

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.11/RP/2020**

in

**Petition No. 279/GT/2018**

**Coram:**

**Shri P.K. Pujari, Chairperson**

**Shri I.S. Jha, Member**

**Shri Arun Goyal, Member**

**Date of Order: 10<sup>th</sup> July, 2020**

**In the matter of**

Review of Commission's order dated 5.2.2020 in Petition No. 279/GT/2018 pertaining to approval of tariff of Uri-II HE Project (240 MW) for the period from 11.10.2013 to 31.3.2014

**And**

**In matter of**

NHPC Limited

NHPC Office Complex, Sector-33,  
Faridabad (Haryana) - 121 003

..... Petitioner

**Vs**

1. Punjab State Power Corporation Ltd  
The Mall, Near Kali Badi Mandir,  
Patiala - 147 001

2. Uttar Haryana Bijli Vitran Nigam Limited  
Vidyut Sadan, Plot No. C16, Sector-6  
Panchkula- 134109

3. Dakshin Haryana Bijli Vitran Nigam Limited  
Vidyut Sadan, Vidyut Nagar,  
Hisar- 125005

4. Haryana Power Purchase Centre  
Shakti Bhawan, Sector-6,  
Panchkula- 134109



5. Uttar Pradesh Power Corporation Ltd  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow - 226 001

6. Engineering Department,  
Union Territory of Chandigarh,  
1st Floor, UT Secretariat, Sector 9D,  
Chandigarh - 160 009

7. BSES Rajdhani Power Ltd  
BSES Bhawan, Nehru Place,  
New Delhi - 110 019

8. BSES Yamuna Power Ltd  
Shakti Kiran Building, Karkardooma,  
New Delhi - 110 032

9. Tata Power Delhi Distribution Ltd  
33 KV Sub-station, Hudson Lane,  
Kingsway Camp, Delhi - 110 009

10. Uttarakhand Power Corporation Ltd,  
Urja Bhawan, Kanwali Road,  
Dehradun - 248001

11. Jaipur Vidyut Vitran Nigam Ltd  
Vidyut Bhawan, Janpath  
Jaipur - 302 005

12. Ajmer Vidyut Vitran Nigam Ltd  
Old Power House, Hatthi Bhatta,  
Jaipur Road, Ajmer - 305 001

13. Jodhpur Vidyut Vitran Nigam Ltd,  
New Power House, Industrial Area,  
Jodhpur - 342 003

14. Power Development Department,  
New Secretariat, Jammu

..... Respondents

**Parties Present:**

Shri Rajiv Shankar Dvivedi, Advocate, NHPC  
Shri M. G. Gokhale, NHPC



## ORDER

The Petitioner, NHPC, has filed this review petition against the Commission's order dated 5.2.2020 in Petition No. 279/GT/2018 whereby the tariff of Uri-II Hydroelectric Project (240 MW) (hereinafter referred to as 'the generating station') for the period from 11.10.2013 to 31.3.2014 was approved in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as "the 2009 Tariff Regulations").

2. Aggrieved by the said order, the Petitioner has filed this review petition on the ground that there is error apparent on the face of the record on the following issues:

- (a) *Deduction of Normative IDC; and*
- (b) *Operation & Maintenance Expenses*

3. The Commission heard the learned counsel for the Petitioner on 'admission' through video conferencing on 25.6.2020. The review of order dated 5.2.2020 in Petition No. 279/GT/2018 on the above issues is not admitted for the reasons stated in the subsequent paragraphs.

### Deduction of Normative IDC

4. The Commission, in paragraph 26 of the order dated 5.2.2020 in Petition No. 279/GT/2018, while calculating and allowing 'Normative IDC' up to COD of the units/ generating station had observed as follows:

*"26. The Petitioner has furnished the statement of calculation of normative IDC claimed duly certified by Auditor. For calculation of normative IDC, the Petitioner has applied the weighted average rate of interest in respect of loans availed by the Company as a whole, for the period before the drawl of loans for the project. For the period after the drawl of actual loan for the project, the rate of interest applicable for actual loan has been considered. The Petitioner was directed vide ROP of the hearing dated 6.2.2019, to furnish the balance sheets of the generating station since*



*the 1<sup>st</sup> infusion of fund (2001-02). The Petitioner has however submitted the balance sheets from the year 2005-06 vide affidavit dated 23.4.2019. Based on the details furnished, IDC has been calculated up to COD of the units/generating station and allowed as under:*

Xxxx

5. The Petitioner in this review petition has submitted the following:

(a) During the proceedings in the original petition, the Commission vide ROP of the hearing dated 6.2.2019 had directed the Petitioner to submit various information along with the copies of balance sheets since first infusion of fund for examination of fund flow. In compliance to the same, the Petitioner vide its affidavit dated 23.4.2019 at point no. 4(b) has mentioned that 'balance sheet since first infusion of fund (from 2001-02 to 2013-14)' is enclosed at Annex-I. However, in the enclosed Annexure, the Petitioner has submitted the copy of balance sheets for the period 2005-06 to 2013-14 and the balance sheets for the period 2001-02 to 2004-05 were missing which was an inadvertent error on the part of the petitioner.

(b) The Petitioner was under the presumption that the balance sheets for the period 2001-02 to 2004-05 were already submitted and was unaware of the fact that the balance sheets for the period 2001-02 to 2004-05 were missing and the same was not done intentionally by the Petitioner. The petition was subsequently heard by Commission on 14.5.2019 and 27.8.2019 and Order was reserved on 27.8.2019 only, but the Commission had not directed the Petitioner to submit the copy of missing balance sheets for the period 2001-02 to 2004-05 either through ROP or through additional information after compliance by affidavit dated 23.4.2019.

(c) The Commission has thus deducted an amount of Rs.161.45 lakh on 11.10.2013 (2 units), Rs. 340.42 lakhs on 1.12.2013 (3 units) and Rs. 429.65 lakh on 1.3.2014 from the capital cost on account of 'Normative Interest During Construction' (NIDC) for the purpose of tariff in the absence of the balance sheets for the period 2001-02 to 2004-05. The Petitioner came to know about the non-submission of said documents only after issuance of the Order dated 5.2.2020 in Petition No. 279/GT/2018.

(d) The above mentioned documents could not be produced by the Petitioner inadvertently during the proceedings of the main petition. Accordingly, the Commission is requested to consider these documents in present review petition and allow the normative IDC as claimed in original petition.



Accordingly, the Petitioner has submitted that the documents which could not be produced by the Petitioner inadvertently during the proceedings in the original petition may be considered and the normative IDC be allowed as claimed by the Petitioner.

6. During the hearing, the learned counsel for the Petitioner reiterated the above submissions and prayed that review on this ground may be allowed.

7. We have examined the submissions of the Petitioner. The Petitioner has submitted that it was unaware that the balance sheets for the period 2001-02 to 2004-05 were not submitted and was under the presumption that the same had been submitted before the Commission. The Petitioner while stating that the non-submission of the balance sheets for the said period was not intentional and has contended that it came to know of non-submission of balance sheets for 2001-02 to 2004-05 period only after issuance of the order dated 5.2.2020 in Petition No. 279/GT/2018. The Petitioner has, therefore, argued that in terms of Section 94(1)(f) of the Electricity Act, 2003 ('the 2003 Act') read with Regulation 103(1) of the CERC (Conduct of Business), Regulations, 1999, the balance sheets for the period 2001-02 to 2004-05 which could not be submitted at the time when the order was made, is an error apparent on the face of the order and same may be considered on review and the normative IDC claimed may be allowed.

8. Section 94(1)(f) of the 2003 Act provides that the Commission shall have the same power as are vested in a Civil court under the Code of Civil Procedure, 1908 (CPC). Order 47 Rule 1 of CPC, 1908 provides that any person considering himself



aggrieved by an order may apply for its review to the court which passed the order under the following circumstances-

*“(a) discovery of new and important matter or evidence, which, after exercise of due diligence was not within the knowledge of the person seeking review or could not be produced by him at the time when order was made, or*

*(b) on account of some mistake or error apparent on the face of recording or*

*(c) for any other sufficient reason”*

9. Under clause (a) above, the mere discovery of new or important matter or evidence is not a sufficient ground for review. The party seeking review has to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the court earlier. Admittedly, in the present case, the Petitioner had not produced the said documents (balance sheets for the period 2001-02 to 2004-05) as it was under the presumption that the same had been submitted in compliance with the directions of the Commission. In our view, the Petitioner should have exercised due diligence and ensured the submission of the said documents at the time of filing the affidavit dated 23.4.2019 or even thereafter when the matter was heard on 14.5.2019 and 27.8.2019. Having not done so, the Petitioner cannot now say that it was under the presumption that the documents had been submitted. The Order dated 5.2.2020 determining the tariff of the generating station for the year 2013-14 was based on the documents available on record. Hence, non-submission of the documents by the Petitioner cannot be a valid ground for re-consideration of the said order. Thus, there is no error apparent on the face of the order. As regards the contention of the Petitioner that the Commission had not directed the Petitioner to submit the copy of missing documents either through ROP or through additional information prior to order being reserved in the matter, it is



pointed out that the burden of proof for substantiating the claims made in the petition lie with the Petitioner and the onus cannot be shifted on the Commission by stating that the document was not called for by the Commission subsequently. The Commission had directed the Petitioner to furnish the additional information vide ROP dated 6.2.2019 and the Petitioner was under an obligation to file the required information along with necessary documentary evidence by exercising due diligence. The Petitioner, having not filed the aforesaid documents to justify the claims made in the petition, cannot now plead that the Commission's order dated 5.2.2020 is erroneous. The deduction of the claims of the Petitioner for normative IDC due to non-submission of the aforesaid documentary evidence does not suffer from any infirmity. In this background, we hold that there is no error apparent on the face of the order dated 5.2.2020 and review on this count is, therefore, not accepted.

### Operation and Maintenance Expenses

10. The Commission in its order dated 5.2.2020 in Petition No. 279/GT/2018 had allowed O&M expenses as under:

*“52. The cut-off date of the project is 31.3.2017 and therefore the completion cost is required to be approved in Petition No. 308/GT/2018 filed by the Petitioner for approval of tariff for the period 2014-19. Accordingly, the capital cost as on 31.3.2014 and the R&R cost of ₹375 lakh (as claimed by the Petitioner) has been considered for calculation of O&M expenses. Accordingly, the O&M expenses worked out and allowed based on the approved capital cost is as under:*

	(₹ in lakh)		
	11.10.2013 to 30.11.2013 (2 Units)	1.12.2013 to 28.2.2014 (3 Units)	1.3.2014 to 31.3.2014 (all 4 Units)
Project cost allowed	107093.28	161008.00	217506.67
Less: R&R expenses	140.63	281.25	375.00
Capital cost considered for purpose of O&M expenses	106952.65	160726.75	217131.67
Annualized O&M expenses @ 2% of above	2139.05	3214.54	4342.63
Number of days	51	90	31
<b>O&amp;M expenses allowed</b>	<b>298.88</b>	<b>792.63</b>	<b>368.83</b>



11. The Petitioner in the review petition has submitted the following:

(a) As the COD of the generating station is 1.3.2014, the cutoff date is 31.3.2017 as per Regulation 3(29) of the 2009 Tariff Regulations. Thus, for the purpose of computation of O&M expenses, the project cost up to cut-off date needs to be considered. However, for calculating the O&M expenses, the Commission in para 52 of the order has considered the project cost up to 31.3.2014 instead of 31.3.2017.

(b) The Petitioner had also filed Petition No. 308/GT/2018 in respect of determination of tariff of this generating station for the period 2014-19 and order for the same was issued on 5.2.2020. While fixing the O&M expenses for the period 2014-19 in the said order, the Commission has computed the O&M expenses for the first full year after COD (2013-14) based on capital cost as on the cut-off date of 31.3.2017, but without revising the annual fixed charges for the period 2013-14.

(c) The orders in both the petitions were issued by the Commission on the same date i.e. 5.2.2020 and the capital cost as on cut-off date (31.3.2017) has been used by the Commission for calculation of O&M expenses for the period 2013-14 and upto 2018-19. However, the Commission has not considered the calculated O&M expenses for the period 2013-14 in the said order for revision of annual fixed charges for the period 2013-14 in Petition No. 279/GT/2018.

(d) In addition to above, the Commission has considered the capital cost of the units instead of the apportioned project cost up to the cut-off date for calculation of O&M expenses for the units till COD of the generating station. In terms of Regulation 19(f) (v) of the 2009 Tariff Regulations, the 'O&M expenses' shall be fixed at 2% of the original project cost (excluding Rehabilitation & Resettlement Works) and shall be subject to the annual escalation of 5.72% per annum for the subsequent years. Thus, for the computation of O&M expenses (either pre-COD or post-COD), the capital cost as on the cut-off date is to be considered.

(e) In view of above, there is an error in the calculation of O&M expenses and the Commission may revise the O&M expenses between the COD of individual units and as on the COD of units, based on project cost as on cut-off date during the first year of operation (i.e. 2013-14) as under:





	<i>(Rs in lakh)</i>		
	11.10.2013 to 30.11.2013 (2 Units)	1.12.2013 to 28.2.2014 (3 Units)	1.3.2014 to 31.3.2014 (all 4 Units)
Project cost*	113648.9	170473.3	227297.7
Less: R&R expenses	140.63	281.25	375
Capital cost considered for purpose of O&M expenses	113508.2	170192	226922.7
Annualized O&M expenses @ 2% of above	2270.16	3403.84	4538.45
Number of days	51	90	31
<b>O&amp;M expenses claimed</b>	<b>317.20</b>	<b>839.30</b>	<b>385.45</b>

\*Project cost Rs. 227297.7 lakh (Rs. 226868.05 lakh {considered by CERC + Rs.429.65 lakh (additional NIDC)}

12. The matter has been considered. Regulation 19(f)(v) of the 2009 Tariff Regulations provides as under:

*“In case of hydro generating station declared under commercial operation on or after 1.4.2009, operation and maintenance expenses shall be fixed at 2% of the original project cost (excluding rehabilitation & resettlement works) and shall be subject to annual escalation of 5.72% per annum for subsequent years.”*

13. The main contention of the Petitioner is that even though O&M expenses for 2014-19 based on the project capital cost as on the cut-off date (31.3.2017) were worked out and allowed in Commission’s order dated 5.2.2020 in Petition No. 308/GT/2018, the calculated O&M expenses for 2013-14 in the said order were not considered while disposing of Petition No.279/GT/2018. According to the Petitioner, since the orders in both the petitions were issued on 5.2.2020, the tariff for the year 2013-14 in Petition No. 279/GT/2018 should have been revised considering the O&M expenses calculated for 2013-14 in Petition No. 308/GT/2018.

14. The COD of the generating station is 19.5.2013 and hence the cut-off date is 31.3.2017. In terms of Regulation 19(f)(v) of the 2009 Tariff Regulations, the O&M expenses allowable to the generating station is linked to the capital cost as on cut-off date of the generating station (i.e. 31.3.2017). Since the capital cost of the project



as on 31.3.2014 was only available in Petition No.279/GT/2018, the same was considered for working out the O&M expenses for 2013-14 in order dated 5.2.2020. However, it is noticed that in order dated 5.2.2020 in Petition No. 308/GT/2018, the O&M expenses for the period 2014-19 has been computed and allowed based on the capital cost as on the cut-off date of the project (i.e. 31.3.2017). The relevant portion of the order is extracted hereunder:

*“80.....The Petitioner has submitted that an amount of ₹375.00 lakh has been capitalized towards Rehabilitation & Resettlement (R&R) cost till 31.3.2014. This has been considered for the purpose of calculation of O&M expenses for the period 2014-19. The Petitioner is however directed to furnish the details of the R&R cost capitalized up to the cut-off date, at the time of truing up exercise. Accordingly, O&M expenses allowed is as under: Accordingly, O&M expenses allowed is as under:*

<i>(₹ in lakh)</i>	
<i>Total capital expenditure up to cut-off date i.e. 31.3.2017</i>	<i>226868.05</i>
<i>R &amp; R expenditure as on 31.3.2014</i>	<i>375.00</i>
<i>Capital cost considered for O&amp;M expenses (excluding R&amp;R expenses)</i>	<i>226493.05</i>
<i>O&amp;M Expenses @2% p.a. for first year i.e. 2013-14</i>	<i>4529.86</i>

*81. The average O&M expenses of ₹4529.86 lakh in 2013-14 is escalated @ 6.64% per annum to arrive at the O&M expenses in the respective years of the tariff period 2014-19. Accordingly, O & M expenses have been worked out and allowed as under:*

<i>(₹ in lakh)</i>				
<i>2014-15</i>	<i>2015-16</i>	<i>2016-17</i>	<i>2017-18</i>	<i>2018-19</i>
<i>4830.64</i>	<i>5151.40</i>	<i>5493.45</i>	<i>5858.22</i>	<i>6247.20</i>

”

15. It is pertinent to mention that the capital cost allowed upto the cut-off date (31.3.2017) as above is subject to revision based on truing-up exercise. Also, the Petitioner has been directed by the said order to furnish the details of the R&R cost capitalized up to the cut-off date at the time of truing up exercise. Considering the fact that the trued-up capital cost of the project will be available at the time of truing-up of tariff for 2014-19, there is no reason to revise the O&M expenses and/or tariff for 2013-14 as allowed vide order dated 5.2.2020 (in Petition No. 279/GT/2018) in review. We, however, grant liberty to the Petitioner to raise this issue at the time



of truing-up of tariff of the generating station for the period 2014-19 for consideration of the Commission. The review on this ground is disposed of in terms of the above.

16. Accordingly, Petition No. 11/RP/2020 in Petition No. 279/GT/2018 is disposed of at the admission stage.

**Sd/-**  
**(Arun Goyal)**  
**Member**

**Sd/-**  
**(I.S. Jha)**  
**Member**

**Sd/-**  
**(P.K. Pujari)**  
**Chairperson**

