

Before
UTTARAKHAND ELECTRICITY REGULATORY COMMISSION
Petition. No. 30 of 2023

In the Matter of:

Petition under Section 86 read with Section 181 of the Electricity Act, 2003 read with the order dated 20.06.2023 Hon'ble High Court in WPMS 1829/2021, seeking for appropriate directions from the Commission to amend the Uttarakhand Electricity Regulatory Commission (Terms and Conditions of Intra-State Open Access) Regulations, 2015.

And

In the Matter of:

M/s Bhilangana Hydro Power Limited.

...**Petitioner**

&

In the Matter of:

Power Transmission Corporation of Uttarakhand Ltd. (PTCUL).

... **Respondent**

Coram

Shri D.P. Gairola

Member (Law)/Chairman(I/c)

Shri M.K. Jain

Member (Technical)

Date of Hearing: August 07, 2023

Date of Order: October 17, 2023

ORDER

This Order relates to Petition filed by M/s Bhilangana Hydro Power Pvt. Ltd. (hereinafter referred to as "the Petitioner") in accordance with the order dated 20.06.2023 passed by the Hon'ble Uttarakhand High Court of Uttarakhand in WPMS 1829/2021, seeking for appropriate directions from the Commission to amend the Uttarakhand Electricity Regulatory Commission (Terms and Conditions of Intra-State Open Access) Regulations, 2015 (hereinafter referred to as "Open Access Regulations 2015").

2. Background

- 2.1 The Petitioner is a power generating company and has set up a 24 MW hydro-electric power project (Bhilangana-III or B-III) on River Bhilangana near Village, Ghuttu, Tehsil Ghansali, District Tehri Garhwal, Uttarakhand. The said project was allocated under the competitive bidding process by the Government of Uttarakhand in the year 2003 and was commissioned on 20.12.2011. Petitioner has been selling all its power outside the State of Uttarakhand under Open Access and is using the 220 kV Double Circuit (D/c) Ghuttu-Ghansali transmission line also represented as 220 kV Bhilangana-III-Ghuttu line which has been established by PTCUL.
- 2.2 PTCUL (hereinafter referred to as “the Respondent” or “the licensee”), a State transmission utility & also transmission licensee of the State had earlier filed a petition dated 03.07.2009 before the Commission for approval of capital investment covered under loan assistance from REC. The Commission while according no objection to it for going ahead with its proposed investment vide Order dated 24.11.2011, excluded the following projects from the proposed investment scheme, (i) 220 kV S/C Chamba-Ghansali line; (ii) 01 No. 220 kV bay at 220 kV S/s Chamba; (iii) 220 kV D/C Bhilangana-III- Ghansali line; (iv) 220 kV S/s Ghansali.

In the aforesaid Order dated 24.11.2011, the Commission gave the following reasoning for excluding the above projects which is reproduced below:

“With regard to the integrated transmission projects, within the scheme, which are proposed to be developed for evacuation of power from the Generators for sale of electricity outside the State cannot be considered in the system strengthening schemes proposed by the Petitioner. The transmission/wheeling charges for these dedicated lines and sub-stations used only for evacuation of such power shall be borne by the beneficiary generators in accordance with UERC (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2010 and UERC (Terms & Conditions of Intra-State Open Access) Regulations, 2010. However, in case of more than 50% of the total power carried through such system is inter-state power and the system

is duly certified by RPC, then these lines shall be non ISTS or deemed inter-state lines in accordance with the provisions of the Electricity Act, 2003 and CERC (Sharing of Inter-state Transmission charges and losses) Regulations, 2010 read with various Removal of Difficulty Order of CERC issued under the aforesaid Regulations. Accordingly, the Commission has decided to exclude the following projects, mentioned in Table-2 below, from REC-IV investment proposal of the Petitioner."

- 2.3 In order to evacuate power from Petitioner's power plant and other proposed upcoming generators, Power Transmission Corporation (hereinafter referred to as 'PTCUL' or 'Respondent') constructed a 220 kV Double Circuit (D/c) Ghuttu-Ghansali transmission line. This line was planned as an 'integrated transmission system' to serve the purpose of all the upcoming generators which were to establish their respective generating plants in that area where the Petitioner's project is located.
- 2.4 Coincidentally, besides Petitioner's Power Plant, no other Plant could come up in time thus making Petitioner a sole user of the aforesaid transmission system, this attracted 3rd proviso to Regulation 20 (1)(b) of the UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015 (erstwhile 2nd proviso to Regulation 21(1)(b) of the UERC OA Regulations, 2010), obligating the Petitioner to pay transmission charges for the Ghuttu-Ghansali transmission line. The said proviso reads as:

"Provided further that where augmentation of transmission system including dedicated transmission system used for open access has been constructed for exclusive use of or being used exclusively by an open access customer, the transmission charges for such dedicated system shall be worked out by transmission licensee for their respective systems and got approved by the Commission and shall be borne entirely by such open access customer till such time the surplus capacity is allotted and use for by other persons or purposes."

- 2.5 However, later, on a representation filed by Petitioner, the Commission vide order dated 29.04.2013 *inter alia* stated that:

“17. With regard to 220 kV D/C Bhilangana-III- Ghansali line, the Commission considers this as a transmission line which will be primarily used for evacuation of power from existing and proposed hydro generating stations in the area. The Commission has taken note of the fact that as of now while one circuit of this double circuit line is strung upto 220 kV S/s at Chamba and is being used for evacuation of power from the existing generating station namely Bhilangana-III (24 MW) the other circuit is strung upto Ghansali and is proposed to be connected to upcoming 220 kV S/s at Ghansali. It is apparent that only one circuit has been energised and put to use. Taking cognizance of the provisions of the Tariff regulations that any capital expenditure towards creation of an asset is deem fit for capitalization only if that asset is put to use, therefore, the Commission has decided to allow cost of servicing/ARR on only 50% of the capital cost incurred by the Petitioner towards the construction of the 220 kV D/C Bhilangana –III- Ghansali line which shall be recovered from the generator namely Bhilangana-III SHP, the only beneficiary as of now, subject to pro-rata recovery of this cost from other generators as and when they are commissioned and connected with this line. As far as the recovery of the balance capital cost of the line, disallowed as above, the Commission will take a view as and when the second circuit of the line is energised and put to use. Notwithstanding to what has been stated above, the Commission is also of the view that this line needs to be included by the Petitioner in the PoC mechanism for recovery of transmission charges as deemed ISTS system in accordance with CERC (Sharing of Inter-state Page 8 of 11 Transmission charges & losses) Regulations, 2010, then the Petitioner shall accordingly recover the charges applicable thereof from the Generator. However, to obviate the financial difficulties being faced by the Petitioner due to non-servicing of the asset, a purely provisional determination is being made which will be subject to adjustment on determination of transmission charges for this line as deemed ISTS line by CERC.”

2.6 The Commission in the aforesaid Order dated 29.04.2013 further concluded that:

“18. Accordingly, the contention of the Generator in its adjudication petition that the entire transmission system from Bhilangana III SHP to Chamba should not be treated as dedicated system stand resolved to the extent that 220 kV GIS substation at Ghansali, 220 kV S/C Chamba-Ghansali line and 01 No. bay at 220 kV

substation Chamba shall be considered as system strengthening works of the transmission licensee and one circuit of 220 kV D/C Bhilangana-III Ghansali line shall be considered as a transmission line for evacuation of power from the Generators."

- 2.7 Aggrieved by the above Order, Petitioner filed an appeal before the Hon'ble APTEL where the order of the Commission was upheld by the Hon'ble APTEL vide order dated 29.11.2014 by stating that:
- a) BHPL is liable to pay entire transmission charges for one circuit of the line as determined by the Commission which is as per the Regulations.
 - b) PTCUL is entitled to recover charges for only one circuit of the line from the Appellant.
- 2.8 Against this order of the Hon'ble APTEL, Petitioner went before the Hon'ble Supreme Court which dismissed the appeal of Petitioner vide order dated 10.05.2018 giving it a liberty to move before the Central Commission to establish that for any particular period the transmission was inter-State.
- 2.9 Later CERC vide Order dated 21.04.2022 clarified that transmission charges are to be determined by the State Commission as the said line is an intra-State line and not a Inter-State line.
- 2.10 Exhausting all available legal remedies, the Petitioner has now challenged the validity of the 3rd proviso to Regulations 20 (1)(b) of the UERC Open Access Regulations, 2015 and filed a Writ Petition before the Hon'ble High Court of Uttarakhand, however, later during the proceedings before the Hon'ble Court, Petitioner requested the Hon'ble Court to permit it to make a representation to the Commission to re-consider/re-examine the 3rd proviso to Regulation 20 (1)(b) of UERC Open Access Regulations 2015 and the Regulations which existed prior to the said Regulation of 2015. Accordingly, the Hon'ble Court vide Order dated 20.06.2023 directed the Counsel for the petitioner to make a representation, which may be considered by the Commission.
- 2.11 Thereafter, Petitioner filed the instant Petition on 04.07.2023. The Commission vide letter dated 14.07.2023 directed the parties to appear before it for hearing

on 01.08.2023. Meanwhile, the Commission received a counter-affidavit from the Respondent.

2.12 On the day of hearing, Petitioner and Respondent elaborated and reiterated their submissions, however, parties could not conclude their arguments and hence, the Commission vide daily Order dated 01.08.2023 decided to hear the parties again on 07.08.2023. On the said date of hearing, the Commission decided to reserve its judgement and further allowed the parties to file their written submissions by 14.08.2023. Whereas, the Respondent submitted its reply on the due date, the Petitioner submitted its written submission on 17.08.2023.

3. The Petitioner submitted:

- 3.1 That it seeks appropriate directions from the Commission thereby amending the existing Uttarakhand Electricity Regulatory Commission (Terms and Conditions of Intra-State Open Access) Regulations, 2015, specifically amending/repealing the 3rd proviso to Regulation 20 (1)(b) of the said Regulations.
- 3.2 That the aforesaid 3rd proviso to Regulation 20 (1)(b) of Open Access Regulations, 2015 is ultra-vires as a State Transmission Utility viz., Power Transmission Corporation of Uttarakhand Limited ("PTCUL") cannot construct a dedicated transmission line/system which can only be developed/ established by a Captive Generating Station or an Independent Generating Station in terms of Sections 9 and 10 of the Electricity Act, 2003, and not by CTU or STU.
- 3.3 That over the years, there has been a regulatory clarity/developments on this very issue, whereby certain orders/ judgments have been passed by the Hon'ble Appellate Tribunal for Electricity (APTEL) which has clarified the position that a dedicated transmission line/system can only be developed/established by a Captive Generating Station or an Independent Generating Station in terms of Sections 9 and 10 of the Electricity Act, 2003, and not by CTU or STU. Accordingly, based on the said developments, it requested Hon'ble High Court with a pray to allow it to make a representation to the Commission to re-consider/re-examine the impugned UERC Open Access Regulations, 2015 viz., the 3rd proviso to Regulation 20 (1)(b) of Open Access Regulations, 2015 and the

Regulations which existed prior to the said Regulation of 2015 in light of the judgments passed by the Hon'ble APTEL.

- 3.4 That 3rd proviso to Regulation 20 (1)(b) of the UERC Open Access Regulations, 2015 introduced a concept of "Dedicated Transmission System" constructed/ augmented by the STU (PTCUL) for utilization by an open access customer in the State of Uttarakhand. The above Regulations further provided that the charges for such 'dedicated' system shall be exclusively borne by the open access customer till such time the surplus capacity of the transmission line is allocated to other users.
- 3.5 That, the above provision is not in consonance with the legislative mandate of the Electricity Act, 2003, since as per the said legislation a State Transmission Utility cannot construct/ establish a 'Dedicated transmission system/ line' for a generator. In other words, any line constructed by either CTU or STU has to become part of the common transmission system whose charges are shared by all the transmission system users and cannot be imposed exclusively.
- 3.6 That from a reading of Sections 2(16), Section 9 and Section 10, it is evidently clear that "Dedicated Transmission Lines" can only be constructed by a Captive Generating Plant (under Section 9) and a Generating Plant (under Section 10)
- 3.7 That Section 2(72) of the Act provides the definition of "Transmission Lines" and does not include within its ambit, construction of any Dedicated Transmission Lines [under Section 2(16)]. As per Section 2(73), Section 39(2)(c) and section 40(a) of the Act, "transmission lines" can only be constructed by "transmission licensees".
- 3.8 That in order to substantiate the aforesaid submission, reference is drawn to the "Removal of Difficulty (5th order)" issued by the Central Government under the Electricity Act, 2003. In the said order, it has been specifically clarified that a "Dedicated Transmission Line" is neither a transmission line in terms of Section 2(72), nor is it a distribution system, connecting the point of a connection to the installation of consumer in terms of Section 2(19) of the Electricity Act, 2003. Therefore, it is clear that transmission licensees can only construct transmission lines, which does not include dedicated transmission lines or system.

- 3.9 That as per Section 39(2)(c), STU is required to ensure development of an efficient, coordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centers, therefore, the intra-state 'system' consists of only 'transmission lines' as defined under Section 2(72) and not "Dedicated Transmission Lines" as defined under Section 2(16). This clearly means that STU can only develop 'transmission lines' and not 'dedicated transmission lines'.
- 3.10 That STUs cannot develop/construct dedicated transmission system/lines, now stands further settled on account of the judgment dated 21.10.2020 passed by the Hon'ble APTEL in Appeal No. 16 of 2020, titled as Odisha Power Generation Corporation Limited vs. Central Electricity Regulatory Commission & Ors. (OPGC judgement). In the said appeal, the Hon'ble APTEL considered an issue as to whether a Central Transmission Utility (defined under Section 38, which is a statutory body envisaged with the functions of planning and construction of Inter-State Transmission System and is similar to an STU) can construct a dedicated transmission system for an electricity generator.
- 3.11 That from the perusal of the above judgment, the Hon'ble APTEL, after carefully analysing the legislative framework enshrined under the Electricity Act, 2003, came to a conclusion that under the Electricity Act, 2003 a dedicated transmission line can only be built by a Captive Generating Plant or a Generation Station, and that, apart from the said entities, no other entity can build a dedicated transmission line/ system. In the above case, the issue pertained to involvement of Central Transmission Utility, which is a statutory body envisaged with the function of planning and coordinating Inter-State Transmission System (ISTS) at the National level under Section 38 of the Electricity Act, 2003. In the instant case, the issue pertains to a situation where PTCUL, as an STU, is also a similarly placed statutory body under Section 39 of EA 2003, performing the function of planning and coordination Intra-State transmission system (InSTS). As such, both CTU and STU are on the same pedestal, and that the only difference being that one is functioning at the national level (CTU) in terms of Section 38 of Electricity Act, 2003 and the other one at the State level (STU/ PTCUL) in terms of Section 39.

That based on the above judgment, the principle of law is absolutely clear that neither CTU nor STU can build/ construct/ establish/ develop dedicated transmission system/ lines. As such, on this count alone, this Commission ought to pass necessary orders to amend/ repeal the 3rd proviso of Regulation 20(1)(b) of the Open Access Regulations, 2015.

3.12 That there are various transmission lines/assets/network constructed by STU in the State which are being exclusively used by the Distribution Licensee (i.e., Uttarakhand Power Corporation Limited). However, for such lines, STU/PTCUL does not levy exclusive transmission charges upon UPCL in terms of the impugned 3rd proviso to Regulation 20 (1)(b) of the Open Access Regulations, 2015, like L&T Singholi-Bhatwari Project, located in Rudraprayag, District Chamoli.

3.13 The Petitioner has sought following reliefs in the representation:

- a) Initiate proceedings under Section 181 of the Electricity Act, 2003 in order to amend/repeal the provisions of the Uttarakhand Electricity Regulatory Commission (Terms and Conditions of Intra-State Open Access) Regulations, 2015, in terms as stated in the present Petition; and
- b) Pass such other and further order or orders as the Commission may deem fit and proper under the facts and circumstances of the present case.

4. The Respondent submitted:

4.1 That the present Petition cannot be filed under the provision of law as stated in the Petition. The Section 86 read with Section 181 of the Act does not confirm any right upon the Petitioner to move any Petition for the relief as claimed in the Petition.

4.2 There is no cause of action for the petitioner to file the present petition. The petitioner has not disclosed any dispute which requires to be adjudicated under section 86(1)f of the Electricity Act, on the contrary has misrepresented that the present Petition has been filed in terms of the directions of the Hon'ble High Court.

- 4.3 That from the contents of the petition it is clear that the petitioner actually wants the Commission to hold that petitioner is not liable to pay the transmission charges for the transmission system being dedicatedly used by it. It is relevant to note that the Commission in earlier judicial proceedings had already decided the issue and the Order of the Commission has been upheld by the Hon'ble APTEL and has attained finality.
- 4.4 That the present Petition is also in violation of the order dated 20.06.2023 passed by the Hon'ble High Court of Uttarakhand in WPMS 1829/2021. It is pertinent to mention that the Petitioner sought liberty from the Hon'ble High Court to move a representation before the Commission but has in fact moved a Petition. Filing of Petition and moving a representation are two different aspect, a petition can be filed only under Section 86(1)(f) of Electricity Act 2003 and as per the provisions of Conduct of Business Regulations and the Order passed in a Petition is subject to appeal before the Hon'ble APTEL. The filing of petition must arise out of legal right which the petitioner does not have in the present matter hence they could only have moved a representation as was permitted and for which the liberty was granted by the Hon'ble court.
- 4.5 That the Petitioner is doing forum shopping with respect to an issue that has been settled long before and in the present Petition, on one hand the Petitioner has kept the Petition before the Hon'ble High Court alive and on other hand wants the Commission to uphold the ground on which the present Petition is based so that he may be able to sustain its Petition before the Hon'ble High Court, thereby not having to pay the transmission charges in future due to amendment in Regulations and also claiming refund of the charges already paid.
- 4.6 That this Representation (in form of Petition) has been filed after inordinate delay and petitioner has tried to misrepresent the fact by associating unrelated facts and legal pronouncement thereby has tried to mislead the Commission in seeking amendment of the Regulations.
- 4.7 That the instant Petition is also barred by the principles of *Res Judicata & functus officio* because the objective behind seeking an amendment to 3rd proviso of Regulation 20(1)(b) of the UERC Open Access Regulations, 2015 is to achieve

socialization of transmission charges related to 220 kV Ghuttu-Ghansali transmission line. In this regard, the Commission has already, by way of its order dated 29.04.2013 held that 50% capital cost incurred by PTCUL over the said line would be allowed to be serviced and the same would be recovered from the Petitioner which is the only user of the said line as of date. In terms of 3rd proviso of Regulation 20(1)(b) of Open Access Regulations 2015, the Commission also held that pro-rata recovery of transmission charges would apply as and when other generators use the said 220 kV Ghuttu-Ghansali Line. Such order issued by the Commission has also been upheld by the Hon'ble Appellate Tribunal for Electricity (Hon'ble APTEL) in its order dated 29.11.2014 and by the Hon'ble Supreme Court in its judgment dated 10.05.2018. Moreover, there is inordinate delay in challenging the Regulations which have been in force since 2010.

- 4.8 That no relief claimed under the present Petition can be permitted or granted by the Commission, in light of the submission made in the counter affidavit dated 06.05.2022 filed by the Commission before the Hon'ble High Court in WPMS 1829/2021.
- 4.9 That in line with the liberty craved from the Hon'ble Supreme Court in its order dated 10.05.2018, the Petitioner also attempted to get the 220 kV Ghuttu-Ghansali transmission line declared as inter-State transmission line. However, the Petitioner was unsuccessful as the same was disallowed by the Central Electricity Regulatory Commission in its order dated 21.04.2022. Therefore, insofar as socialization of transmission charges for the 220 KV Ghuttu-Ghansali transmission line, in the absence of any other generators using the said line is concerned, an issue of estoppel has to apply.
- 4.10 That the petition is not maintainable because, the Petitioner concedes that the purpose of the present Petition is to seek necessary directions from the Commission to amend 3rd proviso of Regulation 20(1)(b) of UERC Open Access Regulations, 2105 i.e., the Commission will have to pass a judicial order to itself for amending its Regulations. It is a settled principle of law that Courts cannot

issue a mandate to legislate an Act or to make subordinate legislation in a particular manner.

- 4.11 That the Petitioner has wrongly relied upon the Judgment of the Hon'ble APTEL dated 21.10.2020 in the matter of *Odisha Power Generation Corporation Ltd. Vs. CERC and Ors.* The said judgment is not applicable to the facts of the case as the said judgment has been passed in peculiar facts and circumstances of the case and is with regard to the inter State transmission network. The bare perusal of the said judgment would make it clear that the judgment is based upon the agreement between the parties and does not decide upon any such issue as has been mentioned by the Petitioner.
- 4.12 That the Petitioner never raised any issue regarding 220 kV D/C Ghuttu-Ghansali line being a dedicated transmission line, however, once the issue attained finality and the Petitioner having no other option but to make payment of the transmission charges, as an afterthought choose to challenge the vires of the said Regulation after years of delay, such conduct of the Petitioner itself entails rejection of the Petition.
- 4.13 That the Petition before the Hon'ble High Court is totally false and frivolous and based upon wrong and incorrect interpretation of law and suppression of relevant facts as is evident also from the reply filed by the Commission in the said Writ Petition.
- 4.14 That the definition of dedicated transmission lines nowhere demarcates or specifies that electric supply lines for point-to-point transmission cannot be transmission lines built by STU. However, it is submitted that the subjected transmission line is not a dedicated transmission line instead a dedicatedly used transmission line whose sole beneficiary is the Petitioner i.e., M/s BHPL.
- 4.15 The transmission charges have to be paid by the Petitioner for using intra-State transmission network when it sells its power outside the state of Uttarakhand. However, as per the relevant provisions of UERC, RE, Regulations, 2013 and 2018 the generator is exempted from payment of any transmission charges when it sells power to the state DISCOM within the state of Uttarakhand under a legal PPA. Monthly invoices were raised to the Petitioner as per the Regulation

20(1)(b) of Open Access Regulations, 2015 and in line with the relevant clauses of Transmission Services Agreement (TSA).

- 4.16 That whenever sale of power by the generator is outside the state of Uttarakhand in such a case it is neither just nor legally permissible to burden the consumers of the State for payment of cost of the network. The user of the network has to bear the cost, therefore as provided in the Regulations the transmission charges under open access are deducted from the ARR of the Respondent i.e., PTCUL which reduces the burden of tariff on the state consumers, who are benefitted.
- 4.17 That the interpretation of the Regulations by the petitioner is very restrictive and not foreseeing the benefit and liability of the utility and the state consumers. It appears that approaching various Courts by the Petitioner is only a pretext to evade its liability for payment of transmission charges. Further, vide Letter dated 04.07.2006 the Petitioner itself requested for construction of a high voltage line and rigorously pursued the implementation of the said transmission network for evacuation of its power and now wants to evade from its liability to pay transmission charges after continuously utilizing the facility provided by the Respondent on one pretext or another. The Petitioner was well aware of the Regulations which clearly specified the computation of transmission charges as per regulation 21(1)(b) of UERC, Intra-State OA Regulations, 2010 before the first Invoice was raised by the Respondent. It is noteworthy to highlight that the petitioner even started paying transmission charges and never ever raised question on the proviso of the UERC, Regulations, 2010 before any forum.
- 4.18 That 220 kV S/c line Ghuttu-Ghansali is being solely utilized by the Petitioner and its ARR is calculated separately and approved by the Commission for recovery from the Generator only. The petitioner has no long term agreement for sale of power with the state distribution licensee and as the network is at present solely used by the Petitioner, it is only responsible to pay for the said charges till the time the spare capacity of the line is allotted to other constituent or persons.
- 4.19 That it is relevant to mention that such concept of dedicated transmission line developed by a transmission licensee is also incorporated in the Regulations

framed by Uttar Pradesh Electricity Regulatory Commission, Haryana Electricity Regulatory Commission etc.

- 4.20 That no other generator in the State of Uttarakhand is utilizing any part of the intra-state transmission network exclusively instead paying transmission charges for Open Access as per Regulation 20(1)(b) of UERC, Intra-State Open Access, Regulations, 2015 and M/s BHPL is the only generator who is solely using 220 kV D/c Ghuttu-Chamba line for evacuation of power from its Project and has contractual obligation to pay all transmission charges as per the relevant Regulations of the Appropriate Commission. Therefore, the plea of the Petitioner that transmission charges of this Network should be pooled is misleading.
- 4.21 That the Petitioner entered into a Transmission Services Agreement (TSA) on dated 25.10.2008 with the Respondent in accordance to which the Petitioner was required to pay monthly transmission charges from the date of CoD/Revised scheduled CoD provided the evacuation system is ready. It is also specified in the TSA under the obligation of the company that the transmission charges payable by the Petitioner will be determined by the Appropriate Commission and as per the said Regulations of the Commission the generator was required to pay the transmission charges for the dedicatedly used Network.
- 4.22 That in support of its submissions seeking amendment/ repeal of 3rd proviso to Regulation 20(1)(b) of Open Access Regulations, 2015 the Petitioner has placed reliance on the Hon'ble APTEL judgment dated 21.10.2020 in the case of OPGCL vs. CERC & Ors. (OPGC Judgment). The Petitioner has contended that by way of the above judgment it has been held by the Hon'ble APTEL, upon a careful analysis of the legislative framework enshrined under the Electricity Act, 2003, that dedicated transmission "lines" or "system" can only be constructed or developed or built either by a Captive Generating Plant (CGP) or Generating Station and not by the Central Transmission Utility (CTU) which is similar to State Transmission Utility (STU). Accordingly, the Petitioner contends that Impugned Regulation is contrary to the Act. The Petitioner's reliance on the

aforesaid judgment is irrelevant for the purposes of the present Petition because the facts of the present case are distinguishable.

- 4.23 That the Impugned Regulation employs the expression "dedicated transmission system" as opposed to "dedicated transmission lines", which is defined under Section 2(16) of the Act. Even under the OPGC Judgment, the Hon'ble APTEL interpreted the expression "dedicated transmission lines" as covered by Section 2(16) of the Act.
- 4.24 That the impugned Regulation merely states that when a line is being used solely by one user, such user will pay the entire transmission charges until other users are added.
- 4.25 That in the facts of the OPGC Judgment, the concerned transmission line was built solely for the purposes of evacuating power from OPGC's thermal power plant to the national grid. However, due to cancellation of coal block allotted for OPGC's thermal power plant and, consequent issuance of an Odisha Government policy stipulating that OPGC ought to sell all the electricity generated by Units 3 and 4 intra-State by evacuating only through STU network by closing the bus sectionaliser between Units 3 & 4, the concerned transmission line was rendered redundant. Given such factual scenario and, considering that OGTPIL who was a ISTS transmission licensee, had built the concerned line pursuant to TBCB process for OPGC's sole use, the liability of paying transmission charges for such line was placed on OPGC for the future period through PoC mechanism (i.e., when it is put to use) and on OPGC & PGCIL for the intervening period (i.e., when it was not put to use because of OPGC & PGCIL default). The factual scenario of the present case is entirely different. The Petitioner is being made to pay transmission charges because it is the sole user of the subject line i.e., 220 kV D/c Ghuttu-Ghansali line. Already, the liability of the Petitioner to pay such transmission charges has been upheld by the Hon'ble APTEL and Hon'ble Supreme Court in the facts of the present case. Therefore, reliance on the OPGC judgment, which arises out of its unique facts and circumstances, is entirely irrelevant. The Hon'ble Supreme Court in its judgements has held that courts should not place blind reliance on decisions

without discussing as to how the factual situation of a case fits in with the fact situation on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute but in the context in which they appear. Judgments are not to be construed as statutes. Therefore, the discussion in the OPGC Judgment should not be taken out of context to assume that the Impugned Regulation is contrary to the Act, especially when the expression used under the Impugned Regulation and Act are different.

- 4.26 That concept of dedicated transmission line developed by a transmission licensee is also incorporated in the Regulations of other states i.e., Uttar Pradesh and Haryana etc.

5. Commission Observations, View & Decision

- 5.1 The instant Petition has been filed before the Commission in compliance of the order dated 20.06.2023 passed by the Hon'ble Uttarakhand High Court in the Petition filed before it. In its Order the Hon'ble Court had allowed Petitioner two weeks' time to file a representation before the Commission. Accordingly, Petitioner filed the instant Petition challenging the Open Access Regulations, 2015, specifically requesting to amend/repeal the 3rd proviso to Regulation 20 (1)(b) of the said Regulations.
- 5.2 At the very outset, it is imperative to clarify on the argument raised by Respondent, that since the Hon'ble High Court had allowed the Petitioner to file a representation before the Commission and therefore, he should not be allowed to file Petition under Section 86 (1)(f) of the Act before the Commission, is not agreeable. We are of the view that representation can be filed in a Petition format as there is no specified format under the UERC (Conduct of Business) Regulations, 2014 for filing a 'representation' therefore, Petition filed before us is maintainable. Also, it doesn't make a difference as what the format/form of representation is, what is significant is that the concern/grievance of Petitioner is communicated/presented well before the Commission. Moreover, this representation is purely being considered w.r.t. ensuring compliance of the Order of the Hon'ble High Court and the directions therein.

- 5.3 In its submission, Petitioner has primarily harped on two issues, first; that Petitioner has faced unjust financial hardship due to these Regulations and second; that regulations are ultra vires and in conflict with the provisions of the Act.
- 5.4 Let us discuss the first issue i.e., whether Petitioner has faced any financial hardship due to the prevailing impugned Regulations. For this, we need to delve a little deep into the background of the matter and to begin with, we see why this 220 kV Double Circuit(D/C) Ghuttu- Ghansali line came up in the first place and why/how recovery of its charges got covered under the impugned Regulations. In general course, a new transmission line is conceptualized on two counts; (i) when power generated is needed to be evacuated from a generating plant; (ii) or when load is expected to increase in an area, however, from reading these two counts a relevant question arises in the instant case, i.e., how was the construction of this line proposed. To answer this, we look into the Commission's Order dated 24.11.2011, wherein, the Commission has examined an investment proposal submitted by Respondent. The investment proposal *inter alia* entailed construction of 220 kV D/C Bhilangana-III-Ghansali line under the system strengthening works having loan assistance from Rural Electrification Corporation (REC). The Commission accorded investment approval to Respondent but it exempted approval for following projects which included: (i) 220 kV S/C Chamba-Ghansali line;(ii) 01 No. 220 kV bay at 220 kV S/s Chamba; **(iii) 220 kV D/C Bhilangana-III- Ghansali line;** (iv) 220 kV S/s Ghansali; and further directed Respondent to file a separate petition for the said exempted projects as these projects were proposed to be developed for evacuation of power from the generators for selling it outside the State and therefore, were not considered in the system strengthening scheme proposed by Respondent. The relevance of brushing through this brief history of the Commission's Order dated 24.11.2011 is only to highlight that the said 220 kV D/C Bhilangana-III- Ghansali line was proposed by Respondent under system strengthening works and was not conceptualized by Respondent as dedicated transmission line. It was later with the aforesaid order of the Commission and the prevailing impugned Regulations that its implication were attracted on Petitioner's 24 MW RE power

plant. Essentially the 220 kV D/C transmission line was planned to evacuate power from the upcoming generators in and around Bhilangana valley, including Petitioner's 24 MW RE power plant (Bhilangana-III). Coincidentally, no other power plant could come up barring Petitioner's power plant thereby making it the sole user/beneficiary of the said line. Since petitioner is an Open Access customer, this situation leveraged a way for Respondent to recover charges for the 220 kV transmission line in wake of impugned Regulations, moreover, it naturally came as an obligation to Petitioner to pay transmission charges for the said transmission line which was initially conceptualized as a intra-state transmission line but later got considered as dedicated transmission system.

- 5.5 Petitioner since commissioning of its power plant, i.e., from 2011 onwards has been paying transmission charges for the entire single circuit 220 KV transmission line. Its been more than 12 years since commissioning of the power plant, Petitioner alone is paying for the transmission charges for the said line as no other user of the line could come up in the area. In its submission Petitioner has averred that since its usage of line is only upto the capacity of its power plant i.e., only 24 MW against the total capacity of 400 MW (being 200 MW for each circuit) therefore, transmission charges should be attuned to the usage capacity and that the recovery of transmission charges from it under the current mechanism is unjustified. Recognizing that since only one circuit was energized and put to use, the Commission therefore, allowed cost of servicing/ ARR on only 50% of the cost incurred by the Respondent towards construction of 220 kV D/C Ghuttu-Ghansali line considering that recovery of transmission charges for the entire 220 kV D/C line from the 24 MW RE generator is not reasonable.

In this situation, we cannot ignore the fact that the said single circuit 220 kV transmission line is capable of carrying 200 MW capacity of power whereas, the capacity of the said line being used by Petitioner is only upto 24 MW however, Petitioner is paying transmission charges for the entire single circuit 220 kV transmission line. Petitioner has unknowingly and unwillingly landed in a situation which was not thought of during the time of commissioning of the plant as more users of line were expected in the area. It is an unpleasant coincidence that has trapped the Petitioner in a situation where he alone is being liable to pay

for an infrastructure which was planned and conceived for many users. Because no other user came up, levying charges for the entire single circuit of 220 kV D/C Ghuttu-Ghansali line on the Petitioner seems unfair.

In this regard, it is relevant to quote sub-Section (2) of Section 39 of the Act which talks about the functions of the State Transmission Utility and is reproduced hereunder:

“(d) 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 ; “

In the above, the non-discriminatory Open Access as averred by the Petitioner means and includes imposition of reasonable charges on the Open Access customer and not imposition of excessive charges. Regarding this, we have studied the order dated 05.07.2007 of the Hon'ble APTEL in Appeal Nos. 169,170,171,172 of 2005 & 248 and 249 of 2006 in the matter of RVK Energy Pvt. Ltd. Vs. Central Power Distribution Co., which states that:

“26. It must not be forgotten that wheeling charges and the surcharge are not the only charges which a consumer is required to pay for using open access. It may also be required to pay additional surcharge on the charges of wheeling to meet the fixed cost of the distribution licensee under sub-section (4) of Section 42 of the Act. The Regulatory Commissions are required to keep in view the fact that the concept of equal opportunity is essential element of open access woven into the fabric of the aforesaid provisions. In case use of open access by a consumer is made onerous by imposing excessive levies, it will amount to barring open access to him. This will result in discrimination of the consumer qua the licensee and generator. Therefore, the above provisions must be looked at, keeping in view the object and reasons of the Act. The provisions must be worked out to promote open access as it will boost competition. Competition benefits the consumer. It pulls down the prices. It improves the quality of service to the consumers. In case open access is inhibited by making it uneconomical for the consumer to choose its source of power, it will have deleterious effect on competition resulting in scarcity of electricity and high tariff. Open access must be utilized to mop up every

bit of power available with the generators to surmount shortages and outages of electricity. This is possible in case the surcharge and additional surcharge is reasonable."

[Emphasis added]

From the above, it is understood that when we address the question of just and unjust in relation to financial levy's, we, under rule of law are bound to omit any undue financial burden levied upon any person which is detrimental to the growth of sector and is not suitable for an ecosystem where power plants such as of Petitioner can survive.

- 5.6 Besides above, when we are analyzing the submissions of Petitioner regarding the levy of excessive charges on it, our attention was requested on the aspect of it being a Renewable Energy Plant and how the government is determined in ensuring its promotion. We agree that promotion of RE power plant is a priority that needs to be realized and materialized for meeting sustainable goals, this determination of the government is also captured by the Hon'ble APTEL in its Order dated 02.08.2021 in the Appeal No. 197 of 2019, in the matter of National Solar Energy Federation of India Vs. Tamil Nadu Electricity Regulatory Commission & Ors., relevant para of the said Order is reproduced hereunder:

"125. At this stage, it would be significant to understand the gravity of this issue in the light of the special emphasis provided in the Act for promotion of renewable energy and the steps being taken by the Central Government for its promotion in the overall benefit of public at large. The emphasis of Government of India on Renewable energy to reduce dependence on fossil fuels and environmental consideration can be understood from the following submission made by Ministry of New and Renewable Energy (MNRE) before the Respondent Commission in the impugned order

5.1. The 4th Respondent states that as per the Paragraphs 6 and 7 of the Petition is concerned the Petitioner has expressed about their solar projects in State of Tamil Nadu and the problems being faced by them due to backing down from SLDC/ALDC. It is submitted that if the averments made by the petitioner are true then it is a matter of concern and the 4th Respondent is also of the view that generation from Renewable Projects should not be curtailed. However

SLDC/ALDC and TANGEDCO/TANTRANSCO may clarify their position and stand in this regard.

5.2. With regard to Paragraph 8 & 9 of the Petition, it is submitted that the Government of India has launched the National Solar Mission in January, 2010 with the objective to promote ecologically sustainable growth while addressing India's energy security challenge with a target of setting up of 20 GW by 2022. The target was further enhanced to 100 GW by 2022. The Ministry of New and Renewable Energy (MNRE) has initiated various programmes for the development of solar projects under National Solar Mission (NSM). As on 30.11.2016, about 8875 MW of solar projects have been installed in the country. Further, the Ministry have always been promoting setting up of solar capacity in the States through its various schemes and supporting the State schemes.

5.3. It is further submitted that the purpose of solar energy is to promote the production of energy through the use of renewable energy sources in accordance with climate, environment and macroeconomic applications in order to reduce dependence on fossil fuels, ensure security of supply and condense emissions of CO₂ and other greenhouse gases. Solar energy shall in particular contribute to ensuring fulfilment of national and international objectives of increasing the proportion of energy produced through the use of renewable energy sources. Continuing on the business-as-usual development of fossil fuel based generation on long term had limitations due to various factors such as limited fossil fuel resource availability, risks in securitizing external fuel supplies, macro-economic constraints like balance of payments problems and high current account deficit, externalities of fossil-based generation, international pressures relating to climate mitigation, constraints of water availability for thermal cooling etc. Dependence on import of fossil fuel would exposes India to risks of volatile prices, foreign exchange rate risks, competition with other importers, and domestic needs of the source countries. Solar energy offers the perfect solution to meeting our energy needs without endangering the climate and the environment.

5.12. It is further submitted that this Ministry has taken up the matter with Central Electricity Regulatory Commission (CERC) vide letter dated 2nd August, 2016 following the backing down of solar projects by some load dispatch centres that the

issue of backing down may be placed before Forum of Regulators so that some consensus is reached on the issue. On the issue of two part tariff, Ministry is of the view that it may be difficult as most of the cost in solar power project is fixed cost. Hence, a broad consensus on the issue of backing down of solar projects is required."

126. The above submission of MNRE is in accordance with the provisions on promotion of renewable energy in the Act and the National Tariff Policy framed by Government of India under section 3 of the Act. Electricity Act, 2003: Section 61. (Tariff regulations): (h) the promotion of co-generation and generation of electricity from renewable sources of energy; Section 86. (Functions of State Commission): (e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee; National Tariff Policy: 4.0 OBJECTIVES OF THE POLICY (e) Promote generation of electricity from Renewable sources;

127. From the above, it is evident that there is a clear mandate in the Act and the Policy to promote renewable energy generation. The Must Run status conferred to renewable energy is also meant for its promotion. The MNRE had also stated before the Commission that given its nature renewable energy shall not be curtailed."

- 5.7 Although the above order relates to a dispute pertaining to the Must Run status given to the RE Plant, the relevant aspect of this order to imbibe here is the efforts of the government in promotion of RE power. Our efforts should/are also in the same spirit, moreover, the Commission is bound to promote Renewable Energy under Section 86 (1) (e) of the Act. Therefore, in view of this, it is incumbent upon us to protect and promote the Renewable Energy plants including that of Petitioner and ensure that the same are not being burdened with any undue financial levies.
- 5.8 Regarding the second issue of vires of Regulations, and the test of its veracity, Petitioner has argued on many points that the dedicated transmission system cannot be constructed by the transmission licensee under the scheme of the Act. For this, he has referred to Section 2 (16) of the Act stating that the said Section provides a definition of dedicated transmission line and that same can be only

constructed by a captive generator under Section 9 of the Act and a generator under Section 10 of the Act. Hence, as per the Petitioner, Regulations are not in consonance with the Act as the 3rd proviso of the impugned Regulations provides for construction of a dedicated line by a transmission licensee. To supplement its arguments, Petitioner has relied upon an order dated 21.10.2020 of the Hon'ble APTEL issued in the matter of Orissa Power Generation Corporation Ltd. Vs. CERC & Ors. thereby referring to paras 8.5 to 8.9 of the said order which are reproduced hereunder:

"8.5 Learned counsel for PGCIL contended that the transmission line in question was built as a dedicated transmission line, and therefore PoC mechanism is not applicable. The interpretation of the Electricity Act, 2003. Section 2 (16) of the Act says that "dedicated transmission line" can only be developed by a captive generating plant referred in Section 9 of the Act, or a generating station referred in Section 10 of the Act. Apart from a captive generating plant defined under Section 9, or a generating company defined under Section 10, there is no other entity which can construct a dedicated transmission line as per the provisions of the Electricity Act, 2003.

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.

8.7 We now refer to the fact that the Central Commission came out with the 7th Amendment to the CERC Connectivity Regulations, whereby the above said 6th Amendment was repealed and a new provision substituted. The said Amendment is setout herein below:

"4. Amendment of Regulation 8 of the Principal Regulations:

.....

(8) The sub-clause (8) of Regulation 8 of the Principal Regulations shall be substituted as under:

“The dedicated transmission line from generating station of the applicant generating Company or any other entity on behalf of generating company to the pooling station of the transmission licensee (including deemed transmission licensee) shall be developed, owned and operated by the applicant generating Company or any other entity on behalf of generating company. The specifications for dedicated transmission lines may be indicated by CTU while granting Connectivity or Long term Access or Medium term Open Access: Provided that CTU shall plan the system such that maximum length of dedicated transmission line does not exceed 100 km from switchyard of the applicant till the nearest pooling substation of transmission licensee:

Provided further that dedicated transmission line may exceed 100 km, if such an Applicant, so chooses: Provided also that in case any connectivity grantee is not utilizing the bay allocated to it at ISTS substation, CTU may cancel its Connectivity as per provisions of these regulations and detailed procedure and allocate the bay to other Applicant. In such an event, the original grantee shall either dismantle its bay or enter into an Agreement with a new grantee as indicated by CTU for utilization of the bay within a period of 2 months of cancellation of Connectivity”

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."

- 5.9 Before emphasizing upon the important element of the above order let us also import the definition of dedicated transmission line given at Section 2 (16) of the Act and the impugned proviso of the aforesaid Regulations:

"Section 2. (Definitions): ---

(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;"

Further, let us now read the 3rd proviso of the impugned Regulations which is provided hereunder:

"Provided further that where augmentation of transmission system including dedicated transmission system used for open access has been constructed for exclusive use of or being used exclusively by an open access customer, the transmission charges for such dedicated system shall be worked out by transmission licensee for their respective systems and got approved by the Commission and shall be borne entirely by such open access customer till such time the surplus capacity is allotted and use for by other persons or purposes.

..."

- 5.10 From reading Section 2 (16) of the Act, it is evident that a dedicated transmission line is to be constructed for and by the Captive Generator and Generator specified under Section 9 & Section 10 of the Act respectively, whereas, while reading through the impugned proviso it is understood that it also refers to dedicated transmission system which is created to facilitate power supply of an Open Access Customer. Issue for our consideration is whether transmission company can construct a dedicated transmission line. In this regard, we have also perused The Electricity (Removal of Difficulty) Fifth Order, 2005 issued by the Ministry of

Power, Government of India issued under the Act, which recognizes the concept of dedicated transmission lines only in context with the Captive Generator and Generators provided in Section 9 & Section 10 of the Act. Moreover, reading the aforesaid provisions of the Act and the aforesaid order of the Hon'ble APTEL wherein it has been clarified that dedicated transmission lines cannot be classified as transmission lines, it leaves no confusion that a dedicated transmission line cannot be constructed by the transmission company.

However, before taking a view in this matter, it is imperative to understand why this impugned proviso was brought in place, what was the objective/purpose and whether its objective/purpose has served the interest of the power sector stakeholders in just and equitable way. For understanding this, we split open the impugned Regulations and it is observed that the Regulation caters to a situation where transmission system has to be augmented or dedicated line is to be constructed by STU/transmission licensee for exclusive use of open access customer or is being used exclusively by open access customer. Here a cardinal question is who will bear the transmission charges, the impugned Regulations states that the sole user of the facility should bear transmission charges of the aforesaid augmentation of transmission system or dedicated line constructed by STU/transmission licensee till other entities uses the network/system and accordingly share the cost on pro-rata basis. The objective for introducing impugned proviso was to facilitate power evacuation and recovery of cost of network created for such evacuation/exclusive use. It is pertinent to reproduce relevant provision of Section 39 (2) of the Act once again, which reads:

“(2) The functions of the State Transmission Utility shall be –

- (a) to undertake transmission of electricity through intra-State transmission system;*
- (b) to discharge all functions of planning and co-ordination relating to intra-State transmission system with –*
 - (i) Central Transmission Utility;*
 - (ii) State Governments;*
 - (iii) generating companies;*

- (iv) Regional Power Committees;
- (v) Authority;
- (vi) licensees;
- (vii) any other person notified by the State Government in this behalf;
- (c) to ensure development of an efficient, co-ordinated and economical system of intra-State transmission lines for smooth flow of electricity from a generating station to the load centres; "

Based on the above provisions of the Act, the State Transmission Utility has been obligated to provide transmission network in the State either creates a new transmission system or augments its existing transmission system considering the load growth/increased generation in the State based on the State transmission plan. Such incremental transmission system is added to the existing intra-State transmission network and its cost is recovered as intra-State transmission charges from its users in accordance with the principles laid down in the Tariff Regulations (MYT Regulations) framed under Section 62 of the Act.

- 5.11 Now that we have examined the implication of this impugned Regulation, we see that it has been invoked only in the matter of Petitioner and is otherwise a dormant provision. In the matter of Petitioner, this provision has not come out as an encompassing law that could serve the interest of all stakeholders involved in just and equitable way, rather, as seen from the above, it has put an unjust burden on the Petitioner which was not the purpose/intent of this impugned proviso or any law enacted. It is unfair, as stated above, to recover transmission charges for the entire 200 MW line from a small 24 MW Renewable Energy generator. Not only is this impugned proviso *de jure* redundant, it is not in consonance with the provisions of the Act. In view of the above discussed law, we are convinced that dedicated transmission line is not to be constructed by a transmission company.
- 5.12 Therefore, in light of the above, the Commission holds that the representation filed by the Petitioner challenging the validity of the 3rd proviso to Regulation 20(1)(b) of UERC (Terms and Conditions of Intra-State Open Access) Regulations, 2015, is maintainable, and accordingly, under provision of removal of difficulty, 3rd proviso of the UERC (Terms & Conditions of Intra State Open Access) Regulations, 2015 and similar provision appearing in the Uttarakhand Electricity

Regulatory Commission (Tariff and Other Terms for Supply of Electricity from Renewable Energy Sources and non-fossil fuel based Co-generating Stations) Regulations, 2023, hereby stands deleted.

- 5.13 This Order shall not have any retrospective effect and shall apply prospectively from the date of issuance of this Order. **Petition. No. 30 of 2023** stands disposed off.

Ordered accordingly.

(M.K. Jain)
Member (Technical)

(D.P. Gairola)
Member (Law) / Chairman (I/c)