IN THE APPELLATE TRIBUNAL FOR ELECTRICITY

(Appellate Jurisdiction)

APPEAL No. 300 OF 2022

Dated: 22.07. 2026

Present: Hon`ble Ms. Seema Gupta, Officiating Chairperson
Hon`ble Mr. Virender Bhat, Judicial Member

IN THE MATTER OF:

HIMACHAL PRADESH POWER TRANSMISSION CORPORATION LIMITED
Through — DGM(C&M)
HIMFED Bhawan, Panjari,
Shimla-171005. … Appellant(s)

VERSUS

1. CENTRAL ELECTRICITY REGULATORY COMMISSION
Through Secretary,
3rd & 4th Floor, Chanderlok building,
36, Janpath, New Delhi-110001.

2. POWER GRID CORPORATION OF INDIA LTD.,
Institutional Area,
Katwaria Sarai, New Delhi-110016.
Corporate Centre : 'Saudamini', Plot No.-2,
Sector-29,
Gurugaon-122 001 (Haryana)

3. HIMACHAL PRADESH STATE ELECTRICITY BOARD,
Represented by its Chairman,
Vidyut Bhawan,
Kumar House Complex Building,
Shimla-171 004.

4. RAJASTHAN RAJYA VIDYUT PRASARN NIGAM LIMITED
Represented by its Chairman,

Vidyut Bhawan, Vidyut Marg,
Jaipur-302005.

5. AJMER VIDYUT VITRAN NIGAM LTD.
Represented by its Managing Director
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur – 302 006.

6. JAIPUR VIDYUT VITRAN NIGAM LTD.
Represented by its Managing Director
400 KV GSS Building (Ground Floor),
Ajmer Road, Heerapura, Jaipur – 302 006.

7. JODHPUR VIDYUT VITRAN NIGAM LTD
Represented by its Managing Director
400 IN GSS Building (Ground Floor),
Ajmer Road, Heerapura,
Jaipur-302006

8. PUNJAB STATE ELECTRICITY BOARD
Represented by its Chairman
The Mall,
Patiala-147 001.

9. HARYANA POWER PURCHASE CENTRE
Represented by its S.E./C&R-1
Shakti Bhawan, Sector-6
Panchkula (Haryana)-134 109

10. POWER DEVELOPMENT DEPTT.
Govt. of Jammu & Kashmir,
Mini Secretariat,
Jammu – 180001.

11. UTTAR PRADESH POWER CORPORATION LTD.
Represented by its Chairman
(Formerly Uttar Pradesh State Electricity Board)
Shakti Bhawan,
14, Ashok Marg,
Lulcknow-226001.

12. DELHI TRANSCO LIMITED,
Shakti Sadan Building, Kotla Road,
New Delhi – 110002.

13. BSES YAMUNA POWER LIMITED,
Represented by its CEO,
Shakti Kiran Building,
Karkardooma,
Delhi – 110092.

14. BSES RAJDHANI POWER LIMITED,
Represented by its CEO,
BSES Bhawan, Nehru Place,
New Delhi – 110 019.

15. NORTH DELHI POWER LTD,
Represented by its CEO,
Power Trading and Load Dispatch Group,
Cennet Building, Pitampura,
New Delhi – 110 034.

16. CHANDIGARH ADMINISTRATION,
Sector-9, Chandigarh
Represented by its chief engineer,

17. UTTARAKHAND POWER CORPORATION LIMITED,
Urja Bhawan, Kanwali Road, Dehradun
Represented by its Managing Director,

18 NORTH CENTRAL RAILWAY,
Allahabad,
Represented by its Chief Electrical Distribution Engineer,

19. NEW DELHI MUNICIPAL COUNCIL,
Palika Kendra, Sansad Marg,
New Delhi-110002.
Represented by its Chairmen,

20. THE CENTRAL TRANSMISSION UTILITY

OF INDIA LIMITED,
Through its Chairman
Floor No.5-10, Tower 1, Plot No.16,
IRCON International Tower,
Institutional Area, Sector-32, Gurugram,
Haryana -122 001.

…. Respondents

Counsel on record for the Appellant(s)	:	Mr. Tushar Mathur Mr. Samir Malik Ms. Rimali Batra Ms. Nikita Choukse Mr. Mahip Singh Sikarwar Ms. Iti Agarwal Ms. Divya Anand Mr. Mr. Paritosh Goel for App. 1
Counsel on record for the Respondent(s)	:	Mr. Sri Venkatesh Mr. Bharat Gangadhan Mr. Ashutosh Kumar Srivatava Mr. Nihal Bhardwaj Mr. Siddhrarth Nigotia Mr. Shivam Kumar Mr. Kartikay Trivedi Mr. Aashwyn Singh Mr. Punyam Bhutani Mr. Suhael Buttan Mr. Siddhrarth Joshi Ms. Himangi Kapoor Mr. Vineet Kumar Mr. Nikunj Bhatnagar Mr Aayush Sinha Mr. Harsh Vardhan Mr. Aditya Vardhan Sharma Mr. Anant Singh Ubeja Mr. Abhishek Nangia Mr. Kunal Veer Chopra

Mr. Nehal Jain
Mr. Vedant Choudhary
Mr. Mohit Gupta for Res.2

Ms. Sangeeta Bharti
Mr. Sushil Kumar Singh
Mr. Ashish Kumar
Mr. Rameezudin Raja
Ms. Anuba Dhulia
Ms. Mehak Kanwar for Res.12

Mr. Mohit K. Mudgal
Ms. Sanya Sud
Mr. Sachin Dubey
Mr. Anjani Kumar Rai for Res.13

Mr. Raj Bahadur Sharma for Res.14

Mr. Alok Shankar
Mr. Kumarjeet Ray for Res. 20

JUDGEMENT

PER HON'BLE MRS. SEEMA GUPTA, OFFICIATING CHAIRPERSON

1. The captioned Appeal No. 300 of 2022 has been filed by Himachal Pradesh Power Transmission Corporation Limited (hereinafter referred to as "**Appellant"/"HPPTCL**"), under Section 111 of the Electricity Act, 2003, challenging the Order dated 21.11.2019 passed by the Central Electricity Regulatory Commission (hereinafter referred to as **"CERC"/"Central Commission")** in Petition No. 158/TT/2018 **("Impugned Order")** filed by Respondent No 2 for determination of Transmission Tariff treating 31.03.2019 as commercial Operation date (COD) for various assets under the scheme ' Augmentation of Transformers in Northern Region – Part B.

2. The Appellant herein, the Himachal Pradesh Power Transmission Corporation Limited ("**HPPTCL**"), is a State Transmission Utility who is entrusted with the development of reliable intra-state transmission network in the state of Himachal Pradesh.

3. Respondent No. 1 is the Central Electricity Regulatory Commission ("**CERC**"), constituted under Section 76 of the Electricity Act, 2003 ("the Act") and is exercising jurisdiction and discharging functions in accordance with the Electricity Act 2003. Respondent No. 2 is Power Grid Corporation of India Limited **("POWERGRID**"), the inter-State Transmission utility of the Country and was also designated as Central Transmission Utility (CTU). Respondent Nos. 3 to 20 are the distribution licensees, State transmission utilities, and other long-term beneficiaries of the Northern Region who are parties to the sharing of transmission charges.

4. Respondent No. 2- POWERGRID, was entrusted with the implementing the transmission scheme namely *"Augmentation of Transformers in Northern Region—Part B"* in which augmentation of 315 MVA (3 x105)400/200 kV transformer at Hamirpur (PG) substation along with 2 no of 220 kV line bays was included. POWERGRID filed the tariff petition 158/TT/2018 and sought deemed COD of the 2 nos 220 kV line bays at Hamirpur (Asset 2) as 31.03.2019 in terms of the proviso ii of Regulation 4(3) of the 2014 tariff Regulation, as same were charged on no load because of non-availability of downstream network of HPPTCL.

5. CERC passed the Impugned Order on 21.11.2019 in which liability of payment of Transmission charges for 220 kV bays at Hamirpur (Asset 2) from 31.03.2019 till commissioning of associated 220 kV transmission system under the scope of HPPTCL was entrusted upon HPPTCL and held as under

> *"25. It is seen from the above that the requirement of 2 no 220 kV line bays at Hamirpur and Jallandhar was agreed in meetings of standing committee, TCC and NRPC. Further, it is observed that in the 22nd meeting of TCC and 25th meeting of NRPC held on 23rd and 24th February, 2012 the representative of PSTCL and HPPTCL were present and agreed for 220 kV line bays at Hamirpur and Jallandhar Sub-stations. Therefore, the contention of the HPPTCL and PSTCL is not justified that at no point of time they have agreed for additional bays at Hamirpur and Jallandhar Sub-station respectively. Based on the above, we approve COD of Asset-2 and Asset-3 as 31.3.2019 and 25.3.2019 respectively under proviso (ii) of Regulation 4(3) of the 2014 Tariff Regulations, 2014.*
>
> *……*
>
> *26. In view of the above, the transmission charges for Asset-2 from 31.3.2019 till commissioning of the associated 220 kV transmission system under the scope of HPPTCL shall be borne by HPPTCL and thereafter, shall be recovered under provisions of Sharing Regulations. Similarly, the transmission charges for Asset-3 from 25.3.2019 till commissioning of the associated 220 kV transmission system under the scope of PSTCL shall be borne by PSTCL and thereafter, shall be recovered under provisions of Sharing Regulations."*

6. Aggrieved by such findings in the Impugned Order, HPPTCL has preferred the present appeal.

ANALYSIS AND DISCUSSION

7. Heard Mr Tushar Mathur learned counsel appearing on behalf of Appellant and Mr Shri Venkatesh, learned counsel appearing on behalf of Respondent No 2, Perused Impugned Order, written submissions filed by the parties and other documents on record. The various issues are deliberated in following paragraphs:

SUBMISSIONS URGED ON BEHALF OF APPELLANT- HPPTCL

8. The Appellant contends that the Central Commission failed to appreciate its submissions in their proper factual and legal context. In the 30th Standing Committee Meeting on Power System Planning (19.12.2011), approval was granted for four 220 kV line bays at Hamirpur—two for Kangoo and two for proposed Palampur substation. It was specifically recorded that the additional two bays at Hamirpur, which form the subject matter of the present Appeal, were to be constructed only upon a request being made by the State Transmission Utility ("STU"), namely HPPTCL, with an advance intimation of at least two years; a position consistently reiterated in the 22nd TCC and 25th NRPC meetings in February 2012. The Appellant's stand was never that the bays were unnecessary, but that their construction and commissioning was conditional and required synchronization with the Hamirpur–Dehan line.

9. The Impugned Order, however, erroneously assumed that the Appellant had agreed to immediate construction of the additional bays irrespective of the stipulated precondition. Further, the Central Commission conflated the distinct positions of PSTCL and HPPTCL—while PSTCL never requisitioned bays at all, HPPTCL only insisted on adherence to the agreed conditionality. By intermingling these submissions, the Commission wrongly concluded that there existed an unconditional agreement requiring simultaneous commissioning of assets and, on that basis, fastened liability upon HPPTCL.

10. The Impugned Order, insofar as it fastened identical liability upon PSTCL along with HPPTCL, was challenged by PSTCL before this Tribunal in ***Appeal No. 109 of 2021 titled PSTCL v. CERC & Ors***. The very reasoning adopted by CERC in the Impugned Order, on the basis of which liability has been fastened

upon both PSTCL and HPPTCL has been held to be erroneous and has been set aside by this Tribunal in the judgement dated 15.09.2022 passed in Appeal No 109 of 2021. In the said judgment, this Tribunal held that the minutes of meetings and deliberations of the Standing Committee, heavily relied upon by POWERGRID and the Central Commission, could not be construed as constituting a binding contractual agreement between the parties and that, in the absence of any contractual arrangement or binding agreement, the concerned State Transmission Utility, not being the beneficiary of the transmission system in question, could not have been saddled with transmission charges merely on the basis of an alleged mismatch in commissioning schedules. These findings strike at the very foundation of the reasoning adopted by CERC in the Impugned Order, inasmuch as the entire premise on which liability came to be imposed upon both PSTCL and HPPTCL was that the parties had allegedly "agreed" in the Standing Committee Meetings to commission their respective assets in a matching manner and that any mismatch in commissioning would automatically attract liability upon the concerned STU.

11. The only factual distinction between the cases of PSTCL and HPPTCL is that, whereas PSTCL had never requested the bays in question, HPPTCL had merely acknowledged that it would intimate POWERGRID at least two years in advance whenever the requirement for such bays arose; however, admittedly, no such intimation was ever furnished by the Appellant-HPPTCL to Respondent No.2-POWERGRID. Despite the absence of any requisition or advance intimation from, Respondent No.2-POWERGRID proceeded to undertake construction of the concerned line bays and it was only when the construction activity had already reached an advanced stage that the Appellant was informed by Respondent No.2-POWERGRID vide letter dated 18.10.2017 that the bays were likely to be completed by December 2017. Appellant, vide its letter dated

14.11.2017, categorically informed POWERGRID that the process for execution of the Hamirpur–Dehan Line had not even commenced and that the award of contract itself was yet to be undertaken, and accordingly indicated that the anticipated timeline for commissioning of the line would be December 2019, i.e., approximately two years thereafter.

12. The Appellant contends that there exists no contractual relationship whatsoever between Respondent No.2-POWERGRID and the Appellant-HPPTCL governing the commissioning timelines of the respective assets, and no agreement, contract, implementation arrangement, or any other binding document was ever executed between the parties requiring the Appellant-HPPTCL to commission the Hamirpur–Dehan Line in synchronization with the COD of the 220 kV bays being constructed by POWERGRID. The liability imposed by the Commission is thus not founded upon any contractual stipulation, but rather on a generalized invocation of the so-called “defaulting entity pays” principle. However, even assuming, without admitting, that such a principle could at all be invoked in the present facts, the Impugned Order completely fails to undertake any fair or objective examination as to who is the actual “defaulting entity” in the present case. The Impugned Order proceeds entirely on the assumption that HPPTCL alone was responsible for the mismatch in commissioning, while completely overlooking the conduct and defaults attributable to POWERGRID itself, including the fact that POWERGRID had proceeded to implement and construct the bays without any prior requisition from HPPTCL, without any advance coordination, and without any communication whatsoever regarding commencement of the works.

13. It is further contended that Regulation 6.3A (4) of the IEGC, 2010 (Fourth Amendment, effective 29.04.2016) mandated execution of an Implementation

Agreement between transmission licensees to provide for matching commissioning schedules, obligations, and consequences of mismatch. POWERGRID, despite being fully aware of this requirement, proceeded without entering into any IA with HPPTCL, in disregard of the binding regulatory framework. The aforesaid amendment had already come into force in the year 2016, much prior to the revised cost estimate and investment approval being obtained by POWERGRID for the concerned bays on 31.03.2017.

14. The significance and necessity of an Implementation Agreement in cases involving matching commissioning obligations and the consequences of mismatch has repeatedly been emphasized by this Tribunal in various Judgments, particularly the Judgment dated 27.03.2017 passed in **Appeal No. 390 of 2017, titled** "***PSCPL v. Patran Transmission Co. Ltd. & Ors***.", wherein this Tribunal recognized that liabilities arising out of mismatch in commissioning must necessarily flow from a defined contractual or statutory framework governing the rights and obligations of the parties. The legal consequence of such a statutory contract is that obligations arising thereunder attain a degree of certainty and enforceability distinct from ordinary contractual arrangements, and it is settled position of law that defences such as frustration, impossibility under Section 56 of the Indian Contract Act, 1872, and general pleas of force majeure have limited applicability to statutory contracts. In this regard, reliance is placed upon the Judgment Hon'ble Supreme Court in ***Mary v. State of Kerala (2014) 14 SCC 272,*** wherein it has been held that obligations arising under statutory contracts stand on a distinct legal footing.

15. The Appellant placed reliance the judgement in on ***NRSS XXXI (B) Transmission Ltd. v. CERC*** (Judgment dated 14.09.2020), wherein it was held that mismatch liability is compensatory and cannot be imposed without

contractual breach. In the present case, POWERGRID itself failed to comply with the mandatory requirement of executing an IA, yet sought to impose damages-based liability upon HPPTCL while avoiding the contractual discipline contemplated under the Regulations. The Impugned Order, by fastening liability solely upon HPPTCL without examining POWERGRID's defaults, is arbitrary, contrary to settled legal principles, and unsustainable.

SUBMISSIONS URGED ON BEHALF OF RESPONDENT No 2 and Respondent No 20 i.e. POWERGRID & CTUIL

16. It is submitted that, the Ccontention of HPPTCL that since no agreement or correspondence existed between HPPTCL and POWERGRID in relation to the subject asset, it is not liable to pay its transmission charges from 31.03.2019 till the actual COD of the downstream network, namely the Hamirpur–Dehan Line is untenable. The Appellant's contention that POWERGRID was required to implement the subject transmission assets only upon receipt of a communication from HPPTCL issued two years in advance is also wholly incorrect. The Agenda for the 30th Meeting of the Standing Committee on Power System Planning of Northern Region specifically included, as one of its agenda items, augmentation of transformation capacity and provision of additional 220 kV line bays at various substations in the Northern Region, including substation located in Himachal Pradesh. Para 3(d) of the said Agenda expressly recorded the proposal for provision of 2 nos. of 220 kV line bays at Hamirpur Sub-Station for evacuation of power pertaining to HPPTCL. A plain reading of the Agenda demonstrates that a total of 28 nos. of 220 kV line bays were proposed across 8 substations in the Northern Region. Thereafter, the aforesaid agenda item was deliberated upon in the 30th Meeting of the Standing Committee on Power System Planning of Northern Region held on 19.12.2011, wherein, out of the proposed 28 nos. of line

bays, implementation of only 4 nos. of 220 kV line bays was agreed upon, comprising 2 nos. of 220 kV line bays at Jallandhar and 2 nos. of 220 kV line bays at Hamirpur. In respect of the remaining 24 nos. of line bays, it was agreed that the same would be provided in future based upon the requirement of the concerned STUs, subject to communication being issued two years in advance. Thus, a conjoint reading of the Agenda and the Minutes of the 30th Standing Committee Meeting unequivocally establishes that the parties had specifically discussed, deliberated upon and agreed to the implementation of Asset-2 (2 nos 220 kV bays at Hamirpur), and that the stipulation regarding issuance of communication two years in advance pertained only to the balance 24 nos. of line bays proposed for future implementation depending upon subsequent requirements of the concerned STUs. The said condition was never made applicable to the already agreed and approved 2 nos. of 220 kV line bays at Hamirpur.

17. The matter was thereafter deliberated in the 22nd TCC Meeting dated 23.02.2012 and the 25th NRPC Meeting dated 24.02.2012, wherein HPPTCL, after detailed deliberations, agreed to the requirement of the said 2 nos. 220 kV line bays at Hamirpur Substation. The aforesaid meetings clearly demonstrate that Asset-2 was undertaken pursuant to the request and concurrence of HPPTCL and with its full knowledge, especially since HPPTCL was represented in all such meetings and never disputed having sought the Subject Asset. Thereafter, vide letter dated 18.10.2017, POWERGRID informed HPPTCL that construction of Asset-2 had reached an advanced stage of implementation and requested HPPTCL to ensure readiness of the corresponding downstream 220 kV transmission lines to match commissioning of the bays. HPPTCL's contention that its letter to POWERGRID, dated 14.11.2017 was merely informational is incorrect. HPPTCL has categorically recorded that it had initiated the process for

execution of the Hamirpur–Dehan Line, including tendering activities, and had indicated a commissioning timeline of December 2019. Additionally, the Investment Approvals dated 27.03.2014 and 31.03.2017 concerning the Subject Asset were also marked to HPPTCL. Further, during the 40th Standing Committee Meeting held on 22.06.2018, HPPTCL itself acknowledged that the Hamirpur–Dehan Line had not yet been commissioned and stated that the same was expected to be commissioned by April 2020.

18. It is submitted that the liability in the present case does not arise solely from a bilateral contract, but emanates from the statutory and regulatory framework, including the planning process, approvals, concurrence accorded in the SCM/TCC/NRPC meetings, approval under Section 68 of the Electricity Act, 2003, and the settled regulatory principle that the entity due to whose downstream delay the transmission element cannot be put to regular use must bear the corresponding transmission charges. Accordingly, HPPTCL is liable for the said transmission charges.

19. The Appellant has erroneously relied upon the Judgment of this Tribunal in Appeal No. 109/2021 ***"PSTCL v CERC &Ors".*** to contend that transmission charges cannot be levied upon it. The factual matrix in the present case is entirely distinguishable from the case concerning PSTCL, wherein PSTCL had neither sought nor required the transmission asset and had consistently objected to the same. In contrast, the Appellant-HPPTCL had itself sought the requirement of bays at Hamirpur Substation during the 30th Standing Committee Meeting and thereafter continued to participate in subsequent planning deliberations without raising any objection whatsoever. In the said judgment, this Tribunal reiterated the settled principle that transmission charges have to be paid by the entity because of whom the asset could not be put to use and accordingly, the

transmission charges were directed to be paid by the PSPCL, instead of Punjab State Transmission Corporation Limited ("PSTCL"). It is settled law that statutory committee decisions are binding and the transmission charges has to be borne by the defaulting entity due to which the transmission system was not put to use. The perusal of various Minutes of Meetings of the Standing Committee, TCC and NRPC, as well as the HPPTCL's own Letter dated 14.11.2017, clearly establishes that the responsibility for execution of the Hamirpur–Dehan Line rested upon HPPTCL. HPPTCL, in its reply before the CERC, has itself admitted that it was undertaking works for completion of the said line. Since Asset-2 of POWERGRID could not be put to use due to the delay/non-availability of HPPTCL's downstream system, HPPTCL is liable to bear the transmission charges irrespective of the absence of any bilateral contractual relationship between the parties.

20. The HPPTCL's contention referring to 3rd Proviso to Regulation 6.3A(4) of the IEGC, 2010 (4th Amendment), that POWERGRID ought to have executed an implementation agreement was strongly refuted by Respondent No 2; firstly this contention were neither pleaded nor urged either during the tariff proceedings or in the present Appeal and, therefore, HPPTCL cannot be permitted to enlarge the scope of the Appeal at this stage. Without prejudice thereto, the HPPTCL's reliance on the aforesaid proviso is wholly erroneous. The 4th Amendment to the IEGC, 2010 was introduced only on 06.04.2016, whereas the Subject Asset had already been agreed upon in the 30th SCM held on 19.12.2011 and, therefore, the said Regulation has no application to the present case. Even otherwise, the provision merely requires the licensee to "endeavour" to match the commissioning of its asset "as far as practicable" and is thus facilitative and directory in nature. The said provision cannot be interpreted in a manner that would nullify or override Regulation 4(3) of the Tariff Regulations, 2014. In this regard, reliance is placed upon the judgment of the Hon'ble Supreme

Court in "***Rajya Bhumi Vikas Bank Samiti State of Bihar v. Bihar Rajya Bhumi Vikas Bank Samiti" (2018) 9 SCC 472.*** It is also pertinent to mention that HPPTCL itself never made any attempt to enter into any such implementation agreement. Having actively participated in the planning process, acknowledged the execution of its downstream system, and admitted delay in commissioning of the Hamirpur–Dehan Line, HPPTCL cannot now seek to rely upon the alleged non-execution of an implementation agreement in an attempt to evade or avoid its liability.

21. Learned counsel for the Respondent No.20 contended that this Tribunal, in "***Bhopal Dhule Transmission Company Limited vs CERC & Ors"(Appeal No.2017 of 2018)***, while relying upon the previous judgments of this Tribunal as well as the Supreme Court Judgements, held that a transmission licensee which has commissioned its asset is entitled to tariff from the date of commissioning; however, such tariff cannot be recovered from the PoC pool of ISTS beneficiaries prior to the asset being charged and put to regular service. This Tribunal further held that the liability to pay transmission charges would fall upon the entity responsible for construction of the downstream asset required for ensuring regular service of the asset in respect whereof tariff is claimed, and that such liability for the period of mismatch in commissioning is not dependent upon the existence of any contractual arrangement between the parties.

OUR CONSIDERATION

22. There is no denial on the part of the Appellant that subject asset was required by them for termination of Hamirpur – Dehan 220 kV line, however it is contended that in terms of minutes of Standing committee meeting, Appellant was to inform the requirement two years in advance to POWERGRID so that Commissioning schedule of 220 kV line being constructed by them could be

matched with the time line of subject 220 kV bays as well as POWERGRID was required to sign Implementation agreement in terms of IEGC. It would be of relevance to note the sequence of events leadings to finalization of subject 2 nos of 220 kV bays at Hamirpur.

Additional Agenda item for 30th Standing Committee on Power System Planning for Northern Regulation to be held on 19/12/2011 (30th SCM)

23. Agenda No 3, proposes the "Augmentation of Transformation Capacity and provision of 220 kV bays in Northern Region" in which under point d along with transformers at other locations, additional 3rd transformer of 315 MVA was proposed for Hamirpur substation along with 2 no of 220 kV Bays as quoted hereunder:

d) Requirement of 400/220 kV ICT at other locations …….

400kV S/s	Trf Capacity	Mw loading	% loading	Remarks	Aug. proposed	220kV Line bays to be provided
Hamirpur	2X315	421	73%	Under outage of one trf. Remaining 315MVA trf. gets loaded to 332 MW	1X315 MVA (3X105 MVA Single Phase)	2 nos.

Minutes of 30th Standing Committee on Power System Planning for Northern Regulation held on 19/12/2011 (30th SCM);

The relevant portion which records the discussion and agreement with regard to Hamirpur is extracted below **:**

"6. Connectivity of Hamirpur (Mattansidh) 220/132kV S/s of HPSEB with Hamirpur 400/220kV S/s of POWERGRID

Director (SP&PA), CEA informed that HPSEB Ltd. had proposed to construct 220kV D/c line from Hamirpur (PG) substation to their existing 220 kV Hamirpur (Mattansidh) S/s and the existing 220kV D/c Jullandhar Hamirpur (HPSEB) (ISTS) line be connected to Hamipur (PG) substation. HPPTCL representative informed that the distance from Hamirpur (HPSEB) to 400/220 kV Hamirpur(PG) substation is about 4 km.

POWERGRID representative stated that the above proposal was equivalent to LILO of Jullandhar – Hamirpur (HPSEB) 220 kV D/c (ISTS) line at 400/220 kV Hamirpur(PG) substation. POWERGRID also informed that 400/220 kV Hamirpur(PG) Substation & LILO of one circuit of Parbati Pooling station - Amritsar 400 kV D/c line at Hamirpur(PG) were already under construction as a part of NRSS-XX scheme and the 220 kV connectivity at this substation was urgently required for stable/reliable operation of the Parbati Pooling - Hamirpur-Amritsar 400 kV line as well as for effective utilization of Hamirpur 400/220 kV substation. He proposed to take up the works of LILO of 220kV Julandhar-Hamirpur D/e at Hamirpur (PG) S/s, as an ISTS scheme as the existing Jullandhar – Hamirpur 220 kV D/c line was an ISTS line.

Considering the urgency of work and the scope being very small, it was agreed that the above works might be carried out by POWERGRID as a part of some on-going scheme.

It was further informed that HPPTCL requested for four 220 kV line bays at Hamirpur 400/220 kV substation i.e. two for connecting their Kangoo S/s and two for connecting their proposed substation at Palampur. POWERGRID representative intimated that 6 nos. of line bays were already being provided at 400/220 kV Hamirpur(PG) substation, Out of these, 4 bays shall be utilized for LILO of 220 kV Jullandhar - Hamirpur D/c line and two bays could be provided for interconnection of proposed Kangoo S/s (HPSEB). The additional two nos. of 220 bays could be considered in future when required, POWERGRID requested HPPTCL to expedite the 220kV D/c interconnection from Hamirpur 400/220 kV substation."

24. We have been informed that Palampur and Dehan are same substation and accordingly used interchangeably. The discussion and agreements with regard to additional agenda items were recorded separately in the same minutes of meeting and with regard to requirement of additional ICTs as per FY 2016-17 studies following is noted :

> ***"d) Requirement of 400/220 kV ICTs at other locations as per 2016-17 studies***
>
> *In addition to above, studies have been carried out in the time frame of 2016-17 to work out the requirement of ICTs at other locations also. From the studies requirement of augmentation of ICTs has been observed at various locations in Northern region. After detailed deliberations following transformer augmentation capacity, in addition to above was agreed:*

400 V S/s	Aug. proposed	220 kV Line bays to be provided
Samba	3x105 MVA	--
Gurgaon	1x500 MVA	--
Mandaula	1x500 MVA	--
Hamirpur	3x105 MVA	2 nos
Jallandhar	1x500 MVA	2 nos
Panchkula	Zx500 MVA	--

> *It was also agreed that 220 kV bays would be provided as per the requirement of, STU. It was decided that respective STU would inform its requirement of 220 kv bays to POWERGRID at least 2 years in advance.*
>
> **Members agreed to the above proposal"**

25. A conjoint reading of the minutes of the 30th Standing Committee meeting and the additional agenda item discussed therein, it emerges that at Hamirpur (PG) ISTS substation, two (2) units of 315 MVA transformation capacity along with six (6) numbers of 220 kV bays were envisaged. Out of these, four (4) bays were required by POWERGRID for implementation of the LILO of Jalandhar–Hamirpur 220 kV line under ISTS, which was duly agreed. In addition, HPPTCL

sought four bays, namely, two for connecting its Kangoo substation and two for its proposed Palampur (Dehan) substation. It was agreed in the 30th SCM (main agenda MOM) that the balance two 220 kV bays out of the six 220 kV would be provided for Kangoo, while the additional two bays for Palampur as sought by HPPTCL would be considered subsequently.

26. Further, under the Minutes pertaining to the Additional Agenda Item, the Standing Committee also agreed to augment the Hamirpur (PG) ISTS Substation by another 315 MVA transformation capacity along with two numbers of 220 kV bays. Basis the stipulation recorded at the foot of the table—that 220 kV bays would be provided as per requirement of the STU, subject to intimation two years in advance, the Appellant has contended that, since no intimation regarding the implementation timeline of the bays was provided by them, liability for its transmission charges cannot be fastened upon it for the mismatch.

27. This contention, though seemingly attractive at first blush, does not withstand scrutiny. The record clearly demonstrates that HPPTCL itself requested four bays, including two for Palampur (Dehan), as recorded in the MOM of 30th SCM as part of the discussion of the main agenda as noted above. Therefore, had eight 220 kV bays were available at Hamirpur 400/200 kV (PG) ISTS substation under the original scheme, the 220 kV bays requirement at Hamirpur for connecting to Palampur (Dehan), as sought by HPPTCL would have been accommodated therein. Thus, the requirement of 220 kV bays for Hamirpur - Palampur(Dehan)220 kV double circuit line seems to be crystallized in the same meeting and does not seem to be contingent upon subsequent intimation.

25th Meeting of Northern Region Power Committee (NRPC) held on 23.02.2012 & 24.02.2012

28. The record of proceedings demonstrates that the new proposals agreed in the 30th Standing Committee Meeting were thereafter placed before the 22nd Meeting of the Technical Coordination Committee (TCC) and the 25th Meeting of the Northern Region Power Committee (NRPC) held on 23.02.2012 and 24.02.2012 respectively. Under Head D (items for NRPC only), and specifically under D1(xv), the approval concerning "Transformation Augmentation in Northern Region: Part B" was noted. The approved Transformation augmentation is extracted hereunder:

Sl.No.	Substation	Transformation Capacity (MVA)	
		Existing	Proposed
Transformation Augmentation in Northern Region : Part - B			
9	Samba	7x105 (1ph)	3x105 (1ph)
10	Gurgaon	2x315	1x500
11	Hamirpur	7x105 (1ph)	3x105 (1ph)**
12	Jullandhar	2x315	1x500**
13	Panchkula	2x315	1x500

** With 220kV line Bays"

29. The MOM clearly records augmentation of transformation capacity at Hamirpur with a third 315 MVA transformer together with 220 kV line bays. The notation "With 220 kV line Bays" appended to the Hamirpur entry leaves no ambiguity that the augmentation was inseparably linked with provision of such bays. It is further material that HPPTCL was a participant in these discussions and concurred in the approval. At no stage did HPPTCL raise any objection or reservation that the approval was conditional upon its furnishing a separate intimation of requirement with a two-year timeline. The contemporaneous record

thus evidences that the requirement of two bays at Hamirpur, meant to facilitate connectivity to Palampur (Dehan), stood crystallized and approved with HPPTCL's concurrence.

Subsequent Events

30. Subsequent events further reinforce this conclusion. HPPTCL itself, by email dated 17.12.2013 addressed to CEA, requested inclusion of the proposal for construction of a 220/132 kV substation at Dehan along with a 220 kV Dehan–Hamirpur double circuit line in the agenda for the 33rd SCM**.** The said request was duly forwarded by CEA to POWERGRID as CTU for inclusion in the Agenda of 33rd SCM.

31. In the 39th Meeting of NRPC and 35th Meeting of TCC held on 02.05.2017 under the status of downstream network of Hamirpur 400/220 kV ISTS station, it is noted that substation is expected to be commissioned by Aug 2017, and 4 nos of 220 kV downstream lines commissioned while balance 2 Nos of 220 kV lines yet to be awarded by state of HP.

32. In the agenda for the 39th SCM held on 29–30 May 2017, at point no 32.2.0, scope of HPPTCL intra-state transmission system, including establishment of the Dehan substation and the Dehan–Hamirpur 220 kV line as part of the Intra-State Green Energy Corridor in Himachal Pradesh was indicated as submitted by HPPTCL vide its letter dated 03.07.2014 and email dated 09.03.2017. The minutes of the 39th SCM meeting recorded the status of downstream network by State utilities from ISTS station at point no 36, under which utilization of six 220 kV bays at Hamirpur was noted as four bays were already utilized, whereas the remaining two bays for Kangoo were yet to be utilized by HPPTCL.

33. HPPTCL vide its letter dated 14.11.2017, in response to POWERGRID letter 18.10.2017, informed the status of Hamirpur – Dehan line. Relevant portion of the letter is extracted hereunder :

> ***"Subject: Readiness of 220 kV Transmission Line for evacuation of power by HPPTCL to match the Commissioning of ICT-III along with 2 Nos 220 KV Line Bays at 400/220 KV GIS Sub-Station, Hamirpur expected by 30.11.2017.***
>
> ***Reference: Your office letter No:- N2HMR/NRPC/HPPTCL/647***
>
> ***Dated: 18.10.2017***
>
> *With reference to your office letter captioned above, it is to inform you that survey work of 220 kV Double Circuit transmission line from PGCIL 400/220kV Sub-Station Hamirpur to Dehan (Patti) Distt. Kangra has already been completed. Forest clearance case is being submitted to the concerned authorities for obtaining necessary permission. Tenders for construction of above line have been called and price evaluation is being carried out. It is expected that work will be awarded by December, 2017. Considering minimum construction period of 24 Months, above transmission line completion is scheduled in Dec. 2019.*
>
> *In this regard, it is requested to provide technical parameters of PLCC, and FOTE system so as to procure compatible communication system for the other end 220 kV Bus Bar Parameters at your end may also be confirmed."*

34. In the 41st meeting of NRPC and 38th meeting of TCC held on 11.04.2018, wherein status of 3 x 315 MVA transformer along with 220 kV bays was recorded that substation shall be commissioned by March 2018, 4 nos of 220 kV bays

already utilized under ISTS and 2 nos of 220 kV bays to be utilized for connecting to Kangoo substation.

35. Further, in the MOM of 40th SCM held on 22nd June 2018, status of downstream network for utilization of transformation capacity at various substations was discussed, including that of 3x315 MVA Hamirpur (PG) substation. The following, inter alia, was recorded:

"S. No.	*Substation*	*Downstream network requirement*	*Downstream network*	*Status as given by STUs*
	Hamirpur 400/220 kV 2x 315 MVA Sub-station (Augmentation by 3x105 MVA ICT) – To be completed by Sep' 18	*04 nos. 220 kv downstream lines commissioned under ISTS. Balance two bays to be utilised by HPSEBL*	*Dehan – Hamirpur 220 kV D/c line*	*HPPTCI informed that earlier 2 nos. of bays were planned to be utilised for connecting 220/132kV Kangoo substation by HPSEBL. Presently, HPPTCL is implementing Dehan – Hamirpur 220 kV D/c line with commissioning schedule as April 2020."*

36. It is an admitted fact that HPPTCL participated in all the above-referred meetings of the Standing Committee on Power System Planning (SCM) and the Northern Region Power Committee (NRPC). The record clearly establishes that it was HPPTCL which indicated the requirement of four 220 kV bays—two for termination of its line to Kangoo substation and the balance two for Palampur (Dehan) and continuously updated the status, never once questioned the

implementation of 220 kV bays for termination of 220 kV lines by them. In our considered view, the specific stipulation in the minutes of the 30th SCM requiring State Transmission Utilities (STUs) to intimate their requirement of 220 kV bays with a lead time of two years does not pertain to the subject transmission asset at Hamirpur. As already observed above, the requirement of two bays for kangoo and Palampur was already crystallized in the 30th SCM, and was subsequently approved and concurred in the 25th NRPC meeting held on 22–23 February 2013.

37. It is pertinent to note that the balance 24 numbers of 220 kV bays, which were planned as part of the additional agenda for the 30th SCM, were not taken up for approval in the subsequent meetings. For those bays, the requirement was indeed to be indicated by the respective State utilities. In subsequent meetings where timelines of downstream systems of various State utilities were discussed, including those emanating from Hamirpur (PG) substation, HPPTCL never contended that it was yet to intimate its requirement of the two bays. On the contrary, from the minutes of the 40th NRPC meeting held on 22 June 2018, it is evident that HPPTCL submitted the implementation schedule of the Hamirpur–Dehan transmission line as April 2020.

38. Further, when POWERGRID, by communication dated 18.10.2017, informed HPPTCL that construction of Asset-2 i.e 220 kV bays Hamirpur (PG) had reached an advanced stage and requested HPPTCL to ensure readiness of the corresponding downstream 220 kV transmission lines to match commissioning of the bays, HPPTCL, in its reply dated 14.11.2017, did not contest or object to the implementation of the bays by POWERGRID on the ground of absence of prior intimation for taking up the implementation of 220 kV bays, instead, HPPTCL merely informed the status of execution of the Hamirpur–

Dehan line, with a commissioning timeline of December 2019. This conduct unequivocally demonstrates that HPPTCL accepted the implementation of the subject bays and proceeded with the planning and execution of its corresponding downstream system accordingly.

39. We accordingly hold that the requirement of subject two 220 kV bays at Hamirpur (PG) ISTS substation for HPPTCL was crystallized in the 30th SCM, held on 19.12.2011 approved in the 25th NRPC meeting held on 23.02-2012-24.02.2012. The stipulation regarding advance intimation of requirement of 220kv bays by the STUs does not apply to these bays, as their necessity was already recorded and approved. HPPTCL, having itself sought and thereafter proceeded to utilized the same, cannot now contest the liability for transmission charges fastened on it by contending absence of prior intimation. Accordingly, such contention of Appellant is rejected.

Applicability of Provision under IEGC 2010- third Proviso to Regulation 6.3 A (4) of Fourth Amendment to IEGC 2010

40. Emphasis has been laid by the Appellant on the third proviso to Regulation A (4) of the Fourth Amendment to IEGC 2010, to contend the liability of payment of transmission charges for the subject assets that no implementation agreement has been signed by HPPTCL with POWERGRID for finalizing the time line. For ease of reference, same is extracted hereunder.

> *"4. Date of commercial operation in relation to an inter-State Transmission System or an element thereof shall mean the date declared by the transmission licensee from 0000 hour of which an element of the transmission system is in regular service after*

successful trial operation for transmitting electricity and communication signal from the sending end to the receiving end:

….

(iii) Where the transmission system executed by a transmission licensee is required to be connected to the transmission system executed by any other transmission licensee and both transmission systems are executed in a manner other than through tariff based competitive bidding, the transmission licensee shall endeavour to match the commissioning of its transmission system with the transmission system of the other licensee as far as practicable and shall ensure the same through an appropriate Implementation Agreement. Where either of the transmission systems or both are implemented through tariff based competitive bidding, the progress of implementation of the transmission systems in a matching time schedule shall be monitored by the Central Electricity Authority."

41. We take note that fourth Amendment to IEGC, 2010, which include the above provision was issued on 06.04.2016, and was to be made applicable from the date of publication in the official Gazette, which could be only subsequent to 06.04.2016. As already deliberated above, the subject 220 kV bays were finalized and approved way back in 2011-12. It is noted that subsequent to the approval of the scheme including the subject asset, POWERGRID initiated the process for implementation of scheme, and Ministry of Power ("MOP"), Govt of India on 19.03.2013 issued prior approval under Section 68 of the Electricity Act, which is a mandatory requirement for installation of the Transmission Scheme:-

Typed Copy

ANNEXURE A/2

"New Delhi, dated the 19th March, 2013

To,

CMD,
PGCIL
Gurgaon

Sub: Prior Approval of the Government under Section 68 of the Electricity Act, 2003 for Augmentation of Transformers: In Northern Region-Part B.

Sir,

I am directed to refer to PGCIL's letter no, C/CP/Aug. of Transformers In NR- Part- B dated 20.02.2013 on the above subject and to convey the prior approval of the Central Government under sub-section (1) of Section 68 of the Electricity Act, 2003 for "Augmentation of Transformers in Northern Region-Part B" at the following existing substation as approved in the 30th Standing Committee Meeting on Power System Planning of NR held on 19.12.2011 and 31st Standing Committee Meeting on Power System Planning of Northern Region held on 02.01.2013:

Sl.No.	*Name of 400 kV Substation*	*Proposed Transformer augmentation (MVA)*	*220 kV line bays*
1.	*Samba*	*1 X 315*	*-*
2.	*Gurgaon*	*1 X 500*	*-*
3.	*Hamirpur*	*3 X 105*	*2 nos.*
4.	*Jalandhar*	*1 X 500*	*2 nos.*
5.	*Panchkula*	*1 X 500*	*-*

The approval is subject to compliance of (a) the requirement of the relevant provisions of the Electricity Act, 2003, as amended from time to time and the rules and regulations framed there-under and (b) the rules governing, the overhead lines as specified in the Indian Electricity Rules, 1958, till they are substituted by corresponding rules framed under the Electricity Act, 2003

The approval is also subject to the following conditions:

i. The implementing agency will commence construction of the project within 3 years, unless this term is extended by the Ministry of Power.

ii. Ministry of Power may withdraw the approval before the expiry of the period of 3 years after giving a one-month notice.

Yours faithfully,

(Ajay Joshi)
Under Secretary to the Govt of India
Telefax No. 23730264

Copy to Shri B.K. Sharma, Director (SP&PA), CEA w.e.f. CEA's letter No.1/3/2013/SP&PA/295 dated 01.03.2013."

42. It is to note that such prior approval under Section 68 of Electricity Act also took cognizance of the approval of scheme in the Standing Committee meetings. Subsequently, the investment approval of the said Scheme, including the subject assets, was accorded by Board of Director's of POWERGRID on 16.05.2014, The grant of investment approval of the scheme means that Board of POWERGRID, the approving authority, authorized POWERGRID to start implementation of the scheme, thus setting the start date for implementation of the scheme, We have been informed by Respondent that intimation of Investment approval of the scheme was sent to HPPTCL also; not disputed by HPPTCL. Thus, we do not find merit in the contention of HPPTCL that POWERGRID had proceeded to implement and construct the bays without any communication whatsoever regarding commencement of the works.

43. It is further noteworthy that, throughout the implementation process, HPPTCL never raised any objection to POWERGRID undertaking the execution of the Scheme. Presumably because HPPTCL has also initiated the parallel activities for implementation of Dehan – Hamirpur 220 kV transmission lines as is evident from its email communication addressed to CEA in 2013, as well as the deliberations recorded in subsequent standing committee meetings.

44. The Appellant seeks to rely upon the third proviso to Regulation 6.3A (4) of the Fourth Amendment to the Indian Electricity Grid Code, 2010, contending that, in the absence of an Implementation Agreement absolves it of liability for payment of transmission charges on account of mismatch. It is a settled canon of statutory interpretation that subordinate legislation, including regulations framed under

Sections 178 or 181 of the Electricity Act, ordinarily operates prospectively. Retrospective application can only be sustained where the parent statute expressly confers such power or where the regulation is clarificatory or procedural in nature. In the absence of such enabling authority, regulations cannot be construed to impose obligations or liabilities for past periods, as this would offend the doctrine of fairness and settled expectations. The Supreme Court has consistently held that unless the parent statute itself authorizes retrospective operation, delegated legislation cannot travel beyond the prospective sphere. In the present case, admittedly the fourth amendment to IEGC was made applicable only upon its publication in the Official Gazette, subsequent to i.e., on 29.04.2016, while actual implementation activities were initiated much earlier, on 16.04.2014, even if considered from Investment approval date. Consequently, the provisions introduced by the Fourth Amendment cannot be invoked to govern or invalidate actions undertaken prior to their coming into force.

45. We accordingly hold that the third proviso to Regulation 6.3A(4) of the Fourth Amendment to the IEGC, 2010, is not applicable to the present case. The contention of the Appellant that its liability for transmission charges can be avoided on the basis of retrospective application of the said amendment is rejected. The reliance has been placed by the Appellant on the Judgment of Hon'ble Supreme Court in "***Mary v. State of Kerala" (2014) 14 SCC 272,*** that parties are bound by the specific provisions of the contract executed between them. Since the provision introduced by the fourth amendment of IEGC, 2010, are not applicable in the present case, the ratio of the aforesaid judgment does not advance the Appellant's case and is, therefore, inapplicable.

46. The reliance placed by the Appellant on the Judgment of this Tribunal in "***NRSS XXXI (B) Transmission Ltd. v. CERC & Ors***." is equally misconceived and distinguishable on facts. In the said case, this Tribunal held that, in the absence of any contractual privity or binding agreement between the transmission licensees, coupled with the absence of any statutory provision creating such liability, mismatch liability, being compensatory in nature, could not be fastened upon the transmission licensee, particularly when its non-performance stood excused on account of Force Majeure. The ratio of the said judgment was rendered in the peculiar factual matrix where no consensus or binding obligation existed between the parties regarding the development and matching commissioning of the interconnected transmission assets.

47. The present case stands on an entirely different footing. Here, the contemporaneous records of the Standing Committee, TCC and NRPC meetings unequivocally establish that the requirement of the subject 220 kV bays emanated from HPPTCL itself, that the same was deliberated upon and approved with its concurrence, and that HPPTCL thereafter consistently participated in the implementation process by furnishing the progress and commissioning schedule of its corresponding downstream transmission system. At no stage did HPPTCL dispute the requirement of the subject bays or object to their implementation by POWERGRID. Thus, the liability in the present case does not arise merely from a bilateral contractual arrangement but flows from the statutory transmission planning process, the approvals granted thereunder, and the settled regulatory principle that the entity whose delay prevents a commissioned transmission asset from being put to regular service must bear the consequential transmission charges. Consequently, the ratio laid down in the **NRSS XXXI (B**) Judgment has

no application to the facts of the present case and does not advance the case of the Appellant.

48. Additionally, noting the submission of Respondents that this contention were neither pleaded nor urged either during the tariff proceedings or in the present Appeal and we also note that action of HPPTCL speaks otherwise with regard to them having initiating the action for implementation of Hamirpur – Dehan 220 kV line, reliance on the said provision in the fourth amendment of IEGC 2010, in our view seems to be an afterthought .

49. Further, the reliance placed by HPPTCL on the Judgment of this Tribunal dated 27.03.2017 passed in **Appeal No. 390 of 2017, titled** "***PSCPL v. Patran Transmission Co. Ltd. & Ors***.", (*Patran* Judgment) is misconceived and of no avail. In the said judgement, this Tribunal, relied upon the principle that the liability to bear transmission charges have to be paid by the entity because of whom the asset could not be put to use and accordingly, the transmission charges were directed to be paid by the PSPCL, who was responsible for arranging the downstream network. The same principle, in fact, squarely applies to the present case. The Appellant itself had projected the requirement of the subject 220 kV bays for the Dehan–Hamirpur 220 kV double-circuit transmission line. However, owing to the failure of HPPTCL to commission the said transmission line, the subject asset could not be put to use. Consequently, in terms of the principle laid down in the Patran Judgment, the liability for payment of transmission charges has rightly been fastened upon HPPTCL for the period until the subject asset was put to use.

50. In the Judgment of this Tribunal in Appeal No. ***109 of 2021 PSTCL vs CERC & Ors.*** (**"PSTCL Judgement"),** the issue involved was between Punjab State Transmission Corporation Limited (PSTC), a transmission licensee

engaged in the business of intra- state Transmission system and POWERGRID, (then CTU) engaged in the business of inter-State Transmission System. POWERGRID undertook the implementation of 220 kV inter-State bays at Jallandhar substation, for utilization by PSPCL. The CERC in the same Impugned Order dated 21.11.2019 affixed the liability of payment of transmission charges for 220 kV bays from its COD of 31.03.2019 till commissioning of downstream network by upon PSTCL. Aggrieved thereby, PSTCL approached this Tribunal contenting that no requirement of such asset has been communicated by it, and there being no contractual liability or occasion for PSTCL to be treated as entity in default, the liability of payment of transmission charges by PSTCL is in violation of law. This Tribunal after pursuing the minutes of standing committee and Regional Power committee meetings, which led to the approval of scheme including the subject asset and various other judgments noted that there was no agreement reached between the parties for development of subject assets. This Tribunal in the said judgement also noted that PSTCL had specifically refuted the requirement of subject bays, firstly, vide its letter dated 16.02.2017 issued in response to POWERGRID letter and in the 41st meeting of NRPC held on 28.02.2018. On the basis of the aforesaid facts, this Tribunal ultimately held as under:

> *"27. From the chronology of events, it is clear that PGCIL went ahead with the development of the work assuming that there was a requirement of the asset for purposes of the appellant. This assumption, without confirmation by the STU, was unfounded. In these circumstances, it cannot be said that there was an agreement reached between the parties (PGCIL on one hand and PTCL on the other) for development of the subject asset. In this view, as indeed in absence of any contract binding the parties to the dispute herein, the liability towards transmission charges cannot be fastened on the STU (PSTCL), not the least on the ground that it had been remiss in development of the downstream system".*

51. The facts of the present case are materially and factually distinguishable from those involved in the PSTCL v. CERC & Ors. In the present case it has been established through MOM of multiple TCC and NRPC meetings that the bays at Hamirpur were sought by HPPTCL and agreed to be developed for them. Even in subsequent discussions, HPPTCL never disputed the requirement and simply intimated the factual status of development of associated asset being developed by them. Accordingly, the reliance placed by Appellant on the said Judgment of this Tribunal in ***Appeal no 109 of 2021, PSTCL vs CERC & Ors*** is of no avail.

52. It is apposite to refer to the Judgment of this Tribunal in ***Bhopal Dhule Transmission Company Limited v. CERC & Ors.,*** wherein the issue pertained to a mismatch between transmission assets developed by two transmission licensees under Sections 62 and 63 of the Electricity Act. Relying upon the earlier judgments of this Tribunal as well as the Hon'ble Supreme Court, this Tribunal reiterated that a transmission licensee, having duly commissioned its transmission asset, is entitled to tariff from the date of commissioning. However, such tariff cannot be socialized through the PoC pool of ISTS beneficiaries until the asset is put to regular service. The Tribunal further reaffirmed the settled principle that, in a case of mismatch between interconnected transmission assets, the financial consequences cannot be vested upon the beneficiaries or the transmission licensee whose asset is ready for use. Rather, the liability for payment of transmission charges is required to be borne by the entity whose failure or omission has prevented the commissioned asset from being put to regular service. Applying the aforesaid principle, this Tribunal upheld the Order of the Central Commission fastening the liability for payment of transmission charges upon the defaulting entity responsible for the mismatch, thereby ensuring

that the transmission licensee, which had completed its obligations, was not deprived of its legitimate tariff entitlement.

CONCLUSION

In view of above deliberations, we do not find any error in the Impugned Order passed by CERC and Impugned Order is upheld.

The Captioned Appeals and pending IAs, if any, are dismissed.

PRONOUNCED IN THE OPEN COURT ON THIS 22nd DAY OF July, 2026.

(Virender Bhat)	**(Seema Gupta)**
Judicial Member	**Officiating Chairperson**

REPORTABLE / ~~NON-REPORTABLE~~

pr/dk/ag