

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 05/MP/2016

Coram:

Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Date of hearing: 21.04.2016

Date of Order : 26.08.2016

In the matter of

Miscellaneous petition under Section 79(1)(f) of the Electricity Act, 2003 for adjudication of dispute between NHPC Ltd. & UP Power Corporation Ltd. (UPPCL) regarding interpretation of Regulation-5(3) of CERC (Terms and Conditions of Tariff) Regulations, 2009.

And

In the matter of

NHPC Limited,
(A Govt. of India Enterprise)
NHPC Office Complex, Sector-33,
Faridabad (Haryana)-121 003.Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd. (UPPCL),
Shakti Bhavan, 14 - Ashok Marg,
Lucknow - 226 001 (Uttar Pradesh). ...Respondents

Following were present:

Shri A.K. Pandey, NHPC Ltd.
Shri Shubhalakshmi Gupta, NHPC Ltd.
Shri Rajiv Srivastava, Advocate, UPPCL

ORDER

The petitioner, NHPC Limited, a Government of India Company has filed the present petition under Section 79(1) (f) of the Electricity Act, 2003 for adjudication of dispute between



NHPC Ltd. & UP Power Corporation Ltd. (UPPCL) regarding interpretation of Regulation-5(3) of CERC (Terms and Conditions of Tariff) Regulations, 2009.

2. The petitioner, a 'Generating Company' as defined under Section-2(28) of the Electricity Act, 2003, is currently operating 14 Hydro Power Stations in the **Northern Region** with an aggregated capacity of 4180 MW supplying power to 13 beneficiaries/ Discoms including respondent, UPPCL under long term Power Purchase Agreements (PPAs). Out of the 14 Power Stations in the Northern Region, the respondent UPPCL is getting power from Salal, Tanakpur, Chamera-I, Uri-I, Chamera-II, Dhauliganga, Dulhasti, Sewa-II, Chamera-III, Uri-II & Parbati-III Power Stations of the petitioner as per allocation order issued by MoP, Govt. of India.

3. The petitioner has preferred this petition for seeking Commission's directions in the dispute between the petitioner and the respondent with respect to the interest on the difference between the final tariff and the tariff billed provisionally which has arisen on account of the different interpretation of the CERC regulations.

4. The submissions of the petitioner are as under:

- a) During the period under dispute (i.e, 2009-10 to 2012-13) the petitioner was supplying power to UPPCL from its Salal, Tanakpur, Chamera-I, Uri-I, Chamera-II, Dhauliganga, Dulhasti, Sewa-II & Chamera-III Power Stations.
- b) As per Regulation 5(3) of CERC Tariff Regulations, 2009, for every month of power transmitted, the generating companies were entitled to provisionally bill the beneficiaries at the tariff applicable as on 31.03.2009 (approved by the Commission) till the tariff for the period 2009-14 is notified by the Commission. On determination of final tariff by the Commission, the generating company shall be entitled to recover the difference between the final tariff and the tariff billed provisionally along with the interest at the specified rates from the beneficiaries. The relevant extracts of the same are reproduced below:

“5(3) In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to provisionally bill the beneficiaries or the



transmission customers with the tariff approved by the Commission and applicable as on 31.3.2009 for the period starting from 1.4.2009 till approval of tariff by the Commission in accordance these regulations:

Provided that where the tariff provisionally billed exceeds or falls short of the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to or recover from the beneficiaries or the transmission customers, as the case may be, within six months along with simple interest at the rate equal to short-term Prime Lending Rate of State Bank of India on the 1st April of the concerned/respective year.”

- c) In line with the above provisions of CERC Tariff Regulations, 2009, the petitioner had raised provisional energy bills for the period starting from 01.04.2009 based on the approved tariff as on 31.03.2009 to the beneficiaries including UPPCL (on monthly basis) for supply of power from its existing generating stations. This has been continued till the tariff orders for respective Power Stations for the tariff period 2009-14 were issued.
- d) Subsequently, the Hon'ble Commission had issued the tariff orders (for the period 2009-14) in respect of Dhauliganga, Tanakpur, Dulhasti & Uri-I Power Stations of the petitioner as per the following details:

SI No.	Project	Date of order	Interest bearing period
1	Dhauliganga	14.03.2011	06.05.2009 - 14.03.2011
2	Tanakpur	10.05.2011	06.05.2009 - 10.05.2011
3	Dulhasti	30.05.2011	06.05.2009 - 30.05.2011
4	Uri-I	16.06.2011	06.05.2009 - 16.06.2011

- e) In line with the methodology specified in proviso to Regulation 5(3) of CERC Tariff Regulations, 2009, the petitioner had recovered/ refunded the shortfall or excess in tariff



already billed provisionally from / to the beneficiaries including UPPCL. (i.e, for the difference in AFC for FY 2009-10, the interest rate applicable for 2009-10 have been applied by the petitioner from the date of provisional billing till the date of issue of final tariff order.)

- f) In the mean time, the Commission had also issued amendments dated 02.05.2011 & 21.06.2011 to CERC Tariff Regulations, 2009 which had a binding effect on both the generating companies and discoms during the control period 2009-14. On account of the amendments dated 02.05.2011 and 21.6.2011, Regulation 5(4) was inserted providing for grant of provisional tariff and Regulation 5(3) was revised mainly to incorporate the directions issued by Reserve Bank of India, according to which the lending rates of the banks were required to be linked to Base Rate instead of Prime Lending Rate of the bank with effect from 1.7.2010. The amended Regulation 5(3) is reproduced as under:-

Regulation 5(3):

“In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to provisionally bill the beneficiaries or the long-term customers with the tariff approved by the Commission and applicable as on 31.3.2009 for the period starting from 1.4.2009 till approval of tariff by the Commission in accordance with these regulations.

Provided that where the tariff provisionally billed exceeds or falls short of the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to or recover from the beneficiaries or the transmission customers, as the case may be, within six months along with simple interest at the following rates for the period from the date of provisional billing to the date of issue of the final tariff order of the Commission:

- i. SBI short-term Prime Lending Rate as on 01.04.2009 for the year 2009-10.*
- ii. SBI Rate as on 01.07.2010 plus 350 basis points for the Base year 2010-11.*
- iii. Monthly average SBI Base Rate from 01.07.2010 to 31.3.2011 plus 350 basis points for the year 2011-12.*



- iv. *Monthly average SBI Base Rate during previous year plus 350 basis points for the year 2012-13 and 2013-14.*

Provided that in cases where tariff has already been determined on the date of issue of this notification, the above provisions, to the extent of change in interest rate, shall be given effect to by the parties themselves and discrepancy, if any, shall be corrected at the time of truing up.”

- g) Accordingly, the interest rate applicable for settlement of excess/ shortfall in ‘AFC pertaining to different financial years’ were as under:

SI No.	Year	Interest rate
1	2009-10	12.25%
2	2010-11	11.00%
3	2011-12	11.23%
4	2012-13	13.15%
5	2013-14	13.36%

- h) Further, the Commission had also made a significant change in the methodology for recovery/ refund of revised AFC due to change in applicable tax rate (MAT or Corporate Tax as the case may be) and consequent change in Return on Equity (ROE) through second amendment dated 21.06.2011. A provision has been made for direct reimbursement / refund of change in AFC from / to the beneficiaries due to change in tax rate on year to year basis without making an application before the Commission. The relevant extracts of Regulation 15(5) is reproduced below:

“(5) The generating company or the transmission licensee, as the case may be, shall recover the shortfall or refund the excess Annual Fixed Charge on account of Return on Equity due to change in applicable Minimum Alternate/Corporate Income Tax Rate as per the Income Tax Act, 1961 (as amended from time to time) of the respective financial year directly without making any application before the Commission:



Provided further that Annual Fixed Charge with respect to the tax rate applicable to the generating company or the transmission licensee, as the case may be, in line with the provisions of the relevant Finance Acts of the respective year during the tariff period shall be trued up in accordance with Regulation 6 of these regulations.”

- i) Consequent to changes in tariff regulations vide amendment dated 21.06.2011, the petitioner had to initiate following changes in the billing methodologies:
- (i) Change the interest rate (wherever required) which has been charged for settlement of arrears for those Power Stations whose tariff orders (for the period 2009-14) were issued prior to issuance of second amendment to CERC Tariff Regulations, 2009 (i.e., Dhauliganga, Tanakpur, Dulhasti & Uri-I Power Stations) (Ref: para-VIII).
 - (ii) Recovery of arrears due to change in applicable tax rate for the FY 2009-10, 2010-11 & 2011-12 with interest as per proviso to Regulation 5(3) (applicable to all Power Stations).
 - (iii) Adopt the modified Regulation 5(3) for settlement of difference in AFC after issuance of final tariff orders for those Power Stations whose tariff orders were not issued on the date of notification of amendment and continued to bill provisionally based on the tariff approved as on 31.03.2009 (i.e. Salal, Chamera-I & Chamera-II Power Stations).
- j) In compliance to changes in the tariff regulations mentioned above, the petitioner had raised supplementary energy bills in respect of NHPC Power Stations to give effect to change of interest rate and for recovery of excess AFC with interest due to changes in applicable tax rate for FY 2009-10 to 2011-12. After issuance of tariff orders in respect of Salal, Chamera-I & Chamera-II Power Stations by the Commission vide its orders dated 27.06.2011, 12.07.2011 & 27.01.2012 respectively, the petitioner had also raised supplementary bills for recovery of difference in AFC with interest.
- k) The energy bills on above lines were issued to all beneficiaries of NHPC including UPPCL. None of the beneficiaries have raised any objection against the methodology adopted by the petitioner when the bills were raised even though they were at liberty to raise written objections if any, within 45 days of presentation of such bills as per Bulk



Power Supply Agreements (BPSA) signed with them. The relevant extracts of Clause 7.2 of BPSA signed with Northern Region Beneficiaries (including UPPCL) is reproduced below:

“In case Bulk Power Customer has any objection as to the accuracy of any bill(s), it shall lodge a written objection with NHPC within 45 days of presentation of such bill(s).....”

Payment to these bills have been made and verified by all beneficiaries including UPPCL.

- l) However, after a long period, the respondent UPPCL raised an objection on applicability of interest rates in successive years with different interpretation of the word ‘concerned/ respective’ appearing in the Regulation 5(3) of CERC Tariff Regulations, 2009. The respondent, vide letter dated 11.04.2013, less verified the interest computed by the petitioner in supplementary bills for the period from 2009-10 to 2012-13 on year to year basis and withheld an amount of ₹ 2.46 Crs.
- m) UPPCL had applied different interest rates in different years for settlement of AFC difference of a particular year. More precisely, for a Power Station whose final tariff order is issued during 2011-12, for settlement of AFC difference pertaining to FY 2009-10, UPPCL has applied interest rate of 2009-10 for the FY 2009-10, interest rate of 2010-11 for FY 2010-11 & interest rate of 2011-12 for FY 2011-12. In our opinion, this is a misinterpretation of the Regulation 5(3) of CERC Tariff Regulations, 2009 by the Respondent, UPPCL.
- n) The petitioner has further submitted that a meeting was convened at Lucknow on 09.05.2013 between NHPC & UPPCL officials for reconciliation of financial statements for energy supplied upto March’2013. During the meeting, the petitioner has clarified that as per Regulation 5(3) of CERC Tariff Regulations, 2009 (Second Amendment dated 21.06.2011), interest is to be levied from the date of provisional billing to date of issue of final tariff order at the interest rate specified for the applicable year for the entire period for the differential AFC of a particular year. During meeting, UPPCL clarified that though they had verified / accepted the raised bills but due to different



interpretation of word 'concerned/respective' by their auditors, they are compelled to reduce the interest amount by ₹ 2.46 Crs.

- o) Subsequently, UPPCL vide their letter dated 18.05.2013 again requested to adjust the difference in interest amount calculated by UPPCL amounting to (-) ₹ 2.46 Crs in the books of the petitioner replied vide letter dated 18.06.2013 reiterating the petitioners' stand in the matter.
- p) As per the petitioner's submission, none of the beneficiaries (except UPPCL) have raised any objection to the supplementary bills raised by the petitioner or questioned the methodology adopted by the petitioner for interest calculation which is exactly in line with the Regulation 5(3) of CERC Tariff Regulations, 2009.
- q) After the notification dated 21.06.2011, Hon'ble CERC has also issued various review orders and truing up orders (after truing up of tariff for the period 2009-12) in respect of NHPC Power Stations during 2012-13 & 2013-14. The petitioner has applied the same methodology as stipulated in Regulation 5(3) & Regulation 6(6) of CERC Tariff Regulations, 2009 for settlement of difference in AFC from the date of provisional billing to date of issue of final tariff order. It is pertinent to mention here that the respondent, UPPCL has not made any objections on such supplementary bills and admitted all the interest bills raised by the petitioner from Nov'2012 onwards. Accordingly, the respondent is taking dual stand in the matter and they are not consistent in their approach.
- r) In background of above dispute, the respondent (UPPCL) has withheld an amount of ₹ 2.46 cr. w.e.f. April' 2013.
- s) Against the above background, the petitioner has made the following prayers:
 - i. Hon'ble Commission is requested to issue necessary clarifications on the interpretation of Regulation 5(3) of CERC (Terms & Conditions of Tariff) Regulations, 2009 (Second amendment dated 21.06.2011) regarding applicability of interest rates on differential AFC of respective years.



- ii. Issue necessary directions to the respondent, UPPCL to make payment of withheld amount of ₹ 2.46 Crs to the petitioner with applicable surcharge as per Regulation 35 of CERC (Terms & Conditions of Tariff) Regulations, 2009 and Regulation 45 of CERC (Terms & Conditions of Tariff) Regulations, 2014
- iii. Pass such other and further order / orders as are deemed fit and proper in the facts and circumstances of the case.

5. The matter was heard on 23.2.2016 and the Commission directed the respondent to file its reply, on affidavit, by 18.3.2016. The respondent filed the reply on 15.3.2016 as below:

6. Reply on behalf of the respondent, UPPCL dated 15-03-2016.

- a) The amount of difference in AFC pertaining to a particular period, say for FY-2009- 10 would clearly admit of interest rate at 12.25% for the period FY-2009 10 but the same amount of under recovery of AFC relating to FY- 2009- 10, in the next Financial year i.e. in the FY 2010-11 when the rate of bank interest had been lowered to 11.00% to 12.25% chargeable for the previous financial year 2009-10, could legitimately qualify for application of rate of interest at 11%. Similarly, the same amount of difference towards AFC charges under recovered relating to FY-2009-10, the rate of interest chargeable could very well be 11.23 % which was the rate of interest prevailing in the Fy-2011-12.
- b) The dispute, on account of methodology adopted by the petitioner in applying the same rate of interest at 12.25 % for the under recovered amount for FY-2009-10 in subsequent Financial years 2010-11 and 2011-12 and the audit in UPPCL objecting to the calculation of amount under recovered towards AFC relating to FY-2009-10 made payable by UPPCL by levying the rate of interest at 12.25% applicable for FY-2009-10 in subsequent Financial years 2010-11 and 2011-12 etc. till the issuance of final tariff order by this Hon'ble Commission, arose only when Audit report was received in UPPCL. Thus Clause 7.2 of Bulk Power Supply Agreement (BPSA) could not be complied with by UPPCL. As stated in the para XIV of the petition itself, UPPCL had also made payment of the supplementary bills raised by NHPC without my objection and therefore there was no occasion for UPPCL to make any objection within a period of 45 days as provided in BPSA.



- c) The expression "concerned/ respective, appearing in Regulation 5 (3) of CERC Tariff Regulations, 2009, would unambiguously be open to the interpretation through which CAG auditor found that UPPCL had paid Rs.2.46 Crores in excess of the actual amount payable to the petitioner towards the under recovery of AFC from the period FY-2009-10 to 2012-2013. The audit in UPPCL, by adopting the methodology, of applying rate of interest prevailing in a particular Financial Year as shown in the petition, as against the methodology of applying rate of interest by the petitioner at the rate of interest applicable for FY 2009-10 in subsequent financial years also despite rate of interest in those subsequent years having been declined, as shown in paragraph XIII of the petition, found that an excess amount of Rs.2.46 Crores had been paid by UPPCL to petitioner, NHPC. Possibly, no fault could be found with the methodology employed by the Audit in UPPCL, in applying to the under recovered amount of AFC the rate of interest applicable for each financial year for the period the amended Regulation 5 (3) of CERC Tariff Regulation, 2009, would cover. The respondent further submitted that the petitioner NHPC, which is a Govt. of India undertaking, in insisting upon the payment of under-recovered AFC amount by adopting the methodology of applying rate of interest applicable only for FY-2009-10 for the subsequent period covered by Financial years 2010-11, 2011-12 and 2012-13, is asking for an unjust enrichment by Rs.2.46 Crores at the expense of the Respondent, UPPCL, a Govt. of U.P. Undertaking. In fact, it is the petitioner which, by misinterpreting Regulation 5 (3) of CERC, Tariff Regulation, 2009, had inflated its supplementary bills raised on UPPCL by Rs.2.46 Crores.
- d) The reference to the meeting held between NHPC and UPPCL at Lucknow on 09.05.2013, for reconciliation of bills or Energy supplied up to March, 2013 is correct. It is also reiterated that the interpretation to the word 'concerned/ respective' occurring in Regulation 5 (3) of CERC Tariff Regulations, 2009 (Second amendment dated 21 .06.2011) could not be but one that the rate of interest applicable during a particular financial year would be the 'concerned/ respective, year with regard to the rate of interest for the purpose of calculating the amount payable by a beneficiary on the differential amount towards AFC. The respondent UPPCL, stands by the revised calculations dated 11.04.2013 on year to year basis as per accounting standards.



- e) The objection of UPPCL to Rs.2.46 Crores having been paid to NHPC, on the basis of wrong calculations and therefore, liable to be adjusted in favour of UPPCL by NHPC, is based on the correct interpretation of the word 'concerned/ respective' forming part of Regulation 5 (3) of CERC Tariff Regulations, 2009. IF other beneficiaries have not raised any objection to the supplementary bills of NHPC served upon those beneficiaries, it cannot be a ground to be taken by the petitioner NHPC for accepting the interpretation which, on the face of the word 'concerned/ respective' in Regulation 5 (3) CERC Tariff Regulations, 2009, would be patently erroneous.
- f) The issue raised in the present petition relates to the interpretation of the word 'concerned/ respective', finding mention in Regulation 5 (3) CERC Tariff Regulations, 2009, on the basis of which, Audit in UPPCL found that an amount of Rs.2.46 Crores was not payable to NHPC towards unrecovered AFC under CERC 2009 Regulations. Correctness or otherwise, of subsequent supplementary bills raised by the petitioner on UPPCL is not the subject matter of the present petition. Therefore, to allege against UPPCL of taking dual stand is not fair as the issue of subsequent supplementary bills is to be judged separately on their own merit.
7. Further in response to the respondent's reply, the petitioner vide reply dated 25.04.2016 submitted as follows:
- a) The respondent is trying to ascertain the methodology adopted by them for the calculation of interest on differential AFC which is in conformity to the factual position already explained by the petitioner at para-XV of the original petition. The petitioner is of the opinion that, the differential AFC of a particular year should carry interest at the rates specified by CERC for that particular year from the date of billing to the date of issue of final tariff order as already explained at para-XIV of the original petition.
- b) The respondent is trying to justify their delay in raising objection against the interest bills even though they were supposed to raise objections (if any) within 45 days as per provisions of BPSA. The respondent has raised the objection against the billing methodology adopted by the petitioner for interest computation only after the issue has



been highlighted by their Auditors. However, this cannot be treated as an excuse for non compliance of the provisions of BPSA which is binding on both the parties.

- c) The respondent has alleged that the benefit of reduced interest rates in FY 2010-11 (11.00%) & FY 2011-12 (11.23%) compared to FY 2009-10 (12.25%) has not been passed on to UPPCL and the petitioner has made an 'unjust enrichment' by ₹ 2.46 Crs at the expense of respondent. This is totally misleading as the petitioner has merely exercised the provisions of Regulation 5(3) of CERC Tariff Regulations, 2009 and the petitioners' intention was not to earn any extra income at the cost of Respondent. In case any error on the petitioner regarding interpretation of the provisions of Regulation 5(3) of CERC Tariff Regulations, 2009, the same needs to be clarified by CERC.
- d) It can also be seen that, interest rate has increased in FY 2012-13 (13.15%) & FY 2013-14 (13.36%) compared to FY 2009-10 (12.25%). However, the petitioner has applied a uniform methodology of charging interest as highlighted in para-XIX of the original petition. i.e, for the difference in AFC pertaining to FY 2009-10, NHPC has applied the interest rate specified for FY 2009-10 till FY 2013-14 for projects whose tariff orders have been issued in FY 2013-14. However, the respondent has not raised any objection during the period 2012-14 (in line with their objection for the period 2009-12) since they have been benefitted with lesser interest rates during FY 2012-14. Hence, it is not the petitioner but the respondent is trying to make 'unjust enrichment' at the cost of petitioner by adopting the lowest interest rates irrespective of methodology specified in CERC Tariff Regulations, 2009. Hence, we reiterate our stand as per para-XIX of the original petition that, the respondent is taking dual stand in the matter and they are not consistent in their approach.
- e) As already explained at para-6 above, the respondent has taken dual stand in their approach for the period 2009-12 & 2012-14 and thereafter. As the issue of interest on differential AFC is due to interpretation of regulatory provisions, the petitioner is of the opinion that, one should be consistent in their approach. Two different approaches on the same issue within a single tariff period cannot be justified. i.e, what is applicable for the



period 2009-12 should be applicable for the period 2012-14 also. Accordingly, the respondents' requisition for separate consideration of supplementary bills issued after Nov'2012 cannot be agreed to.

- f) The respondents' contention that UPPCL has not withheld the amount of ₹ 2.46 Crs is not correct. This is also evident from the latest reconciliation statement signed with UPPCL for the period Oct'2015 to Dec'2015 (Annex-I). Further, the petitioner is in agreement with the respondents' suggestion to invoke the jurisdiction of Hon'ble CERC for adjudication of disputes related to interpretation of Regulation 5(3) of CERC Tariff Regulations, 2009.

Analysis and decision:

8. In the instant petition, the petitioner NHPC has prayed before the Commission to issue necessary clarifications on the interpretation of Regulation 5(3) of CERC (Terms & Conditions of Tariff) Regulations, 2009 (Second amendment dated 21.06.2011) regarding applicability of interest rates on differential AFC of respective years.

Accordingly, the Commission proceeds to examine the same.

9. While examining the interpretations of regulation with respect to applicability of the rate of interest, we observe as follows:

The petitioner, NHPC has applied the rate of interest as given below:

- For the differential AFC for the FY 2009-10, the rate applied is the rate existing in FY 2009-10 (12.25%) for the period from 2009-10 to 2011-12.
- For the differential AFC for FY 2010-11, the rate applied is the rate existing in FY 2010-11 (11.00%) for the period from 2010-11 to 2011-12.
- For the differential AFC for FY 2011-12, the rate applied is the rate existing in FY 2011-12 (11.23%).



(tabularized as below)

SI No.	Difference in AFC for	Interest rate		
		2009-10	2010-11	2011-12
1	FY 2009-10	12.25%	12.25%	12.25%
2	FY 2010-11		11.00%	11.00%
3	FY 2011-12			11.23%

10. The respondent UPPCL has applied interest on differential AFC in the following manner:

- For the differential AFC for FY 2009-10, the rate applied is the rate existing in FY 2009-10 (12.25%), in FY 2010-11 (11.00%) & in FY 2011-12 (11.23%) in the same respective years.
- For the differential AFC for FY 2010-11, the rate applied is the rate existing in FY 2010-11 (11.00%) & in FY 2011-12 (11.23%) in the same respective years.
- For the differential AFC for FY 2011-12, the rate applied is the rate existing in FY 2011-12 (11.23%).

(tabularized as below)

SI No.	Difference in AFC for	Interest rate		
		2009-10	2010-11	2011-12
1	FY 2009-10	12.25%	11.00%	11.23%
2	FY 2010-11		11.00%	11.23%
3	FY 2011-12			11.23%

11. Thus, it may be observed that the Regulation 5 (3) as quoted above has been interpreted differently by the petitioner and the respondent. The petitioner has charged interest on the differential AFC of a particular year at the applicable rate for the year till the dues are finally paid. Whereas, the respondent contends to apply the interest rate prevailing during the particular period (and not the same which was applicable in the year of occurrence of the differential AFC).

12. As such, it may be noticed that the difference in interpretation of the regulation has occurred mainly due to the word 'concerned/respective' appearing in the Regulation 5(3)



of CERC Tariff Regulations, 2009. However, the said regulation has been amended dated 02.05.2011. The amended regulation is reproduced below:

Regulation 5(3):

“In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to provisionally bill the beneficiaries or the long-term customers with the tariff approved by the Commission and applicable as on 31.3.2009 for the period starting from 1.4.2009 till approval of tariff by the Commission in accordance with these regulations.

Provided that where the tariff provisionally billed exceeds or falls short of the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to or recover from the beneficiaries or the transmission customers, as the case may be, within six months along with simple interest at the following rates for the period from the date of provisional billing to the date of issue of the final tariff order of the Commission:

- i. SBI short-term Prime Lending Rate as on 01.04.2009 for the year 2009-10.*
 - ii. SBI Rate as on 01.07.2010 plus 350 basis points for the Base year 2010-11.*
 - iii. Monthly average SBI Base Rate from 01.07.2010 to 31.3.2011 plus 350 basis points for the year 2011-12.*
 - iv. Monthly average SBI Base Rate during previous year plus 350 basis points for the year 2012-13 and 2013-14.*
13. The amended regulation as quoted above, clearly lays down that the given rates are *for the period from the date of provisional billing to the date of issue of the final tariff order of the Commission*. This connotes that the specified rates are applicable in the specific period for calculation of interest on the differentials irrespective of the rate prevailing at the time of accrual of the differential.
14. The regulation thus provides the periodic interest rates for the billing period and not for the instance of occurrence of the arrear. Accordingly, the methodology adopted by the petitioner NHPC is erroneous and is based on the wrong interpretation of the Regulation.



UPPCL's contention in this regard is correct in true spirits of the regulations. Therefore, the prayer of NHPC is rejected.

15. In view of the above, the petitioner is directed to carry out the adjustments to all the concerned beneficiaries in line with the Regulation 5(3) as amended from time to time.
16. With the above, the petition is disposed of.

Sd/-

**(Dr. M.K.Iyer)
Member**

Sd/-

**(A.S.Bakshi)
Member**

Sd/-

**(A.K. Singhal
Member**

