

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 22/RP/2024**

**in**

**Petition No. 96/GT/2020**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri Ramesh Babu V., Member**

**Shri Harish Dudani, Member**

**Date of Order: 24<sup>th</sup> February, 2025**

**In the matter of:**

Review of the order dated 31.3.2024 in Petition No. 96/GT/2020 in the matter of revision of tariff for the period 2014-19 and determination of tariff for the period 2019-24 in respect of Parbati-III Hydroelectric Power Station (520 MW).

**And**

**In the matter of:**

Punjab State Power Corporation Limited  
The Mall, Near Kali Badi Mandir,  
Patiala - 147 001 (Punjab)

**...Review Petitioner**

**Vs**

1. NHPC Limited  
NHPC Office Complex, Sector-33,  
Faridabad (Haryana)- 121003
2. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector – 6,  
Panchkula-134 109 (Haryana).
3. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi-110 019.
4. BSES Yamuna Power Limited,  
Shakti Kiran Building,  
Karkardooma, Delhi- 110 072
5. Tata Power Delhi Distribution Limited  
33 kV Sub-station Building, Hudson Lane,  
Kingsway Camp, New Delhi-110 009.



6. Power Development Department,  
New Secretariat, Jammu- 180 001 (J&K)
7. Uttar Pradesh Power Corporation Limited,  
Shakti Bhavan, 14, Ashok Marg,  
Lucknow - 226 001 (Uttar Pradesh).
8. Ajmer Vidyut Vitaran Nigam Limited,  
Old Powerhouse, Hatthi Bhatta,  
Jaipur Road, Ajmer - 305 001 (Rajasthan)
9. Jaipur Vidyut Vitaran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur - 302 005
10. Jodhpur Vidyut Vitaran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur - 342 003 (Rajasthan).
11. Uttaranchal Power Corporation Limited,  
Urja Bhawan, Kanwali Road,  
Dehradun – 248 001 (Uttarakhand).
12. Engineering Department,  
1st floor, UT Secretariat, Sector 9-D,  
Chandigarh – 160 009.
13. Himachal Pradesh State Electricity Board,  
Vidyut Bhawan, Kumar House,  
Shimla - 171 004 (Himachal Pradesh)

...Respondents

### **Parties Present**

Shri Anand Ganesan, Advocate, PSPCL  
Ms. Swapna Seshadri, Advocate, PSPCL PSPL  
Shri Amal Nair, Advocate, PSPCL  
Ms. Shivani Verma, Advocate, PSPCL  
Ms. Kritika Khanna, Advocate, PSPCL  
Shri Rajiv Dwivedi, Advocate, NHPC  
Shri Sachin Dubey, Advocate, BRPL  
Shri Mohit Kumar Mudgal, Advocate, BRPL

### **ORDER**

Petition No. 96/GT/2020 was filed by NHPC Limited (Respondent No.1 herein) for  
truing-up of tariff of Parbati-III Hydroelectric Power Station (520 MW) (in short, “the



generating station”) for the period 2014-19, in terms of Regulation 8(1) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short “the 2014 Tariff Regulations”) and for the determination of tariff of the generating station for the period 2019-24, in accordance with the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short “the 2019 Tariff Regulations”) and the Commission vide its order dated 31.3.2024 (in short, the impugned order’), disposed of the same. Aggrieved by the said order, the Review Petitioner has filed the Review Petition seeking the review of the impugned order on the following grounds:

- (A) The calculation of incentive on the capacity charges for NAPAF above 90%, on an annual basis, is contrary to the findings of the Commission in orders dated 25.6.2014, 5.4.2019, and 23.4.2019 in Petition Nos 228/GT/2013, 7/GT/2019 and 6/GT/2017, respectively; and*
- (B) Incorrect methodology adopted by Respondent NHPC for the computation of capacity charges in the energy bills.*

### **Hearing dated 8.8.2024**

2. During the hearing on admission, the learned counsel for the Review Petitioner made detailed oral submissions on the above issues and also prayed that the delay of 14 days in filing the Review Petition may be condoned for the reasons mentioned in the review petition. Accordingly, the Commission ordered notice to the Respondents with directions to file their replies, including on the prayer for condonation of the delay. None of the Respondents have filed replies on the prayer for condonation of delay.

### **Condonation of delay**

3. Before proceeding to examine the reliefs sought by the Review Petitioner, as in para 1 above, we deal with the submissions of the Review Petitioner for condonation of delay in filing this Review Petition. As stated earlier, Petition No. 96/GT/2020 was disposed of



vide Commission's order dated 31.3.2024 and the Review Petitioner had knowledge of the same on the said day. The due date for filing the review petition in terms of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 2023, is 40 days from the date of the order, i.e., by 10.5.2024. However, the Review Petitioner filed the Review Petition on 24.5.2024, thereby causing a delay of 14 days. With regard to condonation of delay, the Review Petitioner has submitted that it had sought an opinion from its Advocates on the future course of action as to whether to seek for a review of the order or to challenge the same in an appeal, which took some time. It has also been submitted that the process of examining the impact of the order under review and taking necessary departmental approvals for filing the present review petition took some time. Accordingly, it has been submitted that the delay in filing this Review Petition is neither willful nor intentional. None of the Respondents have made submissions on the prayer of the Review Petitioner for the condonation of delay.

4. We have examined the submissions. Admittedly, in the present case, there has been a delay of 14 days in filing this Review Petition. We note that the reasons for the delay in filing the Review Petition, as furnished by the Review Petitioner, is on account of seeking opinion from the Advocate on the future course of action, whether to file an appeal or review against the impugned order and for obtaining the department approvals for filing the Review Petition. In a similar case (WBSETCL v CERC & ors), the APTEL while examining the delay of 53 days in filing the Review Petition therein, vide its judgment dated 15.12.2023 held as under:

*“10. We are constrained to note here that the primary function of the courts/tribunals is to do justice and they must endeavor to decide the matters on merits while adopting a liberal approach towards condoning the delay on sufficient cause. They must avoid adopting pedantic and technical approach, thereby legalizing injustice. We find it apposite to refer*



*to the following observations of the Hon'ble Supreme Court made way back in 1998 in the case titled N. Balakrishnan versus M. Krishnamurthy (1998) 7 SCC 123:*

*xxx*

*11. In the instant case, it cannot be said that there was any gross negligence or deliberate inaction or lack of bonafide on the part of the appellant in filing the review petition. Even though it had initially expected the 3rd Respondent to seek review of the order dated 29.01.2018 of the Commission and accordingly sent a letter dated 12.02.2018 in this regard to the said respondent yet upon refusal of the said respondent to do so, it immediately approached its Board and initiated the process for assailing the said order. In our opinion, the explanation put forward by the appellant for not having been able to file the review petition within the stipulated time appears to be plausible as well as acceptable and the Commission has erred in not accepting the same”*

5. From the submissions of the Review Petitioner, it is difficult to say that the Review Petitioner remained negligent in commencing the process of assailing the impugned order. It cannot, therefore, be held that there was any gross negligence or a deliberate inaction or lack of bonafide on the part of the Review Petitioner in filing the review petition. In the above background, the delay of 14 days in filing the review petition is condoned.

#### **Hearing dated 26.9.2024**

6. During the hearing, the learned counsel for the Review Petitioner made detailed oral arguments in support of its prayers for review of the impugned order dated 31.3.2024 on the above grounds. The learned counsel for the Respondent, NHPC, while pointing out that the Review Petition is an appeal in disguise and therefore not maintainable, submitted that the reply filed by it, vide affidavit dated 4.9.2024, may be considered, while passing the order in the Review Petition. The learned counsel for Respondent BRPL while supporting the review petition, sought time to file its reply in the matter. Accordingly, the Commission, based on the consent of the parties, reserved its order in the matter after permitting the Respondent to file its reply. While the Review petitioner has filed its rejoinder (to the reply of the Respondent NHPC) vide affidavit dated 18.9.2024, the Respondent BRPL vide affidavit dated 10.10.2024 has filed its reply.



7. Accordingly, based on the submissions of the parties and the documents on record, we proceed to examine the issues raised by the Review Petitioner, in the subsequent paragraphs:

**(A) Incentive on NAPAF above 90%**

***Submissions of the Review Petitioner***

8. The Review Petitioner, in the Review Petition, has submitted the following:

(a) The Commission, in the impugned order, erroneously held that the calculation of incentive on capacity charges shall be considered for NAPAF above 90% on an annual basis. The said finding is contrary to the Commission orders dated 25.6.2014, 5.4.2019, and 23.4.2019 in Petition Nos.228/GT/2013, 7/GT/2019, and 6/GT/2017, respectively, wherein, it was held that no incentive on account of higher PAF is to be allowed to Parbati III HEP (this generating station) till all the units of the upstream Parbati-II HEP are commissioned. Since Parbati-II HEP is not commissioned till date, or at least till the passing of the impugned order, the Commission has erroneously permitted the incentive on capacity charges for NAPAF above 90%.

(b) The Commission has erred in not considering the discrepancies pointed out by the Review Petitioner in the methodology adopted by the Respondent NHPC for the computation of the capacity charges, which is in direct contravention of the orders of the Commission.

(c) The Commission, in the impugned order, erroneously held that the submissions of the Review Petitioner with respect to the discrepancies in the computation methodology, if accepted, would amount to a review of the said norms, which is not permissible in the tariff determination proceedings. The Review Petitioner has not challenged the fixation of NAPAF @ 68% by the Commission, but only the methodology adopted by the Respondent NHPC for the computation of the capacity charges, which is contrary to the provisions of Tariff Regulations, wherein, the computation of capacity charges is based on the Monthly Plant Availability Factor (PAFM) instead of the cumulative Plant Availability Factor.

(d) The Petitioner has submitted that NHPC has adopted an erroneous methodology for the computation of capacity charges in the provisional and supplementary energy bills. The methodology so adopted is in direct contravention to the orders of this Commission, capping the NAPAF to 68%.



(e) The capacity charges payable by the Review Petitioner to the Respondent NHPC are governed by the provisions of the 2014 Tariff Regulations, and the 2019 Tariff Regulations.

(f) Regulation 31 of the Tariff Regulations, 2014, deals with the computation and payment of capacity and energy charges for hydro generating stations. The relevant extract of Regulation 31 in this regard is as under:

*(2) The capacity charge (inclusive of incentive) payable to a hydro generating station for a calendar month shall be :*

*AFC x 0.5 x NDM / NDY x (PAFM / NAPAF) (in Rupees)*

*Where,*

*AFC = Annual fixed cost specified for the year, in Rupees*

*NAPAF = Normative plant availability factor in percentage*

*NDM = Number of days in the month*

*NDY = Number of days in the year*

*PAFM = Plant availability factor achieved during the month, in percentage*

(g) An identical formula has been provided for in Regulation 44 of the Tariff Regulations, 2019. The methodology adopted by NHPC for computing the monthly capacity charges is erroneous on the two counts, which have been explained as under:

(h) Incorrectly taking into account PAFM at actuals for computing monthly capacity charges for certain months instead of capping the same at 68%

(i) It is submitted that in clear contravention to the orders of the Commission in Petition Nos. 228/GT/2013, 7/GT/2017, and 6/GT/2017, NHPC has calculated the monthly capacity charges in the energy bills by considering the PAFM for April to October for FY 2014-19 on an actual basis without taking into account the capping of PAFM by this Hon'ble Commission at 68%. The incorrect approach as taken by the Respondent NHPC is evidenced in the table as under:

FY	Month	PAFM considered by NHPC on actual basis	PAFM to be considered
2015-16	June 2015	70.71 %	68%
	Sept 2015	72.045 %	68%
2016-17	July 2016	76.795%	68%
	Aug 2016	87.202%	68%
	Sept 2016	94.818%	68%
2017-18	May 2017	91.888%	68%
	June 2017	98.546%	68%



(j) From the above table, it is clear that the Respondent NHPC has circumvented the orders of the Commission by considering the PAFM at actuals for certain months. It has resorted to a self-serving interpretation of the Commission's orders to claim that PAFM was, in fact, not capped for the months of April to October. The Commission, in its orders, had clearly mentioned that no incentive on account of higher PAF has been allowed to Parbati-III HEP till such time Parbati-II HEP is commissioned.

(k) Respondent NHPC, thus, while computing the capacity charges ought to cap the PAFM to 68% during the months where it exceeds the same. By not capping the PAFM to 68%, the Respondent has incorrectly inflated the numerator forming part of the formula for calculating the capacity charges as per Regulation 31 and Regulation 44 of the 2014 Tariff Regulations and the 2019 Tariff Regulations, respectively. Ratifying the incorrect methodology in the impugned order is an error apparent on the face of the record.

(l) Respondent NHPC has cumulated the PAFM while cumulating the capacity charges for the month of March for the years 2014-19, 2019-20 and 2020-21. The rationale given by the Respondent vide its letters dated 24.7.2020, 16.9.2020, and 4.11.2020 is that the same is done in order to compare the actual PAF with NAPAF for billing of capacity charges for the year-end month of March. This reasoning of the Respondent is absurd inasmuch as the same cannot be the intention of the Commission when the entire effort was not to incentivize the Respondent.

(m) Respondent NHPC's computation is in direct contravention to the formulae laid down to calculate the capacity charges by way of the 2014 Tariff Regulations and the 2019 Tariff Regulations. The formula for computing the capacity charges as per the Regulations is  $AFC \times 0.5 \times NDM/NDY \times (PAFM/NAPAF)$

(n) PAFM, in the same Regulation, is defined as "Plant availability factor achieved during the month, in percentage." From a combined reading of the formula and the definition of PAFM, it is amply clear that the PAFM for a particular month has to be the PAF achieved during that particular month. Neither the formula as specified in the 2014 Tariff Regulations and the 2019 Tariff Regulations nor the various orders of the Commission make out a special case for cumulating the PAFM for the month of March in order to compare the actual PAF with NAPAF.

(o) In view of the above, the methodology considered by the Respondent NHPC is erroneous on account of the same being in contravention of the previous orders of the Commission. The same has not been considered by the Commission while passing the order under review. This is an error apparent and ought to be reviewed by the Commission.





### **Reply of the Respondent BRPL**

9. The Respondent BRPL has, in its reply affidavit mainly raised contentions, similar to the submissions of the Review Petitioner, as above.

### **Reply of the Respondent NHPC**

10. The Respondent NHPC, in its reply affidavit, has submitted the following:

(a) The Commission has prudentially observed that due to reduced inflows on account of the non-commissioning of the upstream Parbati-II HEP, the generating station would be able to provide maximum available peaking support for three hours in two slots of 1.5 hours each (morning & evening peak). Accordingly, the Commission, vide its order dated 25.6.2014 in Petition No. 228/GT/2013, had worked out the NAPAF of 68% till the commissioning of the upstream Parbati-II HEP. On the same lines, the Commission had approved the NAPAF of 68% vide its orders dated 5.4.2019 and 23.4.2019 for the generating station till the commissioning of the Parbati-II HEP.

(b) In Petition No. 96/GT/2020 for truing up the tariff for the period 2014-19 and for the determination of tariff for 2019-24 for this generating station, the Respondent had submitted the actual PAF achieved during the period 2014-19 for consideration of the Commission vide additional information dated 27.2.2022 as under:

2014-15	2015-16	2016-17	2017-18	2018-19
33.88	42.18	53.49	62.70	51.76

(c) As submitted above, this generating station did not even achieve the normative PAF of 68% during the period of 5 years. It is based on the submissions of this Respondent and also the Review Petitioner, the Commission has passed the impugned order.

(d) The actual PAF data achieved by this generating station for the period from 2017-18 to 2022-23 is in compliance with the direction of the Commission while finalizing the 2024 Tariff Regulations. Based on the actual PAF data and the earlier decisions, the Commission had allowed an NAPAF of 68% for the period 2014-19 and an NAPAF of 43% for the period 2019-24 in the impugned order dated 31.3.2024. The actual annual PAF achieved by the station during the period 2014-19 is less than the NAPAF of 68% determined by the Commission in its previous orders. Therefore, no incentive on capacity charge has been charged by the Respondent during the period 2014-19.



(e)The approach suggested by the Review Petitioner, which involves restricting the PAFM to 68% for calculating NAPAF, is not accurate and is contradictory to the Commission's order dated 25.6.2014. Hence, the Commission very prudentially did not use this approach while determining the NAPAF of 68%. Further, the Commission, while determining the NAPAF of 68%, has considered the inflow of all 12 months and computed different PAF values from 33% in the month of February to 106% in the month of July.

(f) Respondent NHPC, while calculating the capacity charges has adopted the methodology of the Commission. As per the extant Tariff Regulations, the Respondent NHPC is calculating the monthly capacity charges with the actual PAF with the capping of 68% as per the order of the Commission. If such a methodology is not adopted, there will be under recovery of capacity charges. The approach suggested by the Review Petitioner, i.e., restricting PAFM to 68%, is in contravention of the methodology approved by the Commission.

(g)In the order dated 25.6.2014, it is stated that this generating station is a pondage type scheme, providing peaking support to the grid when operated in tandem with the upstream Parbati-II HEP. The submission of the Review Petitioner, that both the projects were to be commissioned in tandem is incorrect. It is the basic right of the Respondent to submit substantial information before the Commission till the final disposal of the petition. The Commission very prudently analyzed the entire information submitted by the Respondent and has passed the impugned order.

(h)Accordingly, there is no error apparent on the face of the impugned order and therefore, the Review Petition is bad in the eyes of the law and may be dismissed with exemplary costs.

### **Rejoinder of the Review Petitioner**

11. In response to the above, the Review Petitioner vide its rejoinder affidavit, clarified as under:

(a) Respondent NHPC has merely paraphrased the order dated 25.6.2014 in Petition No. 228/GT/2013 wherein, till the commissioning of upstream Parbati-II HEP, the NAPAF was fixed at 68%. Respondent has, however, failed to point out that the Commission refused its proposal to operate this generating station as a RoR project till such time the upstream Parbati-II HEP was commissioned. Therefore, the Respondent's claim of NAPAF of 31% was rejected, and instead, NAPAF of 68% was fixed till the commissioning of Parbati-II HEP.



- (b) The Commission, in para 22 of the order dated 25.6.2014, clarified that no incentive on account of higher PAF is to be allowed to this generating station till the commercial operation of all the units of Parbati-II HEP. There is no change in the factual position. Even as of the date of the filing of the rejoinder, the Parbati-II HEP remains to be commissioned. Therefore, in the order under review, the Commission has erred in allowing the NAPAF above 90%.
- (c) The Respondent, in its additional affidavit dated 27.2.2024, traversed beyond the purview of the directions of the Commission. The Commission did not seek any information from the Respondent on the issue of NAPAF. However, the fact that any incentive on the capacity charges was claimed by the Respondent during the period 2014-19 is immaterial to the issue under review.
- (d) It is denied that restricting PAFM to 68% for the purposes of NAPAF is against the order dated 25.6.2014. On the contrary, as pointed out above, the Commission has restricted the NAPAF to 68%. In view of this, the fixing of NAPAF at 68% cannot be frustrated by the Respondent by taking into account the actual PAFM. It is denied that the Respondent while calculating the capacity charges, has followed the methodology of this Commission. However, the Respondent has incorrectly taken into account the PAFM at actuals for computing the monthly capacity charges for certain months instead of capping the same at 68%. It is denied that NHPC is only calculating monthly capacity charges at the actual PAF. It is denied that the correct methodology, as pointed out by PSPCL, is in contravention of the Commission's earlier orders.
- (e) The issue is not whether the projects were to be commissioned in tandem but rather whether the incentive of capacity charges could be awarded beyond the PAFM of 90%. The submission of the Respondent NHPC is incorrect for the reason that the Commission, in its order dated 25.6.2014, has specifically noted that on account of non-commissioning of the upstream Parbati-II HEP, this generating station could not be utilised completely. Therefore, it is evident that the two projects were to be commissioned in tandem. Further, it has also been stated that the actual PAF achieved by the Respondent NHPC is immaterial to the impugned order.
- (f) By order dated 23.11.2021 in Petition No. 153/MP/2021, the Review Petitioner has been given the liberty to approach the Commission after adjudication of the tariff petition filed by the Respondent. Any order passed in the present review petition would also have its effect on Petition No. 153/MP/2021; however, the pendency of Petition No. 153/MP/2021 does not in any manner come in the way of adjudication of the present Review Petition.
- (g) In view of the above submissions, the Review Petition may be allowed.



## **Analysis and Decision**

12. The submissions have been examined. As regards the NAPAF of the generating station, the Respondent herein, in Petition No. 228/GT/2013 filed by it for approval of tariff of the generating station for the period from COD till 31.3.2014, had claimed the NAPAF of 31% for this project, while operating it as an ROR scheme, prior to the commissioning of the upstream Parbati-II HEP. The Commission, based on the '10-daily Design Energy' approved by CEA along with the provision of providing 3 hours of daily peaking (in two slots of morning & evening each for 1.5 hours), had worked out and allowed the NAPAF of 68% till the commissioning of upstream Parbati-II HEP vide its order dated 25.6.2014. The Commission, in the said order, clarified that no incentive on account of a higher PAF is allowed for this generating station till the commercial operation of all the units of the upstream Parbati-II HEP. This decision was retained by the Commission in its subsequent orders dated 5.4.2019 and 23.4.2019 in Petition No. 7/GT/2019 and 6/GT/2017, respectively. In the impugned order dated 31.3.2024, the Commission, with the same intent, did not allow the incentive to this generating station till achieving the PAF of 90% (which was only possible after the commissioning of upstream Parbati-II HEP). Accordingly, the intent of the Commission was the same, i.e., to incentivize the generating company only after the commissioning of the upstream project. Accordingly, we do not find any error apparent on the face of the impugned order warranting review.

### **Incorrect methodology adopted by Respondent NHPC for the computation of capacity charges in the energy bills.**

13. With regard to the submissions of the Review Petitioner that the Respondent NHPC adopted an incorrect methodology for the computation of the capacity charges in the energy bills, we note that similar issues were raised by the Review Petitioner in the



original petition and mentioned in para 77 of the impugned order and the same was considered and disposed of vide para 78 of the impugned order. The Review Petitioner, in our view, has sought to reargue the case on merits, which cannot be permitted in review. Accordingly, we find no error apparent on the face of the impugned order warranting review of the impugned order on this count. Therefore, the review on this count is rejected.

14. Petition No. 22/RP/2024 in Petition No. 96/GT/2020 stands disposed of in terms of the above.

**Sd/-**  
**(Harish Dudani)**  
**Member**

**Sd/-**  
**(Ramesh Babu V)**  
**Member**

**Sd/-**  
**(Jishnu Barua)**  
**Chairperson**

