

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 31/MP/2024**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri Ramesh Babu, Member**

**Shri Harish Dudani, Member**

**Date of Order: 3<sup>rd</sup> March, 2025**

**In the matter of:**

Petition under Section 79(1)(f) and 79(1)(b) of the Electricity Act, 2003, in connection with the disputes arising between the Petitioner and Respondent vide Respondents letter dated 27.9.2023 regarding applicable rebate under Regulation 58 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019.

**And**

**In the matter of:**

Tata Power Delhi Distribution Limited  
NDPL House, Hudson Lines,  
Kingsway Camp, Delhi – 110 009

**...Petitioner**

Vs

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

**...Respondent**

**Parties Present:**

Shri Buddy Ranganathan, Advocate, TPDDL

Shri Shivam Sinha, Advocate, TPDDL

Ms. Priya Goyal, Advocate, TPDDL

Shri Ravi Nair, Advocate, TPDDL

Ms. Shefali Tripathi, Advocate, TPDDL

Shri Anurag Bansal, TPDDL

Ms. Shefali Sobti, TPDDL

Ms. Swapna Seshadri, Advocate, NHPC

Shri Utkarsh Singh, Advocate, NHPC

Ms. Sneha, Advocate, NHPC

**ORDER**

The present Petition has been filed by the Petitioner, Tata Power Delhi Distribution Limited (in short 'TPDDL') under Section 79(1)(f) and Section 79(1)(b) of the Electricity Act, 2003 (the Act) for the dispute which has arisen between the Petitioner and Respondent NHPC, in the light of NHPC letter dated 27.9.2023 altering the practice for



allowing rebate on payments made by the beneficiary discoms towards revised bills raised by NHPC to be paid in instalments for the annual fixed cost, which is not in consonance with the manner of the rebate as stipulated under Section 58m of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short 'the 2019 Tariff Regulations'). Accordingly, the Petitioner, in the petition, has sought the following relief(s):

- (a) Admit the present Petition.*
- (b) Direct that the Petitioner is entitled for rebate provided under Regulation 58 of the 2019 Tariff Regulations on the date of each instalment becoming payable in accordance with Regulation 12 and 13 of the 2019 Tariff Regulations as well as other Regulations and orders issued by this Hon'ble Commission from time to time.*
- (c) Allow recovery/ adjustment of the rebate not allowed to the Petitioner and paid under protest, post issuance of Letter dated 27.09.2023, along with carrying cost.*
- (d) Pass such other and further order(s) that this Hon'ble Commission may feel in the interest of justice and the facts and circumstances of the case.*
- (e) Condone any error/ omission and to grant an opportunity to the Petitioner to rectify the same;*
- (f) Permit the Petitioner to make such further submission(s), addition(s) and alternation(s) to this Petition as may be necessary from time to time.*

## **Submissions of TPDDL**

2. TPDDL, in support of the above prayers, has submitted the following:

- (a) The Commission on 19.1.2009 notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (in short 'the 2009 Tariff Regulations') effective from 1.4.2009, for a period of five years (31.3.2014). Regulation 6(6) of the 2009 Tariff Regulations provided for the recovery or refund of the amount under-recovered or over-recovered after truing-up of the capital expenditure and tariff in six monthly instalments. Regulation 34 of the 2009 Tariff Regulations provided for rebates allowed for the payment of bills of the generating company and the transmission licensee.
- (b) The Commission, on 21.2.2014, notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (in short 'the 2014 Tariff Regulations') effective from 1.4.2014, which remained in force for a period of five years till 31.3.2019. Regulation 8(13) of the notified 2014 Tariff Regulations provided for recovery or refund of the amount under-recovered or over-recovered after truing-up of capital expenditure and tariff in six equal monthly instalments. Regulation 44 of the 2014 Tariff Regulations provided for the provision of a rebate for the payment of bills of the generating company and the transmission licensee.



- (c) The Commission, on 7.3.2019, notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short, 'the 2019 Tariff Regulations') effective from 1.4.2019, which remained in force for a period of five years till 31.3.2024, unless reviewed earlier or extended further by the Commission. Regulations 12 and 13 of the 2019 Tariff Regulations provide for the truing-up of tariffs for the periods 2014-19 and 2019-24, respectively. It is provided that the truing-up of tariff or the period 2014-19 shall be in accordance with the provisions of the erstwhile mentioned Regulation 8 of the 2014 Tariff Regulations, and further, Regulation 13(4) provides that after truing-up for the period 2019-24, if the tariff already recovered exceeds or fall short of the tariff approved by this Commission, the excess or the shortfall amount shall be refunded or recovered in six equal monthly instalments. Regulation 58 of the 2019 Tariff Regulations provides for the grant of rebate for the payment of bills of the generating company and the transmission licensee.
- (d) Thus, it is clear from the plain reading of the Tariff Regulations framed by the Commission, from time to time, that a procurer of electricity is entitled to rebate for prompt payment and, in case of any delay, is liable to be subjected to surcharge for the late payment. The entitlement to rebate, under the Tariff Regulations, ends with the lapse of a 30-day period (referred to in the tariff regulations as the period of one month). Crucially, the entitlement to rebate is linked with the period on which payment is made.
- (e) In terms of the tariff regulations, the generating companies, including the Respondent NHPC, have been raising bills for the recovery of the shortfall amount as per truing up orders issued by this Commission from time to time. In accordance with the various applicable regulations mentioned above, the due date of the said bills is divided into six equal monthly instalments if the tariff already recovered exceeds or falls short of the tariff approved by this Commission. The same has been reiterated by this Commission in its various tariff orders passed in respect of the projects of the Respondent, so that the beneficiary discoms are not burdened.
- (f) Various generating companies, including the Respondent herein, have been allowing rebates in the payment of bills, as per the due monthly instalments, in accordance with the regulations of this Commission, from time to time. NHPC has also been allowing rebates on instalments, till 30.9.2023. In fact, the TPDDL has received a rebate amounting to Rs 22 lakhs till 30.9.2023.
- (g) Dehors the express regulations of this Commission as well as the settled past practices and understanding between the parties, NHPC letter dated 27.9.2023 unilaterally altered the practice for allowing rebate on payments made by the beneficiary discoms towards bills raised by NHPC for annual fixed charges. NHPC in its letter dated 27.9.2023, stated that henceforth,



payment received in respect of the bills raised against the annual fixed charges related orders issued by this Commission, wherein payment is to be recovered in six (6) equal instalments, rebate shall be allowed as per its alleged interpretation of Regulation 58 of the 2019 Tariff Regulations, i.e., 1.5% on payments made within 5 days and 1% when payments are made on any day after 5 days within a period of 30 days from the presentation of the bill.

- (h) NHPC's revised stance ignores the regulatory intent and the established practices, effectively penalizing the beneficiaries opting for the instalment mechanism. This approach contradicts the example provided in NHPC's letter dated 27.9.2023, which acknowledged that payments were to be made in six equal instalments. NHPC was informed vide letter dated 12.10.2023, that the revised approach was unlawful and contrary to the regulations. It was emphasized that bills become payable only on the instalment dates, and NHPC's interpretation undermines the purpose of the six-instalment mechanism.
- (i) Payments were made post 1.10.2023, under protest, and TPDDL reserved its right to seek retrospective benefits with interest. Despite the clarifications provided, NHPC, vide letter dated 27.10.2023, has reiterated its stand.
- (j) Regulation 58 of the 2019 Tariff Regulations must be interpreted in the light of its objective and context. The provision for six equal monthly instalments, as outlined in the Regulations, aims to avoid undue financial burden on the beneficiaries, ensuring that the instalments are treated as a separate payment instances, across six months rather than as a lump sum. Regulation 58 cannot be read in isolation but must be harmonized with the other provisions of the 2019 Tariff Regulations, particularly Regulations 12 and 13. The rebate should apply to instalments as they become payable, aligning with the regulatory framework and past practices.
- (k) In *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd* (1987) 1 SCC 424, it was held that the statutory provisions must be interpreted considering their text and context. The language of the Regulation and intent must be read cohesively to avoid rendering any provision redundant.
- (l) NHPC's revised interpretation, as communicated vide its letter dated 27.9.2023, is arbitrary and contrary to the past practices. NHPC's unilateral decision to alter the rebate practices disregards the regulatory framework and contradicts the established understanding between the parties.
- (m) The interpretation advanced by NHPC creates inconsistencies within the 2019 Tariff Regulations, specifically regarding the late payment surcharge



provision under Regulation 59. LPS is applied only for overdue instalments and not to payments delayed beyond the bill presentation date.

- (n) NHPC's approach undermines the regulatory objective of ensuring fair treatment for the beneficiaries and could lead to unjust enrichment by allowing NHPC to claim rebates prematurely. The revised interpretation negates the benefits of instalments, defeating the regulatory intent.
- (o) The Delhi Electricity Regulatory Commission (DERC) considers the rebate on all instalments, while determining the power procurement cost in the tariff order. Therefore, NHPC's revised practice causes a financial burden on the Petitioner, who will bear the consequences of denied rebates.
- (p) NHPC's position is inconsistent with tariff orders issued by the Commission, which stipulate that refunds or recoveries due to tariff adjustments are to be made in instalments. The revised interpretation by NHPC conflicts with these orders and the established regulatory framework.

### **Hearing dated 6.3.2024**

3. The Petition was admitted on 6.3.2024, and notice was ordered on the Respondent, with directions to complete the pleadings in the matter. In compliance thereof, NHPC filed its reply vide affidavit dated 18.4.2024, and a rejoinder was filed by TPDDL vide its affidavit dated 29.5.2024.

### **Reply of NHPC**

4. The Respondent NHPC, vide its reply affidavit dated 18.4.2024, has mainly submitted the following:

a. Regulation 58 of the 2019 Tariff Regulations, which governs rebates, is explicit and must be interpreted literally. It is a stand-alone provision and should be read/ interpreted independently from the other provisions of the 2019 Tariff Regulations. The plain language indicates that rebates are applicable only for payments made within five days or within thirty days from the presentation of a bill. Reliance is placed on the Statement of Object and Reasons (SOR) issued to Regulation 58 of the 2019 Tariff Regulations and the legal maxim, "Verba legis non est decedenda", whereby the words of a statute are not to be departed from unless ambiguity exists.

b. Rebates are not intended for payments made in instalments under Regulation 13(4) of the 2019 Tariff Regulations. This provision allows for instalments solely to reduce the tariff burden on beneficiaries and does not modify the application of Regulation 58. Reference is made to *M/s Hiralal*



*Rattanlal v. State of U.P. (1973) 1 SCC 216*, where the Hon'ble Supreme Court underscored the principle of adhering to clear statutory language without invoking external interpretations unless ambiguity exists.

c. Regulation 13(4) of the 2019 Tariff Regulations, which deals with the truing-up mechanism and Regulation 58 governs, operate in different spheres. No statutory overlap exists, and any harmonious construction suggested by TPPCL is unwarranted. In *State of H.P. v. Pawan Kumar (2005) 4 SCC 350*, the Hon'ble Supreme Court highlighted the principle that provisions with distinct purposes must be construed independently.

d. The rebate mechanism under Regulation 58 compensates for the time value of money, encouraging prompt payments. Payments under instalments, by their very nature, undermine this principle, making rebates inappropriate. This reasoning aligns with *Kannailal Sur v. Paramminidhi Sadhu Khan AIR 1957 SC 905*, which stated that statutory provisions must adhere to their intended financial and operational rationale.

e. Rebate applies only to consolidated bills paid promptly, ensuring timely recovery of costs without financial strain. Instalment payments inherently delay cost recovery, further justifying the exclusion of rebates for such payments. The judgment in *U.P. SEB v. Shiv Mohan Singh (2004) 8 SCC 402* supports the stance that statutory incentives like rebates are confined to explicit conditions set forth in the regulations.

f. Regulatory provisions must be interpreted in their plain and ordinary sense unless ambiguity necessitates further interpretation (Reliance placed on judgments of the Hon'ble Supreme Court in *Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. (1987) 1 SCC 424* and *Bengal Immunity Co. v. State of Bihar AIR 1955 SC 661*).

g. A beneficiary has the option to either pay the entire bill in one lump sum or choose instalment payments under Regulation 13(4) of the 2019 Tariff Regulations. This provision does not mandate the use of instalments; it is an optional choice for the beneficiary when the differential tariff is not required to be paid immediately in full. Therefore, the beneficiary is not obligated to opt for instalments, as the payment structure is flexible to accommodate different financial situations.

h. NHPC has adhered to the provisions of the 2019 Tariff Regulations regarding the issuance of bills and the provision of rebates. The changes in rebate practices, outlined in NHPC's letter dated 27.9.2023, are consistent with the provisions of Regulation 13(4) and Regulation 58 of the 2019 Tariff Regulations. These provisions were made after a comprehensive review of the rebate provisions to ensure compliance with the regulations.



i. Regulation 13(4) of the 2019 Tariff Regulations allows for payment of revised tariffs in instalments after the truing-up process, with the annual fixed charges revision bills being raised on the total amount due, not on individual instalments. The presentation date for annual fixed charge revision supplementary bills is based on the total bill raised rather than the dates of instalment payments.

j. The provision for instalment payments was introduced to ease the financial burden on beneficiaries. However, it was noted that payments in instalments delay the recovery of tariffs and incur additional carrying costs for NHPC. Although rebates have been provided, NHPC had already made additional payments on account of the rebate, which was deemed unjustified when payments were made in instalments.

k. The rebate benefit granted to the Petitioner for the period before the letter dated 27.10.2023 remains unaffected. It was emphasized that the fact that NHPC did not strictly adhere to the earlier interpretation of the regulations in the past does not bind the company to that approach in perpetuity. NHPC retains the right to revise its practices in accordance with the clear provisions of the Tariff Regulations.

l. Matter pertains to the interpretation of the delegated legislation, and the principle of literal interpretation must be applied. The plain and unambiguous language of the 2019 Tariff Regulations has been consistently followed, and the Petitioner's misinterpretation of these regulations cannot alter their intended meaning. Specifically, Regulation 58 provides that the rebate applies only to payments made on the total bill, not to individual instalments. Payments made in instalments inherently delay the collection of tariffs, which affects NHPC's cash flow and is inconsistent with the rebate principle.

m. The provisions of Regulation 13(4) and Regulation 58 of the 2019 Tariff Regulations are distinct and operate independently. The Petitioner's reliance on the judicial precedents is misplaced, as the cited judgments do not apply to the interpretation of these specific regulations.

n. The Petitioner's claim regarding the rebate provision being accounted for in the tariff order issued by DERC is incorrect. The rebate is contingent upon the timely payment of the entire bill, and its effect cannot be anticipated or incorporated into the tariff order for subsequent payments. The Petitioner's contention in this regard was described as baseless and to be disregarded.

o. In light of the above, TPDDL's claim regarding the rebate on the instalment payments and the misinterpretation of Regulation 58 of the 2019 Tariff Regulations may be rejected.



## **Rejoinder of TPDDL**

5. The Petitioner TPDDL, vide its rejoinder affidavit dated 29.5.2024, mainly submitted the following:

### ***NHPC is estopped from altering its position due to its prior conduct***

(i) The principle of estoppel has also been considered by this Commission in *TPDDL v NTPC Limited (2017 SCC Online CERC 198)*, wherein the Commission held that the '*due date mentioned on the invoice of the respondent remained irrelevant in view of the past conduct and understanding*'. This has also been upheld by the APTEL in Appeal No.26/2018.

(ii) NHPC cannot be permitted to disown its earlier position solely for the purpose of gaining undue advantage. NHPC, by allowing rebates on payments made in accordance with the due monthly instalments, and regulations set forth by the Regulatory Commission, established a consistent course of conduct, which created a reasonable expectation on TPDDL that such rebates would continue to be granted in accordance with such past practices and regulatory guidelines.

(iii) NHPC unilaterally altered the established practice through a letter dated 27.9.2023. No external conditions changed, which may have resulted in this unilateral alteration. Regulations regarding rebates and instalments have existed since the 2009 Tariff Regulations, and a consistent methodology of providing rebates has been followed by NHPC. The methodology has been changed with effect from 1.10.2023 without any explanation or justification.

(iv) Such conduct of NHPC is not only contrary to the extant regulatory framework, but is also inequitable and unfair, as it creates confusion, uncertainty, and prejudice to the Petitioner who relied on prior representation and actions. Therefore, based on the principle of estoppel, NHPC should have prevented from altering its position and should be held to be bound by its prior conduct and representations regarding the grant of rebates on payments by the beneficiary discoms.

(v) Even if the contention of NHPC that Regulation 58 has to be read by strict interpretation, the date of presentation of the bill has to be read as the date of instalment. Each generating company has a different methodology for raising bills. NHPC raises the bill for the entire amount due. However, the bills clearly provide for various instalment dates. Despite the different methodologies for the raising of bills, all the generating companies, such as DVC and SJVNL, provide rebates as per the instalment date.

(vi) The collective bill raised by the Respondent is nothing but an advance bill, which clearly provides for an instalment date. It is only on the instalment date that the said portion of the bill becomes effective. The term '*presentation of bills*' in Regulation 58 of the 2019 Tariff Regulations cannot be read to include the presentation of advance bills.





(vii) The 'literal rule of interpretation' advocated by NHPC not only leads to absurdity but also results in undue benefit to it for no justification at all. Without prejudice, in case the contention of NHPC is accepted, the same will lead to a scenario where the Electricity Commissions will have to determine the tariff of generating and distribution companies on the basis of methodology for raising bills and not on the basis of the amount payable. This will also lead to a situation where the working capital of the distribution company will have to be determined on the basis of the administrative process accepted by the generating company rather than the power requirement of the distribution companies' license area. Such a scenario cannot be envisaged by the Commission while prescribing the 2019 Tariff Regulations.

(viii) No provision in a regulation can be a standalone provision. The entire regulation has to be read harmoniously, and each provision has to be read in line with the object and purpose of the regulation and the parent Act. It is denied that any option is given under Regulation 58 of the 2019 Tariff Regulations for either payment of the consolidated bill or for paying in six monthly instalments. Regulation 58 provides for the rebate and does not provide for the methodology of raising the bill, as the same has to be done in line with the provisions of Regulation 13(4) of the 2019 Tariff Regulations, which provides for payment in six monthly instalments.

(ix) It is denied that rebate can be availed only if the payments are made by beneficiary discoms at one go. The same is contrary to the stand of NHPC in Annexure of its letter dated 27.9.2023. NHPC has not only unilaterally changed the rebate methodology vide letter dated 27.9.2023 but is attempting to take a different approach before this Commission.

(x) As regards the submission of NHPC that LPS is to be applied on the basis of the date of instalment and not the basis of the presentation of a bill, NHPC cannot selectively read the 2009 Tariff Regulations. Having conceded that the term 'presentation of the bill' shall be read as the 'date of payment due/date of instalment' in one provision, NHPC cannot apply literal interpretation in another provision to selectively suit its need.

(xi) It is denied that NHPC is suffering from the time value of money by being paid under six equal instalments. The reliance placed by NHPC on the order of this Commission in *JITPL v. PTC India Ltd.*, is misplaced as it relates to rebate on monthly invoices, and payment had to be made in terms of the agreement between the parties. In the present case, the 2019 Tariff Regulations provide for payment in six monthly instalments, and the rebate has to be calculated on the basis of the payment to be made by the party. It has never been the case of NHPC that part payment is not allowed to seek a rebate. The recovery made under Regulation 13(4) is subject to rebate under Regulation 58 of the 2019 Tariff Regulations.



### **Hearing dated 14.11.2024**

6. The Commission, after hearing the learned counsels for the Petitioner and the Respondent NHPC at length, reserved its order in the Petition on 14.11.2024. The Petitioner and the Respondent NHPC have filed their written submissions on 5.12.2024 and 10.12.2024, respectively.

### ***Written submissions of TPDDL***

7. TPDDL, in its written submissions, has mainly reiterated the submissions made in its rejoinder above. However, referring to Regulations 11 and 119 of the DERC 2017 Tariff Regulations, which provide for considering the 'maximum normative rebate available from each entity,' the Petitioner has submitted that while, on the one hand, the DERC considers the rebate on all installments in the power purchase cost, on the other hand, NHPC is not allowing the rebate on all installments, leading to a significant loss.

### ***Written submissions of NHPC***

8. NHPC, in its written submissions, has clarified as under:

(a) A literal interpretation of Regulation 58 refers to the presentation of a single bill and not to instalments. Therefore, the rebate applies only to a consolidated bill and not to each instalment. The interpretation is consistent with the principle of the time value of money. It is a well-settled principle that if the provision is clear and its legislative intent is evident, additional rules of statutory interpretation are unnecessary. These interpretations come into play only when the legislative intention is ambiguous and unclear (judgments of the Hon'ble SC in *M/s Hiralal Rattanlal etc., v State of UP & anr* (1973) 1 SCC 216 and *State of HP v Pawan Kumar* (2005) 4 SCC 350 relied upon)

(b) Regulations 12 and 13 and Regulation 58 of the 2019 Tariff Regulations serve different purposes. While Regulation 13(4) allows instalments to ease beneficiary payments post true-up, it does not entitle the beneficiaries to rebate on instalments. Regulation 58 applies to the consolidated bill, promoting timely payment and preserving the time value of money for generators. Allowing rebates on instalments would impose an unjustified financial burden on NHPC and contradict the plain language of the regulations.

(c) The Commission's order dated 17.4.2024 in Petition No.118/MP/2023 does not



apply to the issue raised in the present petition, as the levy of differential carrying cost on the installments paid in terms of Regulation 10(7) of the 2019 Tariff Regulations had arisen for consideration, in that matter.

(d) LPS is levied whenever there is a delay in the payment of a bill (either that bill is to be paid under the instalment procedure or for the consolidated bill). If out of 6 installments, one installment is paid after a delay of 10 days, then the LPS would be applied on the said delayed 10 days. A similar principle would be applicable for the number of days of delay for the consolidated bill from the date of payment of the same as stated under Regulation 59 of the 2019 Tariff Regulations, which provides for LPS.

(e) Past practices of NHPC do not override the clear provisions of Regulation 58, and the updated procedure aligns with the regulation's plain language and ensures compliance with the intent of the 2019 Tariff Regulations. Mutual understanding cannot supersede statutory interpretation. Merely because NHPC was not strictly following the interpretation flowing from the plain language of the regulations in the past does not mean that for all times to come, NHPC will be bound by the earlier view.

(f) There is no mandate under Regulation 13(4) for the beneficiary to take the instalment payment, and this is an optional provision if the differential tariff is not required to be paid in one go. NHPC is already bearing financial loss in terms of carrying cost as per provision of Regulation 13(4), and providing a further rebate on the installment payment, except the amount paid within 30 days of presentation of the bill shall result in additional financial burden on NHPC.

(g) Rebate is contingent on the timely payment of the bill by the entity, and the effect of the same cannot be either accurately provided or envisaged or can be taken into account, bypassing the tariff orders for the subsequent years. The billing methodology adopted by NHPC is in line with the applicable regulations, which do not mandate installment-based rebates. While other generating companies may follow different practices, NHPC's approach is consistent with the provisions of the 2019 Tariff Regulations.

9. Based on the submissions of the parties above, the issue which emerges for consideration is:

***“Whether the Respondent NHPC letter dated 27.9.2023 unilaterally altering the grant of rebate on payments made by the Petitioner TPDDL from 1.10.2023, is in line with the intent and purpose of Regulation 58 read with Regulation 13(4) of the 2019 Tariff Regulations.”***

10. Before proceeding, we take note of some of the provisions of the Tariff Regulations notified by this Commission for the period from 2009-14 till 2019-24,



which provide for the recovery/refund of the amount under-recovered or over-recovered after truing up of the tariff, relied upon by the parties in the present case.

**Regulation 6(6) of the 2009 Tariff Regulations**

*“(6) Truing up of capital expenditure and tariff*

*Xxx*

*(6) The amount under-recovered or over-recovered along with simple interest at the rate equal to the short term Prime Lending Rate of State Bank of India as on 1<sup>st</sup> April of the respective year, shall be recovered or refunded by the generating company or the transmission licensee, as the case may be, in six equal monthly instalments starting within three months from the date of the tariff issued by the Commission after truing up exercise.”*

**Regulations 8(12) and (13) of the 2014 Tariff Regulations**

*“8. Truing up*

*Xxx*

*(12) Where after the truing up, the tariff recovered is less than the tariff approved by the Commission under these regulations, the generating company or the transmission licensee shall recover from the beneficiaries or the long-term transmission customers /DICs, as the case may be, the under recovered amount as specified in the Clause (13) of this regulation.*

*(13) The amount under-recovered or over-recovered along with simple interest at the rate equal to the bank rate as on 1<sup>st</sup> April of the respective year, shall be recovered or refunded by the generating company or the transmission licensee, as the case may be, in six equal monthly instalments starting within three months from the date of the tariff issued by the Commission”*

**Regulation 10(7) of the 2019 Tariff Regulations**

*10. Determination of tariff*

*xxx*

*(7) The difference between the tariff determined in accordance with clauses (3) and (5) above and clauses (4) and (5) above shall be recovered from or refunded to, the beneficiaries or the long-term customers, as the case may be, with simple interest at the rate equal to the bank rate prevailing as on 1st April of the respective year of the tariff period, in six equal monthly instalments*

**Regulation 13(4) of the 2019 Tariff Regulations**

*13. Truing-up of tariff for the period 2019-24*

*Xxx*

*(4) After truing-up, if the tariff already recovered exceeds or falls short of the tariff approved by the commission under these regulations, the generating company or the transmission licensee shall refund to or recover from the beneficiaries or the or the long-term transmission customers /DICs, as the case may be, the excess or shortfall amount along with simple interest at the rate equal to the bank rate as on 1<sup>st</sup> April of the respective years of the tariff period in six equal monthly instalments.*

11. On a plain reading of the aforesaid regulations, it is clear that the under-recovered or over-recovered amount, along with simple interest at the rate equal to the bank rate



as on 1st April of the respective year, is required to be recovered or refunded, by the generating company or the transmission licensee, as the case may be, in six equal monthly instalments. In other words, the differential tariff (amount) computed is to be considered as the principal amount, and the applicable simple interest at the rate equal to the bank rate prevailing as on the 1st of April of the respective year is to be added to the said principle amount, to arrive at the amount final recoverable. This amount is then to be recovered in a staggered manner in six equal monthly instalments. However, in the event of any deferment or default in the payment of the said instalments, the Late Payment Surcharge would kick in.

12. As regards the 'rebate' allowed for the payment of bills of the generating company or the transmission licensee, as the case may be, the provisions of the 2009, 2014, and 2019 Tariff Regulations provide as under:

**Regulation 34 of the 2014 Tariff Regulations**

*"34. Rebate (1) For payment of bills of the generating company and the transmission licensee through letter of credit on presentation, a rebate of 2% shall be allowed.*

*(2) Where payments are made other than through letter of credit within a period of one month of presentation of bills by the generating company or the transmission licensee, a rebate of 1% shall be allowed.*

**Regulation 44 of the 2014 Tariff Regulations**

*"44. Rebate:*

*(1) For payment of bills of the generating company and the transmission licensee through letter of credit on presentation or through NEFT/RTGS within a period of 2 days of presentation of bills by the generating company or the transmission licensee, a rebate of 2% shall be allowed.*

*(2) Where payments are made on any day after 2 days and within a period of 30 days of presentation of bills by the generating company or the transmission licensee, a rebate of 1% shall be allowed."*

**Regulation 58 of the 2019 Tariff Regulations**

*"58. Rebate:*

*(1) For payment of bills of the generating company and the transmission licensee through letter of credit on presentation or through National Electronics Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) payment made within a period of 5 days of presentation of bills by the generating company or the transmission licensee, a rebate of 1.5% shall be allowed.*

*Explanation: In case of computation of 5 days, the number of days shall be counted consecutively without considering any holiday. However, in case the last day or 5<sup>th</sup> day is official holiday, the 5<sup>th</sup> day for the purpose of rebate shall be construed as the immediate*



*succeeding working day (as per the official State Government's calendar, where the Office of the Authorised Signatory of Representative of the beneficiary, for the purpose of receipt or acknowledgement of bill is situated).*

*(2) Where payments are made on any day after 5 days and within a period of 30 days of presentation of bill by the generating company or the transmission licensee, a rebate of 1% shall be allowed.*

13. It is evident from the above regulations that a procurer of electricity is entitled to rebate for the prompt payment and is subjected to surcharge only for the late payment. However, the entitlement to rebate is linked not only to the period within which such payment is made but also to the mode of payment. As can be seen from Regulation 58 of the 2019 Tariff Regulations, the rebate of 1.50% is allowed upon payment through a Letter of Credit (LC) on presentation or through NEFT/RTGS mode of payment, within 5 days of the presentation of bills. Also, a rebate of 1% continues after elapse of 5 days, but within 30 days of presentation of the bill. It is, therefore, clear that while the mode of payment through LC or NEFT/RTGS is relevant for the claim of rebate at 1.5%, it is irrelevant for the claim of rebate at 1%, and the only test to be applied is that the payment has been made 'within 30 days' of the bill being raised and presented.

14. The Petitioner, TPDDL, is mainly aggrieved by the Respondent NHPC's letter dated 27.9.2023, unilaterally altering the practice and understanding between the parties of allowing rebate on the payments made by TPDDL towards the recovery of the shortfall amount in six monthly instalments, as per the truing up orders of this Commission from time to time, in terms of the applicable regulations (as quoted in para 10 above). According to TPDDL, though payments are to be made by the beneficiaries in six equal monthly instalments, the proposed practice of NHPC from 1.10.2023 to allow the rebate only on the payments made within 30 days of the annual fixed cost bills is contrary to Regulation 13(4) of the 2019 Tariff Regulations read with Regulation 58 of the 2019 Tariff Regulations. Pointing out that NHPC has been



allowing rebates on instalments till 30.9.2023, TPDDL has submitted that the unilateral decision of NHPC to alter the application of rebate disregards the regulatory intent and framework, effectively penalizing the beneficiaries opting for the installments mechanism and is also in conflict with the tariff orders issued by the Commission. Contending that Regulation 58 cannot be read in isolation and must be harmonized with the other provisions of the 2019 Tariff Regulations, TPDDL has submitted that if a rebate were only to be provided from the date of presentation of a bill, without considering the date of the respective instalments becoming payable, the whole purpose of allowing instalment payments shall be negated and lead to absurdity. It has further contended that though the example provided in the NHPC letter dated 27.9.2023 acknowledges that payments are to be made in six equal installments, the revised approach to rebate ignores the regulatory intent and the established practices. *Per contra*, NHPC has argued that Regulation 58 of the 2019 Tariff Regulations, which govern rebates, is a standalone provision and should be read/interpreted independently from the other provisions of the 2019 Tariff Regulations. Pointing out that rebates are applicable only to consolidate the bills paid promptly, NHPC has argued that the instalment payments inherently delay the cost recovery, further justifying the exclusion of rebates for such payments. According to NHPC, Regulation 13(4) of the 2019 Tariff Regulations does not mandate the use of installments, being an optional choice for the beneficiary when the differential tariff is not required to be paid immediately in full. NHPC, stating that it retains the right to revise its practices in accordance with the clear provisions of the Tariff Regulations, has contended that the presentation date for the annual fixed charge revision supplementary bills is based on the total bill raised rather than the dates of the installment payments.

15. We have examined the rival submissions. The Commission, in its various tariff



truing up orders issued from time to time for the periods 2009-14, 2014-19, and 2019-24, had, in terms of the relevant regulations (as quoted under para 10 above), directed the recovery /refund of the shortfall/excess amount in six equal monthly installments and the generating companies (including the Respondent herein) have been raising bills for recovery of the shortfall amount, in terms of the said orders. Accordingly, these generating companies, in their monthly bill payments made by the beneficiaries (including TPDDL herein), have been allowing the 'rebate' in terms of the relevant regulations (as quoted under para 12 above). However, in the present case, the rebate on the differential installment payments made by TPDDL was governed by the 'Rebate Scheme' of NHPC, as mutually agreed by the parties in terms of the PPA provision, as extracted below:

*10.0. SURCHARGE ON LATE PAYMENT AND REBATE*

*10.1. The provision for levy of surcharge and rebate shall be governed as per notification/directives/guidelines issues/to be issued by CERC/GOI from time to time or any other rebate scheme as mutually agreed upon from time to time and shall form and integral part of the agreement.*

16. NHPC vide letter dated 27.9.2023 clarified to TPDDL (by illustration through example in Annexure-A) that in respect of the payments received in respect of the bills raised against tariff-related orders issued by the Commission, wherein, payment is to be recovered in instalments, the rebate shall be allowed in line with Regulation 58 of the 2019 Tariff Regulations from 1.10.2023. This alternative procedure for allowing rebate was objected to by TPPDL vide letter dated 12.10.2023, stating that the same was not in accordance with the orders/regulations of this Commission. From the illustration and the submissions of the parties, it is evident that NHPC has unilaterally altered the rebate procedure, apparently based on its interpretation that Regulation 58 of the 2019 Tariff Regulations applies only to a consolidated bill and not to each installment. According to NHPC, past practices do not override the provisions of Regulation 58 of the 2019 Tariff Regulations, and it retains the right to revise its





practices in accordance with the provisions of the Tariff Regulations. This submission lacks weightage, considering the fact that Regulation 58 of the 2019 Tariff Regulations was in vogue from 1.4.2019. In our view, NHPC, based on the principle of estoppel also, should have refrained from altering its procedure/position on the grant of rebate on payments with effect from 1.10.2023. Be that as it may, NHPC has argued that Regulation 13(4) and Regulation 58 of the 2019 Tariff Regulations (Rebate) are distinct and operate independently. It has contended that while Regulation 13(4) of the 2019 Tariff Regulations provides a beneficiary the option to either pay the entire bill in one lump sum or choose the installment payments, the Rebate applies only to consolidated bills paid promptly. This submission of NHPC to distinguish the said regulations deserves no merit for consideration. It is a settled rule of construction that to ascertain the intent of a regulation, all the constituent parts of the Regulations are to be taken together, and each word, phrase, or sentence is to be considered in the light of the general purpose and object of the regulation itself. The Hon'ble Supreme Court in *Nathi Devi v Radha Devi Gupta* (2005) 2 SCC 271 held as under:

*“14. It is equally well settled that in interpreting a Statute, effort should be made to give effect to each and every word used by the Legislature. The Courts always presume that the Legislature inserted every part thereof for a purpose and the legislative intention is that every part of the Statute should have effect. A construction which attributes redundancy to the legislature will not be accepted except for compelling reasons such as obvious drafting errors....”*

17. Regulation 13(4) of the 2019 Tariff Regulations, as quoted in para 10 above, provides that after truing up for the period 2019-24, if the tariff already recovered exceeds or falls short of the tariff approved by the Commission, the excess or shortfall amount shall be refunded or recovered along with simple interest at the rate equal to the bank rate as on 1<sup>st</sup> April of the respective years of the tariff period, in six monthly instalments. The same has been reiterated by the Commission in its various orders, truing up the tariff of the generating station of NHPC in terms of the relevant regulations. Thus, under Regulation 13(4), NHPC, as a generating company, is



'mandated' to recover in six equal monthly instalments, the total shortfall /differential amounts from the beneficiaries. The recovery of such shortfall amounts under Regulation 13(4), entails NHPC to raise bills and the payments thereof by TPDDL, which would attract Regulation 58 of the 2019 Tariff Regulations (Rebate). In other words, the recovery made under Regulation 13(4) of the 2019 Tariff Regulations is subject to rebate under Regulation 58 of the 2019 Tariff Regulations. This is irrespective of whether the beneficiary opts to make such payment in one lump sum or by instalments. NHPC cannot, contrary to the intent and purpose of the said regulation, apply the rebate provision only in respect of the consolidated bill payments and not to the installment bill payments, on the ground that the same would delay the cost recovery. Regulation 58 cannot, therefore, be read in isolation but must be harmonized with Regulation 13(4) of the 2019 Tariff Regulations. In case the interpretation of NHPC is accepted, the same would render Regulation 13(4) of the 2019 Tariff Regulations otiose, thereby taking away the right provided to the beneficiary for instalment payments and avail rebate thereof for prompt payment. The alteration of the rebate procedure by NHPC on the count that the same aligns with the plain language and intent of the 2019 Tariff Regulations is, therefore, not tenable.

18. Further, NHPC has relied on the language used in Regulation 58, which provides that rebate is allowed for payments within 5 days or within 30 days of the presentation of the bills, to contend that rebates are not intended for payments made in instalments under Regulation 13(4) of the 2019 Tariff Regulations and does not modify the application of Regulation 58. Regulation 58 of the 2019 Tariff Regulations is extracted below:

***"58. Rebate:***

*(1) For payment of bills of the generating company and the transmission licensee through letter of credit on presentation or through National Electronics Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) payment made within a period of 5 days of presentation of bills by the generating company or the transmission licensee, a rebate of*



*1.5% shall be allowed.*

*Explanation: In case of computation of 5 days, the number of days shall be counted consecutively without considering any holiday. However, in case the last day or 5<sup>th</sup> day is official holiday, the 5<sup>th</sup> day for the purpose of rebate shall be construed as the immediate succeeding working day (as per the official State Government's calendar, where the Office of the Authorised Signatory of Representative of the beneficiary, for the purpose of receipt or acknowledgement of bill is situated).*

*(2) Where payments are made on any day after 5 days and within a period of 30 days of presentation of bill by the generating company or the transmission licensee, a rebate of 1% shall be allowed.*

19. The term 'due date of payment' has not been defined in the 2019 Tariff Regulations, apparently for the reason that Regulation 58 deals with the mechanism for a rebate in respect of the recovery of the annual fixed charges, including the excess/ shortfall payments, in six installments, in terms of Regulation 13(4) of the 2019 Tariff Regulations. From Annexure-A of the letter dated 27.9.2023, it is noticed that NHPC raises bills for the entire amount due, with the bills clearly providing for the installment dates, but has altered the practice of granting rebate only from the date of the bill and not from the installment date. Regulation 58 of the 2019 Tariff Regulations does not provide for the methodology of raising the bills, and there is no provision in the Tariff Regulations for a generating company to raise a consolidated bill. In case a rebate is only to be provided from the date of presentation of the bill, without considering the respective date of instalments becoming payable, then the purpose of allowing instalment gets negated, which leads to the anomaly. According to us, the term 'presentation of the bills' has to be read in the context of the Regulations and in a manner that other regulations do not become redundant. We note that the entitlement of rebate under the Tariff Regulations ends with a lapse of a 30-day period. Since the entitlement to rebate is linked with the period on which the payment is made, the 'date of presentation of the bill' has to be read as 'the date of installment,' and it is only on the installment date that the said portion of the bill becomes effective. In other words, individual installments are to be treated as payment of separate bills for the



purpose of granting a rebate in terms of Regulation 58 of the 2019 Tariff Regulations. It is also noticed that most of the generating companies have been allowing rebates in the payment of the monthly bills, as per the due monthly instalments. We, therefore, hold that the unilateral alteration of the rebate methodology by NHPC vide letter dated 27.9.2023 (read with Annexure-A therein) is arbitrary and contrary to the extant regulatory framework, as well as the past practices and the orders of this Commission. Accordingly, the Petitioner is entitled to rebate under Regulation 58 of the 2019 Tariff Regulations on the date of each installment of the differential amounts becoming payable, in terms of Regulation 13(4) of the 2019 Tariff Regulations. We direct accordingly.

20. The Petitioner, TPDDL, has submitted that it has made the bill payments post 1.10.2023 to NHPC, under protest, reserving its right to seek retrospective benefits, with interest. In view of our decision above, holding that TPDDL is entitled to rebate for the monthly instalment payments made to NHPC, in terms of Regulation 58 of the 2019 Tariff Regulations, we permit the recovery/adjustment of the rebate amount(s) not allowed and paid in protest by TPDDL, in terms of NHPC letter dated 27.9.2023, along with the carrying cost. The carrying cost shall be recovered by TPDDL for arranging the funds (supported by the Auditor's certificate) or the rate of interest on working capital as per the applicable CERC Tariff Regulations or the Late Payment Surcharge rate as per the PPA, whichever is lower.

21. Petition No.31/MP/2024 is disposed of in terms of the above.

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

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

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

