

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 45/2010**

**Coram:**

**Shri V.S.Verma, Member**

**Shri M. Deena Dayalan, Member**

**Date of Hearing: 03.01.2013**

**Date of Order: 02.01.2014**

**In the matter of**

Petition under Section 79 of the Electricity Act, 2003, seeking directions to M.P. PowerGenerating Company Ltd (Respondent No.3) for filing of ARR and petition for determination of tariff in respect of Rajghat Hydro Power Project

**And In the matter of**

Uttar Pradesh Power Corporation Ltd, Lucknow

**Petitioner**

Vs

1. Secretary Energy Dept, Madhya Pradesh Government, Bhopal
2. Madhya Pradesh State Electricity Board, Jabalpur
3. MP Power Generation Company Ltd, Jabalpur
4. MP Power Trading Company Ltd, Jabalpur

**Respondents**

**Parties Present:**

Shri S.Venkatesh, Advocate, UPPCL  
Ms. Ambica Garg, Advocate, UPPCL  
Shri Kapil Agarwal, UPPCL  
Shri G.Umapathy, Advocate, MPPMCL  
Shri K.K.Agrawal, MPPTCL  
Shri Dilip Singh, MPPTCL

**ORDER**

The petition has been filed under Section 79 of the Electricity Act for adjudication of its dispute regarding supply of power from Rajghat Hydel Power Project (Rajghat HPP)



located in the State of Madhya Pradesh. The following specific prayers have been made, namely -:

- “(i) The Hon’ble Commission may kindly direct the Respondents to release the legitimate share of 22.5 MW of power from Rajghat Hydel Power Project to the Petitioner;
- (ii) The Hon’ble Commission may kindly direct the Respondent No 3 to file ARR and Tariff Petition in respect of Rajghat Power Project (45 MW) for ascertaining its cost and determination of tariff from the date of commissioning;
- (iii) Adjudicate and arbitrate the claim of the petitioner and/or refer the matter for adjudication and arbitration of the claim of the petitioner for determination and award of compensation payable to it by the respondents for the loss suffered by it due to the purchase of electricity at higher rate and incurring UI charges under ABT regime, for want of supply of share from the project;
- (iv) Pass any other order which the Hon’ble Commission deems appropriate in the interest of justice.”

2. The petitioner, one of the successors of the erstwhile Uttar Pradesh State Electricity Board (UPSEB) is engaged in the business of bulk procurement of electricity and its bulk supply within the State of Uttar Pradesh. All properties, rights and liabilities of UPSEB, all contracts, agreements, interest and arrangements, other than those assigned to Uttar Pradesh Rajya Vidyut Utpadan Nigam Ltd and Uttar Pradesh Jal Vidyut Utpadan Nigam Ltd, the other successors of UPSEB, have been assigned to and vested in the petitioner.

3. The second respondent succeeded Madhya Pradesh Electricity Board (MPEB) consequent to re-organization of the erstwhile State of Madhya Pradesh in 2000. The second respondent was further reorganized under the statutory scheme notified by the State of Madhya Pradesh, the first respondent, in 2005. The undertakings of the second respondent engaged in generation of electricity were assigned to the third respondent,

M.P. Power Generating Company Ltd. The function of bulk purchase of electricity from the generating companies and bulk supply thereof to the distribution companies within the State of Madhya Pradesh is assigned by the State Government to the fourth respondent, M.P. Power Generating Company Ltd. under the transfer scheme notified in March 2006. M.P. Power Generating Company Ltd. has since been re-designated as M.P. Power Management Company Ltd. (MPPMCL).

4. There is no dispute between the parties as regards the basic facts. In a meeting held on 3.3.1993, UPSEB and MPEB agreed to jointly develop Rajghat HPP in the State of Madhya Pradesh on river Betwa, with a total capacity of 45 MW (3 x 15 MW). In the said meeting MPEB agreed to fund the total cost of developing Rajghat HPP, but the completion cost was agreed to be equally shared by UPSEB and MPEB. It was also agreed that funding of share of UPSEB was to be treated as loan from MPEB, to be repaid by UPSEB along with interest on the outstanding amount at the rate at which MPEB borrowed funds for this purpose, in not more than 10 installments. UPSEB from time to time before commissioning of Rajghat HPP made a total payment of ₹65.5 crore to MPEB. The first unit of Rajghat HPP was commissioned on 29.9.1999, second unit on 15.10.1999 and third unit on 3.11.1999. The State of Uttar Pradesh was supplied power from Rajghat HPP for a brief spell during July to September 2001, stated to be total of 15.56 Million Units. The power supply was discontinued because the petitioner did not open letter of credit for payment of monthly installments of capital expenditure.

5. There is no formal agreement between the parties governing terms and conditions, but these can be gathered from the minutes of the meetings held from time to

time. The petitioner who was assigned the responsibility of drafting the agreement has explained that the agreement couldnot be finalized since the completion cost of Rajghat HPP was not reconciled. Asrecorded in the minutes of the meeting, there has been an understanding between theparties that power generated was to be equally shared as may be noticed from thefollowing extracts from the minutes of the meetings of 8<sup>th</sup>and 9<sup>th</sup>September 2005:

**“7. Sharing of Power from Rajghat HPS to UPPCL**

It was intimated by MPSEB that 50% of share of power from Rajghat HPS could beconsidered to be due to UPPCL from the date of commencement of generationafter clearance of outstanding dues of its cost and interest. The UPPCL agreed tomake payment of reconciled amount to get their share of power from Rajghat HPS.”

6. At this stage, we may briefly take notice of the differences between the parties. The fourth respondent by its letter dated 1.5.2008informed the petitioner that against the estimated completion cost of ₹131.26 crore, thetotal expenditure of ₹194.66 crore as on 31.3.2005 was incurred. Thus an amount of ₹97.33 crore (50% of ₹194.66 crore) was payable by the petitioner as the principalamount. Against this, UPSEB had paid an amount of ₹65.50 crore up to October 1999.The petitioner was further informed that its share of expenditure as on 31.3.2005 was ₹118.78 crore including interest. The petitioner constituted its owncommittee to investigate the completion cost of Rajghat HPP. The committee inits report dated 3.7.2008 concluded that the capital cost as on 31.3.2000, the year closingafter commissioning of Rajghat HPP, payable by the petitioner was ₹73.28 crore as per the audited balance sheet. UPSEB had already paid the sum of ₹65.50 crore.Therefore, only a sum of ₹77.75 crore was payable by the

petitioner as on 31.3.2000. After factoring the interest payable, the committee concluded that outstanding dues added up to ₹949.51 lakh as on 31.5.2005. As the parties could not reconcile the differences over capital cost and the amount of interest payable by the petitioner, the outstanding dues have not been paid by the petitioner. The supply of power to the petitioner remained suspended since September/October 2001.

7. According to the petitioner any pre-condition of payment of outstanding dues for resumption of power supply of its share of power supply is unwarranted. Therefore, the present petition has been filed with the prayers already extracted.

8. The respondents have opposed the petitioner's claims. According to the respondents, the Commission does not have jurisdiction to entertain the present petition. It has been averred that the third respondent as a generating company is neither owned nor controlled by the Central Government nor does it have a composite scheme of generation and sale of electricity in more than one State. It has been contended that only the Madhya Pradesh Electricity Regulatory Commission has the jurisdiction since entire electricity generated is being sold to the fourth respondent within the State of Madhya Pradesh.

9. By order dated 21.8.2012, the Commission over-ruled the preliminary objection as to jurisdiction. The Commission held that the dispute related to inter-State transmission of electricity adjudication of which was within the jurisdiction of the Commission. Accordingly, the petition was admitted for adjudication of the petitioner's claim for release of its share in power generated by Rajghat HPP. The question of

jurisdiction of the Commission to regulate the tariff of Rajghat HPP was kept open to be examined while adjudicating the dispute regarding supply of electricity.

10. The Commission, as an interim measure, directed the respondents to supply to the petitioner, 25% of the power generated by Rajghat HPP, subject to the petitioner making payment of corresponding proportion of O&M expenses on monthly basis. At the hearings, we were informed that the respondents have been supplying power to the petitioner in accordance with the Commission's order dated 21.8.2012 *ibid*. Therefore, the interim direction has been complied with.

11. The question of supply of electricity to the petitioner is linked with payment of share of capital cost of Rajghat HPP. The petitioner has disputed the correctness of the completion cost worked out by the respondents. Therefore, in order to examine the completion cost which was considered pre-requisite for deciding the dispute relating to supply of electricity, the third and fourth respondents were directed to file the audited details of the capital cost, funds borrowed by MPEB and also computation of the interest payable by the petitioner

12. The fourth respondent vide its affidavit dated 12.11.2012 has submitted the details of the capital cost, funds borrowed by MPEB and also computations in support of the interest payable by the petitioner. As per the affidavit, capital expenditure on the construction of Rajghat HPP as on 31.3.2005 was ₹161.22 crore. Thus, the total cost payable by UPSEB was ₹80.62 crore, out of which an amount of ₹65.50 crore was paid by UPSEB by October, 1999. Accordingly, balance payable towards capital expenditure was ₹15.11 crore. As regards the liability of the petitioner to pay interest, the fourth

respondent has worked out the total interest liability at ₹161.72 crore as on 30.9.2012. Thus, the total liability of the petitioner has been worked out as ₹176.84 crore. However, neither the capital cost nor the interest entitlement is supported by audit certificate.

13. We have heard learned counsel for the parties. The Commission in the order dated 21.8.2012 had decided the question of jurisdiction of the Commission to adjudicate the dispute between the parties and accordingly directed the parties to file the replies, while keeping the question of jurisdiction of the Commission to regulate the tariff of the generating station open. The relevant paras of the order are extracted as under :-

“20. As the petition has been admitted, it is not necessary at this stage to examine the question of jurisdiction of this Commission to regulate the tariff of the generation station. The question is left open for the present and will be gone into at the time of adjudicating the main dispute regarding supply of electricity by the respondents to the petitioner.

21. The respondents have linked the question of supply of the petitioner’s share of power with payment of share of capital cost. The petitioner has disputed the completion cost arrived at by the respondents. Therefore, examination of the completion cost of the generating station will be pre-requisite for deciding the dispute relating to supply of electricity. Accordingly, the third and fourth respondents are directed to file the audited details of the capital cost funds borrowed by MPEB and also computation of the interest payable by the petitioner, latest by 30.9.2012, with copy to the petitioners who may thereafter files its reply latest by 25.10.2012.”

14. The parties have filed the replies to the petition including the details of audited details of the capital cost etc. The Commission heard the parties on the merit of the claims made in the petition and the question of jurisdiction of the Commission to regulate the tariff of the generating station. Since the parties have filed their submission on merit as well as on the question of jurisdiction and have made extensive arguments during the hearing, we propose to deal with the issues on merit as well as the question of jurisdiction in this order.

## **Jurisdiction of the Commission to regulate tariff of the generating station**

15. The petitioner in prayer (ii) has sought a direction to the respondents to file tariff petition before the Commission for approval of tariff for Rajghat HPP. According to the respondents, the State Commission of Madhya Pradesh is the Appropriate Commission for approval of tariff since entire power is being supplied to the fourth respondent for sale within the State of Madhya Pradesh. In the interim order, the Commission has held that the petitioner is entitled to its share of power. Moreover, it is an undisputed fact that the respondent supplied power to the petitioner from the generating station for a brief period from July to September, 2001. Therefore, the plea of the respondents that supply is exclusively to the fourth respondent is not correct. No other argument has been raised to dispute the jurisdiction of the Commission to regulate the tariff of the generating station. Since the supply of power generated by Rajghat HPP is to more than one State which was envisaged since inception of Rajghat HPP, we conclude that Rajghat HPP has entered into or otherwise has a composite scheme for generation and sale of electricity in more than one State. Therefore, regulation of tariff of Rajghat HPP is within the jurisdiction of the Commission by virtue of clause (b) of sub-section (1) of Section 79 of the Electricity Act, 2003. We, therefore, direct the respondents, and in particular the third respondent, to file an appropriate petition for approval of tariff of Rajghat HPP in accordance with the Commission's regulations governing the subject, latest by 31.12.2013 w.e.f. the date of supply of power to the petitioner as per our order dated 21.8.2012. While filing the petition, the respondents shall address the following concerns of the Commission:



- (a) The details of the capital expenditure shall be based on audited books of accounts of the erstwhile MPEB, that is, the balance sheets (complete in all respects) for the years 2001-02 to 2012-13 for arriving at the actual capital expenditure as on the date of commercial operation (COD) and post-COD additional capital expenditure. We have not taken cognizance of additional capital expenditure as of now. The Commission would take an appropriate view on the same at the time of tariff determination.
- (b) The petitioner shall give detailed working of the IDC and overhead expenditure capitalized as on COD.

### **Adjudication of the dispute with regard to supply of power to the petitioner**

16. The petitioner has the following agreement with the MPSEB as per the minutes of meeting dated 3.3.1993:-

- (a) The total cost of the project will be funded by the Madhya Pradesh State Electricity Board.
- (b) The total completed cost will be shared between Madhya Pradesh State Electricity Board and Uttar Pradesh State Electricity Board in the ratio of 50-50.
- (c) The share of UPSEB will be treated as a loan from MPSEB and will be re-paid by UPSEB on the following terms and conditions:-

- (i) The loan and interest accrued thereon will be paid in not more than 10 installments.
- (ii) The interest and outstanding amount will be charged on the rate of interest on which the MPSEB will borrow funds for this purpose.

17. The above agreement has not been disputed by any of the parties. As per this arrangement, the 50% of UPSEB was to be treated as loan from MPSEB, to be repaid by UPSEB in ten installments along with interest. Understandably, it was to be paid after the COD. On perusal of the calculation submitted by fourth respondent, it is observed that the capital expenditure till COD of the station was ₹147.72 crore. Out of this ₹147.71 crore, an amount of ₹65.50 crore has already been paid by the petitioner by the COD starting from the year 1997-98. As such, on COD of the project, the liability of the petitioner with regard to capital cost remained only ₹8.36 crore (147.72/2-65.50 crore). However, as per the petitioner, the capital cost of the station as on 31.3.2000 that is, the year closing after the commissioning of the station was ₹146.55 crore. This has been stated to be based on the audited figure as per UPSEB. Accordingly, the petitioner has calculated its share as ₹73.28 crore leaving a balance of ₹7.78 crore as on 31.3.2000. It can be seen that there is minor variation in the capital cost as on COD of station which can be set-right as per the balance sheet. Since the difference between the calculation of the fourth respondent and the petitioner is only ₹58.00 lakh, we are inclined to accept the calculation of fourth respondent.

18. The balance share of UPSEB i.e. ₹8.36 crore should have been claimed by the respondent in the balance installments and the respondent should have supplied the proportionate share of power from the generating station to the petitioner. Instead, the

respondent in garb of non-payment of total share of capital cost in full, did not supply the power to the petitioner. The respondent supplied only 15.56 MUs from July to September 2001. Further, the respondent is claiming interest to the extent of ₹161.72 crore for the non-payment of share of capital cost in full.

19. The station is already in operation since 1999 and the respondents are reaping the benefit of power from the entire capacity of the generating stations since November, 1999 till the restoration of 25% of the supply of the petitioner in compliance with our order dated 21.8.2012. The petitioner has not paid the balance amount of ₹8.36 crore all these years, as per the calculation of fourth respondent. We are of the view that there is no point in asking the petitioner to pay the balance amount with interest, at this stage. It would be reasonable to allow the petitioner the share of power in the generating station in proportion to the payment of ₹65.50 crore made by the petitioner towards capital cost of ₹147.72 crore as on COD. Accordingly, the petitioner is entitled to a capacity share of 19.95 MW in the generating station. We direct the respondents to supply the power to the petitioner corresponding to the capacity share of 19.95 MW now onwards.

## **Compensation**

20. Lastly, the petitioner has sought adjudication and arbitration of its claim for determination and award of compensation for the loss suffered by it due to purchase of electricity at higher rates and incurring UI charges under ABT regime, because of non-supply of its share of power. The petitioner has not claimed any specific amount of compensation. It has not even furnished any details whatsoever like the details of

the amount spent on purchase of electricity from alternative sources in support of the prayer. However, the fact remains that the petitioner had contributed an amount of ₹ 65.50 crore towards its share of the cost of the plant by 1999-2000 but did not get any corresponding proportionate benefits in the form of supply of power since COD except for a brief period of July to September 2001. In the circumstances, the respondents are liable to at least pay for the interest on the capital contributed by the petitioner. The respondents in their computation have indicated interest rates ranging from 10.17% to 13.78% for the period from 1991-92 to 2004-05. The least interest rate is of the order of 10.17%. Accordingly, we direct the third and fourth respondents to pay the interest to the petitioner on ₹65.50 crore @10.17% compounded annually from 1.4.2000 till date of restoration of 25% of power to UPPCL. This amount may be adjusted against the tariff bills of the petitioner.

21. With the above directions, the petition stands disposed of.

**(M Deena Dayalan)**  
**Member**

**(V S Verma)**  
**Member**