

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson  
Shri M. Deena Dayalan, Member  
Shri A. K. Singhal, Member  
Shri A.S. Bakshi, Member**

**Date of Hearing: 13.10.2014**

**Date of Order : 12.11.2014**

**IN THE MATTER OF**

**Petition No. 235/GT/2014**

**Subject:** Revision of capital expenditure for the period 2009-14 in respect of Baira Siul Power Station after truing up, exercise in terms of Regulation 6 (1) of the 2009 Tariff Regulations

**And**

Determination of capital expenditure for the period 2014-19 in respect of Baira Siul Power Station, in terms of 2014 Tariff Regulations

**Petition No. 236/GT/2014**

**Subject:** Revision of capital expenditure for the period 2009-14 in respect of Salal Power Station after truing up, exercise in terms of Regulation 6 (1) of the 2009 Tariff Regulations

**And**

Determination of capital expenditure for the period 2014-19 in respect of Salal Power Station in terms of 2014 Tariff Regulations

**Petition No. 237/GT/2014**

**Subject:** Revision of capital expenditure for the period 2009-14 in respect of Chamera-I Power Station after truing up, exercise in terms of Regulation 6 (1) of the 2009 Tariff Regulations

**And**

Determination of capital expenditure for the period 2014-19 in respect of Chamera-I Power Station in terms of 2014 Tariff Regulations

**AND IN THE MATTER OF**

NHPC Limited  
NHPC Office Complex,  
Sector-33, Faridabad,  
Haryana-121003

... **Petitioner**

Vs

1. Punjab State Power Corporation Limited  
The Mall, Secretariat Complex,  
Patiala – 147001
2. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector, 6  
Panchkula – 134109
3. BSES Rajdhani Power Ltd  
BSES Bhawan, Nehru Place,  
New Delhi – 110019
4. BSES Yamuna Power Ltd  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019
5. Tata Power Delhi Distribution Ltd  
33 kV Sub-station, Kingsway Camp,  
Delhi –110009
6. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House,  
Shimla-171004
7. Uttar Pradesh Power Corporation Ltd  
Shakti Bhavan, 14, Ashok Marg,  
Lucknow – 226001(Uttar Pradesh)
8. Rajasthan Rajya Vidyut Prasaran Nigam Ltd. (RRVPL)  
Jaipur Vidyut Vitaran Nigam Ltd., (JVVNL)  
Jodhpur Vidyut Vitaran Nigam Ltd. (JdVVNL)  
Ajmer Vidyut Vitaran Nigam Ltd. (AVVNL)  
Vidut Bhavan, Janpath,  
Jyoti Nagar, Jaipur-302005(Rajasthan)
9. Uttaranchal Power Corporation Ltd,  
Urja Bhawan, Kanwali Road,  
Dehradun-248001(Uttarakhand)

10. Himachal Pradesh State Electricity Board,  
Vidut Bhavan, Kumar House  
Shimla-171004 (Himachal Pradesh)

11. Engineering Department, UT Secretariat,  
UT Secretariat, Sector-9D  
Chandigarh-160009

12. Power Development Department,  
New secretariat,  
Jammu-180001 (J&K)

...**Respondents**

**Parties present:**

Shri A.K Pandey, NHPC  
Shri S.K Meena, NHPC  
Shri J.K Jha, NHPC  
Shri R.B Sharma, Advocate, BRPL  
Shri Padamjit Singh, PSPCL

**INTERIM ORDER**

These petitions have been filed by the petitioner, NHPC for revision of tariff of Baira Siul HE Project, Salal HE Project and Chamera-I HE Project (hereinafter called 'the generating stations') for revision of tariff for the period 2012-14 after truing up exercise in terms of Regulation 6 (1) of the 2009 Tariff Regulations and for determination of tariff for the period 2014-19 in terms of the provisions of the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations 2014 ('the 2014 Tariff Regulations').

2. During the hearing, the representative for the petitioner submitted that these petitions have been filed for revision of tariff for 2009-14 in respect of these generating stations based on the actual additional capital expenditure incurred during 2012-13 and 2013-14 and for determination of tariff for the period 2014-19 for in terms of 2014 Tariff Regulations. The representative further submitted that additional information as sought for by the Commission has been filed and copies have been served

to the respondents. Accordingly, the representative of the petitioner prayed for determination of tariff of the generating stations as per provisions of the 2009 and 2014 Tariff Regulations respectively.

3. The learned counsel for the respondent, BRPL took preliminary objection in the matter and submitted that these petitions filed by the petitioner were not maintainable for the following reasons:

- (a) The provisions of the 2009 Tariff Regulations notified by the Commission for the period 2009-14 do not provide for clubbing of the tariff petitions for the period 2009-14 and 2014-19 in respect of the generating stations for determination of tariff. The revision of tariff for the period 2009-14 after true-up is based on the provisions of the 2009 Tariff Regulations and the determination of tariff is in accordance with the provisions of the 2014 Tariff Regulations. Hence, the clubbing of tariff petitions is in violation of the regulations of the Commission.
- (b) In terms of Regulation 7(3) of the 2014 Tariff Regulations, the application for determination of tariff for 2014-19 shall be based on the admitted capital cost, including any additional expenditure admitted by the Commission upto 31.3.2014. Since the admitted capital cost as on 31.3.2014 has not been approved for these generating stations, the petition for determination of tariff for the period 2014-19 cannot be considered now. The petitioner shall be directed to file separate petitions for revision of tariff for 2009-14 and the Commission, after determining the capital cost for 31.3.2014, may proceed with the determination of tariff for 2014-19.
- (c) The clubbing of tariff petitions as above defers the legal rights for review and appeal of the parties in the matter of true-up of capital cost, including any additional capital expenditure upto 31.3.2014.
- (d) Similar issue had arisen in Petition No. 245/2009 filed by NTPC and the Commission by its order dated 29.6.2010 had decided that the capital cost as on 1.4.2009 shall form the basis of determination of tariff for 2009-14. The same analogy shall be adopted in the instant case of the petitioner.

4. The representative of the respondent, UPPCL adopted the above submissions of BRPL and submitted that the petitioner may be directed to file separate tariff petitions for the period 2009-14 and 2014-19 respectively, for determination of tariff of these generating stations.

5. In response, the representative of the petitioner has contended that the petition is maintainable and submitted as under:

- (a) The tariff petitions in respect of these generating stations have been clubbed and filed in accordance with Regulation 6(1) of the 2009 Tariff Regulations. This provision permits the filing of truing-up petitions for 2009-14 along with the tariff petitions for the next tariff period i.e 2014-19.
- (b) The tariff in respect of the generating stations had already been trued-up by the Commission based on the actual capital expenditure incurred for the period 2009-12 and the anticipated capital expenditure for 2012-14 in terms of the provisions to Regulation 6(1) of the 2009 Tariff Regulations. Since the admitted capital cost on actual/anticipated basis as on 31.3.2014 is already available, there is no impediment to revise the tariff for 2012-14 after truing-up and determine the tariff for 2014-19 based on the admitted capital cost as on 31.3.2014 in these petitions.
- (c) Even otherwise, the datas in the relevant forms of the tariff petitions have been separately furnished in accordance with the provisions of the 2009 and 2014 Tariff Regulations. Hence, the Commission may revise the tariff for 2009-14 after truing-up and based on the admitted capital cost, determine the tariff for the period 2014-19 by a single order in these petitions.

6. On a clarification sought by the Commission as regards the interpretation of Regulation 6(1) of the 2009 Tariff Regulations which provide for the filing of truing-up petition for 2009-14 along with the next tariff period, the learned counsel for the respondent, BRPL clarified that the said provision does not enable the clubbing of tariff petitions for truing-up for 2009-14 along with the tariff petitions for the period 2014-19. The learned counsel reiterated that the tariff petitions for 2014-19 shall be considered separately only after the admitted capital cost of these generating stations as on 31.3.2014 are worked out and allowed by the Commission.

7. We have heard the submissions of the parties and examined the documents on record.

Regulation 6(1) of the 2009 Tariff Regulations provides as under:

*"6(1) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2014, as admitted by the Commission after prudence check at the time of truing up"*

8. The learned counsel for respondent, BRPL has submitted that the above provision do not permit the clubbing of tariff petitions for true-up for the period 2009-14 and the tariff petitions for 2014-

19. In order to ascertain the real intent of the said provision, we are inclined to refer to the Statement of Reasons annexed to the 2009 Tariff Regulations, wherein, the Commission has observed as under:

*"7.2 Normally the truing up exercise for all the years in a tariff period should be carried out together. Leaving the truing up exercise of the terminal year (2013-14) to be carried out separately would tantamount to carrying out the same exercise once again during the next tariff period, which is avoidable. As such, the Commission is of the view that instead of carrying out the truing up exercise in the terminal year, the exercise with respect to the capital expenditure including additional capital expenditure actually incurred up to 31.03.2014, as admitted by the Commission after prudence check, should be carried out along with the petition filed for next tariff period."*

9. It is evident from the above that the Commission in the above regulations, had intended to carry out the truing-up exercise of the capital expenditure including additional capital expenditure actually incurred upto 31.3.2014 along with the petition for the next tariff period. In the case of the petitioner, the Commission had revised the tariff of the generating stations based on the capital expenditure including additional capital expenditure actually incurred for the period 2009-12 and only the exercise for truing-up of the expenditure actually upto 31.3.2014 is to be undertaken on prudence check in these petitions filed by the petitioner. Since the truing-up exercise of the capital expenditure including additional capital expenditure actually incurred upto 31.3.2014 would be undertaken in order to arrive at the admitted capital cost as on 31.3.2014 before determination of tariff of these generating stations for the period 2014-19, there is no force in the contention of the respondent, BRPL that the tariff petitions for 2014-19 should be filed separately after determination of the capital cost as on 31.3.2014.

10. The learned counsel for the BRPL has also contended that Regulation 7(3) of the 2014 Tariff Regulations provide that the application for determination of tariff of the existing generating stations of the petitioner should be filed based on the admitted capital cost including any additional capital expenditure already admitted up to 31.3.2014 and estimated additional capital expenditure for the respective years of the tariff period 2014-15 to 2018-19. Accordingly, the respondent has submitted that since there is no admitted capital cost as on 31.3.2014 in respect of these generating stations of the petitioner, the tariff for 2014-19 cannot be determined.

11. We have examined the matter. Regulation 7(3) of the 2014 Tariff Regulations provides as under:

*"7(3) In case of an existing generating station or transmission system including communication system or element thereof, the application shall be made not later than 180 days from the date of notification of these regulations based on admitted capital cost including any additional capital expenditure already admitted up to 31.3.2014 (either based on actual or projected additional capital expenditure) and estimated additional capital expenditure for the respective years of the tariff period 2014-15 to 2018-19."*

12. It is clear from the above provision that an application for determination of tariff for the period 2014-19 can be filed based on the admitted capital cost including any additional capital expenditure already admitted up to 31.3.2014 (either based on actual or projected additional capital expenditure) and estimated additional capital expenditure for the respective years of the tariff period 2014-15 to 2018-19. As stated above, the Commission had revised the tariff of these generating stations for 2009-14 based on the actual capital expenditure incurred for the period 2009-12 and the projected additional capital expenditure for the period 2012-14. The above said provision permits the filing of tariff petitions for determination of tariff for the period 2014-19 based on the admitted capital cost as on 31.3.2014 on actual and projected basis. In this background, we are not inclined to accept the submissions of the respondent, BRPL that Regulations 7(3) provides for filing of application for

determination of tariff of the existing generating stations only based on the admitted capital cost including any additional capital expenditure already admitted up to 31.3.2014. The argument of the respondent fails on this ground.

13. Another contention of the learned counsel for BRPL is that the observations of the Commission in order dated 29.6.2010 in Petition No. 245/2009 (NTPC tariff petition) that the capital cost as on 1.4.2009 needs to be determined in respect of the existing project after taking into account the additional capital expenditure incurred prior to 1.4.2009 to form the basis for determination of tariff for 2009-14 shall be adopted in the present case. Accordingly, the learned counsel has submitted that the directions contained in the said order dated 29.6.2010 should be followed and the petitioner may be directed to follow a proper procedure for filing of application for determination of tariff.

14. We have examined the matter. The observations of the Commission in order dated 29.6.2010 in Petition No. 245/2009 is extracted as under:

*7. As per the first proviso to clause (2) to Regulation (5) of 2009 Regulations, the application for determination of tariff in case of an existing project shall be based on admitted capital cost including any additional capitalization admitted up to 31.3.2009 and estimated additional capital expenditure for the respective orders of the tariff period 2009-14. Further, the last proviso to Regulation 7 of the 2009 regulations provides as under:*

*“Provided also that in case of the existing projects, the capital cost admitted by the Commission prior to 1.4.2009 and the additional capital expenditure projected to be incurred for the respective year of the tariff period 2009-14, as may be admitted by the Commission, shall form the basis for determination of tariff.”*

*8. From the above provisions of the 2009 regulations, it emerges that the capital cost as on 1.4.2009 needs to be determined in respect of the existing project after taking into account the additional capitalization incurred prior to 1.4.2009. This is required as the capital cost as on 1.4.2009 shall form the basis for determination of tariff for the period 2009-14.*

*9. In respect of the generating station, Petition No. 126/2009 pertaining to additional capital expenditure for the period 2006-09 and Petition No. 120/2005 pertaining to the apportionment of FERV were pending consideration of the Commission at the time of filing the present petition. Accordingly, the petitioner has considered in the present petition the admitted capital cost as on 31.3.2006 and the additional capitalization claimed for the years 2006-09 for determination of tariff for the period 2009-14. In the meantime, the Commission has allowed Petition No. 120/2005 in its order dated 11.1.2010 apportioning FERV on normative basis against loan for the period 2001-04 and Petition No. 126/2009 in its order dated 15.6.2010.*

10. As the orders in Petition No. 120/2010 and Petition No. 126/2009 have impact in the opening capital cost, we direct the petitioner to amend the petition through an affidavit taking into account the revised figures, with copy to the respondents within a period of one month from the date of this order. The respondents may file their replies within two weeks thereafter"

15. Admittedly, Regulation 5(2) read with the last proviso to Regulation 7 of the 2009 Tariff Regulations provide that the capital cost as on 1.4.2009 should be determined based on the actual additional expenditure incurred prior to 1.4.2009. Accordingly, the Commission in the said order had concluded that the capital cost as on 1.4.2009 should be determined in respect of the existing project after taking into account the additional capitalization incurred prior to 1.4.2009. However, we are not convinced by the submissions of the respondent, BRPL that the same should be made applicable in the instant case. According to us, while Regulation 5(2) read with the last proviso to Regulation 7 of the 2009 Tariff Regulations provide for the determination of tariff based on actual additional capital expenditure incurred prior to 1.4.2009, Regulation 7(3) of the 2014 Tariff Regulations (as quoted in para 11 above) provides for the filing of tariff petition for the period 2014-19 in case of existing generating stations based on actual or projected additional capital expenditure and estimated additional capital expenditure for the respective years of the tariff period 2014-15 to 2018-19. In the above said generating stations of the petitioner, the admitted capital cost as on 31.3.2012 and the projected capital cost as on 31.3.2014 had already been determined by the Commission. Also, truing-up exercise in terms of Regulation 6(1) of the 2009 Tariff Regulations is to be undertaken for the period 2012-14 and tariff of these generating stations would be revised based on admitted capital cost as on 31.3.2014. Since Regulation 6(1) of the 2009 Tariff Regulations permit the filing of truing-up petitions for 2009-14 along with the tariff petitions for the period 2014-19 and as Regulation 7(3) of the 2014 Tariff Regulations permit the filing of tariff application based on the actual /projected additional capital cost as on 31.3.2014, there is no reason to adopt the findings of the Commission in order dated 29.6.2013 in Petition No. 245/2009, as prayed for by the respondent. We are of the considered

view that the said petitions have been filed by the petitioner in terms of the provisions of the said regulations and are maintainable. Accordingly, the contentions of the respondent, BRPL are rejected.

16. It is also noticed that the petitioner has undertaken publication of the application for determination of tariff for 2014-19 in the newspapers in terms of the provisions of the CERC (Procedure for making of Application for Determination of Tariff, Publication of the Application and Other Related Matters) Regulations, 2004. In the said notice the petitioner has also indicated the annual fixed charges claimed for the period 2012-14 in addition to the annual fixed charges claimed for the period 2014-19. Also, copies of the said petitions have also been served on the respondents in terms of the provisions of the CERC (Conduct of Business) Regulations, 1999. In view of this, we find no reason to entertain the argument of the said respondent that notice of publication of the application for the period 2009-14 has to be made by the petitioner separately.

17. In our view, clubbing of tariff petitions for truing-up for 2009-14 along with the tariff petitions for 2014-19 and disposing of the same through a single order would not only save time, but also bring about certainty in the recovery of cost by these generating stations of the petitioner and also safeguard the interest of consumers. In this background, the preliminary objections raised by the learned counsel for the respondent, BRPL as to the maintainability of these petitions stands rejected. Hence, we hold that the petitions filed by the petitioner in respect of the said generating stations are maintainable.

18. Accordingly, these petitions shall be listed for final hearing on 28.11.2014

**Sd/-  
(A.S. Bakshi)  
Member**

**Sd/-  
(A.K.Singhal)  
Member**

**Sd/-  
(M. Deena Dayalan)  
Member**

**Sd/-  
(Gireesh B. Pradhan)  
Chairperson**