

**Before**

**UTTARAKHAND ELECTRICITY REGULATORY COMMISSION**

**Petition No.: 62 of 2024 (Suo-Motu)**

**In the matter of:**

Suo-moto proceedings in the matter of implementation of Hon'ble APTEL's Judgement dated 28.08.2024 in Appeal No. 100 of 2017 and Appeal no. 389 of 2018.

**AND**

**Petition No.: 26 of 2025**

**In the matter of:**

Application under Regulation 59(1) of the UERC (Conduct of Business) Regulations, 2014, Section 94, Section 64 and Section 86(1)(f) & (k) of the Electricity Act, 2023 read with Section 151 of the Code of Civil Procedure seeking directions from the Commission in the Petition no. 62 of 2024 (Suo-moto) regarding implementation of Hon'ble APTEL's judgement dated 28.08.2024 in Appeal No. 100 of 2017 and Appeal No. 389 of 2018.

**In the matter of:**

1. Uttarakhand Power Corporation Ltd.
2. M/s Greenko Budhil Hydro Power Pvt. Ltd.

**CORAM**

<b>Shri M.L. Prasad</b>	<b>Chairman</b>
<b>Shri Anurag Sharma</b>	<b>Member (Law)</b>

**Date of hearing: 17.12.2024 & 14.02.2024**

**Date of Order: May 13, 2025**

This Order relates to the implementation of the judgement dated 28.08.2024 of the Hon'ble APTEL in Appeal No. 100 of 2017 & Appeal No. 389 of 2018 and Petition filed by Uttarakhand Power Corporation Ltd. (hereinafter referred to as "UPCL" or "distribution license") under Section 64 and Section 86(1)(f) & (k) of the Electricity Act, 20023 (the Act) read with section 151 of the Code of Civil Procedure seeking directions from the Commission regarding

implementation of above-mentioned Judgement dated 28.08.2024 of Hon'ble APTEL's and an Application dated 31.12.2024 filed by UPCL under Regulation 59(1) of UERC (Conduct of Business) Regulations, 2014 requesting the Commission to issue directions refraining the generator from raising the invoices at the revised energy charges/tariff till re-determination of consequential tariff by the Commission & conduct a public hearing or invite comments from general public at large.

Both the matters pertain to implementation of the Judgement dated 28.08.2024 of the Hon'ble APTEL in Appeal no. 100 of 2017 and Appeal no. 389 of 2018. Therefore, the Commission has decided to deal with the matter with this single Order.

## **1. Background**

1.1 M/s Greenko Budhil Hydro Power Pvt. Ltd. (hereinafter referred to as "M/s GBHPPL" or "the Generator") is a company incorporated under the Companies Act, 1956. M/s GBHPPL is a generating company falling within the definition under sub-section 28 of Section 2 of the Act and has developed a 70 MW (2x35 MW) Hydro Electric power project (hereinafter referred to as the "Project"). M/s GBHPPL had executed a PPA for 70 MW capacity with the distribution licensee, i.e. UPCL and had initiated scheduling of power w.e.f. 01.12.2015. M/s GBHPPL had filed a Petition for determination of tariff for supply of power from its project to UPCL from 01.12.2015 to 31.03.2016 and for the second Control Period from FY 2016-17 to FY 2018-19.

Subsequently, the Commission vide its Tariff Order dated 30.11.2016 had approved the Business Plan and Multi Year Tariff for M/s GBHPPL for the contracted capacity from 01.12.2015 to 31.03.2016 and for the second Control Period from FY 2016-17 to FY 2018-19.

1.2 Against the Commission's Order dated 30.11.2016, M/s GBHPPL approached the Hon'ble APTEL through its Appeal No. 100 of 2017 on the following issues:

- i) Erroneous computation of Design Energy owing to non-consideration of minimum environment discharge obligation at all time through the year;
- ii) Non-consideration of Tie-Line losses in the computation of saleable energy; and
- iii) Erroneous disallowance of Capital Cost of the Project on account of following:
  - (a) Interest During Construction (IDC) due to time overrun beyond control of M/s GBHPPL;

- (b) Certain soft costs incurred by the project on account of time overrun due to factors beyond the control of M/s GBHPPL;
- (c) Geological surprises beyond the control/contemplation of M/s GBHPPL.

1.3 Subsequently, against the Order dated 30.11.2016 of the Commission, UPCL had also approached the Hon'ble APTEL on the following issues:

- i) Annual Plant Availability Factor (NAPAF) of Budhil HEP as 85% instead of 90%;
- ii) Issue of incentive in case Monthly Plant Availability Factor (PAFM) exceeds due to overloading conditions; and
- iii) Reconsidering the downward allowance of design energy and pass an appropriate Order for fixing the design energy as per Detailed Project Report (DPR).

1.4 On the above-mentioned Appeals, the Hon'ble APTEL vide its Judgement dated 28.08.2024 held as under:

A) Appeal No. 100 of 2017

- a. Design Energy for M/s GBHPPL shall be 280 MUs.
- b. Tie-line losses should be considered as part of saleable energy, and payment of energy is made at scheduled energy at ISTS metering point and the Commission is directed to re-calculate the claim of M/s GBHPPL as per the observation regarding saleable energy based on actual line losses.
- c. Wr.t. IDC, Soft Cost and geological surprises, the appeal is remanded to the Commission to the limited extent of re-determination of capital cost on account of time overrun as allowed, including determination of capital cost (hard cost, soft cost, IDC) as claimed in the appeal,
- d. The Commission is also directed to re-determine the consequential tariff of the project.

B) Appeal No. 389 of 2018

- a. The Appeal was dismissed as devoid of merits.

## **2. Generator and distribution licensee's comments:**

2.1 M/s GBHPPL vide its letter dated 30.08.2024 requested the Commission to pass a consequential order in line with the Judgement dated 28.08.2024 of the Hon'ble APTEL in

Appeal No. 100 of 2017 and Appeal No. 389 of 2018. In the matter, the Commission directed UPCL to submit its comments on the request made by M/s GBHPPL and also directed Ms/ GBHPPL to submit its counter reply on the same.

- 2.2 UPCL vide its submission dated 04.11.2024 requested that M/s GBHPPL be directed to provide the actual line losses to identify the financial impact of the same on the consumers. Further, with regard to time-overrun on account of delay in execution of implementation agreement with Himachal Pradesh Government, UPCL submitted that M/s GBHPPL has not provided compelling reasons for the same and since the delay happened before the SCoD of 2009, therefore, the Commission should consider delays that occurred after 2009 and which are substantiated by proper documentation. With regard to delay in evacuation system and delay in construction of road by other agencies, UPCL submitted that the generator should submit detailed documentations, including project timelines considering macro and micro activities and resource allocation. Regarding delay on account of geographical surprises or outbreaks, UPCL submitted that the generator was aware about terrain of the project and must be knowing the difficulties in construction of the project while preparing the DPR.

UPCL requested the Commission to exercise due diligence in conducting a prudence check on these delays. This process necessitates the provisions of detailed documentation and substantiation from the generator to support its claim. UPCL also submitted that it is in the process of filing an appeal before the Hon'ble Supreme Court against the Judgement dated 28.08.2024 passed by the Hon'ble APTEL and hence, it was requested to put on hold the proceedings for implementation of the Hon'ble APTEL's judgement.

- 2.3 M/s GBHPPL vide its rejoinder dated 13.12.2024 reiterated the relevant paragraphs of the Hon'ble APTEL's Judgement dated 28.08.2024. M/s GBHPPL submitted that the Hon'ble APTEL has decided the matter w.r.t. Design energy in favour of the generator and, therefore, design energy is to be considered as 280 MUs. Further, M/s GBHPPL submitted that from the submission of UPCL it appears that the same are an attempt to re-agitate the issues as already settled by the Hon'ble APTEL, which cannot be permitted to be raised before the Commission as the present proceedings are based on the remand made by Hon'ble APTEL and as such the scope of the same is limited and strictly in accordance with the Hon'ble

APTEL's judgement and cannot be expanded.

- 2.4 In the matter, a hearing was conducted by the Commission on 17.12.2024. During the hearing, UPCL submitted that the generator has itself started raising invoices based on the Hon'ble APTEL's judgement which may be stopped till redetermination of tariff by the Commission. Further, UPCL also requested the Commission to conduct a public hearing as the matter would affect the consumers of the State. The Commission vide its Order dated 17.12.2024 directed UPCL to move an application within 15 days of the date of Order if it intends to seek any legal recourse.
- 2.5 Accordingly, UPCL filed a Petition dated 31.12.2024 requesting the Commission to conduct a public hearing or invite comments from public and issue directions, refraining the generator from raising the invoices at the revised energy charge/tariff till re-determination of consequential tariff.
- 2.6 UPCL submitted that Hon'ble APTEL through its judgement dated 28.08.2024 has directed for re-determination of tariff. Therefore, until the consequential tariff is determined by the Commission, the generator's act of issuing invoices on its own, based on its own estimates, are premature and unjustified. Further, the generator has shown its intention to charge late payment surcharge if the amount on account of revised energy charge is not paid despite the fact that the consequential tariff has not yet been determined by the Commission. UPCL requested that until the Commission determines the consequential tariff, the generator must be refrained from raising the revised invoices at the revised tariff.
- 2.7 The copy of the Petition of UPCL was forwarded to M/s GBHPPL for comments and UPCL was also directed to submit its rejoinder, if any, within one week from the date of receipt of reply from the generator. M/s GBHPPL submitted its reply on 28.01.2025. However, no rejoinder was submitted by distribution licensee. The generator through its submission dated 28.01.2025 stated that a public hearing or invitation of comments from stakeholders/general public is not warranted for the purpose of re-determination of tariff in terms of the Hon'ble APTEL's judgement dated 28.08.2024. The Hon'ble APTEL has principally decided the claims made by M/s GBHPPL in its favour and has remanded the matter to the Commission only to the limited extent of re-determination of capital cost on account of time overrun as allowed, including determination of capital cost (hard cost, soft

cost, IDC). Further, Section 64 of the Act, 2003 does not contemplate the intention of the legislature that right of oral hearing ought to be read into the statute. As such, the oral hearing/public hearing for re-computation of certain components of tariff in terms of the Hon'ble APTEL judgement, does not necessarily require public hearing before the Commission.

With regard to revised invoices, M/s GBHPPL submitted that certain components have been principally decided by the Hon'ble APTEL particularly the issue of revision of Design Energy, hence, such components would require no further adjudication or change during the present remand proceedings before the Commission. Notably, since the same is finally decided by the Hon'ble APTEL, delay in payments towards the same would further attract carrying cost which would be detrimental to the interest of the end consumer.

2.8 Subsequently, UPCL vide its submission dated 22.04.2025 submitted its reply on the rejoinder dated 13.12.2024 made by M/s GBHPPL in the matter of suo-moto proceedings of implementation of Hon'ble APTEL's judgement dated 28.08.2024 in Appeal No. 100 of 2017 and Appeal No. 389 of 2018.

UPCL submitted that Hon'ble APTEL has remanded the matter to the Commission to a limited extent and it has in-principle, accepted the occurrence of the time overrun, however, the determination of the cost has been left to the prudent examination of the Commission upon re-examination of the relevant facts. The generator has made an additional claim of Rs. 180.17 Crore for the purpose of tariff re-determination. UPCL submitted that the Hon'ble APTEL has ordered to re-determine the capital cost due to disallowance of IDC on account of time overrun amounting to Rs. 75.28 Crore and disallowance qua soft cost on account of time overrun amounting to Rs. 25.96 Crore and capital cost adjustment on account of price escalation amounting to Rs. 71.51 Crore.

UPCL submitted that the disallowance of Rs. 71.51 Crore to the appellant on account of hard cost, i.e. civil and hydro-mechanical works is basically a compensation amount that has been determined solely on the basis of the Minutes of Meeting dated 11.12.2009 between the two parties, i.e. M/s GBHPPL (earlier Lanco Green Power Private Ltd.) and contractor (Lanco Infratech Ltd.). It was also submitted that this determination of compensation is not by virtue of any legal/arbitral award but is merely based on mutual understanding reached

between the parties. Any compensation paid to the contractor for the delays attributable to M/s GBHPPL ought not to be passed on to the consumers of the State. The delay in commissioning of the project was a consequence of the deficiencies in planning and errors committed in the formulation of DPR.

With regard to the soft cost pertaining to 'Design, Engineering, Construction and Supervision Charges' UPCL submitted that revised cost approval was issued on 20.08.2010. Despite this, the generator failed to accurately assess the actual requirement of the work under this head, which basically reflects the deficiency on the part of the generator. UPCL also submitted that the project was unable to achieve its scheduled date of commissioning, primarily due to improper planning in the area of design, engineering and supervision. Non-inclusion of some essential H&M items and major components amounting to Rs. 8.66 Crore are the lapses that originated from the generator's own planning. UPCL submitted that the generator failed to discharge its responsibilities diligently in this regard, therefore, permitting the previously disallowed cost of Rs. 9.11 Crore under the head of 'Design, Engineering, construction and Supervision Charges' would be unjustified.

With regard to IDC, UPCL submitted that M/s GBHPPL in their rejoinder dated 13.12.2024 has submitted that the details of their IDC claim are backed with financial statements, bank statements and detailed computation of IDC. Further, from the independent auditor's report dated 06.05.2013 it has been observed that the company had defaulted in payment of interest and repayment of principal amounting to Rs. 6.21 Crore and Rs. 3.66 Crore respectively.

### **3. Commission's view and decision**

3.1 As mentioned earlier, this Order deals with the implementation of Hon'ble APTEL's judgement dated 28.08.2024 in the matter of Appeal no. 100 of 2017 & Appeal no 389 of 2018 and the Petition filed by UPCL requesting for appropriate directions to the generator refraining it from raising the invoices at the revised energy charge/tariff till re-determination of consequential tariff.

3.2 The Hon'ble APTEL vide its judgement dated 28.08.2024 in the matter of Appeal no. 100 of 2017 and Appeal no. 389 of 2018 has concluded as follows:

*"242. In the light of above observations and the facts placed before us, the following is concluded:*

**A) Appeal 100 of 2017**

- (i) *Erroneous computation of Design Energy owing to non- consideration of minimum environment discharge obligation at all times through the year; - **allowed in favour of the GBHPPL, the design energy shall be 280 MUs as claimed.***
- (ii) *Non-consideration of Tie-Line losses in the computation of saleable energy; - **allowed in favour of the GBHPPL, the tie-line losses should be considered as part of saleable energy, and payment of energy is made on scheduled at ISTS metering point, the Commission is directed to re-calculate the claim of the GBHPPL as per the above observation regarding saleable energy afresh based on actual line losses.***
- (iii) *Erroneous disallowance of Capital Cost of the Project on account of the following:*
  - (a) *Interest During Construction (IDC) due to time overrun beyond the control of the Appellant;*
  - (b) *Certain soft costs incurred by the project on account of time overrun due to factors beyond the control of the Appellant;*
  - (c) *Geological surprises beyond the control/contemplation of the Appellant. -*

*-- the appeal is remanded to the State Commission to the limited extent of re-determination of capital cost on account of time overrun as allowed, including determination of capital cost (hard cost, soft cost, IDC) as claimed in the appeal, the State Commission is also directed to re-determine the consequential tariff of the project.*

**B) Appeal 389 of 2018**

- (i) *The Appeal is dismissed as devoid of merit."*

Under Appeal no. 100 of 2017, apart from conclusion mentioned at Point (i), (ii) and (iii), the appeal was remanded to the Commission by the Hon'ble APTEL to the limited extent of re-determination of capital cost on account of time overrun as allowed, including determination capital cost (hard cost, soft cost, IDC) as claimed in the appeal.

3.3 The Commission has gone through the Appeal no. 100 of 2017 before the Hon'ble APTEL and it is observed that the generator had filed the appeal before the Hon'ble APTEL on the issue of design energy, tie-line losses, reconsideration of capital cost of the project on account of time overrun, certain soft cost disallowed due to time overrun beyond the



control of the generator and increase in capital cost due to geological surprises beyond control of the generator. The relevant para of the Appeal is states as follows:

***“1. DETAILS OF APPEAL***

A. xxx

B. *It is submitted that Appellant is filing the present appeal, which is a limited appeal, against the generation tariff order dated 30.11.2016 (hereinafter referred to as the “Impugned Order”), passed by the Hon’ble Uttarakhand Electricity Regulatory Commission (hereinafter referred to as the “Respondent Commission”), wherein the following tariff compoennts, as claimed by the Appellant in its Tariff Petition dated 07.11.2015 under Section 62 of the Electricity Act, 2003 were wrongly allowed by the Respondent Commission:*

- i) **Design Energy**, as regards non-consideration of minimum environmental discharge obligation at all times through the year;*
- ii) **Tie-Line losses** in computation of saleable energy;*
- iii) **Capital cost** of the project on account of the following:*
  - a. Interest During Construction (IDC) due to **time-overrun** beyond the control of the Appellant;*
  - b. Certain **soft costs** incurred by the project on account of time-overrun due to factors beyond the control of the Appellant*
  - c. **Geological surprises** beyond controls/contemplation of the Appellant*

*In view of the above, it is stated that the present appeal is limited to the above-mentioned issues only.”*

3.4 Further, through Para 9.1 of the Appeal, the generator had requested as follows:

*9.1 For that impugned order has been passed by completely ignoring the principles contained in Section 61 of the Electricity Act, 2003 read with the intent of UERC Tariff Regulations, 2011 and the UERC Tariff Regulations, 2015. The Respondent Commission in the impugned order has wrongly determined the tariff of the Appellant by disallowing the following:*

- a. Tie-Line losses in computation of saleable energy and corresponding energy charge;*
- b. Wrong computation of Design Energy of the project by the Respondent Commission*
- c. Escalation in capital/fixed cost on account of the following:*
  - i) claim pertaining to Interest During Construction (IDC) on account of delays*

*beyond the control of the Appellant;*

- ii) *cost incurred on account of geological surprises beyond control/contemplation of the Appellant*
- iii) *Cost incurred by the project on account of time-overrun due to factors beyond the control of the Appellant*
- iv) *Additional capital cost incurred by the project towards compensation pertaining to price escalation due to time-overrun in the project beyond the control of the Appellant."*

3.5 Further, UPCL requested the Commission to consider only those delays which are substantiated by proper documentation including project timelines, resource allocation. UPCL also requested the Commission to exercise due diligence in conducting a prudence check on the delays. Further, UPCL also requested the Commission to conduct a public hearing to have comments from general public/stakeholders. UPCL also submitted that it is in process of filing an appeal before the Hon'ble Supreme Court against the Judgement dated 28.08.2024 passed by the Hon'ble APTEL and, hence, it requested the Commission to put on hold the proceedings for implementation of the Hon'ble APTEL's judgement. The Commission observed that the said appeal has already been rejected by the Hon'ble Supreme Court of India. UPCL also submitted that the Hon'ble APTEL has ordered to re-determine the capital cost due to disallowance of IDC on account of time overrun, soft cost and cost adjustment on account of price escalation amounting to Rs. 71.51 Crore whereas the generator has made an additional claim of Rs. 180.17 Crore equivalent to the amount disallowed by the Commission through its Order dated 30.11.2015. The Commission has dealt with the claim of the generator in the subsequent paragraphs of this Order.

With regard to delay in the commissioning of the project, it is important to mention that the Hon'ble APTEL has remanded the matter to the Commission to a limited extent of redetermination of tariff only as evident from the Judgement of the Hon'ble APTEL it has in principle, accepted all the occurrences of the time overrun, stating that any delay by the Government authorities cannot be placed on account of the affected party. Further, as far as public hearing is concerned, it is pertinent to mention that the Commission has already invited comments from the general public during the initial proceedings of determination of tariff in Petition no. 31 of 2015 filed by the generator. Further, the

Judgement of the Hon'ble APTEL has attained finality as the appeal filed by UPCL before the Hon'ble Supreme Court has been dismissed, therefore presently the Commission is only to comply with the Judgement of the Hon'ble APTEL i.e. to re-determine the tariff under a limited scope as concluded by the Hon'ble APTEL. Therefore, the Commission does not find it relevant to seek comments in the implementation of the Judgement dated 28.08.2024 of the Hon'ble APTEL.

Accordingly, the present re-determination of capital cost and tariff is limited to the extent of conclusion drawn by the Hon'ble APTEL in its judgement dated 28.08.2024 in Appeal no. 100 of 2017 & Appeal no. 389 of 2018 and claim made by the generator in the said Appeal before the Hon'ble APTEL.

3.6 The Commission has pointwise dealt with the following issues considering the judgement of the Hon'ble APTEL, submission of the generator and distribution licensee:

- A) Computation of Design Energy,
- B) Tie-line losses in the computation of Saleable Energy,
- C) Disallowance of Time overrun due to delay in construction of evacuation system by other agencies,
- D) Price escalation disallowed on account of geological breakdown, increase in length of HRT and increase in quantum of steel reinforcement for Diversion dam,
- E) Disallowance of Interest During Construction on account of time-overrun,
- F) Disallowance of associated soft cost on account of time-overrun,
- G) Disallowance of capital cost pertaining to Electro-Mechanical works

#### **A. Computation of Design Energy**

3.7 The Hon'ble APTEL vide Para 72 of its Judgement dated 28.08.2024 has taken a view that mandatory discharge of water is to be maintained throughout the year, irrespective of the season, whether lean season or monsoon. The relevant extract of the said judgement dated 28.08.2024 is reproduced as follows:

*"72. From a simple reading of the notification, it is clear that the Appellant is bound to release, at all times, a minimum of 15% of the inflow observed in the lean season and is also mandated to maintain the same at the "immediately downstream" of the diversion structures. It is to be mentioned that the reference of "15% of the minimum inflow observed in the lean season" in*

*the above notification is to calculate the quantum of the flow to be maintained and it does not restrict the period of flow or mention anywhere that it is for lean season and not applicable for Monsoon period. It is an established jurisprudence that no new word or new meaning may be attached to a law.*

*73. Undisputedly, the above-said condition must be maintained throughout the year, irrespective of the season, whether lean season or monsoon season.*

...

*80. We are satisfied that the Appellant while complying with the above condition, has rightly considered the statutory minimum discharge of 15% (0.91 cusec) even in monsoon season while computing Design energy.*

*81. The Impugned Order passed by the State Commission is totally unjust and irrational, the same deserves to be set aside on this issue.*

*82. The Issue-1 is decided in favour of the Appellant."*

As observed by the Hon'ble APTEL, as per the notification dated 09.09.2005 of Government of Himachal Pradesh, the generator is bound to release, at all the times, a minimum of 15% of the inflow observed in the lean season and is also mandated to maintain the same at the immediate downstream of the diversion structures. Accordingly, the Commission has worked out the design energy, i.e. 280.90 MUs considering mandatory discharge as per the notification dated 09.09.2025 against the earlier approve design energy of 283.54 MUs. Tariff has been redetermined from the date of execution of the PPA, i.e. 01.12.2015 considering the Design Energy of 280.90 MUs in the subsequent paragraphs of this Order.

#### **B. Tie-line losses in the computation of Saleable Energy**

3.8 With regard to the tie-line losses, Hon'ble APTEL through its judgement dated 28.08.2024 observed that the transmission line losses should not be considered as part of saleable energy, it should be deducted to arrive at the saleable energy at ISTS metering point. Further, Hon'ble APTEL directed the Commission to re-calculate the claim of the generator considering tie-line losses on actual basis. The relevant extract of the Judgement is as follows:

*“93. It is important to note that two paras of a tariff Regulations cannot be read in isolation, the tariff regulation 2011 as quoted above, regulation 54(1) mentions “saleable Capacity” and regulation 54(4) mentions energy at Ex-bus of the power plant.*

*94. These two provisions need to be read in harmony, for a hydro station after considering transformation loss at generator GT and Free power, it must be seen where the energy is being scheduled if the energy is being scheduled at Ex-bus i.e. on the secondary side saleable energy would be calculated at that point and if power is being scheduled after tie line as in instant case power is being scheduled at Interstate transmission point i.e. PGCIL pooling substation at Chamera, the saleable energy should be computed at that point, otherwise it will be erroneous because the energy lost in tie line from generating station to pooling station can never be physically available for “sale” hence cannot be counted as saleable energy.*

*...*

*96. In the present case as both Uttarakhand and HP are drawing power from the Chamera pooling station, the tie line losses should not be considered as part of saleable energy, i.e. while calculating Saleable energy, it will be deducted to arrive at saleable energy at ISTS metering point and as payment of energy is being made on energy scheduled at ISTS metering point, thus it will harmonise the provision in regards to both Saleable energy and scheduled energy.*

*...*

*98. The claim of GBHPPL on tie line losses is based on its own estimate which needs prudence check by the Commission based on actual line losses, hence the Commission is directed to re-calculate the claim of the GBHPPL as per the above observation regarding saleable energy afresh, after deducting the allowable normative auxiliary consumption as per the Regulations plus the free energy to the State and the tie line losses.”*

3.9 The Hon’ble APTEL through its Judgement directed the Commission to determine the saleable energy taking into consideration the tie-line losses on actual basis. In this regard, the Commission directed the generator to submit the actual line losses from CoD to till date substantiating the same with documentary evidence. In reply, the generator submitted Ex-bus meter reading at the plant and meter reading at Chamera-III. From the submissions of the generator, it is observed that the transmission losses for FY 2017-18, FY 2018-19, FY 2019-20 and FY 2020-21 were 0.50%, 0.32%, 0.80% and 0.71% respectively. Further, it was

also observed that the tie-line losses of 0.19% based on the historical data, have been considered when the generator started sharing its dedicated transmission line with Himachal Pradesh for evacuation of power from small hydro power plants and Bajoli Holi HEP situated in Himachal Pradesh as per Order dated 04.12.2020, 30.06.2021, 17.01.2022, 09.05.2022 and 10.11.2022. The Commission directed the generator to submit the basis of determination of 0.19% of transmission losses and reasons for higher transmission losses from FY 2017-18 to FY 2020-21. The generator vide its reply dated 30.04.2024 submitted that computation of lines losses of 0.19% was undertaken by Himachal Pradesh Power Transmission Corporation which shows that the transmission of power of 77 MW through 220 kV S/C line with Zebra conductor line losses would work out to 0.19% (approx.). Further, with regard to higher actual line losses, the generator submitted that when the Budhil HEP is not generating and draws power from the grid, such drawl is reflected in increased quantum of line losses. Furthermore, the Budhil HEP was temporarily utilising a Panther Conductor (instead of Zebra Conductor in the span of 670 meter for 13 months) which resulted in the increase in the line losses. M/s GBHPPL requested the Commission to consider the actual data as submitted towards determining the applicable tie-line losses.

3.10 The Commission has gone through the information provided by generator regarding month wise transmission losses. The Commission observed that there is a substantial variation in the line loss from month to month. As mentioned in the preceding paragraphs, the generator submitted that when the plant is not generating and draws power from the grid, such drawl is reflected in increased quantum of line losses. From, the information provided by the generator for transmission losses, it cannot be worked out as to how much quantum of drawl of electricity is included in transmission losses. Therefore, the Commission has relied on the report of HPPCL regarding variation in transmission losses in 220 kV Budhil to Chamera-III transmission line with increase in power injection at 220 kV Budhil Bus and email from M/s GBHPPL to HPPTCL wherein it has been mentioned that the transmission losses are 0.19% of the Budhil line as per the historical data. As the same has not been challenged by the generator and accepted as such. Accordingly, the Commission has considered tie-line loss of 0.19% in the dedicated transmission line from Budhil HEP to Chamera-III pooling station for determination of saleable energy in compliance to the direction of Hon'ble APTEL.

3.11 Based on the above observations, the saleable energy from 01.12.2015 to 31.03.2024 works out to 243.76 MUs, 229.83 MUs for FY 2024-25 and 227.14 MUs from 01.04.2025 onwards.

**C. Disallowance of Time overrun due to delay in construction of evacuation system by other agencies**

3.12 With regard to the time overrun on account of delay in construction of evacuation system by other agencies, the Hon'ble APTLE held that the commissioning schedule of the generating plant should match with the commissioning schedule of the evacuation system to avoid either the generation or the evacuation system getting bottled-up, which ultimately affects the cost of power for the consumer. Further, the Hon'ble APTEL held that for any delay in commissioning of the evacuation system, the generating company should not be held responsible. The relevant extract of the Judgement dated 28.08.2024 is as follows:

*111. In the instant case, the location of the termination point was changed multiple times by the Central and the State agencies, additionally, the configuration of conductors and towers of dedicated lines was also altered on the instruction of the Central and the State agencies which affected the timelines.*

*112. Undisputedly, the evacuation system is a necessary and important requirement for any generation project, and in case the above-listed delays are beyond the control of the Appellant, we find no reason to delve further into the other factors as far as delay is concerned.*

*113. The evacuation scheme, as mentioned by the GBHPPL, was developed for eight hydro projects to be commissioned during the same period, and as such the planning of the scheme was taken up at the highest level involving the statutory authorities like Central Electricity Authority, Central Transmission Utilities, and other important stakeholders including government authorities.*

*114. The GBHPPL submitted that for the evacuation of power from the above generation projects, the scheme envisaged 3 pooling sub-stations, one by PGCIL (near Chamera III station of NHPC) and two by HPPTCL (Lahal and Karian).*

*115. As such, it was important that the Project must be constructed within a timeline matching the construction schedule of the finalized evacuation system, which was finalized only in 2009.*

116. The State Commission vide the Impugned Order or through submissions before us has not countered the facts submitted by the GBHPPL, as seen from there, there were frequent changes in the evacuation scheme and delays in finalizing the scheme.

117. It can be seen from there that the evacuation scheme was finalized only on 17.06.2009, therefore, even if the generation project had been commissioned before the commissioning of the evacuation transmission system, the generation project would have remained non-operative.

118. Further, we agree with the submissions of the GBHPPL that the forest clearance and then construction of the tie-line was dependent on the scheme finalization and had to be commissioned only subsequently.

119. All three factors are sequential and the components therein have to be commissioned in the sequence, i.e. i) finalization of the scheme, ii) commissioning of the evacuation scheme along with commissioning of bays at NHPC HEP, and iii) the construction of the tie-line.

...

123. The evacuation system can be commissioned only after the planning and finalization of the scheme, and after the evacuation scheme including the bay is ready, the tie line can be completed for connecting the generating station to the evacuation transmission system.

124. In case there is a significant delay in the finalization of the scheme and commissioning of the evacuation system, the generation project, even if the project is commissioned, it will remain idle resulting in to financial loss.

...

127. In the CEA meeting dated 13.11.2009, the GBHPPL was instructed to construct an additional bay and GIS switchyard at NHPC Chamera III, for which space was required at the NHPC Chamera III HEP, further, the GBHPPL was instructed to carry out the work of bay construction only through NHPC.

128. Immediately, thereafter, the GBHPPL requested NHPC vide letter dated 03.02.2010 for the space and the draft MoU.

129. The NHPC signed the MoU for the construction of the required "Bay" at its HEP only on 21.10.2010 after revising and finalizing the cost estimates on 30.08.2010, the delay in signing the MoU was beyond the control of GBHPPL.



130. The evacuation transmission system was built and commissioned only on 01.11.2011 with a delay.

131. The NHPC's project was delayed, which inter-alia, also included the construction of the bay in the switchyard, it is, thus established that such delay was beyond the control of the Appellant.

132. Subsequently, the GBHPPL constructed the tie-line which the State Commission should have examined under the relevant benchmarks.

133. It cannot be denied that the Generation Project of the GBHPPL was commissioned within the period by which the tie-line was commissioned.

134. The time taken by Government authorities to finalize the evacuation scheme, delay in forest clearance, finalization of cost estimates for the construction of Bay, and signing of MoU by NHPC has resulted in delays in the construction of the project.

135. We agree with the submission of the GBHPPL that the pooling station of CTU at Chamera III was commissioned only on 01.11.2011, as such, even with a fully constructed plant, the GBHPPL would have incurred significant increase in IDC to the project cost on account of its plant remaining idle.

136. The GBHPPL also submitted that in Para 4.3.2 of the Impugned Order, the State Commission has wrongly considered SCOD as 42 months as the implementation period of the Project, however, as per Chapter 1 and other chapters of the DPR, it is 54 months, thus, the same is an error apparent and goes to the root of the present appeal.

137. These activities affected the generation station and dedicated line construction. for a generating plant, the evacuation system and construction of plants are not mutually exclusive, the location of the terminal bay at the pooling station would affect the internal configuration of the plant as the location of the Generator transformer would be decided by that.

138. In addition to this in multiple orders of the Central Commission and this Tribunal's judgment, it has been held that the commissioning schedule of the generating plant should match the evacuation system commissioning schedule to avoid the condition of the bottleneck of either the generation or the evacuation system, which ultimately affects the cost of power for the consumer, and, therefore, to avoid mismatch in transmission and generation and their

*construction activities, continuous monitoring and coordination by government authorities is done.*

*139. Hence, for any delays in the commissioning of the evacuation system, the generating company should not be held responsible for, a necessary prudence check must be done by the Commission by considering this."*

The Hon'ble APTEL through its Judgement has directed the Commission to check the time overrun prudently taking into consideration that for any delays in commissioning of the evacuation system the generating company should not be held responsible.

3.13 The Commission observed that the generator in its Appeal had submitted that the Commission has wrongly considered SCOD as 42 months as the completion period of the Project whereas the generator has submitted that as per Chapter 1 and other chapters of the DPR the completion period is 54 months. Thus, the same is an error apparent. On this view, it is pertinent to mention that Executive Summary of the DPR states as follows:

*"CONSTRUCTION SCHEDULE*

*The project is programmed to be completed in a period of 42 months from the date of investment approval. It is envisaged that 12 months time will be required to complete the infrastructure development works."*

Further, with regard to scheduled completion period for the project, Chapter 14 i.e. 'Financial and Economic Analysis' of DPR states as follows:

*"The Project is to be brought in operation within 42 months from the date of financial closure by which time, most of the pre-construction activities, construction of approach roads to various job sites get completed."*

The Commission had relied on the time specified under Chapte-14, i.e. 'Financial and Economic Analysis' of DPR which explicitly mentioned that the project shall be put under commercial operation within 42 months from the date of financial closure. The Financial closure of the project was 13.03.2006 and, accordingly, the schedule date of commissioning was worked out to September 12, 2009 considering 42 months from the financial closure.

3.14 Nevertheless, the Commission has once again gone through the various submissions made by the generator during the earlier proceedings of Petition no. 31 of 2015 in the matter of

determination of tariff of Budhil HEP to ascertain whether there was any delay on the part of the generator taking into consideration the view of the Hon'ble APTEL reproduced above, that the generating company should not be held responsible for any delay in the commissioning of the evacuation system.

3.15 It is observed that the activities w.r.t. evacuation systems started in June, 2005 and multiple meetings were held with CEA, PGCIL & Standing Committee and the evacuation system got finalised by June, 2009 and, thereafter, the evacuation system was put to commercial operation on 01.11.2011. The commissioning schedule of the generating plant should match the commissioning schedule of the evacuation system to avoid either the generation or the evacuation system getting bottled-up. The Commission has gone through the Order dated 02.01.2013 in Petition no. 94/TT/2011 of the Central Electricity Regulatory Commission in the matter of determination of tariff of the said evacuation system to examine whether there was any delay in evacuation system to meet the expected date of commissioning of the Budhil project. From the said order of CERC, it is observed that there was a delay in commissioning due to land acquisition, forest clearances and hindrances from local.

3.16 Further, the Commission observed that the generator had started the work of construction of dedicated transmission line to be connected at Chamera-III Pooling sub-station for evacuation of power from Budhil HEP in March 2010 and the same got completed in April 2012, i.e. within six months from commissioning of the evacuation system by PGCIL including GIS Pooling Sub-station and bays i.e. 01.11.2011 at Chamera-III. Accordingly, based on the above discussion and directions of the Hon'ble APTEL, the Commission considers the time overrun on account of delay in finalisation of the evacuation system and additional bay at NHPC Chamera-III switchyard, beyond the control of the generator as also directed by Hon'ble APTEL.

**D. Price escalation disallowed on account of geological breakdown, increase in length of HRT and increase in quantum of steel reinforcement for Diversion dam,**

3.17 With regard to time overrun on account of delay in commissioning due to geological surprises affecting the progress of work in most of the underground structures due to occasional stoppages and slow progress since most of the water conductor system and power house components were underground structures and also geological over breaks

resulting in additional concrete back filling and concrete lining in the HRT/Desilting tank, additional work due to increase in length of HRT and increase of reinforcement for Diversion dam, the project lies in the western part of the Himalayan organic belt affected by several tectonic features, as such, the area around the project is highly tectonised giving rise to crushed rock mass, gauzy material, blocky crumbly and sheared rock. The Hon'ble ATPEL agreed with the submission of the generator that the delay on account of geological surprises is beyond the control of the generator. Further, the Hon'ble APTEL has allowed the time overrun due to occurrence of events beyond the control of M/s GBHPPL.

3.18 Further, the Hon'ble APTEL stated that the time overrun impacted the capital cost and, therefore, re-examination of the impact of time overrun is required. The Hon'ble APTEL also directed the Commission to re-examine the issues pertaining to price escalation amounting to Rs. 71.51 Crore. The relevant extract of the judgement is as follows:

*"152. It cannot be disputed that the Project lies in the western part of the Himalayan organic belt affected by several tectonic features, as such, the area around the Project is highly tectonised giving rise to crushed rock mass, gougy material, Blocky crumbly and sheared rock.*

...

*154. The GBHPPL also submitted that adverse geology further affected the progress of work in most of the underground structures due to occasional stoppages, slow progress, and extra time for completing these extra works, since most of the water conductor system and powerhouse components were underground structures, they were prone to geological uncertainties.*

...

*159. We agree with the submissions of the GBHPPL, such delays are beyond the control of the GBHPPL, therefore, the appeal has merit and deserves to be allowed on this count.*

...

*164. The Impugned Order passed by the State Commission and the reasoning recorded therein is erroneous and unreasonable, the time extension as sought by the GBHPPL in the appeal is allowed considering the above observations in the preceding paragraphs due to the occurrence of events beyond the control of the GBHPPL including the delay by the Government/ Statutory authorities.*

165. Undisputedly, the time overrun impacts the capital cost, therefore, it is important to re-examine the additional cost claimed by the GBHPPL.

166. In the light of the aforementioned judgment of this Tribunal, the State Commission is directed to re-examine the impact of time overrun on the capital cost.

167. As claimed by the GBHPPL, the escalation of Rs. 71.51 Crores in civil works was due to the following reasons, the issue shall be examined afresh:

- i. Geological overbrakes, leading to cost escalation not envisaged in the DPR;
- ii. Price escalations due to delays not envisaged in DPR;
- iii. Increase in length of HRT from 6028 meters to 6265 meters;
- iv. Increase in quantum of steel reinforcement for Diversion dam."

Through the above judgement, the Hon'ble APTEL agreed with the submission of the generator and concluded that the time overrun on account of geological surprises was beyond the control of M/s GBHPPL and directed the Commission to examine the escalation in the capital cost amounting to Rs. 71.51 Crore due to geological breakdown, price escalation due to delays not envisaged in the DPR, increase in HRT from 6028 meters to 6265 meters and increase in quantum of steel reinforcement for Diversion dam.

3.19 To examine the cost overrun of Rs. 71.51 Crore, the Commission directed the generator to submit the contracts pertaining to Rs. 71.51 Crore alongwith invoices and correspondences (internal and with contractors) regarding increase in length of HRT. In reply, the generator vide submission dated 06.03.2025 submitted the copy of the amended agreement dated 08.01.2010. However, copy of invoices and correspondence w.r.t. increase in HRT were not submitted. The Commission examined the amended agreement dated 08.01.2010 for contract of construction of civil works. The relevant extract of the amended agreement w.r.t. amounting to Rs. 71.51 Crore is as follows:

*"2.2 The parties hereby agree for acceptance of additional claim and payment of Rs. 71,51,00,000/ (Rupees Seventy one Crores fifty lacs only), as agreed between parties in the minutes of meeting dated 11.12.2009 which shall be paid as a compensation towards price escalation, overheads & other charges incurred due to delay in work on account of reasons not attributable to the contractor and the same shall be accepted and released in*

*the following manner:*

*Acceptance of Claim and Payment:*

- i) Completion of HRT Face-7 (1800 m) excavation = Rs. 22.43 Crore*
- ii) Completion of Dam Concreting upto EL. 1628 = Rs. 11.22 Crore*
- iii) Completion of excavation for balance component = Rs. 11.22 Crore*
- iv) Further an amount of Rs. 15.42 Crore towards concrete placement in over breaks in HRT shall be progressively accepted and paid to LITL @ Rs. 24613/meter length of 6265 meter of HRT. This shall be released alongwith the payment for the tunnel lining for the actual length executed every month."*

It is observed from the above clauses of the amended agreement dated 08.01.2010 that the amount of Rs. 71.51 Crore pertaining to price escalation has been decided in the minutes of meeting dated 11.12.2009. Accordingly, the Commission once again directed the Petitioner to submit the copy of the Minutes of Meeting held between parties on 11.12.2009 alongwith invoices pertaining to the agreed amount of Rs. 71.51 Crore.

The generator vide its reply dated 30.04.2025 submitted that it has already submitted the copy of the amended contract dated 08.01.2010 which explicitly states the scope of work which includes (i) Head Race Tunnel, (ii) Surge Shaft, (iii) Pressure Shaft, (iv) Draft Tube Tunnels, (v) Draft Tube Tunnels, (v) Draft Tube Gate Gallery, (vi) Access Tunnel to Draft Tube Gate Gallery, (vii) Access Tunnel to Draft Tube Gate Gallery from Power-House, (viii) Tail Race Tunnel and, (ix) Power House Tunnel. Further, the civil work contract for the said works was originally signed on 26.12.20205 which was to be completed in 2008, hence, price commensurate with year 2005 price levels were quoted by the contractor. However, due to several events beyond the control of the generator, such works could only commence at a much later date for which amendment contract dated 08.01.2010 was executed resulting in significant increase in prices.

Further with regard to Minutes of Meeting and internal correspondence and correspondences with the contractor, the generator submitted that the requisite information is not readily available with it. However, the approved project cost and the audited accounts of the generator for FY 2012-13 reflects that the generator has actually incurred the increased costs as claimed.

In the matter, the Commission is relying upon the final completion cost of the project as per the audited accounts for FY 2012-13. Besides in line with the view of the Hon'ble APTEL with respect to delays and geological surprised experienced by the project as being uncontrollable in nature the Commission accepts to allow the expenditure incurred on this head.

#### **E. Disallowance of Interest During Construction on account of time-overflow**

3.20 With regard to the disallowance of Interest During Construction (IDC) on account of disallowed time overflow, the Hon'ble APTEL stated that the Commission has disallowed the increased expenditure on account of IDC due to the time overflow and the matter was remanded back to the Commission for re-determination of capital cost on account of time overflow including IDC. The relevant extract of the judgement is as follows:

*"170. Further, the State Commission has also disallowed the increased expenditures on account of IDC due to the abovementioned time overflow, while doing the same, it has been observed that since the time overflow beyond the SCOD is not being allowed, hence, considering that all the Capital Expenditures have been incurred till the SCOD, the IDC is being allowed on a pro-rata basis of the Capital Cost approved by the State Commission.*

*171. The appeal is allowed, and the appeal is remanded to the State Commission to the limited extent of re-determination of capital cost on account of time overflow as allowed, including determination of capital cost (hard cost, soft cost, IDC) as claimed in the appeal, the State Commission is also directed to re-determine the consequential tariff of the project."*

As discussed in the preceding paragraphs of this Order, it is concluded that the delay in commissioning of the project was beyond the control of the generator and, hence, interest during construction is to be allowed to the generator as a component of capital cost.

3.21 With regard to interest during construction, the generator was directed to submit year wise and bank/financial institution wise details of Interest During Construction. In reply, the generator through its submission dated 06.03.2025 submitted that since the project was acquired by M/s GBHPPL after the completion of CoD, the year wise and Bank/financial institution wise details of IDC are not readily available with M/s GBHPPL. The details of the same can only be fetched from the books of accounts of the respective years without having the details of financial institutions/banks. The Petitioner submitted an auditor's

certificate stating that the IDC amount upto 30.05.2012 amounted to Rs. 135.00 Crore.

3.22 The generator submitted the auditor's report for FY 2012-13 to the Commission through its submission dated 13.12.2024. The Commission analysed the report and observed that the auditor qualified the report stating that as per the records of the company, the company has defaulted in payment of interest and repayment of principal of Rs. 6.21 Crore and Rs. 3.66 Crore respectively to banks and financial institutions during FY 2012-13.

3.23 From the above observation, it can be presumed that Interest During Construction amount is inclusive of penal interest towards default in payment of interest and repayment of principal amount. Accordingly, the Commission has once again gone through the various submissions made by the generator during the earlier proceedings in Petition no. 31 of 2015 in the matter of determination of tariff of Budhil HEP wherein it is found that the generator had submitted auditor's report from FY 2006-07 to FY 2014-15. From examination of that report, it is observed that the total Interest During Construction amounted to Rs. 135 Crore and it is also observed from the auditor's report for FY 2013-14 that the Budhil HEP had defaulted in payment of interest and repayment of principal amounting to Rs. 17.55 Crore and Rs. 6.02 Crore respectively in FY 2013-14 also. From the analysis of various submissions of the generator, it is found that Banks had charged penal interest amounting to Rs. 0.95 Crore upto the date of commercial operation (CoD) of Budhil HEP. In this regard, it is pertinent to mention that such penal interest cannot be allowed a pass through as the same is levied on the generator for its default in payment of interest and repayment of principal account. Accordingly, Interest During Construction, excluding penal interest works out to Rs. 134.05 Crore. Further, the Commission approves the Interest During Construction amounting to Rs. 132.29 Crore in proportion to the approved capital cost against the claimed capital cost upto CoD to be recovered through tariff.

#### **F. Disallowance of associated soft cost on account time-overrun**

3.24 With regard to the disallowance of the soft cost on account of disallowed time overrun, the Hon'ble APTEL stated that the Commission has restricted the soft cost only upto the scheduled CoD of the project, whereas the actual completion was extended due to several factors beyond the control of the generator, therefore, the soft cost is to be determined as claimed by M/s GBHPPL after examining the facts as placed before it. The relevant extract



of the judgement is as follows:

*"168. The State Commission has restricted the soft cost only up to the scheduled COD of the Project, whereas, the actual completion was extended due to several factors observed and concluded herein.*

*169. Considering that the time overrun has been allowed, the State Commission shall determine the soft cost as claimed by the GBHPPL after re-examining the facts as placed before it.*

...

*171. The appeal is allowed, and the appeal is remanded to the State Commission to the limited extent of re-determination of capital cost on account of time overrun as allowed, including determination of capital cost (hard cost, soft cost, IDC) as claimed in the appeal, the State Commission is also directed to re-determine the consequential tariff of the project."*

The Hon'ble APTEL through its judgement has directed the Commission to redetermine the soft cost as claimed by the generator considering that the time overrun has been allowed.

3.25 With regard to the soft cost, it is pertinent to mention that the Commission while determining the tariff for M/s GBHPPL vide its Order dated 30.11.2016, had segregated the soft cost into two parts namely, Soft cost independent of time factor and Soft cost dependent on time. Soft cost independent of time includes expenditure incurred on account of LADA, HPSEB Survey & Investigation, PWD Roads, HP Entry Tax, Bank Charges and Construction Cess (BOCW). Further, 'Soft Cost dependent of time includes 'Establishment charges', 'Design, Engineering, Construction & Supervision', 'Admn. & Other charges' and 'Preliminary expenses'.

3.26 The Commission had allowed the expenditure towards LADA, PWD Roads, HP Entry Tax and Construction cess as actually incurred. Further, the Commission had allowed the bank charges based on the capital cost approved against the capital cost proposed by the generator. Further, an amount of Rs. 6.17 Crore was allowed by the Commission towards HPSEB Survey & Investigation against the claimed amount of Rs. 10.66 Crore on account of the reasons that due to non-remittance/ short remittance of charges by the generator, the expenditure towards HPSEB Survey & investigation accumulated to Rs. 10.66 Crore. The relevant extract of the Commission's Order dated 30.11.2016 is as follows:

***“Soft Costs independent of time factor***

*Soft cost independent of time includes expenditure incurred on account of LADA, HPSEB Survey & Investigation, PWD Roads, HP Entry Tax, Other Bank charges and Construction Cess (BOCW). All the expenditures as claimed by the Petitioner, except HPSEB Survey & Investigation related expenditure, have been considered for the purpose of determination of capital cost since these were mandatory under statutory requirements. However, in case of HPSEB Survey & Investigation related expenditure it has been observed from the Petitioner’s submission dated 29.06.2016 that the Petitioner was required to make the payment within 3 months from the financial closure with cumulative interest of 10% p.a. whereas, due to non-remittance/short-remittance of charges by the Petitioner till FY 2010-11 the said amount accumulated to Rs. 10.66 Crore. Had the Petitioner paid the amount within 3 months from the date of financial closure, it would have to require to pay only Rs. 6.17 Crore. Therefore, only Rs. 6.17 Crore has been allowed and the balance amount paid due to additional interest burden has not been considered. Further, the other Bank charges has been considered based on the Capital Cost approved against the Capital Cost proposed by the Petitioner.”*

3.27 The generator in the present Suo-moto proceedings, vide its submission dated 13.12.2024 requested the Commission to allow expenditure towards HPSEB Survey & Investigation amounting to Rs. 10.66 Crore as the Commission had wrongly considered the expenditures pertaining to ‘HPSEB Survey and Investigation’ as soft cost independent of time factor instead of soft cost dependent on time. In the matter, the Commission directed the generator to submit a copy of the demand raised by HPSEB vide letter dated 22.09.2008 and letter dated 25.04.2012. The generator through its reply dated 30.04.2025 submitted that such communications are not available with the management. The generator has written to HPSEB seeking copies of the aforesaid demand letters. The generator also submitted that the Commission had disallowed Rs. 10.66 Crore under the head of ‘HPSEB Survey and Investigation’ and restricted it to Rs. 6.17 Crore by considering the same as soft cost independent of time factor which is incorrect. It is apposite to note that it was only vide letter dated 22.09.2008, HPSEB demanded Rs. 9.69 Crore which was duly approved by the GoHP under the revised cost approval dated 20.08.2010. The generator submitted that the Commission ought to have allowed at least Rs. 9.69 Crore, which was the first demand, raised by HPSEB and there was no rational to restrict the cost to Rs. 6.17 Crore.

3.28 In the matter, as discussed in the preceding paragraphs of this Order, the present Suo-moto proceedings are limited to the extent of implementation of the findings of the Judgement dated 28.08.2024. The Hon'ble APTEL has remanded the Appeal to the Commission to the limit extent of re-determination of capital cost on account of time overrun, including determination of capital cost (hard cost, soft cost, IDC) as claimed in the appeal.

It is worth mentioning that the Commission had considered the said expenditure under the category of 'Soft Cost independent of time factor' and the generator had not challenged the categorisation done by the Commission for such expenditure before the Hon'ble APTEL. Moreover, the Commission had allowed only Rs. 6.17 Crore against the claim of Rs. 10.66 Crore as the Petitioner was required to make the payment within 3 months from the date of financial closure i.e. 13.03.2006 with cumulative interest of 10% p.a. for any delay beyond the aforesaid period whereas, due to non-remittance/ short remittance of charges by the generator till FY 2010-11 the amount got accumulated to Rs. 10.66 Crore. The Commission had disallowed the excess amount levied on the generator due to delay in payment which cannot be allowed to be recovered by way of tariff from the consumer of the State. Accordingly, the claim of the generator to consider the expenditure towards 'HPSEB survey & Investigation' under the head of 'Soft Cost dependent of time' is not tenable. Hence, the same is rejected. Further, for the bank charges, the Commission has adopted the same methodology as adopted by the Commission in Order dated 30.11.2016. Further, the soft cost dependent of time has been approved by the Commission taking into consideration that the time overrun is not attributable to the generator as held by the Hon'ble Tribunal.

Details of Soft Cost approved by the Commission is as follows:

**Table-1: Details of Soft Cost Claimed by the generator and Approved by the Commission (Rs. In Crore)**

Particular	Claimed by the Generator	Allowed in Order dated 30.11.2016	Approved in this Order
<b>Soft Cost independent of time factor</b>			
LADA	6.30	6.30	6.30
HPSEB Survey & Investigation	10.66	6.17	6.17
PWD Roads	4.00	4.00	4.00
HP Entry Tax	0.17	0.17	0.17
Other Bank Charges	7.19	5.30	7.10
Construction Cess (BOCW)	1.01	1.01	1.01

**Table-1: Details of Soft Cost Claimed by the generator and Approved by the Commission  
(Rs. In Crore)**

<b>Sub-Total (A)</b>	<b>29.33</b>	<b>22.95</b>	<b>24.75</b>
<b>Soft Cost dependent of time</b>			
Establishment charges	24.78	13.56	24.78
Design, Engg. Cons & Supervision	13.62	4.51	13.62
Admn. & Other Charges	2.13	1.21	2.13
Preliminary expenses*	10.09	10.09	9.48
<b>Sub-Total (B)</b>	<b>50.62</b>	<b>29.37</b>	<b>50.01</b>
<b>Total (A)+(B)</b>	<b>79.95</b>	<b>52.32</b>	<b>74.75</b>

*\*Preliminary expense includes an amount of Rs. 0.61 Crore pertaining to Donation. The same has been deducted as the same should be met by the generator out of its profits.*

### **G. Disallowance of capital cost pertaining to Electro Mechanical works**

3.29 The generator through its submission dated 13.12.2024 submitted that M/s GBHPPL had initially claimed Rs. 147.18 Crore towards expenditure for Electro- Mechanical Works, however, the Commission had only allowed expenditure of Rs. 146.15 Crore, without assigning any reasons for disallowing the remaining Rs. 1.03 Crore. Considering that the Hon'ble APTEL through the Judgment dated 28.08.2024, has held that legitimate time and cost overruns ought to be allowed, it is clear that the entire expenditure of Rs. 147.18 Crore as incurred by GBHPPL ought to be allowed by the Commission.

3.30 The Commission had considered the value of all the contracts and amended contracts while determining the capital cost towards Electro-Mechanical works in its Order dated 30.11.2016. The Commission directed the generator to submit the contracts against the value of Rs. 1.03 Crore. The generator vide its reply dated 30.04.2025 submitted that it has provided the copies of the contracts towards E&M works as well as the breakup towards the same in its reply dated 06.03.2025. The generator requested the Commission to carry out the necessary prudence check for allowing the same.

3.31 As mentioned earlier, the present Suo-moto proceedings are limited to the extent of implementation of findings of judgement dated 28.08.2024. The Hon'ble APTEL has remanded the Appeal to the Commission to the limit extent of re-determination of capital cost on account of time overrun, including determination of capital cost (hard cost, soft cost, IDC) as claimed in the appeal. Further, the generator had not contested the disallowance of expenditure amounting to Rs. 1.03 Crore against 'Electro- mechanical works' in its Appeal before the Hon'ble APTEL. Moreover, no contracts have been

provided by the generator for Rs. 1.03 Crore. Accordingly, the same has not been considered by the Commission in this Order.

3.32Based on the above discussions, the capital cost approved in Tariff Order dated 30.11.2016, claimed by the generator and approved by the Commission through this Order after implementing the directions/finding/conclusion of Hon'ble APTEL in judgement dated 28.08.2024 is as follows:

**Table-2: Capital Cost allowed by the Commission vide Order dated 30.11.2016 and allowed in accordance with the Judgement dated 28.08.2024 of the Hon'ble APTEL (Rs. In Crore)**

Particulars	Capital Cost allowed in Order dated 30.11.2016	Claimed by the Generator through submission dt. 13.12.2024	Admissible Capital Cost in present Order
Land	8.03	8.03	8.03
Civil Works			
Building	60.52	315.15	60.52
Other Civil Work	159.20		221.37
Hydro Mechanical Works	23.92		33.26
E&M works inc. transmission lines	146.15	147.18	146.15
Establishment charges	13.56	24.78	24.78
Design, Engg, Cons & Supervision	4.51	13.62	13.62
Pre-operative expenses			
a. LADA	6.30	6.30	6.30
b. HPSEB Survey & Investigation	6.17	10.66	6.17
c. PWD Roads	4.00	4.00	4.00
d. Admn & Other charges	1.21	2.13	2.13
Preliminary expenses	5.38	10.09	9.48
IDC & Other Bank Charges			
a. IDC	59.79	135.07	132.29
b. Other Bank Charges	5.30	7.19	7.10
HP Entry Tax	0.17	0.17	0.17
Construction Cess (BOCW)	1.01	1.01	1.01
<b>Total Capital Cost</b>	<b>505.22</b>	<b>685.38</b>	<b>676.37</b>

### **Re-determination of Tariff for Budhil HEP**

3.33The capital cost as on CoD works out to Rs. 676.37 Crore as discussed in the above paragraphs of this Order and direction/observations of the Hon'ble APTEL against the capital cost of Rs. 505.22 Crore initially approved by the Commission through its Order dated 30.11.2016.

3.34The Commission has re-determined the Annual Fixed Charges (AFC) from the date of

execution of the PPA i.e. 01.12.2015 with UPCL till FY 2023-24 based on the now approved capital cost of Rs. 676.37 Crore in accordance with the prevailing UERC Tariff Regulations in the subsequent paragraphs of this Order as the Commission has carried out the truing up till FY 2023-24.

3.35 Year wise detail of the trued-up AFC in Tariff Order of the respective year and re-determined tariff as per above observations is as follows:

**Table-3: Year wise detail of AFC approved in Tariff Orders and Re-determined AFC as per Judgement dated 28.08.2024 of the Hon'ble APTEL (Rs. In Crore)**

Financial Year	2015*	2016#	2017	2018	2019	2020	2021	2022	2023
	2016	2017	2018	2019	2020	2021	2022	2023	2024
Approved AFC as per respective Tariff Orders of the Commission	6.52	96.24	90.97	87.33	89.74	86.70	83.98	81.80	77.96
Revised AFC on the above observations	8.92	125.91	121.94	117.37	118.89	114.97	110.79	103.40	99.72

\*Approved as single part tariff considering energy 17.52 MUs @ Rs.5.09/kWh (re-determined in this Order) against Rs. 3.72/kWh (approved in Tariff Order dated 21.03.2018)

#Approved as a single part tariff considering energy of 220.87 MUs @ Rs. 5/kWh (re-determined in this Order) against Rs. 3.70/kWh (approved in Tariff Order dated 21.03.2018) from April 2017 to Nov 2017. Further, two part tariff from December 2016 to March 2017

3.36 Year wise detail of incremental tariff, on account of above discussion, to be recovered from UPCL is as follows:

**Table-4: Year-wise detail of (Surplus)/Gap approve in Tariff Orders and Re-determined as per Judgement Dated 28.08.2024 of Hon'ble APTEL based on PAFM of Respective years (Rs. In Crore)**

Financial Year	2015	2016	2017	2018	2019	2020	2021	2022	2023
	2016	2017	2018	2019	2020	2021	2022	2023	2024
(Surplus)/Gap – Allowed in respective Tariff Order by the Commission	(0.17)	(6.97)	(1.96)	(2.66)	0.125	(0.561)	1.819	(2.48)	(4.00)
Revised (Surplus)/Gap based on the above observations	2.15	24.43	29.32	26.67	29.42	27.92	25.58	19.19	21.45
To be recovered from UPCL	2.32	31.39	31.28	29.33	29.30	28.48	23.76	21.67	25.45

3.37 Details of trued-up Energy Charge rate based on PAFM of respective years from FY 2016-17 to FY 2023-24 is as follows:

**Table-5: Year wise trued-up Energy charges rate from FY 2016-17 to FY 2023-24 (Rs./kWh)**

Financial Year	2016*	2017	2018	2019	2020	2021	2022	2023
	2017	2018	2019	2020	2021	2022	2023	2024
Trued up Energy charges as per respective Tariff Order of the Commission	1.848	1.845	1.771	1.820	1.758	1.703	1.659	1.581
Re-determined Energy Charges	2.518	2.501	2.407	2.439	2.358	2.272	2.121	2.045

\*Since two part tariff is applicable from December 2016 onwards

3.38 Further, since the Commission has not carried out the truing up for FY 2024-25, the impact of FY 2024-25 shall be allowed during the truing up exercise based on the audited account. The redetermined tariff for FY 2024-25 shall be reviewed by the Commission based on the actual expenditure at the time of tariff proceedings for ARR of FY 2026-27 alongwith truing up for FY 2024-25.

3.39 Details of ARR and energy charged approved vide Tariff Order dated 11.04.2025 for the fifth Control Period from FY 2025-26 to FY 2027-28 and re-determined ARR based on the above observations is as follows:

**Table-6: Annual Fixed Charges approved vide Tariff Order and Re-determined by the Commission for FY 2025-26 to FY 2027-28 (Rs. in Crore)**

Annual Fixed Charges	FY 2025-26		FY 2026-27		FY 2027-28	
	Approved vide Order 11.04.2025	Re-determined	Approved vide Order 11.04.2025	Re-determined	Approved vide Order 11.04.2025	Re-determined
Depreciation	5.87	8.23	5.87	8.23	5.87	8.23
Interest on Loan	4.44	7.06	3.89	6.30	3.34	5.53
Return on Equity	26.77	35.24	26.77	35.24	26.77	35.24
O&M Expenses	18.10	18.08	19.13	19.11	20.05	20.03
Interest on Working Capital	1.66	1.94	1.70	1.98	1.74	2.01
Less: Non-Tariff Income	0.00	0.00	0.00	0.00	0.00	0.00
<b>Net Annual Fixed Charges</b>	<b>56.84</b>	<b>70.56</b>	<b>57.36</b>	<b>70.86</b>	<b>57.77</b>	<b>71.04</b>

**Table-7: Capacity Charge and Energy Charge Rate re-determined by the Commission for the fifth Control Period**

Particular	FY 2025-26		FY 2026-27		FY 2027-28	
	Approved vide Order 11.04.2025	Re-determined	Approved vide Order 11.04.2025	Re-determined	Approved vide Order 11.04.2025	Re-determined
Net AFC (Rs. Crore)	56.84	70.56	57.36	70.86	57.77	71.04
Saleable Energy (MU)	229.71	227.14	229.71	227.14	229.71	227.14
Capacity Charges (Rs. Crore) (50% of AFC)	28.42	35.28	28.68	35.43	28.89	35.52
Energy Charges (Rs./kWh) (50% of AFC)	1.237	1.553	1.249	1.560	1.258	1.564

3.40 Further, with regard to carrying cost, the generator through its letter dated 06.05.2025 submitted that since the matter relates to payments due from FY 2016-17 onwards, the carrying cost component would amount to around Rs. 150 Crore and it is willing to forego 50% of the carrying cost considering the long-term relationship with the distribution licensee and the generator.

With regard to the carrying cost, the principle has been laid down by the Hon'ble APTEL in its Judgement dated 20.12.2021 in Appeal no. 150, 166, 168, 172, 173 of 2011 and in other judgements also that carrying cost/interest owing to revision in tariff will be due from the date from which the payment was due in the form of compensation for time value of money or the monies denied at the appropriate time and paid after a lapse of time. In the present case, the carrying cost in the form of compensation works out to Rs. 151.63 Crore from FY 2015-16 to FY 2024-25. Further, as stated by the generator, it is ready to forego 50% of the worked out carrying cost, carrying cost amounting to Rs. 75.12 Crore shall be recovered from UPCL.

The arrears so worked out from FY 2015-16 to FY 2023-24 alongwith carrying cost shall be recovered by the generator from UPCL in 11 equal installments Further, the AFC approved for FY 2025-26 to FY 2027-28 shall be recovered in accordance with the existing Tariff Regulations.

4. Ordered accordingly.

**(Anurag Sharma)**  
**Member (Law)**

**(M.L. Prasad)**  
**Chairman**