

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 4/2012 in Petition No. 175/2011**

Coram: Dr. Pramod Deo, Chairperson  
Shri S. Jayaraman, Member  
Shri V.S. Verma, Member  
Shri M. Deena Dayalan, Member

Date of hearing: **5.7.2012**

Subject: Review of order dated 26.8.2011 in Petition No. 175/2011 in connection with liquidation of arrear payments in installments in respect of provisional order/final orders passed by the Commission granting/determining the annual fixed charges for the period 2009-14 for Central Generating Stations namely, NHPC Ltd. NEEPCO Ltd., NTPC Ltd. and transmission licensee namely PGCIL Ltd.

Petitioners: Assam Power Distribution Company Limited (APDCL)

Respondents: North Eastern Electric Power Corporation Ltd and others.

Parties Present: Shri Sanjay Sen, Advocate, APDCL  
Shri Jitendera Kumar Jha, NHPC  
Shri Amrik Singh, NHPC  
Ms. Debjani dey, NEEPCO  
Shri C.K Mondol, NTPC  
Shri Ajay Dua, NTPC  
Shri Rohit chabra, NTPC  
Shri Shyam Kumar, NTPC

**RECORD OF PROCEEDINGS**

At the outset, the learned counsel for the petitioner submitted that the grievance of the petitioner pertains to the payment of outstanding arrears/dues as a result of determination of final tariff of the generating stations / transmission systems of the respondents for the period 2009-14, in six installments within a period of six months, in terms of the order dated 26.8.2011 in Petition No. 175/2011. The learned counsel submitted that though the issues raised in the review petition were not put forth by the petitioner in the proceedings for determination of tariff in the original petition, he prayed that the Commission may consider the grant of further moratorium for payment of outstanding dues, with interest for the following reasons:

(a) The burden of outstanding dues payable by the petitioner as on January, 2012 is ₹403 crore (approx) and the bulk of the said amount is payable to the respondent NEEPCO. The distribution companies, including the petitioner are already reeling under inadequacy of tariff to cover the cost for procurement and supply of power to the consumers;

(b) The Assam State Electricity Regulatory Commission by its regulations namely, AERC (Fuel and Power Purchase Price Adjustment Formula) Regulations, 2010 (FPPA) has imposed a cap of 25% of energy charge on Fuel and Power Purchase Price Adjustment. Since fuel price adjustment has been imposed from July, 2011, there is no scope for further adjustment and realization of the amounts on account of supplementary bills raised by the respondents is subject to the same being allowed by the State Commission.

(c) In case any direction is given by the Commission to recover the said amount within six months from the petitioner, the same would result in increased tariff of more than ₹1.78/unit, within the state, which not only would be not permissible under the FPPA Regulations, 2010 but would also lead to public outcry.

2. On a specific query by the Commission as regards the delay in filing the review petition, the learned counsel pointed out that it has approached this Commission after the State Government of Assam had refused any relief as regards the payment of outstanding dues of the petitioner. He also submitted that the burden on account of the delay in filing of petitions by the generating companies /transmission licensees may not be imposed on be petitioner.

3. The representative of the respondent No.3, NTPC submitted that no relief has been sought for by the petitioner against NTPC. He also submitted that meagre amount due from the petitioner has been paid and there are no outstanding dues from the petitioner as on date. He also objected to the submissions of the petitioner as regards the alleged delay in filing of the tariff petitions by the generating companies for determination of tariff.

4. On a specific query by the Commission as to whether the relief prayed for by the petitioner is covered by the interim order of the Tribunal dated 2.7.2012 in Appeal No. 82/2012 (BRPL-vs-CERC & ors) and Appeal No 90/2012 (BYPL –vs- CERC & ors) as regards retrospective levy of tariff, the learned counsel for the petitioner submitted that the said interim order is *prima facie* not applicable, as the instant case is covered under Regulation 5(3) of the 2009 Tariff Regulations.

5. The representative of the respondent No.1, NEEPCO objected to the prayer of the petitioner for grant of further moratorium as regards the payment of outstanding dues, by the petitioner. The representative submitted that the final tariff of all its generating stations, except Doyang HEP, has been determined by the Commission for the period

2009-14. She also submitted that that apart from the nonpayment of outstanding dues in terms of the Commission's order dated 26.8.2011, the petitioner has also not been paying the current dues in full, to the respondent NEEPCO and prayed that the Commission may direct the payments accordingly. The representative submitted that the respondent NEEPCO may be granted liberty to file necessary details, on affidavit, as regards the payments outstanding till date, from the petitioner.

6. In response, the learned counsel for the petitioner clarified that the grievance of the petitioner pertains only to the payment of outstanding arrear amounts, as aforesaid and the current bills are being paid by the petitioner to the respondent NEEPCO. The learned counsel also prayed that it may also be granted liberty to file statement on affidavit, indicating the payments made to the respondent, NEEPCO, by the petitioner.

7. The Commission accepted the prayer and allowed the parties to place on affidavit, the details of the outstanding dues and payments made to the respondent, NEEPCO, with copy to the other, within 20.7.2012.

8. The Commission desired to know whether the petitioner had approached the respondents NEEPCO and NHPC for moratorium for payment of outstanding dues on account of financial difficulties faced by the distribution companies. The learned counsel replied in the negative and offered that the petitioner is prepared to negotiate with the generating companies, if so directed by the Commission.

9. The Commission directed the petitioner and the respondents NEEPCO and NHPC to negotiate and explore the possibility of a mutual settlement as regards payment of outstanding dues. The Commission however directed that the petitioner should pay the current bills of these generating companies, without default.

10. The parties are directed to complete the process of negotiation and settlement, if any, and submit the report, on affidavit, on or before 6.8.2012.

11. The petition will be listed for further hearing, if required, based on the outcome of the negotiation, as directed above. .

**. By Order of the Commission**

**Sd/-  
(T.Rout)  
Joint Chief (Law)**