

M/S Everest Power Private Limited vs Punjab State Electricity Regulatory ... on 4 May, 2026

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

APPEAL No. 430 of 2019
APPEAL No. 416 of 2022

Dated : 4th May, 2026

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

In the matter of:

APPEAL No. 430 of 2019

M/s Everest Power Private Limited
The Additional Vice President,
Through its Authorised Signatory
Having its Corporate Office at:
Hall A, First Floor, Plot No. 143-144
Udyog Vihar Phase IV, Gurgaon - 122015
Email: delhioffice@everstpower.in

...

Versus

1. Punjab State Electricity Regulatory Commission
Through its Registrar
Site No. 3, Block No. B,
Sector 18A, Madhya Marg,
Chandigarh, SC0: 220-221,
Sector 34A, Chandigarh - 160018
Email: chairpersonpsercchd@gmail.com
2. Punjab State Power Corporation Limited
Through its Chief Engineer
PSEB Head Office, The Mall
Patiala - 147001, Punjab
Email: cmd-ppcl@ppcl.in

Appeal No. 430 of 2019 & 416 of 2022

3. PTC India Limited
Through its Executive Vice President
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place,
New Delhi - 110066
Email: da@ptcindia.com

... Responden

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Syed Fazl Askari
Gyanendra Singh
Pawan Singh
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for Res. 2

Appeal No. 430 of 2019 & 416 of 2022

Amit Kapur
Akshat Jain
Avdesh Mandloi
Abhimanyu Maheshwar
Shikhar Verma
Rishabh Bhardwaj
Sayan Ghosh
for Res. 3

APPEAL No. 416 of 2022

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Appeal No. 430 of 2019 & 416 of 2022

JUDGMENT

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. The captioned two appeals are directed against the two orders dated 3rd September, 2019 and 9th March, 2021 passed by 1st Respondent - Punjab State Electricity Regulatory Commission (hereinafter referred to as "the Commission") in Petition Nos. 23 of 2017 & 16 of 2020 respectively. Since identical issues have been raised in both the appeals and are between the same parties, we find it appropriate to dispose off both the appeals vide this common judgement.

2. The Appellant in both the appeals M/s Everest Power Private Limited (in short EPPL) is a generating company and has developed 100 MW Malana II Hydro Electric project in Dist. Kullu in the State of Himachal Pradesh. The 2nd Respondent in both the appeals M/s Punjab State Power Corporation Limited (in short PSPCL) is entrusted with the responsibility of generation and distribution of power in the State of Punjab. The 3rd Respondent in both the appeals M/s PTC India Limited in short (PTC) is a trading licensee under the Electricity Act, 2003 and has been granted inter state trading license by the Central Electricity Regulatory Commission .

Details of the two appeals :-

3. The Appeal No. 430 of 2016 has been filed by M/s Everest Power Private Limited challenging the Generation Tariff Order dated 03.09.2019 (in short "Impugned Order 1") passed by the Punjab State Electricity Regulatory Commission in Petition No. 23 of 2017, while determining the

Annual Fixed Cost ("AFC") for the Control Period for FY 2017-18 to FY 2019-20.

4. The second captioned Appeal No. 416 of 2022 has been filed by EPPL challenging the Order dated 09.03.2021 ("Impugned Order 2") passed by the Punjab State Electricity Regulatory Commission in

Petition No. 16 of 2020, which was filed by EPPL for approval of the Annual Fixed Cost ("AFC") for its Project in respect of the following control periods:

(a) Multi-Year Tariff ("MYT") Control Period of FY 2017-18 to FY 2019-

20 for True-up of FY 2017-18 & 2018-19 and revised estimates for FY 2019-20, under Sections 62 & 64 of the Electricity Act, 2003 ("EA, 2003") read with Regulation 63 of the Commission (Terms and Conditions of Determination of Generation, Transmission, Wheeling and Retail Supply Tariff) Regulations, 2014 ("PSERC MYT Regulations, 2014"); and

(b) MYT for 2nd Control Period of FY 2020-21 to FY 2022-23, under Sections 62 & 64 of EA 2003 readwith Regulation 60 of the PSERC MYT Regulations, 2014.

Submissions of EPPL List of important Date and Events

5. The following list of important as well as relevant dates and events would be helpful in understanding and analyzing the rival contentions/submissions of the parties :-

S.N. Date Particulars

1. 25.07.2005 A Power Purchase Agreement ("PPA") was executed between the Appellant and the Respondent No. 3/ PTC for sale of entire capacity of the Project.
2. 23.03.2006 In terms of the above, a back-to-back Power Sale Agreement was executed between PTC and the Respondent No. 2/ PSPCL.
3. 01.07.2014 The Commission, in exercise of its powers conferred under Section 61 readwith Section 181(2) of EA 2003 notified the PSERC MYT Regulations, 2014.
4. 28.05.2015 By way of a notification, the Commission clarified the effective date of enforcement of the said Regulations to be April, 2017 and the Three-Year Control Period for the same was from FY 2017-18 to FY 2019-20.
5. 03.04.2017 In the meanwhile, the Appellant filed a petition, bearing Petition No. 23 of 2017, before the Commission for approval of AFC for the Control Period for FY 2017-18 to FY 2019-20.

6. 08.11.2017 The Commission passed an interim order in I.A. No. 18 of 2017 in Petition No. 23 of 2017, allowing provisional AFC at Rs. 167.83 Crores for FY 2017-18to maintain the continuity of power to PSPCL.

7. 19.11.2018 In light of the directions of the Commission in Order dated 30.07.2018 in Petition No. 24 of 2017, the Appellant filed amended Petition No. 23 of 2017 for each year of the Control Period (FY 2017 to FY 2020) under Sections 62 & 64 of the EA, 2003 readwith Regulation 63 of the PSERC MYT Regulations, 2014.

8. 03.09.2019 The Impugned Order 1 was passed by the Commission.

9. 20.05.2020 The Appellant filed the amended Petition No. 16 of 2020 seeking Multi-Year Tariff for Control Period of FY 2017-18 to FY 2019-20, True-up of FY 2017-18 & 2018-19 and revised estimates for FY 2019-20

10. 09.10.2020 The Appellant filed amended Petition No. 16 of 2020 in view of queries dated 22.06.2020 sought by the Commission.

11. 09.03.2021 The Impugned Order 2 was passed by the Commission.

Issues which arise for our consideration in these two appeals :-

6. Following five issues arise for our consideration in these two appeals:-

(i) Dis-allowances made by the Commission in the two impugned orders towards Operation and Maintenance Expenditure.

(ii) Dis-allowances by the Commission in the two impugned orders towards capital expenditure under Deferred Provisions.

(a) Disallowance towards Buildings (balance work towards construction of project colony) & construction of staff rest run at Dam Complex :

(b) Disallowance of Rs.0.54 crores under "Miscellaneous Expenditure:

(c) Disallowance of Rs. 1.12 crores towards escalation of balance infrastructure works: and

(d) Disallowance of Rs.0.61 Crores towards Construction of Store at Project Site;

Analysis and discussions:-

7. Before proceeding to deal with issues raised by Appellant in both the appeals, it is observed that the Appellant has filed certain documents by way of an Application (being I.A No. 1855 of 2025), related to the escalations in costs of various components. While preferring such application, the Appellant has relied upon Order

XLI Rule 27 (1)(aa) of Code of Civil Procedure, 1908. Further, it has been submitted that this Tribunal is a court of first appeal, and as such, empowered to examine the complete merits of each case duly placed before it for consideration.

8. Appellant has submitted that EPPL's claims for additional capitalisation pertaining to construction of the Project Colony, construction of staff restrooms at the dam complex, and escalation on balance infrastructure works, all of which were disallowed by Commission, are directly traceable to the EPC Contract with NECL and the chain of correspondence arising therefrom. It was submitted that the documents sought to be introduced establish the contractual genesis of the escalation claims and are, therefore, necessary to enable this Tribunal to pronounce a just judgment on the issues raised in the Appeal.

9. On the other hand, PSPCL opposed the Application on both maintainability and merits. On maintainability, it was submitted that the documents comprising contracts and correspondence between 2005 and 2015 were indisputably within EPPL's knowledge and possession throughout the proceedings before the State Commission (which culminated in the Impugned Order dated 09.03.2021), as well as at the time of filing the Appeal in 2022. Despite multiple rounds of data calls by the State Commission, EPPL chose to present its additional capitalisation claims only on the basis of audited accounts, without relying on or producing the EPC Contract or related correspondence.

10. On merits, PSPCL submitted that the documents are narrative and descriptive in nature; that none of them contain item-wise cost justification, contractor-certified measurements, or cost build-up details directly linked to the monetary claims adjudicated by the State Commission; and that the production of these documents at this belated

stage would not advance the cause of justice but would only permit EPPL to attempt to fill lacunae in its evidentiary record.

11. At the threshold, we note the applicable legal framework governing admission of additional evidence before this Tribunal. Section 120 of the EA 2003 provides that this Tribunal shall not be bound by the Code of Civil Procedure, 1908, and shall be guided by the principles of natural justice. At the same time, PSPCL rightly points out that while this Tribunal is not bound by the technical provisions of the CPC, the substantive principles underlying Order XLI Rule 27 which reflect the broader doctrine of finality and orderly adjudication cannot be entirely set at naught. The two conditions recognised under Order XLI Rule 27 for admission of additional evidence are: (a) that the evidence was not within the party's knowledge or could not, despite due diligence, have been produced at the original proceedings; or (b) that the evidence is necessary to enable the Court or Tribunal to pronounce judgment.

12. Crucially, however, given that this Tribunal is not bound by the CPC, these conditions cannot be applied mechanically or with the same rigidity as a civil court bound by the CPC would apply them. The overarching touchstone for this Tribunal is whether, in a tariff determination exercise, admission of the documents is necessary in the interest of justice and for enabling a complete and fair adjudication of the controversy before it. As the Hon'ble Supreme Court has consistently reiterated, procedural rules are handmaids of justice and not their mistresses. Where exclusion of relevant material would result in an incomplete or unjust determination of a matter touching public interest as tariff proceedings undeniably do, the

Tribunal's inherent powers must be exercised liberally. It also needs to be kept in mind that a generating company which is supplying power to a distribution licensee under Section 62, is entitled to a rightful tariff in terms of the tariff principles contained in Section 61 of the Act. The tariff determination exercise is similar to a cost audit exercise undertaken by an auditor, where documents are requisitioned or produced at various stages as per the requirements, and is thus, different from a dispute under a civil suit. Thus, to determine a statutorily mandated tariff, this Tribunal or the Regulatory Commissions have to consider any documents which helps in such exercise. With respect to the above distinction between a civil suit and a statutory tariff determination regulatory exercise, we find it imperative to liberally construe the procedure with respect to furnishing of documents which help in determination of tariff.

13. It is further to be noted that regulatory tariff proceedings before a State Commission are not adversarial civil trials in which a party anticipates and pre-emptively adduces every document that may conceivably be relevant to every defence that the opposing party may raise. Before a Regulatory Commission, a generating company files its tariff petition supported by statutory formats, audited accounts, and such supporting documents as it deems necessary to demonstrate the cost incurred. The Commission then exercises its inquisitorial jurisdiction, it requisitions for data, raises queries, and conducts scrutiny. The claim that EPPL should have produced EPC contracts from 2005 in its Petition assumes anticipatory precision that cannot fairly be expected in regulatory proceedings of this nature.

14. This Tribunal also notes that the proceedings before the State Commission involved multiple rounds of data calls and queries, and the Impugned Order 2 reflects that the State Commission's primary concern was the inability of EPPL to correlate the claimed expenditure with the approved scope and reasonable cost parameters. It is precisely this correlation through the EPC Contract's escalation clause, the contractor correspondence, and the documented delays that the additional documents seek to establish. The documents are not being introduced to raise a new issue; they are being introduced to provide the documentary foundation for an issue, i.e., the contractual basis of escalation that has been raised and argued from the inception of the Appeal.

15. It is observed that the documents as placed by the Appellant are relevant, and their non-production before the State Commission is explainable in the context of the nature of regulatory tariff proceedings, and that no prejudice is caused to PSPCL. PSPCL's plea that it would be prejudiced is not substantiated as the documents are historical, they arise from transactions to which EPPL was a party, and their contents are not such as to take PSPCL by surprise or deprive it of the opportunity to respond effectively. PSPCL has to keep in mind that it is statutorily bound to make payment of rightful tariff of the Appellant/ generating company in terms of Section 61 principles, and as such, we hold that PSPCL cannot be prejudiced by consideration of documents now furnished by the Appellant.

16. For the foregoing reasons, we are of the considered view that the above Application deserves to be allowed in the interest of justice, to enable a full and fair adjudication of the issues arising in Appeal No. 416 of 2022. The documents sought to be placed on record are relevant to the core issues in controversy, i.e., with respect to determination of tariff, their production is necessitated by the specific findings of the Impugned Order

2. Issue 1- Disallowances made by the Commission in the two Impugned Orders towards Operation and Maintenance Expenditure Submissions on behalf of the Appellant:-

17. The Appellant submits that the issue regarding erroneous disallowance of Operation and Maintenance Expenses primarily arises from Impugned Order 1 and same methodology/ baseline values has been followed by Commission while passing Impugned Order 2. As such, consolidated submissions have been advanced by the Appellant/ EPPL during the course of hearing, with respect to issue qua O&M expenses.

18. The Appellant is aggrieved with the determination of tariff by Commission in the Impugned Orders, wherein, the said Commission failed to adhere to Regulation 8.1 (b) which makes it mandatory to determine baseline values for O&M Expenditure after duly considering various relevant factors inter-alia including industry benchmarks/ norms for similar/ same capacity projects, figures approved by Commission in past, latest audited accounts, estimates for ensuing years, etc.

19. It is the case of Appellant that Commission, by not following the mandate of Regulation 8.1(b), failed to consider appropriate benchmarks from similarly situated generators, and the expenditure incurred in the Base Year in terms of Regulations 8.1(b) readwith 3.9 of the Commission MYT Regulations, 2014, while determining the O&M cost of the Project. The aforesaid relevant clauses of the PSERC MYT Regulations, 2014 are reproduced herein below:

"...

3.9. "Base Year" means the year immediately preceding the first year of the control period, and used for the purposes of these regulations;

...

8. MYT APPROACH 8.1. Baseline Values

(a) The baseline values for the control period shall be determined by the Commission and the projections for the Control Period shall be based on these figures.

(b) The baseline values shall be inter-alia based on figures approved by the Commission in the past, latest audited accounts, estimate of the expected figures for the relevant year, industry benchmarks/norms and other factors considered appropriate by the Commission."

(Emphasis & Underline Supplied)

20. However, the Commission, in the Impugned Order 1, determined the base line value for the subject control period only based on past figures approved under the O&M expense head for FY 2016-17, merely escalating them by Wholesale Price Index ("WPI") negating the entire

ambit of revision of baseline for each control period as envisaged under Regulation 8.1(b).

21. In the above context, it is the case of the Appellant that the Commission ought to have approved the baselines values for the Appellant on the basis of (i) the latest audited costs (actual expenditure incurred); (ii) the approved expenditure in earlier years; (iii) industry benchmarks/ norms for similar/ same capacity projects; and (iv) estimate of the expected figures for the relevant year(s) as submitted by the Appellant, and other relevant factors, which was in line with Regulation 8.1 of the PSERC MYT Regulations, 2014 (as reproduced hereinabove).

22. Thus, the Commission has acted in clear derogation of the PSERC MYT Regulations, 2014 by limiting the Operation and Maintenance Expenses to figures approved under the O&M expense head for FY 2016-17 and escalating them by WPI.

23. It has been submitted that the PSERC MYT Regulations, 2014 were notified on 01.07.2014, however the same were made effective w.e.f. 01.04.2017 vide a subsequent notification dated 28.05.2015. Accordingly, these regulations were applicable for tariff determination for the relevant MYT control period, i.e., from FY 2017-18 to FY 2019-20. It is stated that the Commission determined the baseline values for the very first time for FY 2017-18 vide the Impugned Order 1 and thus the Appellant could not have challenged the baseline figures earlier.

24. In addition to the above, Appellant has submitted that the PSERC failed to consider that even if the claim of the Appellant was allowed, then also

actual O&M cost of the Project is almost 50% to 75% lesser in comparison to the O&M cost incurred by similar/ same projects and thus, expenditure by the Appellant towards O&M cost should have been allowed. Notably, Commission erred in not considering such data as an appropriate benchmark and failed to provide any similar benchmarks evincing industry standards. A table depicting the aforesaid has been submitted by the Appellant, and the same has been reproduced below:

Particula	Bairas	Loktak	Tanakp	Rangit	SEWA	Malana	rs	ul	(150M	ur	(120	(60M															
(120M	-II	(180M	W)	MW)	W)	W)	(100M	W)	W)	COD	Year	Sept,	May,	83	April,	92											
Feb,	July,	July,	83	2000	2010	2012	2014-15	82.39	85.90	95.04	43.56	65.29	24.31	2015-16	80.58	86.44	114.90	49.66	70.25	37.41	2016-17	95.37	112.45	124.16	60.22	80.11	31.84

25. Further, it is Appellant's case that Commission failed to evaluate the details and the comprehensive information/ data/ documents submitted by the Appellant relating to O&M expenditure incurred since COD of the Project, in line with Regulation 8.1, which were as follows:

- (a) Latest Audited Accounts of the Appellant;
- (b) Detailed note on regulatory regime with regards to determination

of O&M cost for various hydro projects by the Ld. Central Commission ("CERC");

(c) O&M Expenditure approved by CERC for Hydro Projects having similar/same capacity; and

(d) Details of the expenditure incurred towards various sub-heads (employee cost, Repair & Maintenance expenses, and Administrative & General expenses) under O&M expenses along with the supporting documents elaborating reasons thereof.

All the above documents were furnished by the Appellant in its petition filed before the Commission (being Petition No. 23 of 2017 in which the Impugned Order 1 was passed).

26. It is also stated that Commission also ignored the actual expenditure incurred by the Appellant towards Repair & Maintenance ("R&M") Expenses during FY 2014-15 to FY 2016-17, which was furnished by the Appellant in its petition filed before the Commission (being Petition No. 23 of 2017 in which the Impugned Order 1 was passed).

27. Adding onto the foregoing submissions, it has been submitted by the Appellant that at the time of hearing in Petition No. 23 of 2017 (in which the Impugned Order-1 was passed), the Commission issued a letter dated 19.03.2019 read with order dated 08.04.2019, wherein, some queries were put forth regarding O&M expenditure. In this context, the Appellant filed a Reply dated 18.10.2019, addressing the aforesaid queries of the said Commission in the following manner:

(a) The Commission sought queries with respect to increase in R&M expenses for FY 2016-17 in relation with FY 2012-13; information

for Administrative and General Expenses for FY 2014-15, 2015-16 & 2016-17; salary bills of employees of the Appellant for FY 2014- 15, 2015-16 & 2016-17; details of R&M expenses incurred during FY 2014-15, 2015-16 & 2016-17; and details of actual expense incurred towards R&M expenses for FY 2014-15, 2015-16 & 2016- 17;

(b) In the above context, the Appellant submitted a comprehensive note containing head-wise details of Administrative and General Expenses for FY 2014-15, 2015-16 & 2016-17. The Appellant also submitted the actual R&M expenses for FY 2014-15, 2015-16 & 2016-17;

(c) In addition to the above, while submitting the salary bills of its employees as required, the Appellant apprised Commission of the fact that its Project was facing financial crunch due to non-realization of full AFC since the matter had been sub-judice before multiple forums, which was decided only in April, 2015 by the Hon'ble Supreme Court. Hence, it was only from FY 2015-16 that the Appellant was able to review the salaries of its employees; and

(d) It was further submitted that the Appellant's Project was Commissioned in July, 2012 and thus, the first financial year after COD, i.e., FY 2012-13, was not the full operation year for the said Project. In such circumstances, the requirement towards R&M expenses was very limited for FY 2012-13, and since the Project was under defect liability period, most of such expenses were being carried out by the EPC contractor. As such, the actual

expenditure incurred by the Appellant towards R&M expenses only began from FY 2014-15.

28. In addition to the above, the Appellant filed an additional reply dated 22.06.2019 to the queries put forth by Commission, wherein, the Appellant submitted a detailed note on O&M expenses including the details of the expenses incurred by the Appellant towards Employee Cost and R&M during the period from 2014-15 to 2016-17, alongwith pointed justifications and copies of the relevant bills/ invoices.

Erroneous comparison undertaken by Commission with Shanan Hydro Electricity Project of the Respondent No. 2/ PSPCL

29. It is further submitted by the Appellant that the comparison undertaken by Commission between Shanan Project of the Respondent No. 2/ PSPCL and the Appellant is completely erroneous on account of the following:

(i) Shanan Project is located in a broad valley with most components at surface with a small tunnel, while the Project of the Appellant is located in high-altitude with vertical cliff having underground components and is subject to snowfall;

(ii) Further, Shanan Project does not have any project road and project relies on PWD roads where in the maintenance of the roads are taken care of by PWD, whereas, for the Appellant's Project, all access is through project roads and rope ways maintained by the Project itself, thereby requiring extensive maintenance;

(iii) Shanan is surrounded by mountainous terrain having elevation of only 1200-1300m and is located in a valley. On the other hand, the Appellant is located on a smaller hillside valley and is surrounded by mountainous terrain having elevation of over 2400m-2500m;

(iv) Shanan is located in a fairly developed area including residential and commercial properties, whereas, the Appellant is located in a remote location with no permanent construction around the site; and

(v) Shanan has access to National Highway (NH - 154) closer to project site, whereas, the Appellant has only one road access to the site, part of which is maintained by the Appellant itself.

30. In addition thereto, the following distinctions have been drawn between Shanan HEP and Malana-II HEP of the Appellant:

Factor	Shanan
Altitude	1200m
Source Altitude	1829m - Brot Valley, Ulh River
Head Height	548m
Location/Accessibility of components	Bulk of components are above ground
Project Construction	Part I (15x4 MW) - Part II 50 MW - 1982

31. Apart from the foregoing, the Appellant has made following submissions as regards uniqueness of the Project:

(a) Each hydro project is unique in itself, depending on the site-specific conditions including geology, topography, accessibility of the site and climatic conditions etc. In this context, there were notable differences in the Project of the Appellant;

(b) A comparison of O&M Expenditure (in Rs. Crores) between Malana-II HEP (Appellant's Project) and other similar projects is provided hereunder:

Particulars Bairasul Loktak Tanakpur Rangit SEWA Malana-

	(180MW)	(150 MW)	(120 MW)	(60 MW)	(120 II MW)	(100 MW)	
COD Year		Sept. 83		May, 83		April, 92	Feb, 2000
2014-15		82.39		85.90		95.04	43.56
2015-16		80.58		86.44		114.90	49.66
2016-17		95.37		112.45		124.16	60.22

(c) Also, the average O&M Cost/ MW of other projects (based on the latest amount approved towards O&M by the Ld. CERC/ Commission) is much higher than the O&M Cost/ MW of Malana - II HEP of the Appellant. The same is depicted and explained through a comparative table produced herein below:

Project Bairasul Loktak Tanakpur Rangit SEWA Shanan Name

(MW)					
O&M Cost/ MW	0.53		1.07	1.03	1.00
(Rs. Cr.)					
Avg. O&M Cost/ MW (Rs. Cr.)					
O&M Cost/ MW of Malana-II (Rs. Cr.)					

(d) Further, Commission failed to consider the outsourcing part of O&M services, which had various advantages like hedging the risk, availability of skilled and unskilled man-power, to meet the seasonal variation of man power requirement, help in meeting the man power requirement during maintenance and shutdown.

32. In terms of the aforesaid, certain unique features which differentiate Malana -II HEP (the Appellant's Project) from other Hydroelectric Projects situated in the State of Himachal Pradesh are provided as follows:

(a) The Project is located in high altitude region of Himalayas, wherein dam, HRT and Surge shaft are located between elevation 2500-

2800 meters;

(b) The Project witnesses inclement weather and unprecedented snowfall almost every year. The heavy snowfall and freezing cold makes the working conditions of the Project quite challenging & difficult as the movement of men and machinery during the winter season is not possible;

(c) The Project site shivers under intense cold with the minimum temperature going well below 0°C. The working conditions at Dam Complex are severe where the dam site is cut-off for more than 4 months due to heavy snow cover, and 4-5 feet thick snow remains on the top of the Concrete Gravity Dam;

(d) High head scheme (600m): This is the highest head for a Project having capacity of 100MW or so. Generally, such high heads come under higher capacity projects. Some of the examples are Naptha Jhakri 1500 MW (450 mtr.), Karcham Wangto 1000MW (300 mtr), Teesta III 1200MW (800mtr), etc.;

(e) The head race tunnel is almost 5km long located in a very fragile geology;

(f) The Project components are accessed through the project road of length of 14 Km. These roads to Dam site traverses through very difficult and steep terrain and adverse geology, and are subjected to extreme weather conditions of monsoon, cloud bursts and heavy snow, resulting in frequent landslides and washing out of the road. Thus, continuous maintenance of all the roads and bridges is mandatory to ensure smooth operation of the project; and

(g) All of the Project components are underground, and therefore, continuous monitoring, maintenance and repair are unavoidable.

33. Additionally, the O&M Expenses of other projects similar to the Appellant, i.e., 100 MW (approx.) run-of-water hydro-projects in similar geographical areas have been tabulated as under:

Table: Comparison of O&M among a similar capacity of projects for FY 17-18, 18-19 as approved by CERC (in CERC Tariff Regulations 2014) S. HEPs Capacity O&M (in O&M per MW N. (MW) Crore) 17-18 / 18-19

1. Loktak 105 117.3274 1.12 125.1226 1.19

2. Bairasiul 180 105.4730 0.58 112.4806 0.62

3. Tanakpur 120 86.1324 0.71 91.8551 0.77

4. Sewa II 120 74.6824 0.62 79.6443 0.66

5. Rangit 60 55.5058 0.93 59.1936 0.99

6. Malana 100 MW 34 (approx.) 0.34 (Claim) In light of the above, the Appellant has contended that COMMISSION has erroneously disallowed the legitimate expenditures towards the Operation and Maintenance Expenses for the Project, and incorrectly determined the baseline values. As such, it has been contended that Impugned Orders 1 and 2 be set aside on this count.

Submission of PSPCL

34. The primary issue raised in these appeals, and the sole issue in Appeal No. 430 of 2019 is the O&M expenses allowed by the State Commission for the base year FY 2017-18, being the base line values in terms of

Regulation 8.1(b) of the MYT Regulations, 2014 which, inter alia, reads as under:

"8.1 Baseline Values ...

(b) The baseline values shall be inter-alia based on figures approved by the Commission in the past, latest audited accounts, estimate of the expected figures for the relevant year, industry benchmarks/ norms and other factors considered appropriate by the Commission."

35. It is submitted the State Commission has correctly applied MYT Regulations, 2014 and determined the base line value in a judicious manner.

36. The primary contention of the Appellant that the State Commission should consider the O&M expenses as per the CERC Regulations as determined for generating stations of NHPC is grossly misconceived.

37. The CERC Regulations have no application to the present case. This issue has been settled by the Hon'ble Tribunal intra parties in the judgement dated 12.11.2014 in Appeal Nos. 30 and 35 of 2014, whereby the Hon'ble Tribunal rejecting the contention of the Appellant for application of CERC's Regulations, inter alia, held as under:

"87. In the present case, as pointed out by the State Commission, already the Regulations have been framed by the State Commission and therefore, the applicable Regulations are only State Commission's Regulations and not the Central Commission's Regulations.

88. In view of above, the contention of the Appellant Everest Power that the State Commission ought to have applied the Central Commission's Regulations while determining the tariff of the project is entirely misplaced."

38. Further, the very nature of determination by CERC and the State Commission is different. The CERC allows O&M cost on normative basis on a lump sum basis for the generator, without any bifurcation between employees cost, Administrative and General (A&G) Expenses and Repair and Maintenance (R&M) Cost.

39. However, the State Commission determines each element of O&M cost separately in accordance with the MYT Regulations.

40. The State Commission has considered the approved O&M cost for the previous year FY 2016-17 of Rs. 18.36 crores for considering and computing the base line for FY 2017-18 for Employee Cost, the terminal benefits has been allowed on actual basis, and also for R&M and A&G Expenses para 2.19 to 2.22.

41. After determination of the base line values, the escalation is in terms of Regulations, wherein the k factor is determined. There is no dispute on such k factor determination.

42. While the actual figures cannot be taken as a base line value, the State Commission has also considered the actual claims of the Appellant and given reasons as to why the same cannot be considered. The State Commission has also noted the following:

a) There is no justification for maintaining offices at Delhi, Gurugram and Shimla. It is relevant to mention that the Appellant company operates only one project, it is not that multiple projects have to be coordinated from one office;

b) The Appellant also maintains guest houses at Delhi, Gurugram and Shimla, which cost is claimed in tariff;

c) The specific query on increase in salary expenses despite reduction in the number of employees was not answered;

d) The projected employee cost in fact exceeded the amount mentioned in the audited accounts;

- e) 20% increase in employee cost is claimed;
- f) The insurance cost is for higher value than the capital cost; and
- g) Corporate Social Responsibility Cost is also claimed;

43. The truing up for FY 2016-17 has been accepted by the parties. There is no justification for the Appellant to accept the FY 2016-17 determination, but object to the same used as the base for considering FY 2017-18. The State Commission has allowed higher O&M cost than for FY 2016-17.

44. Further, the State Commission has also compared the cost with the Shanau Powerhouse. The said project is 110 MW (same as the Appellant) located in Himachal Pradesh (owned by PSPCL), for which the total O&M cost for FY 2017-18 was only Rs. 10.91 crores.

45. The Appellant has been allowed much higher cost of Rs. 19.02 crores for FY 2017-18.

46. The generating stations compared by the Appellant (@Pg 15 of appeal) of NHPC are also materially different, in terms of capacity, location, terrain etc. In fact, two of located in Northeast India and one in Jammu and Kashmir.

Our Analysis and Findings

47. The central and most significant issue in these appeals and the sole issue in Appeal No. 430 of 2019, concerns the determination of baseline values for Operation and Maintenance (O&M) expenses for the MYT Control Period FY 2017-18 to FY 2019-20. The Appellant contends that the Commission, in arriving at the baseline values for the O&M expenditure, mechanically and exclusively relied upon the approved O&M figures for FY 2016-17 (i.e., the immediately preceding year), escalating them merely by the Wholesale Price Index ('WPI'), without undertaking the comprehensive multi-factor analysis mandated by Regulation 8.1(b) of the PSERC MYT Regulations, 2014.

48. In the above context, Regulation 8.1(b) of the PSERC MYT Regulations, 2014 reads as follows:

"The baseline values shall be inter-alia based on figures approved by the Commission in the past, latest audited accounts, estimate of the expected figures for the relevant year, industry benchmarks/norms and other factors considered appropriate by the Commission."

49. We observe that the language of this provision is unambiguous and categorical. The word 'shall' imports a mandatory obligation on the State Commission. The phrase 'inter-alia based on' explicitly enumerates a non-exhaustive list of factors that the Commission is duty-bound to consider while determining baseline values. These factors include: (i) figures approved by the Commission in the

past; (ii) latest audited accounts; (iii) estimates of expected figures for the relevant year; (iv)

industry benchmarks/norms; and (v) other factors considered appropriate by the Commission. The enumeration of multiple distinct considerations under Regulation 8.1(b) is a deliberate legislative choice reflecting the intent that baseline determination is a comprehensive exercise and not a mechanical extrapolation from past approved figures.

50. The term 'inter-alia' is of particular importance. It signifies that the enumerated factors are illustrative and not exhaustive thereby implying that the Commission must, at a minimum, consider all the enumerated factors and may, in addition, weigh other factors it deems appropriate. The use of this phrase precludes a reading of the regulation that would confine the inquiry to only one factor, namely past approved figures.

51. From a careful reading of Impugned Order 1, it is evident that the Commission determined the baseline values for O&M expenses for FY 2017-18 exclusively on the basis of the figures approved for FY 2016-17

-- being Rs. 18.36 Crores escalated by WPI. The Commission did not undertake any independent analysis of the other mandatory factors prescribed under Regulation 8.1(b). It does appear to us that this approach suffers from a fundamental and incurable legal infirmity.

52. It is observed that the very purpose of the PSERC MYT Regulations, 2014 was to introduce a multi-year tariff framework that moved away from the year-to-year mechanical extrapolation that had characterized the pre-MYT regime. The baseline determination was conceived as a fresh and comprehensive exercise at the commencement of each Control Period, precisely to ensure that the baseline reflects prevailing operational realities rather than perpetuating outdated figures. By limiting

the baseline inquiry to a simple WPI escalation of the previous year's allowed figures, the State Commission has negated the very purpose of the MYT regime it created under its own regulations.

53. Therefore, this Tribunal finds it wholly impermissible for the Commission to carry forward the pre-MYT approved figures without conducting the comprehensive review mandated by Regulation 8.1(b), particularly since the baseline values are being established for the first time under the new MYT framework. In this regard, we also agree with the Appellant that it could not have challenged the baseline figures earlier precisely because those baseline figures were being determined for the very first time in the MYT framework through Impugned Order 1.

54. The Appellant has placed on record extensive material demonstrating the unique, challenging, and complex features of the Malana-II Hydro Electric Project, which distinguishes it fundamentally

from other hydro projects and particularly from the Shanan Hydro Electricity Project, with which Commission chose to compare it. This Tribunal finds the following features to be of material significance in determining a fair and rational O&M baseline:

- **High Altitude Location:** The Project is situated at an altitude of approximately 2528 meters above sea level, with dam, HRT and surge shaft components located between elevations of 2500-2800 meters. The extreme altitude entails harsh climatic conditions with temperatures dropping well below 0°C in winters.
- **Prolonged Inaccessibility:** The dam site remains cut off for more than four to five months every year due to heavy snow cover, with four to

five feet of thick snow remaining atop the Concrete Gravity Dam. This seasonal inaccessibility renders maintenance work impossible for extended periods, necessitating intensified efforts during accessible months.

- **High Head Scheme (600 meters):** The Project operates with a net head of 600 meters -- the highest head for any project in the approximately 100 MW class. Such a high head imposes extraordinary stress on hydraulic machinery and necessitates specialized, frequent, and intensive maintenance of turbines, penstocks, and associated equipment.

- **Underground Components:** All major project components -- the powerhouse, surge shaft, head race tunnel -- are underground, requiring continuous specialized monitoring and maintenance.
- **Long Head Race Tunnel in Fragile Geology:** The 5-kilometer head race tunnel passes through very fragile and geologically sensitive terrain, requiring perpetual monitoring and remedial interventions.
- **Challenging Access:** Project roads of approximately 14 km traverse difficult and steep terrain prone to frequent landslides, cloud bursts, and monsoon damage, and are maintained entirely by the Appellant. No public roads serve the site.

- **Outsourced O&M:** The Project relies on outsourced O&M services to manage seasonal manpower requirements, meet specialized technical demands, and ensure year-round plant safety -- a model that involves legitimate overhead costs not present in government- owned projects.

55. In sharp contrast, the COMMISSION chose to benchmark the Appellant's O&M costs against the Shanan Hydro Electricity Project of PSPCL, a

project of 110 MW capacity whose total O&M cost for FY 2017-18 was Rs. 10.91 Crores. In our considered view, this comparison is fundamentally flawed and cannot be sustained for the following

reasons:

- Shanan Project is situated at an altitude of approximately 1200-1300 meters, barely half the altitude of the Malana-II Project of the Appellant in a broad, developed valley. The Malana-II Project of the Appellant, by contrast, is in a remote, high-altitude mountainous terrain above 2400-2500 meters.
- The bulk of Shanan's components are above ground, while all major components of Malana-II are underground, requiring continuous and expensive underground maintenance.
- Shanan relies on PWD-maintained roads, incurring no road maintenance expenditure, while the Appellant maintains all project roads and ropeways at its own cost.
- Shanan enjoys proximity to National Highway NH-154, while the Malana-II Project is accessible only through project-maintained roads prone to landslides.
- Shanan is located in a relatively developed, populated area while Malana-II is in a completely remote location with no permanent civilian infrastructure.

56. Accordingly, we are of the view that comparing the O&M costs of two structurally, geographically, geologically, and operationally dissimilar projects merely because of broadly similar installed capacity without any adjustment for project-specific factors, constitutes an arbitrary exercise that is contrary to the mandate of Regulation 8.1(b) as well as the tariff principles contained in Section 61 of the Act. The Commission has failed

to explain how the Shanan Project can serve as a meaningful benchmark for the Appellant.

57. Further, the Appellant placed before the Commission detailed industry benchmark data, comparing O&M costs for projects of similar capacity and geography. The said data, which the Appellant placed before the Commission and which was not disputed, reveals a stark and irrefutable fact that even as per the Appellant's own claim, its O&M cost per MW (Rs. 0.34 Crore per MW) was far below the per-MW O&M of all comparable NHPC-regulated projects ranging from Rs. 0.58 to Rs. 1.19 Crore per MW. The Commission, having allowed only Rs. 19.02 Crores for FY 2017-18 (which represents approximately Rs. 0.19 Crore per MW), in our view, has effectively penalized the Appellant for operating a project at costs far below industry benchmarks.

58. This Tribunal notes that Regulation 8.1(b) specifically and expressly mandates consideration of 'industry benchmarks/ norms.' When an industry benchmark analysis unambiguously demonstrates that even the Appellant's claimed figures are significantly below peer-group averages, it is wholly inexplicable and contrary to the regulatory mandate for the Commission to disallow the claim

without providing any counter-analysis of the benchmarks. The State Commission ought to have addressed this benchmark data with reasons; its silence on this aspect renders the impugned determination unsustainable.

59. Regarding the employee cost, the Commission approved only Rs. 4.37 Crores for FY 2017-18 against the Appellant's claim of Rs. 8.15 Crores. The State Commission found fault with the Appellant on account of

alleged maintenance of offices at Delhi, Gurugram and Shimla; maintenance of guest houses at these locations; an unexplained increase in salary despite reduction in employee count; and a 20% increase in employee cost claimed.

60. This Tribunal finds the State Commission's approach on employee costs to be flawed. First, the Appellant is a private generating company executing a legally binding PPA with PTC/PSPCL. Its offices at Delhi, Gurugram and Shimla serve legitimate administrative, regulatory, commercial, and legal functions. A generating company involved in multi- jurisdictional regulatory proceedings before Commission (Chandigarh), CERC (Delhi), and this Tribunal is entitled to maintain office infrastructure at these locations. The State Commission's reasoning that the Appellant operates 'only one project' and therefore does not need multiple offices conflates the site-level operations of a hydroelectric project with the corporate-level legal, regulatory, and commercial administration of a private generating company. Such an approach has no basis in the MYT Regulations and is contrary to the principle that all legitimately incurred administrative costs form part of an entity's operational expenditure. The approach of the Commission amounts to dictating as to how a private generating company needs to conduct its operations/ business, which is not the intent of its tariff regulations.

61. Secondly, regarding the increase in salary expenses despite reduction in employee count, the Appellant submitted detailed information to the Commission during the hearing that the Project faced financial difficulties due to non-realization of full AFC over prolonged periods when the matter

was sub-judice before multiple forums, which was ultimately resolved only in April 2015 by the Hon'ble Supreme Court. It was only from FY 2015-16 that the Appellant was financially able to revise salaries. The Commission failed to appreciate this undisputed context and instead treated the natural consequence of deferred salary revisions as an infirmity in the Appellant's accounts.

62. Regarding Repair & Maintenance Expenses, the Commission approved only Rs. 14.65 Crores for FY 2017-18 against the Appellant's claim of Rs. 25.77 Crores under the head of Repair & Maintenance and Administrative & General Expenses. The Commission based this determination primarily on past approved figures.

63. However, it is observed that the Project had been under the defect liability period of its EPC contractor up to FY 2013-14, during which most R&M activities were carried out by the contractor at no additional cost to the Appellant. Meaningful independent R&M expenditure only commenced from FY 2014-15. Therefore, we find that using FY 2012-13 as a reference year for R&M escalation was inherently distorting, as R&M costs in the early years were suppressed.

Further, the unique features of the Project, being underground components, 5 km fragile tunnel, steep project roads prone to landslides, 600m head machinery under high stress necessarily entail higher-than- average R&M costs compared to surface projects or valley-based projects.

Furthermore, it has been brought to the notice of this Tribunal that the Appellant submitted detailed R&M expense data for FY 2014-15, 2015-

16 and 2016-17 with bills and invoices. The Commission, despite receiving this information, failed to conduct a prudence check on the same and instead made a blanket disallowance.

64. PSPCL's first argument is that the Appellant accepted the FY 2016-17 true-up determination, and therefore cannot object to that figure being used as the base for FY 2017-18. The Appellant's acceptance of the FY 2016-17 true-up amounts to acceptance of that figure for that particular year alone. It does not and cannot amount to a concession that the FY 2016-17 approved figure is a correct, comprehensive, and legally sufficient basis for baseline determination under Regulation 8.1(b) of the Commission MYT Regulations 2014, a separate and distinct normative exercise. Also, it is a settled principle of law that res judicata is not applicable to tariff proceedings, as held by the Hon'ble Supreme Court in Uttar Pradesh Power Corporation Limited v. National Thermal Power Corporation, reported in [(2009) 6 SCC 235]. As such, the contention of PSPCL stands rejected on this ground.

65. PSPCL has also contended that the CERC Regulations have no application and that this Tribunal has previously rejected the Appellant's contention for application of CERC Regulations in Appeal Nos. 30 and 35 of 2014. We note that the above argument by PSPCL is a misleading argument as the Appellant is not, in the present appeals, seeking application of CERC Regulations per se. Rather, it relies upon data pertaining to NHPC projects (which are regulated by CERC) purely as an industry benchmark, as mandated by Regulation 8.1(b) of the PSERC MYT Regulations, 2014 itself. This is an entirely different proposition.

Industry benchmarks by their very nature may be drawn from the practices and approvals of other regulatory authorities overseeing comparable projects. The earlier judgment rejecting the substitution of CERC Regulations for State Commission Regulations has no bearing on the use of CERC approved figures as benchmarks.

66. It is also the case of PSPCL that the State Commission allowed a higher O&M cost than for FY 2016-17, and therefore there is no grievance. We are of the view that the question is not whether the allowed amount is higher than the previous year but whether it is determined in accordance with the law i.e., in accordance with the multi-factor analysis mandated by Regulation 8.1(b) read with Section 61 of the Act. A determination that is marginally higher than the previous year but is still reached by an impermissible methodology is no less legally infirm.

67. PSPCL's another argument is the comparison with the Shanan Powerhouse, which the State Commission used to justify limiting the Appellant's O&M to Rs. 19.02 Crores. This Tribunal has already addressed the fundamental inappropriateness of this comparison in detail above, and we are not repeating our observations again. Such a comparison reveals a failure to apply the analytical judgment required by Regulation 8.1(b) of PSERC MYT Regulations, 2014.

68. For the reasons enumerated above, this Tribunal holds that the Commission committed a grave error of law in determining the baseline values for O&M expenses for the MYT Control Period FY 2017-18 to FY 2019-20. The Commission was duty-bound under Regulation 8.1(b) of

the PSERC MYT Regulations, 2014 to conduct a comprehensive multi-factor analysis, taking into account: (i) figures approved in the past; (ii) the latest audited accounts of the Appellant; (iii) estimates for the relevant year; (iv) industry benchmarks and norms from comparable projects; and

(v) project-specific operational parameters. Having failed to do so, and having mechanically relied upon a single factor i.e., the past approved figure for FY 2016-17 escalated by WPI, the State Commission's determination of baseline O&M values is vitiated and cannot stand.

69. Accordingly, Issue No. 1 is decided in favour of the Appellant. The matter is remanded to the Commission with specific directions to re-determine the baseline O&M values for the Control Period FY 2017-18 to FY 2019-20 in strict conformity with Regulation 8.1(b), considering all the factors enumerated therein, including the industry benchmark data furnished by the Appellant. The Commission shall also consider the unique features and site-specific challenges of the Malana-II HEP while re-determining the above as per our directions. Impugned order-2 shall stand modified accordingly as per the revised base line values to be redetermined by the Commission in terms of this judgement and the corresponding additional financial impact shall be alongwith carrying cost at the applicable rate.

Issue 2: Disallowances by the Commission in the two Impugned Orders towards Capital Expenditure under Deferred Provisions

This issue can be, for the sake of convenience, divided in following four sub-issues.

A. Disallowances towards Buildings (balance works towards construction of Project colony) & construction of staff rest room at dam complex:

Submissions on behalf of the Appellant:-

70. It is Appellant's case that Commission disallowed the following amounts under the above component:

(a) Rs. 0.24 Crores (Rs. 2.14 Crores claimed minus Rs. 1.90 Crores allowed) towards construction of the Project Colony during FY 2017-18; and

(b) Rs. 0.28 Crores (Rs. 1.01 Crores claimed minus Rs. 0.73 Crores allowed) towards construction of staff rest room at Dam complex during FY 2018-19.

71. It is submitted that the above claims of the Appellant are clearly reflected in the Audited Balance Sheets for FY 2017-18 & 2018-19, details whereof are as under:

(i) The expenditure of Rs. 2.14 Crores towards construction of Project Colony is reflected under Note 3 of the Audited Balance Sheet for FY 2017-18 under the head 'Buildings - Project Office'. The relevant note in the audited balance sheets of the Appellant were

a part of record before the Commission and have been filed before this Tribunal by way of IA No. 1855 of 2025 ; and

(ii) The expenditure of Rs. 1.01 Crores towards construction of Staff Restroom at dam complex is reflected under Note 3 of the Audited Balance Sheet for FY 2018-19 under the head 'Buildings - Project Office'.

72. Appellant submits that Commission failed to acknowledge its own observations made in the order dated 30.07.2018 passed in Petition No. 24 of 2017 (Petition filed for approval of Capital Investment Plan and Business Plan for the subject Control Period) ("CIP Order"), as elucidated hereinbelow, wherein, the expenditure towards project colony and staff restroom was acknowledged:

(a) The infrastructure work pertaining to Project Colony could not be completed on account of local issues;

(b) The difficulty being faced by the Appellant on account of non-

availability of experienced/ skilled labourers during winter season, leaving construction work in abeyance; and

(c) The amount payable to the EPC contractor becomes due in terms of the contract only when the entire building works are completed.

Thus, when the works towards Project Colony and staff restrooms were completed in FYs 2017-18 and 2018-19, then the Appellant was entitled to the actual cost incurred in terms of Sections 61(d) readwith Section

2(30) of EA 2003 which mentions that housing colony etc. for staff is an integral part of the generating station.

73. It is stated that the Commission in the CIP Order also noted that additional capitalization would only be allowed when the said amount is claimed as actual expenditure alongwith submission of audited accounts.

74. Therefore, the Appellant claimed actual expenditure with respect to the construction of project colony and staff restroom in Petition No. 16 of 2020, in which the Impugned Order 2 was passed.

75. In order to buttress the above, the Appellant has also placed on record certain contracts and communications exchanged with the sub- contractors in order to demonstrate the actual expenditure:

(a) An EPC Contract, bearing No. EPPL/C-HM/INFRA/2378, was entered into between the Appellant and Navayuga Engineering Company Limited ('NECL') on 20.12.2005, for execution of 'Infrastructural Works, Preliminary Enabling and Ancillary Works' -

detailed under Schedule - II, for an amount of Rs. 140 Crores ('Subject EPC Contract'). The said Agreement contemplated completion of the works in 15 months;

(b) The Appellant, vide its letter dated 28.02.2006 issued to NECL, sought clarity for the delay in progress by NECL, in terms of the percentage of payment on monthly basis being made by the said Applicant;

(c) Vide a letter dated 03.03.2006 addressed to the Appellant, NECL accepted the proposal for demand of progressive payments based on actual works executed at the Project site, in replacement of the payment schedule contained in the Subject EPC Contract;

(d) Also, a meeting was conducted between the Appellant and NECL, wherein, minutes of meetings dated 02.09.2006 records reasons sought by the said Applicant for delay in progress of works at Project site. Thus, in the meeting, the Scope of Work was revised, the Subject EPC Contract was

amended, and the Billing Breakup of the said Amendments were provided;

(e) Pursuant thereto, NECL addressed a letter dated 05.08.2008 to the Appellant, informing that due to the amendment in the Scope of Works (vide letter dated 28.02.2006), additional costs were to be borne in order to meet the implementation schedule of the Project due to certain issues, and an additional claim of Rs. 20.68 Crores was submitted by NECL, with a detailed breakup by way of a study report;

(f) In terms of the above, the Appellant sent a letter to NECL on 29.06.2015, confirming Balaji O&M Services Pvt. Ltd. ('BOMSPL') as a sub-contractor for the Balance Works towards Colony Works (from October, 2015 to June, 2016) and Project Works (from March, 2016 to September, 2016);

(g) As regards the above, a letter came to be issued by BOMSPL on 11.07.2015, agreeing to execute the balance works related to

Permanent Colony and Road at the Project site, as well as abiding to the time period contemplated by the Appellant contained in its letter dated 29.06.2015; and

(h) It is pertinent to submit that the payments towards such works of construction of Project Colony and Staff Restroom were made in FYs 2017-18 and 2018-19.

It is apposite to note that the documents mentioned at (a) to (g) above, were placed on record by the Appellant through its Application for placing on record "additional documents" (being IA No. 1855 of 2025) before this Tribunal.

76. It is further submitted that as per the principles envisaged under Section 61(d) of EA 2003, the tariff is to be determined keeping in mind the recovery of costs incurred by the generating company, especially in light of the aforesaid documents. Notably, the fact that such estimated costs for the aforesaid components were considered appropriate in CIP Order, subject to true-up, entails that Commission ought to have considered the actual cost during the true-up stage and not restricted the same to earlier estimates rendering the true-up process otiose. As such, since the audited financial statements of the Appellant reflected the actual expenditure of Rs. 2.14 Crores towards construction of Project Colony and Rs. 0.28 Crores towards construction of staff rest room being legitimate expenditures, the same ought to have been allowed by the Commission.

77. Further, a perusal of Response dated 25.11.2020 by the Appellant to the queries raised by the Commission reveals that a copy of the bill towards above construction works amounting to Rs. 2.14 Crores for construction of Project colony had been provided to the Commission (Annexure-1 to the said Response) along with bill of Rs. 1.01 Crores for construction of Staff Rest Room.

78. Apart from the foregoing, reference is also placed upon Section 2(30) of EA, 2003, which states that ""generating station" or "station" means any station for generating electricity, including any building and plant with step-up transformer, switchgear, switch yard, cables or other appurtenant equipment, if any, used for that purpose and the site thereof; a site intended to be used for a generating station, and any building used for housing the operating staff of a generating station, and where electricity is generated by water-power, includes penstocks, head and tail works, main and regulating reservoirs, dams and other hydraulic works, but does not in any case include any sub-station".

As such, in terms of Section 2(30) of EA 2003, housing colonies, buildings, and rooms constitute an integral part of a generating station, and expenditures towards the same ought to have been allowed.

79. Thus, it is submitted that Commission has failed to conduct prudence check in terms of the extant Regulations, and as such, the impugned Order deserves to be set aside and the issue remanded for fresh consideration.

Submission on behalf of PSPCL :-

80. The State Commission has correctly disallowed an amount of Rs. 0.24 crores towards construction of project colony during FY 2017-18 and Rs. 0.28 crores towards construction of staff rest rooms at dam complex during FY 2018-19. It is pertinent to note that the State Commission vide Order dated 30.07.2018, in Petition No. 24 of 2017 approved the expenditure towards abovementioned structures, to the tune of Rs. 1.90 crores.

81. It is the Appellant's case that they were only allowed a normative value and were given the liberty to claim any escalation based on actual costs incurred. The above is misconceived.

82. The Appellant has wrongly based its entire argument on its own submissions, which it is trying to pass-off as ratio decidendi of the Order dated 30.07.2018. The Appellant's inability to complete the works on time cannot mean that the burden is passed on to the consumers.

83. The Sate Commission has correctly held that the Appellant has failed to establish the impact of alleged adverse events on the construction of project colony and staff rest room at dam complex. In absence of any cogent reasons for increase in expenditure, the inflated costs cannot be allowed.

Our Analysis :-

84. This issue pertains to the disallowance in Impugned Order 2 of the following components:

(a) Rs. 0.24 Crores (the differential between Rs. 2.14 Crores actually incurred and Rs. 1.90 Crores normatively approved) towards construction of the Project Colony during FY 2017-18; and

(b) Rs. 0.28 Crores (the differential between Rs. 1.01 Crores actually incurred and Rs. 0.73 Crores normatively approved) towards construction of Staff Rest Rooms at the Dam Complex during FY 2018-

19.

85. For this, we refer to Section 2(30) of the Electricity Act, 2003 which defines 'generating station' as including 'any building used for housing the operating staff of a generating station.' The definition thus expressly and unambiguously recognizes that housing colonies and operational staff accommodation constitute an integral and inseparable part of a generating station. Since the Malana-II Project of the Appellant is located in a remote Himalayan terrain without any habitation in the vicinity, the construction of a project colony and staff rest rooms is not a discretionary or peripheral activity, it is an operational necessity without which the Project cannot be manned or operated. The Electricity Act, 2003 recognizes this reality by bringing staff housing expressly within the definition of a generating station.

86. The critical distinguishing fact in this case is that the COMMISSION itself, in its Order dated 30.07.2018 passed in Petition No. 24 of 2017 (the Capital Investment Plan Order, 'CIP Order'), expressly acknowledged the works relating to project colony and staff rest rooms. In the CIP Order, the Commission specifically noted: (a) that the infrastructure work pertaining to the Project Colony could not be completed on account of

local issues; (b) that the Appellant faced difficulty due to non-availability of experienced and skilled labourers during winter seasons; and (c) that the amounts payable to the EPC contractor became due only upon completion of the entire building works.

87. In the CIP Order, the Commission approved a normative provision for these works subject to true-up explicitly stipulating that additional capitalization would be allowed once the Appellant claims actual expenditure with audited accounts. This conditional approval at the CIP stage imposed a duty on the Appellant to carry out the works and then submit actual expenditure with audited accounts at the true-up stage, which the Appellant duly did in Petition No. 16 of 2020. The Impugned Order 2 was the true-up stage and the Appellant had complied with all conditions of the CIP Order. However, it is observed that the State Commission made a u-turn and disallowed the additional amounts without explaining why the conditions it had itself imposed were not met or why the actual audited expenditure was not credible.

88. In this regard, we observe that the concept of 'truing up' in electricity tariff law has a well-settled meaning. As the Hon'ble Supreme Court in BSES Rajdhani Power Limited v. Delhi Electricity

Regulatory Commission [(2023) 4 SCC 788] as relied upon by the Appellant has categorically held that truing up means the adjustment of actual amounts incurred by the entity against estimated/projected amounts. The truing-up stage is not an occasion for the Commission to revisit, reopen, or rethink the fundamental basis of earlier tariff determinations. Nor can a Commission

use the true-up stage to introduce a fresh methodological departure that was not part of the original determination.

89. The ratio of this Tribunal's judgment in GIFT Power Company Limited v.

GERC (Appeal No. 285 of 2021, dated 14.11.2022) is also squarely applicable, where it was held that the scope of truing up is limited to the adjustment of actual income and expenditure against estimated amounts. At the true-up stage, the Commission cannot change the basic premise or methodology of tariff determination.

90. In the present case, the Commission had, in the CIP Order, acknowledged the works relating to project colony and staff rest rooms, approved normative amounts, and deferred final determination to the true-up stage upon submission of actual audited expenditure. When the Appellant submitted actual audited expenditure in Petition No. 16 of 2020, the Commission in the Impugned Order 2 was obligated to conduct a prudence check and determine whether the actual expenditure was reasonable, necessary, and incurred as stated. Instead, the Commission disallowed the excess figures over the normative estimates without conducting any prudence check, without identifying any instance of waste or imprudence in the actual expenditure, and without providing any reasoned basis for the disallowance.

91. The Appellant has placed on record an EPC Contract bearing No. EPPL/C-HM/INFRA/2378 executed between the Appellant and Navayuga Engineering Company Limited ('NECL') on 20.12.2005 for execution of infrastructural works at Rs. 140 Crores, including project colony construction. The contract contemplated completion in 15

months. The contract demonstrates that the scope of work was revised due to delays; additional costs were claimed by NECL; and ultimately a sub-contractor, Balaji O&M Services Pvt. Ltd. ('BOMSPL'), was engaged for balance works in 2015-16. Payments for these works fell in FYs 2017-18 and 2018-19 and are duly reflected in audited accounts under the head 'Buildings -- Project Office.'

92. The actual expenditure of Rs. 2.14 Crores (FY 2017-18) and Rs. 1.01 Crores (FY 2018-19) is not merely a self-serving assertion of the Appellant but is corroborated by audited financial statements, contractor bills, and contract documentation. We find that the Commission's disallowance of the excess over the normative figure, without any finding that the actual expenditure was excessive,

unjustified, or imprudent, is arbitrary.

93. PSPCL has argued that the Commission correctly disallowed the excess figures/ costs, and that the CIP Order approved only a normative value and not a commitment to allow escalation. In this regard, it is observed by us that the CIP Order did not merely fix a normative value but it conditionally deferred final determination to the true-up stage, upon submission of actual audited accounts. If the Commission's intention was to cap the allowable amount at the normative figure regardless of actual costs, it would not have kept the matter open for true-up. The very act of deferring to the true-up stage implies that the Appellant or any generator/ entity has to complete the work and then claim the actual, reasonable expenditure later at the true-up stage. PSPCL's contention that the Appellant's failure to complete works on time should not burden

consumers is unpersuasive when the delay was caused by local agitation, seasonal unavailability of skilled labour in high-altitude terrain which were factors beyond the Appellant's control and noted by the Commission itself in the CIP Order.

94. This Tribunal, therefore, holds that the Commission erred in disallowing Rs. 0.24 Crores and Rs. 0.28 Crores towards construction of Project Colony and Staff Rest Rooms respectively. These expenditures are expressly covered within the definition of 'generating station' under Section 2(30) of the Electricity Act, 2003; operationally necessary for a remote Himalayan project; acknowledged and conditionally approved by the Commission itself in the CIP Order; duly incurred and reflected in audited accounts; and subject to true-up in terms of the CIP Order itself. The Commission ought to have conducted a prudence check at the true-up stage, and its summary disallowance without identifying any imprudence, is unsustainable. This issue is answered in favour of the Appellant. Thus, Commission is directed to allow the actual audited expenditure towards Project Colony (Rs. 2.14 Crores for FY 2017-18) and Staff Rest Rooms (Rs. 1.01 Crores for FY 2018-19) subject to a proper prudence check, and the amounts so allowed be released alongwith applicable interest/ carrying cost.

B. Miscellaneous (towards procurement of Office Equipment; Tools & Tackles/ Machinery and Computers):

Submission of the Appellant :-

95. That, the Commission disallowed Rs. 0.54 Crores, which was incurred towards "miscellaneous expenditure" by the Appellant, on account of wrongfully treating the same as an expenditure qua "minor items" which is not allowed in terms of proviso to Regulation 18.2(e) of the PSERC MYT Regulations. While doing so, the Commission proceeded to disallow the entire amount towards purchase of office equipment, plant & machinery, furniture & fixtures and computers during the entire MYT period.

96. The Appellant submitted that the reliance upon proviso to Regulation 18.2(e) is completely erroneous, for the reason that the said proviso is restricted to only Regulation 18.2(e), and not Regulation 18.2(d). The claim of the Appellant falls under Regulation 18.2(d). The Regulation 18.2(d) is reproduced hereinbelow:

"18. ADDITIONAL CAPITALIZATION ... 18.2 The Capital Expenditure of the following nature actually incurred after the cut-off date may be admitted by the Commission subject to prudence check:

.. (d) Any additional works/services which have become necessary for efficient and successful operation of the project, but not included in the original project cost; and ..."

(Underline Supplied)

97. It is settled law that a proviso is an exception to the main provision, which in the present case is Regulation 18.2(e). Regulation 18.2(e) is applicable only in case of damage due to natural calamity. It is in this

context, that the proviso bars expenditure towards minor items incurred as a result of natural calamity after the cutoff date.

While in the present case, the expenses incurred after the cutoff date were not as a result of any natural calamity. Hence, Regulation 18.2(e) is not applicable, including the proviso.

98. Accordingly, the actual expenditure incurred by the Appellant in terms of Regulation 18.2(d), due to additional work or expenditure which becomes essential for efficient and successful operation of the Project, ought to be allowed. That, the above expenditures towards miscellaneous items are clearly reflected in the Audited Balance Sheets in the following manner:

(a) Rs. 0.25 Crores under Note 3 of Audited Balance Sheet for FY 2017-18 under the heads 'Plant & Machinery', 'Office Equipment', 'Computers' and 'Furniture & Fixtures';

(b) Rs. 0.13 Crores under Note 3 of Audited Balance Sheet for FY 2018-19 under the heads 'Office Equipment', 'Computers' and 'Furniture & Fixtures'; and

(c) Rs. 0.16 Crores under Note 3 of Audited Balance Sheet for FY 2019-20 under the heads 'Office Equipment', 'Computers' and 'Furniture & Fixtures'.

Pertinently, the above documents did not form part of the record before Commission, and the same have been placed before this Tribunal by way of the abovementioned IA.

99. It is also pertinent to note that the above expenditure was incurred belatedly, i.e., after the cutoff date, due to impediments created by local agitation and non-availability of migrant workers, which was noted by the Commission itself in the CIP Order.

100. It is also submitted by the Appellant that the above claim, which was allowed principally by the Commission through the CIP Order, was disallowed subsequently in the true-up order (Impugned Order 2), which goes against the very scope of truing-up, which entails comparison of normative/provisionally allowed with actual expenditure. In this regard, reliance has been placed upon the following judgments:

(a) Judgment of the Hon'ble Supreme court titled as BSES Rajdhani Power Limited v. Delhi Electricity Regulatory Commission, reported in (2023) 4 SCC 788, wherein the following was laid down:

"55. 'Truing up' has been held by APTEL in SLDC v. GERC4 to mean the adjustment of actual amounts incurred by the Licensee against the estimated/projected amounts determined under the ARR. Concept of 'truing up' has been dealt with in much detail by the APTEL in its judgment in NDPL v. DERC wherein it was held as under:

"60. Before parting with the judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the Revenue required by a particular utility and such assessment should be based on practical considerations. ... The truing up exercise is meant (sic) to fill the gap between the actual expenses at

the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure.

This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence."

56. This view has been consistently followed by the APTEL in its subsequent judgments and we are in complete agreement with the above view of the APTEL. In our opinion, 'truing up' stage is not an opportunity for the DERC to rethink de novo on the basic principles, premises and issues involved in the initial projections of the revenue requirement of the licensee. 'Truing up' exercise cannot be done to retrospectively change the methodology/principles of tariff determination and reopening the original tariff determination order thereby setting the tariff determination process to a naught at

'true up' stage."

(b) Judgment dated 14.11.2022 of this Hon'ble Tribunal titled as GIFT Power Company Limited v. GERC rendered in Appeal No. 285 of 2021, wherein, the following was laid down:

"7. Clearly, the scope of truing up proceedings is limited to the adjustment of actual income and expenditure for the corresponding period of determination of ARR. It is not open to the Regulatory Commission to change, at the stage of truing up, the basic premise or methodology on the

basis of which ARR was determined, the stage of truing up being one only for adjustment of actuals qua the estimated amounts and not meant for introducing new or varied methodology. We may quote Hon'ble Supreme Court on this subject in the judgment reported in the case of BSES Rajdhani Power Limited vs. Delhi Electricity Regulatory Commission (2022 SCC OnLine SC 1450) as under:

"53. 'Truing up' has been held by APTEL in SLDC v. GERC to mean the adjustment of actual amounts incurred by the Licensee against the estimated/projected amounts determined under the ARR. Concept of 'truing up' has been dealt with in much detail by the APTEL in its judgment in NDPL v. DERC wherein it was held as under:--

"60. Before parting with the judgment we are constrained to remark that the Commission has not properly understood the concept of truing up. While considering the Tariff Petition of the utility the Commission has to reasonably anticipate the Revenue required by a particular utility and such assessment should be based on practical considerations. ... The truing up exercise is meant (sic) to fill the gap between the actual expenses at the end of the year and anticipated expenses in the beginning of the year. When the utility gives its own statement of anticipated expenditure, the Commission has to accept the same except where the Commission has reasons to differ with the statement of the utility and records reasons thereof or where the Commission is able to suggest some method of reducing the anticipated expenditure.

This process of restricting the claim of the utility by not allowing the reasonably anticipated expenditure and offering to do the needful in the truing up exercise is not prudence."

54. This view has been consistently followed by the APTEL in its subsequent judgments and we are in complete agreement with the above view of the APTEL. In our opinion, 'truing up' stage is not an opportunity for the DERC to rethink de novo on the basic principles, premises and issues involved in the initial projections of the revenue requirement of the licensee. 'Truing up' exercise cannot be

done to retrospectively change the methodology/principles of tariff determination and re-opening the original tariff determination order thereby setting the tariff determination process to a naught at 'trueup' stage."

...

9. In our considered view, the majority opinion is misdirected and in breach of the discipline required to be maintained at the stage of truing up.

Reference to Regulation 6 (General Framework) of MYT Regulations, 2016, wherein the right of the State Commission to "vary as and when the facts and circumstances so warrant, from the procedures and parameters specified" to justify the departure made is incorrect as the general power cannot be availed to junk the letter and spirit of specific circumspection prescribed for truing up by Regulation 21.3. The decision rendered on such majority opinion must be set aside and vacated. We order accordingly."

101. It is thus stated that impugned Order 2 to the extent of disallowance qua miscellaneous expenditures (as mentioned hereinabove) ought to be set aside and remanded back to the Commission for fresh consideration.

Submission of PSPCL :-

102. PSPCL has contended that the State Commission has correctly not considered the expenses under the miscellaneous head, amounting to Rs. 0.54 crores in terms of Regulations 18.2(e) of the MYT Regulations, 2014, any expenditure on acquiring minor items is not to be considered for additional capitalization for determination of tariff. When the expenses claimed are post cut-off date, a strict interpretation of the regulations shall be followed. The said Regulation, inter alia, reads as under:

"18.2. The Capital Expenditure of the following nature actually incurred after the cut-off date may be admitted by the Commission subject to prudence check:

[...] e. In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) including due to geological reasons after adjusting for proceeds from any insurance scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation:

Provided that any expenditure on acquiring the minor items or the assets the tools and tackles, furniture, air- conditioners, voltage stabilizers, refrigerator coolers, fans, washing machines, heat convectors, mattresses, carpets brought after the cut-off

date shall not be considered for additional capitalisation for determination of tariff w.e.f., the date of the start of first year of the control period."

103. It has thus been submitted on behalf of PSPCL that where the regulation itself bars capitalisation of minor items incurred post cut-off date, there is no merit in the claim sought to be advanced.

Our Analysis :

104. This issue relates to the disallowance of Rs. 0.54 Crores under the head of 'miscellaneous expenditure,' which comprised Rs. 0.25 Crores incurred in FY 2017-18 towards Plant & Machinery, Office Equipment, Computers, and Furniture & Fixtures; Rs. 0.13 Crores in FY 2018-19 towards Office Equipment, Computers, and Furniture & Fixtures; and Rs. 0.16 Crores in FY 2019-20 towards Office Equipment, Computers, and Furniture & Fixtures.

105. The Commission disallowed this entire amount by invoking the proviso to Regulation 18.2(e) of the PSERC MYT Regulations, 2014, which bars capitalization of 'minor items' such as tools and tackles, furniture, air- conditioners, voltage stabilizers, refrigerators, fans, and so on, acquired after the cut-off date.

106. In the above context, we first refer to Regulation 18.2 which provides for the categories of capital expenditure incurred after the cut-off date that may be admitted subject to prudence check. Regulation 18.2(d) covers 'any additional works/services which have become necessary for efficient and successful operation of the project, but not included in the original project cost.' Regulation 18.2(e) covers expenditure on account of damage caused by natural calamities (except due to negligence of the generating company), and expenditure due to additional works necessary for 'successful and

efficient plant operation.' The proviso to Regulation 18.2(e) excludes capitalization of minor items acquired after the cut-off date.

107. From a perusal of the Impugned Order, it appears to us that the fundamental error committed by the State Commission is the application of the proviso to Regulation 18.2(e) to expenditure that does not fall under Regulation 18.2(e) at all. As a matter of elementary statutory interpretation, a proviso is an exception carved out of and therefore limited in its operation to the specific provision it is annexed to. We agree with the contention of the Appellant that a proviso to Regulation 18.2(e) can only govern the scope of Regulation 18.2(e). It cannot be extended beyond Regulation 18.2(e) to override the intent of Regulation 18.2(d).

108. The Appellant's expenditure on Plant & Machinery, Office Equipment, Computers, and Furniture & Fixtures does not arise from damage caused by natural calamities, and as such cannot attract Regulation 18.2(e). These are items procured for the efficient and successful operation of the Project specifically falling under Regulation 18.2(d), i.e., 'additional works/services which have become necessary for efficient and successful operation of the project, but not included in the original project cost.' The Commission's extension of the proviso to Regulation 18.2(e) to this claim, which squarely falls under Regulation 18.2(d), is thus, erroneous.

109. We observe that the law on the limited scope of a proviso is well settled.

A proviso must be read as subordinate to and an exception within the main provision to which it is appended. It cannot expand its operation to

other provisions or override them. As the Hon'ble Supreme Court has consistently held, a proviso carves out an exception only from the particular enactment to which it is a proviso, and its scope does not travel beyond that. Reference in this regard may be made to Judgments passed by the Hon'ble Supreme Court in A.N Sehgal v. Raja Ram Sheoran reported as [1992 Supp (1) SCC 304]; Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal & Ors. reported as [(1991) 3 SCC 442]. Applying this settled principle, we hold that the proviso to Regulation 18.2(e) cannot be read to invalidate a claim legitimately falling under Regulation 18.2(d).

110. The expenditure on Plant & Machinery (included in the FY 2017-18 claim) represents items that are essential for plant-level operations -- tools, testing equipment, and operational machinery. The expenditure on Office Equipment, Computers, and Furniture & Fixtures is necessary for the administrative functioning of the Project office. These are not mere consumer goods but are operational necessities required for the management and technical operation of a 100 MW hydroelectric project. The fact that such items were procured after the cut-off date does not, by itself, disqualify them under Regulation 18.2(d), which specifically allows additional capitalization after the cut-off date for items necessary for efficient and successful project operation.

111. Thus, it is observed that the Commission failed to conduct any prudence check on whether these specific items were necessary for efficient and successful operation of the Project, as Regulation 18.2(d) mandates.

112. This Tribunal further notes that in the CIP Order, the Commission had principally allowed this expenditure. The disallowance in Impugned Order 2 during the true-up proceedings represents a reversal of a position taken in the CIP Order, a reversal without any new material or legal basis. As this Tribunal has held in Issue No. 2 above, the true-up stage is not an occasion for the Commission to revisit and reverse allowances principally made earlier at the capital investment plan stage. The ratio of BSES Rajdhani and GIFT Power Company applies here as well, with equal force here.

113. PSPCL's contention in this regard is that Regulation 18.2(e) is applicable, and that post-cut-off date expenditure on minor items cannot be capitalized. This argument does not sustain for the reason that the Appellant's claim does not arise under Regulation 18.2(e) but it arises under Regulation 18.2(d). PSPCL has not addressed the Appellant's above argument as to the scope of the proviso.

114. This issue is thus decided in favour of the Appellant. The Commission committed an error of law by applying the proviso to Regulation 18.2(e) to expenditure falling squarely under Regulation 18.2(d). The disallowance of Rs. 0.54 Crores towards miscellaneous expenditure (comprising Plant & Machinery, Office Equipment, Computers, and Furniture & Fixtures) is set aside. Commission is directed to re-examine this expenditure under Regulation 18.2(d) and conduct a proper item-wise prudence check as mandated by the said regulation and allow all such items that pass the prudence check. The appellant shall be entitled to carrying cost also at the applicable rate.

C. Escalation (Escalation on balance infrastructure works & major works):

115. The Appellant submits that the Commission through the CIP Order, had allowed Rs. 0.19 Crores for FY 2018-19 and Rs. 0.04 Crores for FY 2019-20, towards escalation on balance infrastructure works and major works. However, through Petition No. 16 of 2020 (in which the Impugned Order 2 was passed), the Appellant claimed Rs. 1.35 Crores for FY 2017- 18 and Rs. 0.42 Crores for FY 2019-20, as trued up expenditure, towards escalation on balance infrastructure works and major works, and such expenditure was erroneously disallowed by Commission.

116. It is the case of Appellant that the above expenditure of Rs. 1.35 Crores is clearly reflected under Note 3 of the Audited Balance Sheet for FY 2017-18 under the head 'Buildings - Project Office', which was brought to the notice of Commission in the tariff determination proceedings.

117. In fact, reliance has been placed on the EPC Contract, dated 20.12.2005 executed between the Appellant and NECL also contains an escalation clause, which is reproduced hereinunder:

"The contractor will subject to Clause-5, commence the work within 15 days after receiving the Notice for Commencement ('NTP') from the Employer. Such notice for commencement would be given by the Employer on or before 31st December 2005 to the Contractor. If the Notice for Commencement is delayed beyond 15th January 2006 the Agreement Price will remain same till 30th August, 2006. In case NTP is delayed beyond 1st May 2006, both parties would negotiate and arrive at a suitable escalation and in case of failure of Parties to agree to

suitable escalation, the Employer would have the right to terminate this Contact."

(Underline Supplied)

118. It is thus Appellant's submission that through the Impugned Order-2, the Commission, without assigning any reasons, allowed only Rs. 0.23 Crores for FY 2017-18, under the above head of expenditure, thereby rendering a disallowance of Rs. 1.12 Crores which was incurred during FY 2017-18. In this regard, it is stated that the construction of project colony was delayed on account of various factors/ reasons beyond control of the Appellant. It is stated that when civil works are delayed, there is always a cascading effect due to increase in costs/ expenditure on account of various commercial reasons.

119. Accordingly, in the true up proceedings qua the Impugned Order, the Commission proceeded to ignore the escalation bills issued by the O&M Contractor upon the Appellant amounting to Rs. 1.35 Crore, which were attached in the Response dated 25.11.2020 filed by the Appellant to the queries raised by the Commission.

120. It is the stance of Appellant that the above issue was also dealt with by the Appellant vide its reply dated 25.11.2020 to queries/ observations conveyed by the Commission vide its letter dated 22.06.2020 and order dated 12.11.2020.

121. In light of the above facts, the Appellant submits that the Commission was required to conduct a prudence check for the additional expenditure incurred by the Appellant, in terms of Section 61(d) of EA 2003, basis the

information/ documents furnished by the Appellant before the said Commission. However, the Impugned Order 2 was passed by disallowing the above without providing any reasons whatsoever.

122. Even otherwise, the disallowance rendered by the Commission under Para 2.19 of the Impugned Order 2 also renders it as a non-speaking order, which is impermissible in law, in terms of the following judgments passed by the Hon'ble Supreme Court:

(a) Judgment titled as Omar Usman Chamadia v. Abdul, reported in (2004) 13 SCC 234, wherein the following was laid down:

"10. However, before concluding, we must advert to another aspect of this case which has caused some concern to us. In the recent past, we had several occasions to notice that the High Courts by recording the concessions shown by the counsel in the criminal proceedings refrain from assigning any reason even in orders by which it reverses the orders of the lower courts. In our opinion, this is not proper if such orders are appealable, be it on the ground of concession shown by the learned counsel appearing for the parties or on the ground that assigning of elaborate reasons might prejudice the future trial before the lower courts. The High Court should not, unless for very good reasons desist from indicating the grounds on which their orders

are based because when the matters are brought up in appeal, the court of appeal has every reason to know the basis on which the impugned order has been made. It may be that while concurring with the lower courts' order, it may not be necessary for the said appellate court to assign reasons but that is not so while reversing such orders of the lower courts. It may be convenient for

the said court to pass orders without indicating the grounds or basis but it certainly is not convenient for the court of appeal while considering the correctness of such impugned orders. The reasons need not be very detailed or elaborate, lest it may cause prejudice to the case of the parties, but must be sufficiently indicative of the process of reasoning leading to the passing of the impugned order. The need for delivering a reasoned order is a requirement of law which has to be complied with in all appealable orders. This Court in a somewhat similar situation has deprecated the practice of non-speaking orders in the case of State of Punjab & Ors. vs. Jagdev Singh Talwandi (AIR 1984 SC

444), that was a case where the High Court in a detention order while allowing the challenge to the detention order directed the release of the detenu before it could give a reasoned order. Even such a practice was deprecated by a Constitution Bench of this Court. Whereas in the instant case it is a final order reversing the order of the learned Sessions Judge wherein the High Court thought it not necessary to give the reasons on the ground that the counsel appearing for the parties did not press for a reasoned order. Consequently, when the matter was taken up for hearing, we had no benefit of the reasons which persuaded the High Court to pass the impugned order. Hence, we have proceeded to decide the appeal on merit based on the material available on record and the arguments addressed before us, from which we have come to the conclusion that the impugned order ought to be set aside. Though a prayer was made on behalf of the first respondent that the matter be remanded to the High Court to facilitate it to pass a reasoned order, on facts of this case, we think it proper to decide the issue before us ourselves without prolonging the proceeding any further by remanding it to the High Court. But we do record our disapproval of the practice followed by the High

Court reflected in the impugned order and hope the same will not be repeated."

(b) Judgment titled as Chairman, Disciplinary Authority, Rani Laxmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney and Others, reported in (2009) 4 SCC 240, wherein the following was laid down:

"7. In the present case, since the appellate authority's order does not contain any reasons, it does not show any application of mind.

8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation."

123. To this extent as well, the Appellant contends that Impugned Order 2 is non-speaking and liable to be set aside and remanded to the Commission for fresh consideration.

Submission on behalf of PSPCL :-

124. PSPCL submits that the Appellant's contention that the State Commission has vaguely disallowed the escalation on balance infrastructure works, i.e., Rs. 1.12 crores, is baseless. It is stated that

Appellant failed to furnish any cogent reasons for the increase in expenditure, and merely attached its balance sheets wherein it expected the State Commission to fish out reasons for escalation.

125. It is stated that during the course of final hearing before this Hon'ble Tribunal, the Appellant sought to place on record a set of additional documents purportedly to substantiate its escalation claims. PSPCL has objected to the said attempt under Order XLI Rule 27 of the Code of Civil Procedure, 1908.

126. It is stated that the Appellant's attempt to introduce additional documents at the stage of final hearing is impermissible and amounts to a clear attempt to ill lacunae in its case. Pleadings in the appeal had long been completed and the matter had already been argued at length when the said application was filed. And this is when the Appellant had every opportunity to and access to the documents filed at the Appellate Stage.

127. The documents sought to be introduced pertain to the period between 2005 and 2015 and were indisputably within the Appellant's knowledge and possession throughout the proceedings before the State Commission as well as during the pendency of the appeal. The Appellant has failed to plead, much less establish, that despite due diligence such documents could not have been produced earlier, as required under Order XLI Rule 27 Code of Civil Procedure, 1908.

128. It has been submitted that the impugned Order 2 was passed in tariff proceedings after multiple rounds of data calls and scrutiny. The State Commission adjudicated the Appellant's claims

on the basis of the

material placed before it. The Appellant cannot now be permitted to fundamentally alter the evidentiary basis of its case at the appellate stage by introducing documents that were consciously withheld earlier.

129. Without prejudice, even on merits, the additional documents sought to be introduced have no nexus with the issues adjudicated by the State Commission. The documents do not contain any correlation with approved scope, or material demonstrating prudence of the expenditure actually booked during FY 2017-18 to FY 2019-20. They are narrative in nature and do not address the specific deficiencies recorded in the impugned Order.

Our Analysis

130. This issue pertains to the disallowance of Rs. 1.12 Crores, being the difference between Rs. 1.35 Crores claimed and Rs. 0.23 Crores allowed by the Commission, towards escalation on balance infrastructure works (Buildings and Communication) during FY 2017-18.

131. We have perused the documents on record, and observe that the EPC Contract dated 20.12.2005 between the Appellant and NECL contains a specific escalation clause, which provides that in the event of delay in the Notice to Proceed beyond 01.05.2006, both parties shall negotiate a suitable escalation amount. Given that the Project experienced significant delays on account of local issues, geological challenges, and force majeure events, all acknowledged by the Commission in the CIP Order, escalation costs payable to the contractor upon delayed

completion are a contractually mandated and commercially legitimate component of project costs.

132. We find infirmity in the Commission's treatment of this claim for complete absence of reasons for such disallowance. The Appellant submitted actual expenditure of Rs. 1.35 Crores as reflected in audited accounts for FY 2017-18, a detailed response dated 25.11.2020 to the Commission's queries and supporting contractor bills issued by the O&M contractor. Despite the substantial evidence produced by the Appellant, the Commission allowed only Rs. 0.23 Crores without explaining as to why the escalation bills submitted by the Appellant were not accepted, without identifying any specific invoice that was found to be doubtful, and without providing any analysis of the contractual basis for escalation.

133. An order that affects the financial rights of a regulated entity without assigning reasons, becomes a non-speaking order. The law on the requirement of reasoned orders from quasi-judicial bodies is settled beyond any doubt. As the Hon'ble Supreme Court held in Omar Usman Chamadia v. Abdul [(2004) 13 SCC 234], a reasoned order is a requirement of law that must be complied with

in all appealable orders. The purpose of reasoned orders is to demonstrate application of mind, minimize arbitrariness, and enable an effective appeal. The Hon'ble Supreme Court further in Chairman, Disciplinary Authority, Rani Laxmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney [(2009) 4 SCC 240] held that a quasi-judicial order that does not disclose reasons does not demonstrate application of mind and is liable to be set aside.

134. When civil construction works are delayed particularly in Himalayan terrain where seasonal access is severely restricted, the escalation in costs is an inevitable and foreseeable consequence. Construction material prices, labour costs, and contractor mobilization costs all increase over extended periods. The Appellant's project colony construction was delayed on account of local agitation at the project site, non-availability of skilled and unskilled migrant labour during winter months and logistical constraints in remote terrain. These causes of delay were expressly acknowledged by the Commission in the CIP Order. When a regulatory body acknowledges the causes of delay in one order and then disallows the consequential escalation costs without explanation in a subsequent order, the said approach needs to be deprecated and such disallowance ought to be set aside.

135. PSPCL has argued that the Appellant failed to furnish cogent reasons for the increase in expenditure and merely attached balance sheets expecting the Commission to 'fish out' reasons. This argument does not withstand scrutiny. The record shows that the Appellant submitted a detailed response dated 25.11.2020 to the Commission's queries, attached escalation bills from the O&M contractor, and placed on record the underlying EPC contract with its escalation clause.

136. PSPCL has also objected to additional documents being placed on record before this Tribunal by way of IA No. 1855 of 2025 under Order XLI Rule 27 of the Code of Civil Procedure. This Tribunal has noted the Appellant's clarification that the documents sought to be placed on record as additional documents are not the same as the documents already on

record, which include the EPC contract, sub-contractor correspondence, and escalation bills (items (a) to (g) referred to in the Appellant's written submissions). In any event, this Tribunal's findings on this issue are based on the absence of reasons in the Impugned Order 2, a defect which goes to the root and is independent of reliance placed by the Appellant on any additional documents.

137. Thus, this issue is decided in favour of the Appellant. The Commission's disallowance of Rs. 1.12 Crores towards escalation on balance infrastructure works is a non-speaking and arbitrary order. The Commission did not identify any deficiency in the Appellant's documentation. The Impugned Order 2 on this issue is set aside. The matter is remanded to Commission with a direction to conduct a fresh and reasoned prudence check of the escalation claims, considering the escalation clause in the EPC Contract, the escalation bills of the O&M contractor, and the audited financial statements, and to pass a speaking order allowing all escalation costs found to be prudent alongwith carrying

cost at the applicable rate.

D. Construction of Store at Project Site:

138. Appellant states that the Commission disallowed Rs. 0.61 Crores which was incurred towards construction of store at the Project site due to the said cost not being a part of the Capital Investment Plan for MYT period.

139. The above expenditure of Rs. 0.61 Crores is clearly reflected under Note 3 of the Audited Balance Sheet for FY 2018-19 under the head 'Buildings

- Project Office'.

140. It is stated that the Appellant constructed stores which were however smaller to accommodate the spares supplied by the Original Equipment Manufacturer (OEM), therefore, it was an emergent requirement for the Appellant to construct a store of adequate dimension near the powerhouse complex so as to undertake routine inspection and avoid any damage to the electronic items on account of exposure to moisture.

141. In this regard, Appellant has contended that the Commission failed to take note of Regulation 18.2(d) of the PSERC MYT Regulations, 2014, which states that Capital Expenditure actually incurred after the cut-off date may be admitted by the Commission subject to prudence check in case of "any additional works/ services which have become necessary for efficient and successful operation of the project, but not included in the original project cost".

142. Therefore, since the construction of store at the Project site of the Appellant was a legitimate expense on part of the Appellant, it was not open for Commission to completely disallow the same basis no rational reasons, which makes the Impugned Order 2 as non-speaking on the above issue. This flows from the principle that all legitimate expenses incurred by an entity ought to be allowed in terms of Section 61(d) of EA 2003, for which, reference is drawn upon the judgment dated 05.10.2020 passed by this Hon'ble Tribunal in Appeal No. 97 of 2020, titled as Karnataka Power Transmission Corporation Limited v. KERC.

143. In fact, Appellant has pointed out that this issue was also elaborated through its reply dated 25.11.2020 to queries/ observations conveyed by

Commission vide its letter dated 22.06.2020 and order dated 12.11.2020. Thus, the above claim ought to be set aside and remanded to the said Commission for fresh consideration.

Submission of PSPCL :

144. The Appellant's interpretation of State Commission's Order dated 09.03.2020 passed in Petition No. 16 of 2020, that expenditure incurred towards construction of store at the project site, i.e., Rs. 0.61 crore, was not a part of the capital investment and raised as an afterthought, is entirely incorrect.

145. Contrary to Appellant's contention, PSPCL submitted that the State Commission had held that since it is obvious for a plant as big as the Appellant's to have a store and hence it cannot be acknowledged as a legitimate expense that incurred after cut-off date.

146. It is submitted that the State Commission is not expected to accept the claims of the Appellant, without a prudence check of the audited accounts.

147. PSPCL also contends that the Appellant's averment that the State Commission ought to have considered CERC's mechanism for approving determination of O&M expenses is erroneous. It is submitted that the law is settled on this issue, CERC's regulations are only to be followed in cases where there is a vacuum or no similar regulations governing the field in the state. In the present case, the State Commission's regulations are clear and unambiguous.

148. In view of the circumstances enumerated above, it is submitted that there is no merit in Appeal Nos. 430 of 2019 and 416 of 2022, and they are liable to be dismissed.

Our Analysis :

149. This issue concerns the disallowance of Rs. 0.61 Crores incurred towards construction of a store/ warehouse at the project site during FY 2018-19.

150. The Appellant has submitted an explanation that the existing store was inadequate to accommodate spares supplied by the Original Equipment Manufacturer ('OEM') for a 100 MW hydroelectric project operating with high-head (600 meters) machinery. Due to the Project's remote location, critical spares must be stocked at the site to ensure rapid response to equipment failures. Moreover, electronic components and precision instruments are particularly susceptible to moisture damage in alpine environments, necessitating an enclosed, weatherproof storage facility of adequate size. The construction of a larger, adequately dimensioned store near the powerhouse complex was therefore an operational requirement not a luxury or an afterthought.

151. In this context, Regulation 18.2(d) of the PSERC MYT Regulations, 2014 permits additional capitalization of expenditure incurred after the cut-off date for 'additional works/services which have become necessary for efficient and successful operation of the project, but not included in the original project cost.' A store of adequate capacity for housing OEM spares and sensitive electronic equipment is unambiguously an

'additional work which has become necessary for efficient and successful operation of the project.' The original project construction did not anticipate the precise storage requirements that emerged during actual operations, a common occurrence in any major infrastructure project.

152. The Commission's reasoning that a plant as big as the Appellant's would 'obviously' need a store and that therefore it cannot be an expense incurred after the cut-off date suffers from a logical fallacy. The fact that a store is obviously necessary does not mean the existing store was of adequate size or specification. An inadequate store does not serve the same function as an adequate one. The question before the Commission was not whether a store was needed in the abstract but whether the additional expenditure on an upgraded and adequately dimensioned store was justified.

153. Section 61(d) of the Electricity Act, 2003 mandates that tariff shall safeguard the interests of consumers while providing a reasonable return to the generating entity, ensuring recovery of costs incurred by it. The legitimate costs incurred by a generating company for the efficient operation of a station must be recoverable in tariff. A store that enables the Appellant to stock OEM-supplied spares and protect sensitive electronic components in a moisture-prone alpine environment directly enables the safe, efficient, and reliable operation of the Project and therefore falls squarely within the purposes that Section 61(d) is designed to serve.

154. The disallowance of the store construction cost in Impugned Order 2 is not accompanied by a reasoned analysis. The Appellant raised this issue expressly in its Reply dated 25.11.2020 to the Commission's queries. The Commission's observation that the store was not part of the Capital Investment Plan is an insufficient basis for disallowance when Regulation 18.2(d) expressly permits additional capitalization for expenditure on works not in the original project cost. The Commission ought to have dealt with Regulation 18.2(d), conducted a prudence check, and passed a reasoned order.

155. PSPCL has argued that the State Commission cannot be expected to accept claims without a prudence check. This Tribunal agrees with this general proposition but the problem is precisely the opposite. The Commission disallowed the claim without conducting any prudence check. A prudence check requires the Commission to examine the nature of the expenditure, the purpose served, the reasonableness of the cost, and whether it falls within the regulatory framework. The State Commission's observation that the store should have been part of the original capital expenditure is unfounded, since the project could not have anticipated in 2005-2006 the precise storage requirements arising during operations after 2012.

156. Thus, this issue also is decided in favour of the Appellant. The disallowance of Rs. 0.61 Crores towards construction of the store at the project site is set aside. The expenditure falls within the ambit of

Regulation 18.2(d) as an additional work necessary for efficient and successful project operation. The Commission is directed to conduct a proper prudence check of this expenditure examining the size, design, cost, and allow such expenditure alongwith carrying cost at applicable rate, subject to prudence check. The Commission shall pass a speaking order on this issue also.

157. In view of the foregoing analysis and findings on each of the five issues, this Tribunal issues the following directions:

Summary of our findings :-

1. On Issue No. 1 (O&M Baseline Values): The determination of O&M baseline values in Impugned Order 1 dated 03.09.2019 is set aside to the extent it relates to the methodology of baseline determination. The matter is remanded to the Commission for fresh determination of baseline O&M values for the Control Period FY 2017-18 to FY 2019- 20 in strict accordance with Regulation 8.1(b) of the PSERC MYT Regulations, 2014. The Commission shall consider all factors mandated under Regulation 8.1(b) including the Appellant's latest audited accounts, the industry benchmark data placed on record, and the unique operational parameters of the Malana-II HEP and pass a detailed speaking order within 3 months. Impugned Order 2 shall stand modified accordingly to adopt the revised baseline values to be re-determined by the Commission in terms of this judgement and the corresponding financial impact shall be alongwith carrying cost at the applicable rate.

2. On Issue No. 2(a) (Project Colony and Staff Rest Rooms): The disallowances in Impugned Order 2 of Rs. 0.24 Crores (Project Colony, FY 2017-18) and Rs. 0.28 Crores (Staff Rest Rooms, FY 2018-19) are set aside. The Commission is directed to allow the actual audited expenditure of Rs. 2.14 Crores towards Project Colony in FY 2017-18 and Rs. 1.01 Crores towards Staff Rest Rooms in FY 2018- 19, subject to prudence check and the amounts so allowed be released alongwith applicable interest/carrying cost.

3. On Issue No. 2(b) (Miscellaneous Expenditure -- Rs. 0.54 Crores): The disallowance of Rs. 0.54 Crores is set aside. The Commission's application of the proviso to Regulation 18.2(e) to expenditure falling under Regulation 18.2(d) is held to be an error of law. The Commission is directed to allow this expenditure under Regulation 18.2(d) with prudence check and to allow cost of all items that are determined to be necessary for the efficient and successful operation of the Project. The Appellant shall be entitled to carrying cost also at the applicable rate.

4. On Issue No. 2(c) (Escalation on Balance Infrastructure Works --
Rs. 1.12 Crores): The disallowance in Impugned Order 2 of Rs. 1.12

Crores under the head of escalation on balance infrastructure works is set aside as a non-speaking order. The Commission is directed to conduct a fresh and reasoned prudence check of the escalation claims, duly considering the audited accounts of the Appellant and supporting data placed on record and to pass a speaking order allowing all the escalation costs found to be prudent alongwith carrying cost at the applicable rate.

5. On Issue No. 2(d) (Construction of Store -- Rs. 0.61 Crores): The disallowance in Impugned Order 2 of Rs. 0.61 Crores towards construction of a store at the project site is set aside. The Commission is directed to allow the cost incurred towards the above, after conducting a prudence check of this expenditure under Regulation 18.2(d) alongwith carrying cost at applicable rate, by way of a speaking order.

Conclusion :-

158. In conclusion, Appeal Nos. 430 of 2019 and 416 of 2022 are accordingly allowed in the terms set out hereinabove. The Commission shall, while undertaking the fresh determination as directed, provide the parties a reasonable opportunity of hearing and for furnishing any additional data

or computation that may be required for the fresh exercise. The State Commission shall also ensure that the re-determined AFC is reflected in the billing cycle with appropriate carrying cost adjustments, so that the Appellant is not financially prejudiced by the delayed recognition of legitimate expenditure. The above exercise shall be completed within a period of 3 months from the date of this judgment.

Pronounced in the open court on this 4th day of May, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

REPORTABLE / NON REPORTABLE

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