

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 4/RP/2012

in

Petition No. 175/2011

**Coram
Shri V. S. Verma Member
Shri M.Deena Dayalan, Member**

**Date of Hearing: 11.7.2013
Date of Order: 27.8.2013**

In the matter of

Review of order dated 26.8.2011 in Petition No. 175/2011 in connection with the liquidation of arrear payments in installments in respect of provisional orders / final orders passed by the Commission granting / determining the annual fixed charges for the period 2009-14 for Central Generating Stations namely, National Hydro Power Corporation Ltd (NHPC), NEEPCO Ltd, NTPC Limited and transmission licensee, namely, Power Grid Corporation of India Ltd.

And in the matter of

Assam Power Distribution Company Ltd, Guwahati
Vs

...Petitioner

1. North Eastern Electric Power Corporation Limited, New Delhi
2. NHPC Ltd, Faridabad
3. NTPC Ltd, New Delhi
4. Power Grid Corporation of India Ltd, New Delhi

...Respondents

Parties Present

Shri Rajeev Hustu, NHPC
Shri S. K. Meena, NHPC
Shri J.K.Jha, NHPC
Shri Ajay Dua, NTPC
Shri Sachin Jain, NTPC

ORDER

In Petition No. 175/2011 (*suo motu*), the Commission by its order dated 26.8.2011 had decided as under:

"8. It is observed from the above that the difference between the tariff provisionally charged and the provisional / final tariff determined by the Commission shall be recoverable / refunded within six months with simple interest at the rate equal to SBI PLR from 1.4.2009 to 30.6.2010 and at a rate equal to SBI AR with effect from 1.7.2010. Though the said regulations are silent



about the number of installments, they do lay down the period of six months within which the arrears are to be recoverable / refundable with interest.

9. In consideration of the prayer of PSPCL and keeping in view the difficulties faced by the beneficiaries of the central generating stations / transmission licensee, we direct that the arrears arising out of the differences between the tariff provisionally billed and the provisional / final tariff be liquidated by the beneficiaries in six monthly installments within a period of six months, subject to the payment of interest as per regulations"

2. Aggrieved by the said order, the petitioner, Assam Power Distribution Company Ltd (APDCL) has filed this review petition seeking review on the following grounds:

- (a) Review/recall the order dated 26.8.2011 in Petition No. 175/2011.
- (b) Passed orders granting moratorium and the dues.
- (c) Create regulatory assets in view of the delay in filing the tariff petition and passing of the orders.

3. The petitioner also filed Interlocutory Applications, I.A. No 12/2012 for condonation of delay in filing the review application and I.A.No.13/2012 for stay of the operation of the order dated 26.8.2011. The matter was heard on 'admission' on 12.4.2012 and the learned counsel for the petitioner mainly submitted the following in support of its prayer for review of order:

(i) The impact of the said suo motu order is that it would result in per unit increase in tariff within the State to more than ₹1.78 paisa.

(ii) The petitioner is finding it difficult to implement the said suo motu order dated 26.8.2011, in view of the time frame fixed by the Commission i.e. six monthly installments within a period of six months for payment of the said arrears and also due to the impact of more than ₹1.78 paisa increase per unit in tariff.

(iii) The Assam Electricity Regulatory Commission (AERC) has fixed a cap of 25% of energy charge on the Fuel and Power Purchase Price Adjustment (FPPPA) formula, in pursuance of which the petitioner has already imposed FPPPA charges @ ₹0.69/kwh on the consumers, as prescribed in the AERC (Fuel and Power Purchase Price Adjustment Formula) Regulations, 2010.

(iv) The delay caused by the central sector generating stations and Central Transmission Utility (CTU) in not filing their respective tariff petitions in time has resulted in the carrying cost, which is attributable to the generating stations/CTU and the beneficiaries should not be burdened with the same.

(v) The petitioner was not given an opportunity of being heard in the said *suo motu* proceedings of the Commission prior to passing of the order dated 26.8.2011.



(vi) The petitioner has approached the Assam State Government for assistance, which is of no avail.

(vii) In view of the above difficulties, the petitioner would not be in a position to implement the said *suo motu* order, more particularly within the period of six months and hence prays for grant of further moratorium.

4. The Commission after hearing the petitioner ordered notice on the respondents and directed the completion of the pleadings in the matter. Reply has been filed by the respondents and the petitioner has filed its rejoinder to the same. During the hearing on 5.7.2012, the respondent, NTPC submitted that there were no outstanding dues from the petitioner. However, the Commission directed the petitioner and the respondents, NEEPCO and NHPC to negotiate and explore the possibility of a mutual settlement as regards payment of outstanding dues. The parties were also directed to complete the process of negotiation and settlement, if any, and submit the report, on affidavit, on or before 6.8.2012.

5. The respondent, NEEPCO by affidavit dated 19.7.2012 has submitted that the total dues outstanding as on 17.7.2012 was ₹484.37 crore. By affidavit dated 6.8.2012, the respondent also submitted copy of the minutes of the meetings dated 2.8.2012 and 3.8.2012. Similarly, the respondent, NHPC by affidavit dated 3.8.2012 has submitted that the outstanding dues as on July, 2012 was ₹14.27 crore. The matter was listed for hearing on 11.7.2013 and the Commission reserved its order in the petition.

6. While so, the petitioner, by affidavit dated 26.7.2013, has submitted that pursuant to the directions of the Commission, it had entered into negotiations with the respondents, NEEPCO, NHPC and PGCIL for settlement of outstanding payments and accordingly the outstanding dues of NHPC and PGCIL had been settled with "nil" balance. It has also submitted that payments with regard to the dues of the respondent, NEEPCO are being settled as per minutes of the meeting dated 2/3.8.2012 and remains committed to do so. Based on this, the petitioner has submitted that nothing survives in the review petition.



7. From the affidavit dated 26.7.2013, we notice that the petitioner has made settlement of outstanding dues of ₹24.50 crore of NHPC during the period from November, 2011 to January, 2013. Similarly, the outstanding dues of PGCIL amounting to ₹155.72 crore has also been settled by the petitioner as on 30.4.2013. As regards the settlement of outstanding dues to respondent, NEEPCO, it is noticed from the minutes of the meetings dated 2.8.2012 and 3.8.2012 that the petitioner has agreed to liquidate the total outstanding dues inclusive of arrear bills, simple interest and surcharge amounting to ₹350 crore (approx) in eighteen monthly installments. Accordingly, the petitioner has agreed for payment of a monthly installment of ₹20.00 crore with effect from September, 2012 and the balance net amount to be adjusted during the last installment payment. The petitioner while pointing out that nothing survives in the petition in view of the payments made as stated above has also submitted that it remains committed to make the payments to the respondent, NEEPCO as per minutes of the meetings dated 2.8.2012 and 3.8.2012. We appreciate the commitment made by the petitioner.

8. Taking into consideration the affidavit of the petitioner dated 26.7.2012 and in view of the liquidation of outstanding dues of the respondents by the petitioner as narrated above, all other reliefs prayed for by the petitioner in the review petition have become infructuos. Accordingly, this review petition, along with the interlocutory applications is disposed of at the admission stage.

Sd/-
[M.Deena Dayalan]
Member

Sd/-
[V.S.Verma]
Member

