

No. N/13/2021

BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.

Dated: 01.06.2022

Present

Shri H.M. Manjunatha	: Officiating Chairperson
Shri M.D. Ravi	: Member

OP No.09/2021

BETWEEN:

JK Cement Limited
Having its Registered Office
At Kamla Tower,
Kanpur,
Uttar Pradesh.

.....PETITIONER.

(Represented by Sri Vinay Hegde, Advocate)

AND:

Karnataka Power Transmission
Corporation Limited,
Having its Corporate Office
At Kaveri Bhawan, K.G. Road,
Bengaluru.

.....RESPONDENT.

(Represented by Sri Shahbaaz Husain, Advocate
for M/s Precinct Legal)

ORDERS

1. The Petitioner has filed the petition under Section 86 (1) (f) of the Electricity Act, 2003, praying for the following reliefs to:

- a) Set aside the impugned Demand dated 12.06.2020 vide Annexure-P12 for Rs.1,50,02,657; and/or
- b) Pass any other order as it deems fit in the interest of justice.

Note: Annexure-P12 the impugned Demand notice dated 12.06.2020 for Rs.1,50,02,657, is the total amount claimed towards O&M charges in respect of the dedicated transmission line as well as the terminal bay at KPTCL Sub-station for the years 2012-13 to 2020-21 as detailed in the tabular statement annexed with Annexure-P12.

2. The Petitioner has filed the present petition on 09.02.2021 and made the following submissions:

- a) That the Petitioner, owns and operates a cement plant at Muddapur in Mudhol Taluka, Bagalkot District. The cement plant was commissioned in October, 2009. The Petitioner is an EHT consumer of Hubli Electricity Supply Company Ltd. (HESCOM), with a contract demand of 14 MVA and has entered into a Power Supply Agreement (PSA) on 16.04.2009 (Annexure P1).
- b) The power supply scheme for supply of 14 MVA on 110 KV reference required the Petitioner to inter-alia execute the following works under self-execution:
 - i. Construction of 110KV Terminal Bay at 220KV Vajramatti Station for the 110 KV line to the installation of the Petitioner.
 - ii. Construction of 110 KV SC line on DC towers from the 220KV Varjamatti Station to the installation of the Petitioner.
 - iii. Construction of metering point at the installation of the Petitioner.

At this stage, it is relevant to mention that the 110KV terminal at Vajramatti was allotted to the Petitioner by the Respondent. The Respondent on 27.08.2008 and 27.09.2008 (Annexure P2 and P3,

respectively), approved the detailed estimates prepared for the works and terminal allotment as under:

Head	Amount
Construction of terminal bay	Rs. 75,15,000/-
Construction of transmission line and towers	Rs. 6,68,40,000/-
Construction of metering point	Rs. 29,10,000/-
Springing of 110 KV terminal bay at Vajramatti Station	Rs. 62,65,000/-

- c) That the Petitioner carried out the above works and made payment of supervision charges etc. to the Respondent. The Supply / service line was accordingly commissioned on 14th April 2009.
- d) That the Petitioner, to supplement its power requirements for the cement plant, also setup a cogeneration captive power plant, 2X25MW and commissioned on 19th July 2009. The said co-generation power plant primarily caters to the power requirement of the cement plant and surplus power, if any, is supplied under open access to DISCOMs/ Traders/ other consumers. The evacuation scheme was approved by the Respondent on the already existing supply / service line on 19th August 2009, against a payment of Rs. 5 Lacs per MW (Annexure P4).
- e) That the instant Petition pertains only to the levy of O&M charges by the Respondent on the Petitioner for the operation and maintenance of said line and the terminal bay at Vajramatti station. The Respondent in the Impugned Demand dated 12.06.2020 has wrongly claimed O&M charges from the Petitioner at 1.5% of the entire capital cost of the

transmission asset (i.e. Rs. 7,72,65,000/-) since FY 2012-13 to FY 2021 along with escalation at 5.72% and interest at 6.25% starting from FY 2012-13.

- f) The Petitioner stated that the issue of O&M charges has come up before the Commission on earlier occasions also and the issue was first dealt with by the Commission in O.P. No. 13 of 2014 at the instance of the Respondent, whereby the Respondent sought approval of the Commission for recovery of O&M expenses towards maintenance of HT/EHT lines and terminal bays from HT / EHT consumers and IPPs in accordance with the corporate office order of the Respondent dated 17.08.2012 (Annexure P5.) The Commission vide order dated 26.02.2015 (Annexure P6), held that the Respondent cannot collect O&M charges for maintenance of the EHT lines from the EHT consumers. With respect to IPPs, the Commission held that the Respondent is entitled to collect O&M charges from IPPs, if the Respondent maintains the dedicated transmission line subject to such charges being mutually agreed between the parties and in default, being adjudicated by the Commission.
- g) The Petitioner also submitted that since the line in question was originally as EHT supply line, no O&M charges can be levied on the Petitioner in terms of the Commission's Order dated 26.02.2015. The relevant portion of the order dated 26.02.2015 is reproduced here below for ready reference:

"11(f) We note that the ESCOMs are maintaining HT lines of voltage levels of 11 kV & 33 kV and the petitioner is maintaining EHT lines of voltage level of 66 kV and above, supplying electricity to consumers. The petitioner cannot claim maintenance charges from HT consumers, whose lines are maintained by ESCOMs. The cost of maintenance of EHT lines maintained by the petitioner is factored in the Transmission tariff paid by ESCOMs to the petitioner. The Transmission tariff includes the cost of maintaining the EHT lines exclusively supplying electricity to a consumer or group of consumers. Therefore, the petitioner cannot collect O & M expenses for maintenance of the EHT lines separately from the EHT consumers. If the petitioner is permitted to collect O & M charges from the EHT consumers, for maintenance of the line, it would amount to charging them twice."

- h) That despite this clear position the Respondent kept on raising demands for O&M expenses for FY 2012-13, FY 2013-14 and FY2014-15 at the rate of 1.5% of the capital cost of the entire transmission asset along with 12% yearly escalation vide demand notices dated 11.02.2015 and 15.10.2015 (Annexure P7 (colly.)). The Petitioner disputed each and every demand made by the Respondent on account of O&M expenses vide response dated 14.04.2015 and 29.10.2015 (Annexure P7 (colly.)).
- i) The Respondent for FY 2016-17 and 2017-18, changed its methodology for calculation of O&M and claimed Rs. 2.79 Lacs and Rs. 2.99 Lacs as O&M expenses for the terminal bay at Vajramatti. At this stage it is

relevant to note that for FY 2012-13 to FY 2015-16, O&M charges were claimed at the rate of 1.5% of the total capital cost of the transmission asset along with 12% escalation and for FY 2016-17 and FY 2017-18, fixed sums were claimed only for the O&M expenses in relation to one bay at Varjamatti sub-station vide demands dated 29.05.2017 and 08.11.2017 (Annexure P8 (colly)).

- j) The issue came up before the Commission for the second time in OP No. 81 of 2016, 64 of 2017 and 118 of 2017. The Commission vide order dated 24.04.2018 (Annexure P9), as an interim measure permitted the Respondent to raise bills towards arrears of O&M charges incurred for maintaining the terminal bays located in substation of the Respondent as per the corporate order dated 17.08.2012 subject to final determination of O&M charges by the Commission.
- k) The Commission finally determined the issue of O&M charges to be collected by the Respondent vide order dated 14.12.2018. The Commission was pleased to hold that the Respondent will recover O&M charges for the terminal bay located at the KPTCL substation at the rate of 1.5% of the capital cost of the terminal bay, with a yearly escalation of 5.72% with effect from 17.08.2012. The Commission further held that even if the Respondent has been maintaining dedicated transmission lines of generators in the past, it has to take appropriate legal recourse for recovery of the same. The Respondents were barred from taking any coercive action for recovery of arrears of O&M charges for dedicated

transmission lines. The relevant portion of the order dated 14.12.2018 is reproduced here below for ready reference:

“10. In view of the above discussions and conclusions, we pass the following:

ORDER

(a) The KPTCL alone has to operate and maintain the line terminal bay of dedicated transmission line of the generators, located at the KPTCL sub-station. The operation and maintenance charges, payable by the generators for the line terminal bay, shall be at 1.5% of the capital cost of the line terminal bay with an annual escalation of 5.72% on the O & M charges, for the base year, besides the generators meeting the cost of equipment or spares required for replacement of failed or defective equipment.

(b) The KPTCL shall have the right to recover the O&M charges for line terminal bay at the rate as determined by the Commission in this Order from 17.08.2012, i.e., the date of the KPTCL's Circular, claiming O&M charges for line terminal bay. In case, any arrears of O&M charges towards line terminal bay is not paid within the stipulated time in the demand notice raised by the KPTCL, an application may be filed under Section 142 of the Electricity Act, 2003 against the defaulting generator.

(c) At the time of establishing the line terminal bay, the parties shall enter into an agreement disclosing the capital cost of the line terminal bay and other relevant terms, regarding payment of O&M charges, the demand to be raised, etc. Interest at the rate of 6.25% per annum shall be payable for any delayed payments.

(d) There is no obligation on the KPTCL to maintain the dedicated transmission line of the generators and it can undertake such maintenance only if there is a consensus between the parties on payment of maintenance charges. In case, the KPTCL has already carried out maintenance of the dedicated transmission lines of the generators and could not recover the maintenance charges, it has to take appropriate legal recourse for the recovery of the same. It cannot adopt any coercive action not permitted under law, against the generator for recovery of arrears of such maintenance charges.”

- l) After passing of the Order dated 14.12.2018, KPTCL issued an internal circular on 01.04.2019 (Annexure P11) regarding the procedure for revision of O&M charges.
- m) An Impugned demand for a sum of Rs. 1,23,41,133 was raised by the Respondent on 12.06.2020 (Annexure P12).
- n) The Petitioner submits that it had initially filed an appeal before the Hon'ble APTEL against the Order dated 14.12.2018. When the Impugned Demand was raised on 12.06.2020, the Petitioner filed an application seeking stay of the Impugned Demand before the Hon'ble APTEL. On

24.07.2020 (Annexure P13), the Petitioner, through counsel, sought liberty to approach the Commission for necessary relief instead of pursuing the stay application before the Hon'ble APTEL. Accordingly, the Hon'ble APTEL disposed of the stay application with liberty as prayed for. It is stated that the Petitioner has subsequently on 24.12.2020 (Annexure P14) withdrawn the appeal before approaching the Commission with the present Petition.

- o) Firstly, it is the case of the Petitioner that being an EHT consumer no O&M charges whatsoever, are payable by it to the Respondent for the said line and the terminal bay, in terms of the dispensation in the Order dated 26.02.2015 passed in OP No. 13 of 2014 by the Commission.
- p) Secondly and without prejudice, a very large portion of the Impugned Demand is barred by limitation.
- q) Thirdly and without prejudice, it is the case of the Petitioner that even if the said line is considered as a dedicated transmission line, the Respondent in terms of the order dated 14.12.2018 passed by the Commission is only entitled to collect O&M charges for the terminal bay at its substation in Vajramatti at 1.5% of the capital cost of the said terminal bay along with yearly escalation as provided for in the said order and not at 1.5% of the entire capital cost of the transmission asset.
- r) Fourthly and without prejudice, the claim for interest, prior to raising of the Impugned Demand dated 12.06.2020 is in any case not sanctioned

in terms of the Order dated 14.12.2018 passed by the Commission. That in view of the forgoing facts and submission, the Petitioner states that, the Impugned Demand deserves to be set aside by the Commission.

s) That in view of the foregoing facts and submissions, the Petitioner states that, the Impugned Demand deserves to be set aside by the Commission.

3. The Respondent appeared through counsel and filed the statement of objections on 14.07.2021. The Respondent has submitted the following points:

- a) The Petitioner owns and operates a cement plant at Muddapur in Mudhol Taluka, Bagalkot District. The cement plant was commissioned in October, 2009.
- b) The Respondent, a State Transmission Utility, maintains a vast transmission network that includes bays, lines, sub stations and aids the transmission of electricity from the source of generators to the distribution network at the Commission determined tariff. Such tariff inter alia includes the cost of infrastructure, Operation and Maintenance (O&M) charges, employee cost. O&M charges, which are included in the tariff relates to common transmission lines and bays that are used to transmit electricity without any exclusivity.
- c) Under Section 10 of the Electricity Act 2003, the generating companies are obliged to establish and maintain dedicated transmission lines and bays under the supervision of the Respondent. The said dedicated lines

and bays do the function of connecting the power generated from its source to transmission network of Respondent from where it is transmitted to the distribution network. The tariff determined by the Commission for the generators includes the O&M cost pertaining to the dedicated transmission lines and bays. Wherefore, the generators have been compensated for the cost they incur in maintaining the transmission lines and bays.

d) Subsequent to the establishment of the dedicated transmission lines and bays by IPPs, the Respondent in most of the cases, has been maintaining such lines and bays, albeit, the same is the responsibility of the Generators. All the dedicated transmission bays are maintained by the Respondent for the same is situated inside the substation of the Respondent, where the entry of the generators and their personnel is restricted. On the other hand, transmission lines in some cases have been maintained by the generator and in some cases, they have been maintained by the Respondent. The Respondent collects normative O&M charges for the maintenance of dedicated transmission lines and bays or only the bays as the case may be from the generators.

e) In the above backdrop, the Respondent passed a Circular dated 17.08.2012 requiring payment from generators whose transmission lines and bays have been maintained by the Respondent and such payment had been arrived at a normative cost for the reason that it was practically impossible to determine actual cost on a case to case basis.

The said Circular was resisted by the Independent Power Producers (Hereinafter referred to as "IPP") who refused to pay O&M cost on dedicated transmission lines and bays. Further to such resistance, the Respondent filed a Petition before Hon'ble Commission in OP 13/2014 with a prayer to allow the Respondent to recover the O&M expenses incurred in maintaining the lines and bays from HT/EHT consumers and IPPs. The Commission vide its Order dated 26.02.2015, allowed the Petition in so far as it related to the entitlement of the Respondent to recover O&M charges from IPP's in all such cases where the Respondent maintains the dedicated transmission lines and bays. The Court in the aforementioned Order has ruled that:

"(d) We note that while fixing tariff for sale of power by a generating company, the cost of the dedicated transmission line and the maintenance cost of the line is factored in the capital cost of the plant. If the petitioner is maintaining the line, the generating company is required to pay the maintenance charges, which it has received in the tariff.

(e) In view of the above, we hold that the IPPs are required to pay the O&M charges, if the maintenance of the dedicated transmission line is done by the Petitioner. However, we note that there is no mutually agreed rate between the petitioner and the IPPs to be paid as O & M charges for maintenance of the dedicated transmission line by the petitioner."

f) Thereafter, the Respondent issued another Circular dated 25.03.2017 to collect O&M charges from IPP's as per the rates considered by the Commission towards O&M cost of the Respondent in its APR for FY16. The said Circular came to be challenged by several IPPs before the Commission in OP Nos. 81/16, 64/17, 118/17. The Commission passed a common Order on 24.04.2018 in such Petitions reinforcing the right of the Respondent to recover O&M charges. The Commission in the said Order set aside Circular dated 25.03.2017 on the ground that the computation of O&M charges as contained therein is not appropriate. The Commission also acknowledged the difficulty in arriving at actual cost of O&M charges of dedicated transmission lines and bays. As an interim measure, the Circular dated 17.08.2012 was revived wherein the normative calculation of O&M cost was deliberated. The Commission in the said Order Dated 24.04.2018 has stated that:

“In the above circumstances, it may not be just and proper, not to allow the O&M expenses that would be incurred by the Respondent (KPTCL) in maintaining the terminal line bays concerning the dedicated transmission lines. The difficulties now expressed by the Respondent (KPTCL) were not brought to the notice of this Commission at the time of hearing of OP No.13/2014. The Respondent (KPTCL) could have filed a Review Petition, highlighting its difficulties in furnishing the actual expenses incurred and seeking review of the Order passed in OP No.13/2014. In the present proceedings also, the Respondent (KPTCL)

could have made that request, specifically, but no such ground has been taken in its Statement of Objections. The Order in OP No.13/2014 was passed after holding a public hearing. Therefore, we are of the considered view that any review of the Order, passed in OP No.13/2014, should be made only after following that procedure. However, till the Order in OP No.13/2014 is subjected to review in a due procedure, the Respondent (KPTCL) should be given an interim relief for claiming the O&M charges incurred for the terminal line bays. For that limited purpose, we deem it proper to allow the Respondent (KPTCL) to claim the O&M charges in respect of the terminal line bays, as it was being claimed under the earlier Circular dated 17.08.2012 of the Respondent (KPTCL)."

- g) In Order to settle the methodology of computing O&M charges or transmission lines and bays, the Commission published a discussion paper on 07.08.2018, titled, "Collection of O&M charges by the KPTCL (Respondent) from Independent Power Producers (Generators)" inviting comments from all stakeholders. Thereafter, on 14.12.2018, the Commission passed the order on the said discussion paper by considering the contentions of all stakeholders and once again in the said order upheld the rights of the Respondent to collect O&M charges from IPPs.
- h) The Commission after considering the comments of the Generators noted that it may not be possible to segregate the expense incurred

only towards lines and bays even from the book of accounts of the IPPs. Wherefore, the Commission approved a normative 1.5% of the capital cost as the O&M cost and further provided an annual escalation at 5.72% as the base O&M charges.

- i) The tariff of the IPPs covers O&M cost of the dedicated lines and bays and this being the case, the IPPs shall maintain the dedicated lines and if not maintained by them, they shall pay the cost of maintenance to the Respondent. As regards to the dedicated bays, KPTCL is the sole authority for maintenance of the bays and hence, the Respondent ought to recover such costs from the IPPs.
- j) The Respondent has also submitted that the Petitioner has falsely averred that O&M charges are not payable to the Respondent as the Petitioner is an EHT consumer. The Respondent vehemently denied this averment for the reason that the O&M charges are imposed as the Petitioner is an IPP and not in the capacity of an EHT consumer as the Petitioner in Para No. 4 of the Petition has admitted to being an IPP. The relevant Para is reproduced hereunder:

*“that the Petitioner, to supplement its power requirement for the cement plant, also set up a cogeneration captive power plant, 2*25 MW and commissioned on 19th July, 2009. The said cogeneration captive power plant primarily caters to the power requirement of the cement plant and surplus power if any supplied under open access to DISCOMs/Traders/other consumers. The evacuation scheme was*

approved by the Respondent on the already existing supply/service line on 19th August, 2009, against a payment of Rs. 5 Lacs per MW. Copy of the new evacuation scheme approval dated 19th August, 2009 is attached herewith as Annexure P4 of the Petition.”

- k) Wherefore, it is explicitly clear that the Petitioner is liable to pay O&M charges to the Respondent as it is an IPP. By no stretch of imagination do the Orders dated 26.02.2015, 24.04.2018, 14.12.2018 exclude the IPP's who are also EHT consumers from paying O&M charges to the Respondent. The Petitioner has lost sight of the fact that the demand has been raised in its capacity as an IPP and not as a consumer. The Orders of this Commission merely exclude exclusive EHT consumers from the payment of O&M charges.
- l) The dedicated transmission line, although, the property of the generating company is maintained by Respondent. The Petitioner, being a generating company cannot under the guise of being an EHT consumer also circumvent from making payment to Respondent towards the O&M charges. Such misrepresentation of facts by the Petitioner is strongly condemned and objected to by the Respondent.
- m) This Commission has rightly clarified its stand on the issue in Order dated 21.11.2019 in RP No. 03/2019. The relevant portion of the Order is extracted below for the convenience of this Hon'ble Court:

“We note that the provisions of the Electricity Act, 2003 specify that the ‘dedicated transmission line’ has to be established, operated and

maintained by a generating company. Admittedly, the members of the petitioner association are generating companies. Section 2 (16) of the Electricity Act, 2003 defines dedicated transmission lines which are confined to a captive plant or a generating company referable to section 9 or 10 of the Act. Section 2 (72) of the Electricity Act, 2003 defines other transmission lines. Service line is defined in Section 2 (61) of the Electricity Act, 2003. A conjoint analysis of above provisions would lead to the conclusion that they operate in distinct and separate fields. In other words, a dedicated transmission line as defined under Section 2 (16) is not a transmission line as provided under Section 2 (72) or a service line under Section 2 (61) of the Electricity Act, 2003. A HT/EHT consumer may put up 'service line' at his cost for availing supply of power from the grid. For maintenance of such line laid by a HT/EHT consumer, it is held in the order dated 26.02.2015 that no O&M charges can be collected by the ESCOMS. These service lines cannot be equated to dedicated transmission lines. When a generating company draws power from the grid for auxiliary consumption or for start up or other purposes through the dedicated transmission line, it cannot be treated as a regular 'consumer' of ESCOM and the line cannot be treated as a 'service line'. The main difference is that the main purpose of a dedicated transmission line is for transmitting power generated from a generating company to the grid and this line remains the property of the generating company, whereas a service line though

constructed by a HT/EHT consumer, is taken over as the property of ESCOM. Thus, a line laid by a generating company is a 'dedicated transmission line', the main purpose of which to evacuate power from generating station and it is not a 'service line' to meet the power requirement as a 'consumer'. At best, it can be said that when energy is drawn from the grid by a generating company through the dedicated transmission line as a consumer, instead of through a separate service line, it amounts to a concession given to the generating company drawing energy from the grid, as a HT/EHT consumer. For these reasons, the generating company has to pay O&M charges to the respondent for maintenance of a dedicated transmission line."

- n) It flows from the Order in RP 03/2019 that even when the dedicated line is used by the Generator as a consumer to draw power from the grid, the same cannot be treated as a service line. Wherefore, the generating company must pay O&M charges to the Respondent in the capacity of being an IPP.
- o) The Respondent in its letter dated 04.06.2016 replied to the Petitioner's legal notice dated 16.05.2016 by dismissing the Petitioner's claims for non-payment of O&M charges. The Petitioner had placed reliance on the Orders in OP 13/2014 by stating that EHT consumers are exempt from payment of O&M charges. The Respondent had clarified that the Petitioner is no more a "Consumer" as they are injecting power into the

Grid and accordingly, have to be termed as "generator or IPP" for the purpose of payment of O&M charges. The Respondent also stated that as per its Board Order dated 17.08.2012, EHT consumers that become an IPP at a later stage, ought to pay O&M charges.

p) The Petitioner has averred that 1.5% of the entire capital cost of the transmission asset has been considered instead of 1.5% of the capital cost of the terminal bay. Such contention is denied as false and baseless. The capital cost of the bay at 220KV Vajramatti sub-station has been considered to calculate the O&M charges. The respondent has stated without any ambiguity that the bay cost has been considered.

4. The Petitioner in its rejoinder filed on 30.07.2021, has denied the interpretation and the purport of the record, especially of the Orders dated 26.02.2015, 24.04.2018, 04.12.2018 and 21.11.2019. The Petitioner has submitted that the Respondent is wrongly contending in the reply that the line in question is a dedicated transmission line, belonging to the Petitioner but being maintained by the Respondent. This is apparent as it is now an admitted position that O&M charges for the line are not demanded by the Respondent from the Petitioner and only O&M charges (though wrongly) for the line terminal bay are being demanded. This is so, as for the line, the Respondent is recovering O&M charges in the transmission tariff paid to it by the HESCOM. It is the case of the Petitioner that O&M charges for the bay in question are also factored in the transmission tariff and thus, for the same reason, it is not liable to pay any O&M charges, even for the terminal bay,

as it would otherwise lead to double charging, which is not permitted under law.

The Petitioner also submitted that the line and the bay were constructed under self-execution of work scheme, with the main purpose of getting power supply from the distribution licensee, and the line and the bay were handed over to the Respondent after construction. Therefore, under no circumstances, can the line said to be a dedicated line or the bay is said to be a dedicated bay; but the same is the property of the Respondent, O&M expenses for which are factored in the transmission tariff. The Petitioner has submitted that the contention of the Respondent that by injecting power into the grid, the Petitioner no longer remains a consumer is not correct as it is still a consumer of HESCOM and has submitted the relevant documents along with the latest bill (Annexure P-16) to buttress this position. The Petitioner also submitted that it is wrong for the Respondent to suggest that the transmission tariff includes O&M charges only for common transmission lines and bays. It is stated that the transmission tariff includes O&M charges for lines and bays exclusively supplying electricity even to a single consumer. Further, the Petitioner denies that the tariff from its captive generating station located within its plants premises has ever been determined or is determinable by the Commission. Therefore, it is totally incorrect for the Respondent to suggest that the O&M charges are recovered by the Petitioner under its generation tariff. The Petitioner submitted that the facts in RP 03/2019 was exactly the reverse of what it is in the present case. The

line is a service / supply line mainly constructed for getting power supply from the distribution licensee to the cement plant of the Petitioner. As a matter of fact, the Petitioner has been and continues to draw power as a consumer of HESCOM via the said line and bay. Though it is true that during imposition of Section 11 and sometimes on bilateral basis, the excess power available with the CPP of the Petitioner, has been occasionally exported using the same line and associated bay with the approval of the Respondent, but the quantum of the power drawn from the distribution licensee far exceeds the quantum exported. Under such circumstances the main purposes of the said line and the associated bay cannot be said to be that of evacuating power from the generating station. On the contrary the said line serves the main purpose of a service / supply line for the Petitioner to meet its power requirements as a consumer. Secondly, the line and the associated bay is the property of the KPTCL and not the Petitioner, the same in any case cannot be considered as a dedicated transmission line and a dedicated bay. Therefore, the Respondent cannot recover O&M charges for the bay separately.

5. The Petitioner in its written submissions dated 30.09.2021, has stated that the following:

- a) The contention of the Respondent that since the line is also being used to export surplus power from the captive generating plant, the line and the bay assume the character of a dedicated line, has got no merit, as it would again lead to double factoring, in as much as, the Petitioner

would be paying twist for the same line and terminal bay, once in its capacity of a consumer and for the second time in its capacity of being a generator. Such a situation is legally unsustainable. With regards to the Respondent placing reliance on the decision of the Commission in RP 03 / 2019, the Petitioner has stated the following:

- i. The review Applicant was an association of co-gen plants, which has sought review of the order dated 14.12.2018, in relation to payment of O&M charges for the dedicated lines and the terminal bays of generating companies.
- ii. Though the argument seems to have been raised regarding the Members of the Petitioners being EHT consumers also, it is nowhere borne out from the order that it was the same line, which was being used for receiving power supply and also exporting surplus power, as in the present case.
- iii. The consideration by the Commission, from a receiving supply point of view was restricted to the generating company drawing power from the grid for auxiliary consumption or for start-up, through the dedicated transmission line; unlike the present case where this has been demonstrated before the Commission that the line and the apparatus was constructed and is being primarily used for taking regular supply of power from the grid as a consumer.
- iv. The Commission itself pointed out that the determining factor for a line to be considered a dedicated transmission line or a service line, is the

main purpose of the line and whether it has been retained by the generating company. The Petitioner submits that on this test itself, the line and the terminal bay qualify as service / supply line apparatus, as the original and primary purpose of the line was and still remain that or receiving supply as a HT consumer and that the same has been handed over to the Respondent after construction.

Therefore, in terms of the order 26.02.2015 and as also the rationale of the order dated 21.11.2019 in RP No. 3/2019, the Petitioner is not liable to pay any O&M charges to the Respondent.

b) Further, the Petitioner has submitted that the order dated 14.12.2018 entitles KPTCL to collect O&M charges only for the terminal bay at the rate of 1.5% of the capital cost of the terminal bay with an annual escalation of 5.72%. As far as the dedicated transmission line is concerned, the order dated 14.12.2018 clearly finds that the O&M charges for the same can be charged by the Respondent, only if there is a consensus between the parties, regarding the same. For cases where maintenance of the line has already been undertaken, without an agreement, the order leaves it open for the Respondent to take appropriate legal recourse for recovery of the same, but prohibits the Respondent from taking any coercive action for recovery of the same. The relevant portion of the order is reproduced herein below for ready reference:

“(a) The KPTCL alone has to operate and maintain the line terminal bay of dedicated transmission line of the generators, located at the KPTCL sub-station. The operation and maintenance charges, payable by the generators for the line terminal bay, shall be at 1.5% of the capital cost of the line terminal bay with an annual escalation of 5.72% on the O & M charges, for the base year, besides the generators meeting the cost of equipment or spares required for replacement of failed or defective equipment.

.....

(d) There is no obligation on the KPTCL to maintain the dedicated transmission line of the generators and it can undertake such maintenance only if there is a consensus between the parties on payment of maintenance charges. In case, the KPTCL has already carried out maintenance of the dedicated transmission lines of the generators and could not recover the maintenance charges, it has to take appropriate legal recourse for the recovery of the same. It cannot adopt any coercive action not permitted under law, against the generator for recovery of arrears of such maintenance charges.”

Accordingly, the impugned demand dated 02.06.2020 in the table detailing the charges considers only one element i.e. 'bay cost'. However, the figure against bay cost has been wrongly considered as Rs. 7.72 Crore approximately (which is the approved estimated capital cost of the entire transmission asset) instead of Rs.75 lacs only, being the approved estimated

capital cost of the terminal bay. Since the base figure considered in the impugned demand is wrong and exaggerated, the O&M charges to be calculated as 1.5% of the capital cost are also wrong and exaggerated. Further, the escalation of 5.72% has been applied on wrong and exaggerated figures. The order dated 14.12.2018 does not carry a provision for charging of interest and even if it may be there, the same has been applied on a wrong and exaggerated figure.

6. The Respondent vide its written arguments dated 04.10.2021 has submitted the following:

- i. It is an admitted fact that the lines and bays in dispute are being maintained by the Respondent and the Petitioner does not claim to have maintained the same,
- ii. The Petitioner has not disputed the applicability of the O&M charges as per the order dated 14.12.2018, passed by the Commission on dedicated lines and bays of the Generators that are used for the purpose of evacuation. It is now a settled position that generators have to pay for the maintenance of the dedicated lines and bays as the same is their responsibility under Section 10 of the Electricity Act, 2003. The Petitioner merely claims that the dedicated lines and bay are being used by it in its capacity as the HT consumer.
- iii. It is also an undisputed fact that the Petitioner is a HT consumer as well as a generator owning a cogeneration plant. In order to

showcase the legal validity of the impugned demand, the Respondent has to show that the lines and bays in question are being used by the Petitioner to evacuate power and transmit the same to the substation of the Petitioner.

- iv. The Petitioner has also admitted to have used the said lines and bays for the purpose of evacuation of power from its co-generation plant.
- v. It can be seen from the export data as submitted by the Petitioner that the Petitioner has exported several million kWh using the disputed lines and bay.
- vi. The contention of the Petitioner that the ownership of the line was handed over to the Respondent is misleading as a bare perusal of the letter dated 22.05.2010 explains that the line was sought to be handed over to the Respondent only for the purpose of maintenance and that the transfer of ownership was never sought. Furthermore, the subject of the letter reveals that it was issued for the purpose of handing over 110KV line connected to the co-generation plant of the Petitioner, which makes it clear that the line in question is used for evacuating the power from the co-generation plant and the same was never maintained by the Respondent as a line used for supply of power to the Petitioner.
- vii. Further the Respondent submitted that the Petitioner has averred that in any case, the Respondent can levy O&M charges by

considering the capital cost of the bay alone, and inclusion of cost towards any other material is erroneous. The Respondent denies such averment as untenable and contrary to the ruling of the Commission in its order dated 14.12.2018. thus the Respondent is entitled to recover O&M charges from generators for maintaining their dedicated lines and bays and not just bays. Therefore, it flows that the Respondent after having admittedly maintained the dedicated line and bay of the Petitioner is ought to have recovered the O&M cost on both line and bay.

- viii. The Petitioner in its Petition has produced a table showing the capital cost of its project. The said table reveals that the cumulative capital cost of the bay, line and metering point is Rs. 7,72,65,000/-, which is the capital cost considered by the Respondent for the purpose of levying O&M charges on the Petitioner. Therefore, the Respondent has not erred in anyway in its calculation as the capital cost of the line and bay has been considered in conformity with the directions of the Commission. The argument of the Petitioner that any the cost of bay should be considered is untenable as the Respondent has admittedly not only maintained the bay but also the line.
- ix. The Petitioner has disputed the levy of interest by the Respondent but the same has been sanctioned by the Commission in its order dated 14.12.2018.

- x. The Petitioner has highlighted para 11 of the statement of objection to state that the Respondent has erroneously contended that only the capital cost of bay has been considered. The Respondent states that the content of para 11 of the statement of objection is an inadvertent error on its part and seeks the leave of the Commission to consider the contentions of the Respondent raised in the written submission on this issue as its stand.

7. The material grounds urged in the statement of objections by the Respondent may be stated as follows:

- a) That the Petitioner is liable to pay O&M charges to the Respondent as it is an Independent Power Producer (IPP) and the IPPs who are also EHT consumers, are still liable to pay O&M charges towards the maintenance of dedicated transmission lines of IPPs. That the Respondent is maintaining the terminal line bay as well as the dedicated transmission line of the Petitioner from inception and that the demand made is not illegal and not in contravention of the Orders passed by this Commission.
- b) That the Respondent had clarified to the Petitioner that the Petitioner was no more a "Consumer" as it was injecting power into the grid and accordingly had to be termed as "Generator or IPP" for the purpose of payment of O&M charges.

- c) It is denied that the claim raised in the demand notices is barred by time.
- d) In substance, the claim of the Respondent is that the EHT supply line from Vajramatti Sub-station to the cement plant of the premises assumes the character of dedicated transmission line of IPP, subsequent to allowing the Petitioner to evacuation of the power to the grid from the 2 x 25 MW coal-based power plant with exportable capacity of 20 MW. Therefore, it is contented that as per the Order dated 14.12.2018 (Annexure-P10) passed by this Commission, the Petitioner is liable to pay O&M charges as demanded in demand notice dated 12.06.2020 (Annexure-P12) totally amounting to Rs.1,50,02,657 including the interest as permitted.
- e) For the above reasons, the Respondent has prayed for the dismissal of the petition.

8. We have heard the learned counsel for the parties and they have also filed the written submissions.

9. From the pleadings and the rival contentions, the following issues arise for our consideration:

Issue No.1: Whether the EHT line from Vajramatti Sub-station up to the premises of the cement plant of the Petitioner, should be treated as dedicated transmission line once the approval was granted for evacuation of power from the thermal plant of the Petitioner to Vajramatti Sub-station through the same EHT line? In case the

EHT line from Vajramatti Sub-station up to the premises of the cement plant of the Petitioner, is treated as dedicated transmission line, whether the Petitioner is liable to pay the O&M charges to the Respondent for the transmission line as well as associated equipments in the KPTCL sub-station?

Issue No.2: Whether the claim made by the Respondent in the impugned demand notice dated 12.06.2020 is properly quantified?

Issue No.3: What Order?

10. After considering the records and the submissions of the parties and the relevant provisions of law our findings on the above issues are as follows;

11. Issue No.1: Whether the EHT line from Vajramatti Sub-station up to the premises of the cement plant of the Petitioner, should be treated as dedicated transmission line once the approval was granted for evacuation of power from the thermal plant of the Petitioner to Vajramatti Sub-station through the same EHT line? In case the EHT line from Vajramatti Sub-station up to the premises of the cement plant of the Petitioner, is treated as dedicated transmission line, whether the Petitioner is liable to pay the O&M charges to the Respondent for the transmission line as well as associated equipments in the KPTCL sub-station?

a) It is to be noted that while starting construction of the cement plant, the Petitioner intended to avail power supply to the said plant from 220 kV Vajramatti Sub-station of the Respondent which was also under construction. Thus, the Commission during the hearing, sought certain clarification/documents from the Petitioner with respect to:

- i. date of commissioning of Vajramatti Receiving Station,
- ii. date of commissioning of 2*25MW coal based generating station,
- iii. date of approval of evacuation of power for petitioner plant from KPTCL in respect of their 2*25MW coal based generating plant on payment of requisite charges,
- iv. date of service connection provided to Petitioner's RR. No. MDHT-9.

The Petitioner vide additional affidavit dated 14.01.2022, has submitted the following:

- i. The date of commissioning of Vajramatti Receiving Station is not available with a Petitioner. The Petitioner has placed on record certificate dated 16.05.2009, issued by the Respondent certifying 16.04.2009 as the date of commissioning of 110KV SC line from Vajramatti sub-station to the cement plant.
- ii. The date of commissioning of 2X25MW coal based generating plant was 19.07.2009.
- iii. The approval for evacuation of 20MW of exportable capacity from KPTCL was granted on 19.08.2009. the Petitioner further stated that it had made a proposal for evacuation of additional 5 MW of exportable capacity (totalling to 25MW) which was also approved by the Respondent on 21.10.2011 after payment of requisite charges of Rs.5 lakhs / MW totalling to a sum of Rs. 125 Lakhs.
- iv. The service connection bearing number RR No. MDHT-9 was originally provided to the Petitioner against a contract demand of

a 1 MVA on 08.02.2008 which was subsequently increased to 5 MVA. After commissioning of the service / supply line in question, on 16.04.2009, a second Power supply agreement was entered into on 16.04.2009 itself, for a contract demand of 10MVA. Thereafter, August 2010 onwards, the bills of the Petitioner for a cumulative contract demand of 15 MVA were raised by HESCOM against meter No. MDHT-9 only.

b) The Petitioner constructed a 2 x 25 MW coal-based generating plant, with exportable capacity of 20 MW. The remaining power was intended to be used by the Petitioner for the cement plant. The power evacuation from the generating plant was arranged by the Respondent through the same EHT supply line constructed by the Petitioner from Vajramatti Sub-station to the cement plant with necessary augmentation and installation of additional equipment required at the cost of the Petitioner. The regular inter-connection approval dated 19.08.2009 (Annexure-P4) for 20 MW exportable coal based thermal plant was issued approving the synchronization of coal-based power plant with Vajramatti Sub-station. KPTCL vide its letter dated 21.10.2011, had approved the evacuation scheme for additional 5 MW and totalling to 25 MW by payment of Rs. 125 Lakhs (@ Rs. 5 Lakh/MW for 25MW) towards network augmentation charges (Annexure A-4).

Now, the Respondent KPTCL has contended that the Petitioner was no more a "Consumer" as it was injecting power into the grid and

accordingly had to be termed as "Generator or IPP" and that the EHT supply line from Vajramatti Sub-station to the cement plant of the premises assumes the character of dedicated transmission line of IPP, subsequent to allowing the Petitioner to evacuate power to the grid from its 2 x 25 MW coal-based power plant with exportable capacity of 25 MW. Thus, the Petitioner should be liable to pay O&M charges to the Respondent as it is an Independent Power Producer (IPP) and the IPPs who are also EHT consumers, are still liable to pay O&M charges towards the maintenance of dedicated transmission lines of IPPs. That the Respondent is maintaining the terminal line bay as well as the dedicated transmission line of the Petitioner from inception and that the demand made is not illegal and not in contravention of the Orders passed by this Commission.

Therefore, it is contented that as per the Order dated 14.12.2018 (Annexure-P10) passed by this Commission, the Petitioner is liable to pay O&M charges as demanded in demand notice dated 12.06.2020 (Annexure-P12) totally amounting to Rs.1,50,02,657 including the interest as permitted.

On perusal of the facts, the Commission notes that according to the bill dated June, 2021 (Annexure P-16), the contract demand of the Petitioner is 14 MVA for which the Petitioner has paid demand charges and thus, the Petitioner is still a consumer of HESCOM. The Commission also notes that the Petitioner has not exported any energy during FY20 and FY21.

During FY17, FY18 and FY19, the Petitioner has exported 16.69%, 1.26% and 0.53% respectively of the total energy generated (Annexure P-17). The Petitioner has sought approval for export of 25 MW (more than the contracted demand of existing 14MVA), thus, primarily assuming a character of a generator i.e., an IPP and using the 'Service line' as a 'Dedicated transmission line'. 'Dedicated transmission lines' is defined under Section 2 (16) as:

"dedicated transmission lines" means any electric supply-line for point to point transmission which are required for the purpose of connecting electric lines or electric plants of a captive generating plant referred to in Section 9 or generating station referred to in Section 10 to any transmission lines or sub-stations or generating stations, or the load centre, as the case may be."

It may be noted that, Section 10 (1) of the Electricity Act, 2003 (hereinafter referred to as Act, 2003) states that *"Subject to the provisions of this Act, the duties of a generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder"*.

The above provisions make it clear that dedicated transmission line is to be established, operated and maintained by the generator. Mainly considering the above provisions and that the line terminal bay area of the KPTCL is a prohibited area for outsiders, this Commission has passed the Order dated 14.12.2018 'in the matter of collection of O&M charges

by the KPTCL from the Generators. The operative portion of the Order as noted in para 10 reads as follows:

- “(a) The KPTCL alone has to operate and maintain the line terminal bay of dedicated transmission line of the generators, located at the KPTCL Sub-station. The operation & maintenance charges, payable by the generators for the line terminal bay, shall be at 1.5% of the capital cost of the line terminal bay with an annual escalation of 5.72% on the O&M charges, for the base year, besides the generators meeting the cost of equipment or spares required for replacement of failed or defective equipment.*
- (b) The KPTCL shall have the right to recover the O&M charges for line terminal bay at the rate as determined by the Commission in this Order from 17.08.2012, i.e., the date of the KPTCL's Circular, claiming O&M charges for line terminal bay. In case, any arrears of O&M charges towards line terminal bay is not paid within the stipulated time in the demand notice raised by the KPTCL, an application may be filed under Section 142 of the Electricity Act, 2003 against the defaulting generator.*
- (c) At the time of establishing the line terminal bay, the parties shall enter into an agreement disclosing the capital cost of the line terminal bay and other relevant terms, regarding payment of O&M charges, the demand to be raised, etc. Interest at the rate of 6.25% per annum shall be payable for any delayed payments.*
- (d) There is no obligation on the KPTCL to maintain the dedicated transmission line of the generators and it can*

undertake such maintenance only if there is a consensus between the parties on payment of maintenance charges. In case, the KPTCL has already carried out maintenance of the dedicated transmission lines of the generators and could not recover the maintenance charges, it has to take appropriate legal recourse for the recovery of the same. It cannot adopt any coercive action not permitted under law, against the generator for recovery of arrears of such maintenance charges.

(e) The generators who have challenged the O&M charges, claimed by the KPTCL in Original Proceedings, before this Commission and whose cases are pending, are at liberty to pursue their cases. If they are not agreeable with this Order."

- c) The State Transmission Utility (STU) or transmission licensee is required to build, maintain and operate an efficient co-ordinated and economical intra-state transmission system for smooth flow of electricity, as provided in Sections 39 & 40 of the Act, 2003.
- d) The 66 kV and above EHT supply lines constructed by the EHT consumers under self-execution, are maintained by KPTCL. The 33 kV and below HT supply lines forming part of the distribution system constructed by HT consumers under self-execution are being maintained by the concerned ESCOM. Therefore, maintenance of EHT supply lines are being undertaken by KPTCL on behalf of the concerned ESCOM and the KPTCL is reimbursed the maintenance charges of such EHT supply lines by the ESCOMs, by factoring in the transmission tariff. Similarly, the KPTCL

collects the expenditure required in providing infrastructure for supply of electricity from the applicant-consumer as per the relevant Regulations.

e) In OP No.13/2014 by Order dated 26.02.2015 this Commission held that KPTCL was not entitled to claim the O&M Charges from the EHT consumers for maintaining the EHT supply lines forming part of distribution system. The reasons stated are that the cost of maintenance of EHT supply lines maintained by KPTCL is factored in the transmission tariff paid by the ESCOMs to KPTCL and that the transmission tariff includes the cost of maintaining the EHT supply lines exclusively supplying electricity to a consumer or a group of consumers. Therefore, it is held that KPTCL cannot collect O&M expenses for maintenance of EHT lines once again from the EHT consumers. The Order dated 26.02.2015 passed in OP No.13/2014 of this Commission is in the nature of a Generic Order which has been passed after hearing all the stakeholders following the due procedure. This Order is not challenged by any stakeholder and it has become final.

f) In the present case, the Petitioner contends that the 110 kV EHT supply line from cement plant of the Petitioner to Vajramatti Sub-station is constructed as supply line and is predominantly used for supply of 14MVA of contracted capacity to the cement plant from Vajramatti Sub-station, but it is also being used for export of 25MW (which is more than the contracted capacity of 14 MVA) of power to Vajramatti Sub-station from the coal-based thermal plant of the Petitioner. Therefore, the said line

has acquired the characteristics of a 'dedicated Transmission line' and such consumers are liable to pay O&M charges in respect of such supply lines to that effect and hence, the Petitioner is liable to pay the O&M charges as held in Order dated 14.12.2018 of this Commission relating to payment of O&M charges by the generators.

- g) The Commission notes that the 110 kV EHT line in question has been initially constructed for arranging power supply to an extent of 10 MVA (later modified to 14MVA) to the cement plant of the Petitioner from Vajramatti Sub-station. The same line was converted as dedicated transmission line with required modification for evacuation of power from the thermal plant of the Petitioner to Vajramatti Sub-station. The Inter-connection approval dated 19.08.2009 (Annexure-P4) was issued by the Chief Engineer (Electy.) Planning & Coordination, KPTCL, Bengaluru, for commissioning of the coal-based thermal plant of the Petitioner.
- h) The Commission is of the considered view that in the present case, the Petitioner has initially constructed the dedicated line for receiving the supply from HESCOM and subsequently when the coal based power plant was set up, the Petitioner has paid the augmentation charges to export the power through the same line. Therefore, the Commission on perusal of the facts of the case, considers that the above line with the associated equipment constructed by the Petitioner serves as a 'dedicated Transmission line'.

- i) Having considered the above line as 'Dedicated transmission line', as per Section 10 of the EA, 2003, the Petitioner has to operate and maintain the above line with the associated equipment. Since the terminal bay is situated in the premises of KPTCL's substation, which is a protected area, the operation and maintenance of the bay has to be carried out by KPTCL alone in accordance with the directions of the Commission in its Order dated 14.12.2018 and the Petitioner is liable to pay the O&M charges for the same. However, regarding the line which is situated outside the premises of the KPTCL's substation, the O&M can be carried out by the Petitioner himself. The Petitioner in its letter dated 14.04.2015 has stated that in the month of February 2014, there was 48 hours' interruption resulting in loss of about 60 lakhs units to the Petitioner. It is submitted that the line fault was attended by KPTCL staff with the help of Petitioner's manpower and vehicle. Hence, the Petitioner has submitted that demanding of O&M charges is not in order. The Commission notes that the Petitioner has also admitted that the line was attended by the KPTCL staff and that some assistance has been extended by the Petitioner. Only one incidence has been brought before the Commission and without any supporting documents to convincingly prove that KPTCL has not carried out the maintenance of the lines. Thus, as per Section 10 of the EA, 2003 the dedicated line has to be maintained by the generator. On the contrary, if the generator has not maintained the dedicated line, the O&M charges of the line for the duration it is

maintained by KPTCL, KPTCL is entitled to collect the charges in line with para 9 (d)(iii) of the Commission's Order dated 14.12.2018, which is enunciated below:

“(iii) The Commission notes that, as per the circular dated 17th August, 2012 of the KPTCL, a few generators might have already paid the O&M charges towards dedicated transmission line as well as line terminal bay located at the KPTCL sub-station, while a few others might not have paid and disputed the same. From the above analysis, there is no obligation on the KPTCL, to maintain the dedicated transmission line and it can undertake such maintenance only if there is consensus, between the parties on payment of maintenance charges. In case, the KPTCL has already carried out maintenance of dedicated transmission lines of the generators and has not recovered the maintenance charges, it shall claim the same at the rates decided in this Order from the generator. In case, any generator fails to honour claims, the KPTCL shall have the right to recover the same through appropriate legal recourse. The KPTCL shall not, however, take any coercive action not permitted under law, for the recovery of the unpaid amounts.”

The Petitioner can authorise KPTCL to take up the O&M of the line also, by paying charges as decided in para 9(d)(i) of the Commission's Order dated 14.12.2018, which is reproduced hereunder:

“From the above discussions, it is found that, the KPTCL is not obligated to maintain the dedicated transmission lines of the generators. However, the KPTCL may

undertake the maintenance of dedicated transmission lines, at the request of generators on reaching an agreement for payment of O&M charges by the Generator at the rate of 1.5% of the capital cost of the dedicated transmission line with an annual escalation of 5.72% on the O & M charges for the base year. If there is no agreement on payment of maintenance charges, the KPTCL shall not undertake the maintenance of dedicated transmission lines of the generator. In such a situation, it is the responsibility of the generator to maintain the dedicated transmission line and the KPTCL shall not claim the O & M charges from the generator."

The Commission has observed in the earlier paras that KPTCL, has maintained the dedicated transmission lines and concluded that it is entitled to the claims made towards transmission lines and transmission bays in terms of the Commission's Order dated 14.12.2018. Hence, Issue No.1 is answered accordingly.

12. Issue No.2: Whether the claim made by the Respondent in the impugned demand notice dated 12.06.2020 is properly quantified?

a) It may be noted that the Petitioner in para 5 of the Petition has submitted that the Respondent in its Impugned demand dated 12.06.2020 has wrongly claimed O&M charges from the Petitioner at 1.5% of the entire cost of the transmission asset (i.e., Rs. 7,72,65,000) since FY13 to FY21 along with escalation at 5.72% and interest at 6.25% starting from FY13. The Petitioner also stated that the Respondent vide its letters dated 11.02.2015 and 15.10.2015 kept on raising demands for O&M expenses

for FY13, FY14 and FY15 at the rate of 1.5% of the cost of the entire transmission asset along with 12% yearly escalation. The Respondent KPTCL vide its letter dated 11.02.2015 and 15.10.2015 had directed the Petitioner to pay Rs.38,94,156 towards O&M charges for FY13, FY14 and FY15 as per the KPTCL Corporate Order dated 17.08.2012.

- b) The Petitioner has submitted that the Respondent vide its letter dated 29.05.2017 and 08.11.2017 has changed its methodology for calculation of O&M expenses for FY17 and FY18 and has claimed Rs. 2.79 Lakhs and Rs. 2.99 Lakhs respectively, as O&M expenses for terminal bays at Vajramatti sub-station. The Petitioner submitted that the Respondent had issued an internal order dated 01.04.2019 (after the Commission passed an order dated 14.12.2018) regarding the procedure for revision of O&M charges. Accordingly, the Respondent had issued the impugned demand dated 12.06.2020. The Petitioner also submitted that, it had initially filed an appeal before the Hon'ble APTEL against Order dated 14.12.2018. The Petitioner had filed an application seeking stay of the Impugned demand dated 12.06.2020 before the Hon'ble APTEL. On 20.07.2020, the Petitioner through counsel sought liberty to approach the KERC for necessary relief instead of pursuing the stay application before the Hon'ble APTEL. The Petitioner has subsequently withdrawn the appeal, before approaching the KERC with the present Petition.

- c) The Respondent in its objection statement has averred that 1.5% of the entire capital cost of the transmission asset has been considered instead of 1.5% of the capital cost of the terminal bay.
- d) The Petitioner in its rejoinder, has submitted that the Respondent is recovering O&M charges in the transmission tariff paid to it by HESCOM. Hence, the Petitioner is not liable to pay any O&M charges even for the terminal bay, otherwise it will lead to double accounting which is not permitted under law. The Petitioner also submitted that under no circumstances can the line be a dedicated line or the bay be a dedicated bay, but the same is the property of the Respondent and O&M charges are factored in the transmission tariff. The Petitioner also denied that the tariff from its generating plant located within its premises has ever been determined by the Commission. Accordingly, it is totally incorrect for the Respondent to suggest that the O&M charges are recovered by the Petitioner under its generation tariff. Further, the Petitioner has submitted that the fact of the situation in RP 03/2019 was exactly the reverse of what it is in the present case and the line is a service/supply line and the Petitioner continues to draw power as a consumer of the HESCOM. Petitioner has also stated that it has occasionally exported power using the same line and associated bay with the approval of the Respondent, but the quantum of power drawn from the distribution licensee far exceeds the quantum exported. The Petitioner also submitted that the bay cost of Rs. 7,72,65,000 considered

by the Respondent while raising the impugned demand is not correct. The construction costs of the bay as approved by the Respondent was only Rs. 75,15,000 and the cost considered in the impugned demand is the cost of entire asset.

- e) The Petitioner in its written submissions dated 30.09.2021, has submitted that the supply line was commissioned on 14/16th April, 2009. The cogeneration captive plant was commissioned on 19th July, 2009 i.e., approximately 3 months after the commissioning of the supply line. The evacuation scheme was approved by the Respondent on the already existing supply/service line on 19th August, 2009. The Petitioner has submitted that the Order dated 14.12.2018, entitles KPTCL to collect O&M charges only for the line terminal bay at the rate of 1.5% of the capital cost of the terminal bay with an annual escalation of 5.72%.
- f) The Respondent in its written comments dated 04.10.2021 has submitted that the Commission in its Order dated 14.12.2018 has allowed the Respondent to recover O&M charges from generator for maintaining their dedicated lines and bays and not just bays. Therefore, it flows that the Respondent after having admittedly maintained the dedicated line and bay of the Petitioner is ought to have recovered the O&M cost on both the lines and bays. The cumulative capital cost of the bay, line and metering point is Rs. 7,72,65,000 which is the capital cost considered by the Respondent for the purpose of levying O&M charges on the Petitioner. Therefore, the Respondent has not erred in anyway in its

calculations, as the capital cost of the line and bay has been considered in conformity with the directions of the Commission. Further, the Respondent has submitted that it has not only maintained the bay but also the transmission line.

g) In this regard it may be noted that the Commission in its Order dated 26th February 2015, in O P No.13 / 2014 'KPTCL versus NIL' has opined the following:

“f) We note that the ESCOMs are maintaining HT lines of voltage levels of 11 kV & 33 kV and the Petitioner is maintaining EHT lines of voltage level of 66 kV and above, supplying electricity to consumers. The Petitioner cannot claim maintenance charges from HT consumers, whose lines are maintained by ESCOMs. The cost of maintenance of EHT lines maintained by the Petitioner is factored in the Transmission tariff paid by ESCOMs to the Petitioner. The Transmission tariff includes the cost of maintaining the EHT lines exclusively supplying electricity to a consumer or group of consumers. Therefore, the Petitioner cannot collect O & M expenses for maintenance of the EHT lines separately from the EHT consumers. If the Petitioner is permitted to collect O & M charges from the EHT consumers, for maintenance of the line, it would amount to charging them twice.

The Commission also opined the following:

“(g) The Commission notes that the action of the Petitioner in claiming O&M charges / collecting the charges pursuant to an order of the Petitioner dated 17.8.2012 (Annexure P-

4) without approval of the Commission, is not proper. On coming into force of the Electricity Act, 2003, the Commission alone has been vested with the power to determine tariff. In the circumstances, the Petitioner is to be directed to withdraw such notices, and refund the amount so collected from HT/EHT consumers of ESCOMs.”

Thus, it can be concluded that the Commission in its Order mentioned above had barred the Respondent to collect the O&M charges from the EHT consumers for the reasons stated above.

In the above mentioned Order, the Commission also noted that Section 10 of the Electricity Act, 2003 reads as follows:

“10. Duties of generating companies

(1) Subject to the provisions of this Act, the duties of generating company shall be to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith in accordance with the provisions of this Act or the rules or regulations made thereunder.....”

A generating company is duty bound to establish, operate and maintain the dedicated transmission line. In the present case, the Petitioner is an IPP/generator and for maintaining the dedicated transmission lines and transmission bays, the generator is liable to pay O&M charges in terms of the Commission's Order.

h) In the present case, the EHT line established by the Petitioner primarily as a 'Supply line' which later acquired the status of a 'dedicated Transmission line' for the reasons stated above. Thus, even though the

tariff of the power exported by the Petitioner has not been determined by the Commission, the Petitioner in accordance with Section 10 of the Electricity Act, 2003 is duty bound to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines connected therewith.

- i) The Commission also observes that the Petitioner had commissioned a 2*25 MW captive power plant in August, 2009 with an exportable capacity of 20 MW and received an approval for export of power in August, 2009 which was later modified to 25 MW. Thus, the Petitioner has an exportable capacity which exceeds the contracted demand by 12.4 MW (25 MW exportable capacity – 14 MVA*0.9p.f.).
- j) Thus, in accordance with the Order dated 14.12.2018 of the Commission, operation and maintenance of the line terminal bay, located in the KPTCL sub-station, has to be invariably maintained by the KPTCL. Thus, keeping in view Section 10 of the EA, 2003, which mandates the Generator to establish, operate and maintain generating stations, tie-lines, sub-stations and dedicated transmission lines and keeping in fact that the 'Supply line' and associated line terminal bay are used as 'dedicated line' for export of power, the Commission is of the view that the generators are liable to pay the O&M charges towards the dedicated transmission line and line terminal bay as determined by the Commission in its Order dated 14.12.2018.
- k) For the above reasons, we hold Issue No.2 in affirmative.

13. Issue No.3: What Order?

- a) The discussions made and findings recorded on the above issues, show that the 110 kV EHT line in question should be considered as 'dedicated transmission line' and the respondent has maintained the said line and the bay throughout. In that event the sum of amount demanded by the respondent in the notice dated 12.06.2020, towards the charges for maintenance of bay as well as the dedicated transmission line is in accordance with the rates prescribed in the Order dated 14.12.2018 – In the matter of collection of Operation and Maintenance (O&M) charges by the KPTCL from the Generators. However, subsequent to the date of the said Order, the recovery of charges towards maintenance of dedicated transmission line is not permitted without a consensus between the parties on the payment to be made towards maintenance charges of it.
- b) Therefore, the demand made in the impugned notice dated 12.06.2020, to the extent of claiming maintenance charges towards maintenance of dedicated transmission line, subsequent to 14.12.2018, is not valid and requires confirmation as to whether parties have entered into any agreement in the matter of maintenance of transmission line by KPTCL.
- c) For the above reasons, we pass the following:

ORDER

- (i) The petition is partly allowed holding that the demand made in the impugned notice dated 12.06.2020 to the extent of claiming maintenance charges towards maintenance of;
- (a) terminal bay for the period from 2012-13 to 2020-21 is upheld;
 - (b) transmission line for the period from 2012-13 to 13.12.2018 is also upheld;
 - (c) transmission line subsequent to 14.12.2018, is not valid and is hereby set aside and the claim for the same is subject to consensus regarding maintenance of transmission line by the petitioner and KPTCL.
- (ii) The respondent shall issue a fresh demand notice in terms of the direction noted above within one month from the date of issue of this Order and the petitioner shall pay the same within fifteen days from the date of receipt of such notice.

sd/-

(H.M. Manjunatha)
Officiating Chairperson

sd/-

(M.D. Ravi)
Member