

**Central Electricity Regulatory Commission
New Delhi**

Petition No: 125/MP/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Date of Order: 31.01.2017

In the matter of

Miscellaneous Petition under Section 79(1) (f) of the Electricity Act, 2003 for reimbursement of interest on the arrear bills issued after revised Regional Energy Account by NRPC in respect of Chamara-I HE Project for the period 01-05-1994 to 31-03-1997.

And

In the matter of

NHPC Limited
(A Govt. Of India Enterprise)
NHPC Office Complex,
Sector – 33,
Faridabad – 121 003.

PETITIONER

Vs

- 1) The Chairman,
Punjab State Power Corporation Limited,
The Mall, Secretariat Complex,
Patiala - 147 001 (Punjab).
- 2) The Managing Director,
Haryana Power Generating Company, (HPGCL), Urja Bhavan, Sector-6,
Panchkula - 134 109 (Haryana).
- 3) The Chairman,
Rajasthan Rajya Vidyut Prasaran Nigam Ltd.(RRVPL),
Vidyut Bhavan,Janpath,
Jyoti Nagar,
Jaipur-302005 (Rajasthan).
- 4) The Chairman,
Uttar Pradesh Power Corporation Ltd., Shakti Bhawan, 14, Ashok Marg,
Luucknow - 226001 (Uttar Pradesh).
- 5) The Chairman,
Himachal Pradesh State Electricity Board Limited,



- Vidyut Bhwan, Kumar House,
Shimla-171004 (Himachal Pradesh)
- 6) Secretary Engineering,
Chandigarh Administration, 4th Floor,
UT Secretariat, Sector 9-D,
Chandigarh - 160 009.
 - 7) Director (Fin.), DPCL,
2nd Floor, Shakti Sadan Building,
Kotla Road, New Delhi – 110 002.
 - 8) The Principal Secretary,
Power Development Department,
Civil Secretariat, Jammu (J&K).

RESPONDENTS

Following were present:

Shri A.K.Pandey, NHPC
Shri S.K.Meena, NHPC
Shri Dhanush.C.K., NHPC
Shri S.K.Chaturvedi, Advocate, DPCL
Shri S.P.Singh, DPCL

ORDER

The present petition has been preferred by **NHPC Ltd. (“the Petitioner”)** seeking direction to allow for reimbursement of interest on the arrear bills of Chamera-I HE Project for the period from 1.5.1994 to 31.3.1997 from the beneficiaries. The petitioner has made the following prayers:

- i. Hon’ble Commission may kindly allow for reimbursement of interest on the arrear bills of Chamera-I HE Project for the period 1.5.1994 -31.3.1997 from the beneficiaries of the project as NHPC has suffered the financial loss in the form of opportunity cost on the arrear bills which were issued in 2013.
- ii. The respondents may kindly be directed to make payment of interest bills raised to them.
- iii. When prayer 1&2 are allowed by the Hon’ble Commission, the petitioner may be permitted to claim further interest on the delayed payment of interest bill issued in Mar’2013 and also the other expenditure in filing this petition.



2. The petitioner has submitted that it has entered into Bulk Power Supply agreements (“BPSAs”) with the Northern Region beneficiaries for supply of power from Chamera-I HE project. As per clause 2.1 of BPSA, the energy available for sale would be allocated to Bulk Power Customer in accordance with the instructions of MOP, Government of India from time to time.

3. The tariff was fixed by the Government of India for the period 1.5.1994 to 31.3.1997. As per tariff notification issued by Ministry of Power, Government of India, vide Order dated 7.4.1997, in respect of Chamera-I HE Project for the period 1.5.1994 to 31.3.1997, the petitioner had to provide free power to home state up to 12% of the net design energy of Chamera-I HE Project equivalent to 199 MUs.

4. The dispute had arisen in respect of computation of free power. According to HPSEB, they are entitled to get 12% free power out of total energy sent out as per the power sharing formula in accordance with GOI order no.16/46/86-DO (NHPC) (Vol. II) dated 1.11.1990 instead of 12% free power on the net design energy as mentioned in GOI tariff notification dated 7.4.1997. The petitioner was following the approach of computing share of 12% free power to home state with reference to design energy. Though the actual energy sent out is generally within the design energy, in case of Chamera-I Project, the energy sent out was more than design energy during 1.5.1994 to 31.3.1997.

5. HPSEB had raised its concern for not getting 12% free power of actual energy generated from the project. Accordingly, HPSEB withheld an amount of Rs. 27,76,95,659/- since March, 1999 out of the outstanding dues as difference between 12% free power on Energy Sent Out and Net Design Energy basis.

6. The arbitrator was appointed by both parties. The arbitrator had passed an award on 17.11.2006 in favour of HPSEB with the conclusion that the benefit of free power to the extent of 12% of Energy Sent Out of Chamera-I should be passed on to home state for the period from 1.5.1994 to 31.3.1997;

7. The petitioner challenged the arbitration award passed by sole arbitrator in the Hon’ble High Court of Himachal Pradesh, Shimla. Subsequently, Hon’ble High Court Shimla vide order dated 18.11.2010 directed the parties to explore the possibility of settling the matter amicably. The matter could not be resolved at the meeting held on 22.2.2011 and it was agreed by both the parties that MOP, GOI may be requested to resolve the dispute.



8. In order to remove ambiguity, MOP vide order No. 6/4/2011-NHPC dated 22.6.2012 issued a corrigendum to notification dated 7.4.1997 which provides as under:

“In partial modification of this Ministry’s Notification No. 2/9/NHPC/Tariff/96/Vol-II dated 7.4.1997 on the above cited subject, Note -2 appearing below para 1 regarding generation tariff, may be replaced to read as under:

Note-2 NHPC shall provide free power to the Home State (Himachal Pradesh) up to 12% of generated energy (ESO)”.

9. In accordance with the corrigendum dated 22.6.2012 issued by MoP, Regional Energy Account (REA) was revised by Northern Regional Power Committee vide communication dated 16.1.2013. In the revised (Regional Energy Account) REA, benefit of 12% free power on energy sent out was passed to HPSEB which resulted into reduction of energy payable by HPSEB. Consequently, the primary energy allocation to the constituents other than HPSEB has been reallocated by the petitioner resulting in increase of their bills.

10. On 6.3.2013, the petitioner raised the bills for additional payment to the constituents other than HPSEB for the period 1.5.1994 to 31.3.1997 amounting to Rs. 26.74 Crore against the beneficiaries in March 2013 as per revised REA issued by NRPC. The details of bills for sale of energy raised by the petitioner originally as well as after the revision are as under:

i. Bills for sale of energy raised by the petitioner originally:

(In MUs)

Beneficiary	ESO	Saleable	Primary	Secondary	Total
PSEB	134.30	134.30	95.54	38.76	134.30
HVPL	830.27	830.27	590.65	239.62	830.27
HPSEB	272.42	73.42	52.23	21.19	73.42
DVB	263.46	263.46	187.42	76.04	263.46
J&K	3.62	3.62	2.57	1.04	3.62
UPPCL	221.88	221.88	157.84	64.04	221.88
RRVPL	495.63	495.63	352.59	143.04	495.63
Chandigarh	16.67	16.67	11.86	4.81	16.67
NHPC Pro	8.85	8.85	6.30	2.55	8.85
Total	2247.10	2048.10	1457.00	591.10	2048.10

ii. Bills for sale of energy revised by the petitioner:

(In MUs)



Beneficiary	ESO	Saleable	Primary	Secondary	Total
PSEB	134.30	134.30	98.95	35.35	134.30
HVPNL	830.27	830.27	611.75	218.52	830.27
HPSEB	272.42	2.77	2.04	0.73	2.77
DVB	263.46	263.46	194.12	69.34	263.46
J&K	3.62	3.62	2.66	0.95	3.62
UPPCL	221.88	221.88	163.48	58.40	221.88
RRVNL	495.63	495.63	365.19	130.45	495.63
Chandigarh	16.67	16.67	12.29	4.39	16.67
NHPC Pro	8.85	8.85	6.52	2.33	8.85
Total	2247.10	1977.45	1457.00	520.45	1977.45

11. Since, the amount was due to the petitioner for the period from 1.5.1994 to 31.3.1997, the petitioner raised the interest claim of Rs. 68.29 Crore at SBI lending rate of the respective years from the beneficiaries till the date of billing of arrear amount to recover the financial loss on account of opportunity cost of the arrear amount. The beneficiaries, except Chandigarh, have not accepted interest bills for payment on the ground that MOP vide its corrigendum dated 22.6.2012 has not specified anything regarding levy of interest.

12. According to petitioner, it has suffered financial loss due to delay in issue of corrigendum to the tariff notification issued by MOP on dated 7.4.1997. However, corrigendum to notification order has been issued by MOP during 2012 after a period of about 19 years of the commercial operation of the project.

13. As per BPSA, the dispute with the beneficiary was to be resolved through arbitration under the provision of Electricity (Supply) Act, 1948. Since Electricity (Supply) Act, 1948 has been repealed by Electricity Act, 2003 and there is no specific Regulation of CERC for dealing the instant case, it is requested by the petitioner to deal the instant petition in accordance with section 79(1)(f) of Electricity Act, 2003.

14. The respondents Delhi Power Company Ltd.(DPCL) in its reply has furnished as under:

- a) The petition is not maintainable and is liable to be dismissed as DPCL is neither a transmission/ distribution agency nor a beneficiary of the power allegedly supplied during the year 1994-1997. There is no mention of levy of interest in the corrigendum dated 22.6.2012 issued by MOP. Accordingly, DPCL denied the claim of principal as well as interest as set up by the petitioner.



- b) In response to the reply by DPCL, the petitioner has filed a rejoinder dated 10.10.2014 in which the petitioner submits that the claim of DPCL was neither a transmission/ distribution agency nor a beneficiary of the power supplied during the year 1994-1997 is wrong. Petitioner further submits that on the basis of the bipartite agreement between Govt. of India and Govt. of NCT of Delhi, it is very much clear that the respondent being a successor company of DESU/ DVB, is abide by the tariff orders and its subsequent amendments if any, issued by the concerned authorities from time to time. In the instant case, it is Ministry of Power who has issued the amended tariff notification dated 22.6.2012 in respect of Chamera-I Power station on the basis of which the billing has been done by NHPC. Hence, the notification dated 22.6.2012 is binding on DPCL being the holding company/ successor of erstwhile DESU/ DVB.
- c) The respondent UPPCL in its reply to the petition, has contended that the petitioner has considered the present case as a true-up, whereas the instant case of NHPC falls in none of the categories, namely, True-up, Opportunity Cost/ Carrying Cost/ Levy of Surcharge etc. To the reply of UPPCL, in its rejoinder, the petitioner has submitted that it is clearly a case of opportunity cost to recover the financial loss incurred by NHPC in a justified manner.
- d) The petitioner, vide ROP dated 21.08.2014, was directed to serve copy of the petition to the Ministry of Power, Government of India to file its reply/ comments. The representative of the petitioner submitted that as per the Commission's direction dated 21.08.2014, copy of the petition was served on the Ministry of Power. However, Ministry of Power (MOP) vide its letter dated 5.9.2014 returned the petition asking the petitioner to indicate the action required on the part of MOP. The petitioner vide letter dated 17.9.2014 furnished to MOP the background against the present petition along with relevant past correspondences made between the petitioner and to convey its views on applicability of interest (opportunity cost) with respect to MOP order dated 7.4.1997. However, no reply has been filed by the Ministry of Power till date.

Analysis and Decision:

15. We have considered the submissions of the petitioner and the respondents. The following questions have arisen for our consideration:



- a) Is the revision of energy account due to change of the basis of free power *inter-alia* re-allocation of primary energy to the constituents is in line with the tariff notification issued by MoP?
- b) If the answer to the first question is affirmative, whether the interest claim on the dispute amount is admissible in accordance with the law?
- d) Is the claim of DPCL that they were neither transmission/ distribution agency nor a beneficiary is maintainable keeping the fact in view that their predecessor were into contract?

16. The first issue has been examined to ensure whether the approach followed by the NREB and the petitioner to raise revised bill is appropriate. The Ministry of Power has considered the 12% free power as a percentage of energy sent out. Further, on 22.6.2012, the Ministry of Power issued a corrigendum to the tariff notification dated 7.4.1997. Due to this corrigendum, the basis of computing 12% free power was changed to Energy Sent Out from Net Design Energy. Accordingly, the energy account was revised by NREB. The corrigendum to notification dated 7.4.1997 vide order No. 6/4/2011-NHPC dated 22.6.2012 provides as under:

"In partial modification of this Ministry's Notification No. 2/9/NHPC/Tariff/96/Vol-II dated 7.4.1997 on the above cited subject, Note -2 appearing below para 1 regarding generation tariff, may be replaced to read as under:

Note-2 NHPC shall provide free power to the Home State (Himachal Pradesh) up to 12% of generated energy (ESO)".

17. Similarly, Note-3 of the MOP notification dated 7.4.1997 provides as below:

"Note-3 NHPC shall bill to the beneficiaries and the beneficiaries shall pay (other than Himachal Pradesh), on account basis, at 216 p/kwh (subject to final adjustment of annual fixed charges at the end of the year in case of generation is less than the designed energy for the power purchased by the beneficiaries from Chamera-1 HEP upto its net design energy for sale equivalent 1457 million units. any energy sale to Himachal Pradesh in excess of 199 MU but within the net design energy of Chamera-1 shall also be billed at 216 P/kwh, subject to final adjustment of the total annual fixed charge at the end of the year."



As per Note-3 of the tariff notification dated 7.4.1997, the fixed charges were to be billed to the beneficiaries (other than Himachal Pradesh) for the power purchased up to its net design energy for sale equivalent 1457 million units (i.e. design energy of 1656 MUs less 199 MUs equivalent to 12% free power). The tariff of 216 P/KWh has been worked out on the basis of above criteria. Ministry of Power, vide corrigendum dated 22.6.2012, has changed the basis of free power which consequently led to the situation where quantum of free power 199 MUs considered for the purpose of rate of fixed charge will undergo change. The increase of free power to HPSEB will have impact on the tariff payable by other constituents.

18. In the instant case, since the rate of fixed charge 216 P/KWh is fixed, the differential amount has been compensated by re-allocating the primary energy of other beneficiaries. NREB has revised the REA from 1994 to 1997 on this line and consequently, the quantum of primary energy of constituents other than HPSEB has been increased. The petitioner has submitted the original and REA for the period under consideration. In order to depict the above explanation, the computation of 1995-96 submitted by the petitioner is discussed in the subsequent paragraph.

- a) NREB originally issued the energy account in 1997 for 1995-96 and accordingly, the petitioner raised bill for sale of energy as under:

(In MUs)

Beneficiary	ESO	Saleable	Primary	Secondary	Total
PSEB	134.30	134.30	95.54	38.76	134.30
HVPNL	830.27	830.27	590.65	239.62	830.27
HPSEB	272.42	73.42	52.23	21.19	73.42
DVB	263.46	263.46	187.42	76.04	263.46
J&K	3.62	3.62	2.57	1.04	3.62
UPPCL	221.88	221.88	157.84	64.04	221.88
RRVNL	495.63	495.63	352.59	143.04	495.63
Chandigarh	16.67	16.67	11.86	4.81	16.67
NHPC Pro	8.85	8.85	6.30	2.55	8.85
Total	2247.10	2048.10	1457.00	591.10	2048.10

It is noticed from the above that the petitioner has reduced free power of 199 MUs (12% of design energy) to work out the saleable design energy.

- b) After corrigendum issued by the Ministry of Power, NREB has again revised REA and accordingly, the petitioner has raised bill for sale of energy as under:

(In MUs)

Beneficiary	ESO	Saleable	Primary	Secondary	Total
PSEB	134.30	134.30	98.95	35.35	134.30
HVPNL	830.27	830.27	611.75	218.52	830.27



HPSEB	272.42	2.77	2.04	0.73	2.77
DVB	263.46	263.46	194.12	69.34	263.46
J&K	3.62	3.62	2.66	0.95	3.62
UPPCL	221.88	221.88	163.48	58.40	221.88
RRVPL	495.63	495.63	365.19	130.45	495.63
Chandigarh	16.67	16.67	12.29	4.39	16.67
NHPC Pro	8.85	8.85	6.52	2.33	8.85
Total	2247.10	1977.45	1457.00	520.45	1977.45

Perusal of above table reveals that NREB has reduced the free power with reference to Energy sent out. Since, the annual fixed charges to be recovered on the basis of primary energy are constant, the primary energy allocation to HPSEB has decreased, However at the same time, the primary energy component of other constituents has increased.

19. The above computation has been examined with the provisions of Note-3 to Para 2 of the tariff notification dated 7.4.1997.

It is observed that the Ministry, vide corrigendum dated 22.6.2012, has not revised the Note-3. The NREB has revised REA in consonance with the above provision. The beneficiaries have not disputed the energy account issued by NREB. Therefore, it can be stated that the revision of REA and the differential principal amount claimed by the petitioner is in line with tariff notification read with corrigendum issued by Ministry.

20. The 3rd issue regarding, non-acceptance of the interest by the beneficiaries as claimed by the petitioner examined as under:

- i. The petitioner has raised the interest claim of Rs. 68.29 Crore at SBI lending rate of the respective years from the beneficiaries till the date of billing for the billing period 1.5.1994 - 31.3.1997. The petitioner has claimed interest on the ground that NHPC suffered the financial loss in form of opportunity cost due to delay in issue of corrigendum to the tariff notification issued by MOP vide dated 7.4.1997.
- ii. The issue is for billing period from 1.5.1994 to 31.3.1997 during which the tariff was fixed by the Government prior to the Electricity Act, 2003. Therefore the interest claim of the petitioner has been examined in accordance with the tariff notification and Power Purchase Agreements. The petitioner has submitted the tariff notification issued by the MoP and subsequent corrigendum.



- iii. Clause (c) to Para 6 of the MoP's tariff notification dealing with, the surcharge on late payment provides as under:

“(c) Surcharge due on Late Payment:

In case payment is made after the last date of the month following the month in which the bill is raised by NHPC, the surcharge @2% (two percent) per month shall be charged on the amount remained unpaid after the said date in proportion to the number of days of delay after the said date”

- iv. As per the provision, the surcharge in late payment which is applicable from the due date after bill (invoice) is raised to the beneficiaries. In the instant case, the bill is revised at the instance of the corrigendum to the tariff notification issued by MoP. The Power Supply Agreement refers the tariff notification and it does not contain any specific provision to address the situation where the billing is revised at the instance of Government. The beneficiaries have agreed for the principal payment.
- v. The petitioner has not received the amount from the 30 days of the bill raised which was to be received from the HPSEB. Since the invoice raised to HPSEB has now been rendered void as a result of revision of energy account by NREB, the petitioner has to recover the annual fixed charges from other constituents due to reallocation of energy. Since, the invoice to other constituents have been raised later on after revision of energy account, the late payment surcharge as per Para 6(c) of the tariff notification cannot be applied. As the petitioner is recovering the principal amount in 2012 for the energy supplied during 1994-99, the petitioner may be suffering loss due to net present value of money for which the petitioner has approached the Commission for seeking compensation. However, in the instant case, the petitioner has approached the Commission for compensation under Section 79(f) of the Electricity Act, 2003 for adjudication of the disputes. In the instant case, the petitioner has approached to resolve the dispute under the Power Supply Agreements which also makes reference to the tariff notification. Further, the corrigendum issued to the tariff notification by MoP does not address the issue of levy of interest due to late realization of payment by the petitioner.

21. In view of the above facts, we are of the opinion that there being no provision for imposition of such interest in the Bulk Power Supply Agreement and the notification issued by the Ministry in this regard, the prayer of the petitioner cannot be accepted.



22. As regards the issue raised by Delhi Power Company Ltd. with respect to the legal obligation on their part pertaining to the succession matter, it is observed that Bulk Power Supply Agreement (BPSA), as enclosed with the petition, depicts Delhi Vidyut Board as one of the Bulk power consumer. BPSA further mentions that NHPC and other bulk consumers should include their respective successors and assigns, unless repugnant to the context. The issue raised by Delhi Power Company Ltd. is not the subject matter of this petition; hence no views are expressed on the same.

23. The Petition No. 125/MP/2014 is disposed of in accordance with the above.

**Sd/-
(A.S Bakshi)
Member**

**Sd/-
(A.K.Singhal)
Member**

**Sd/-
(Gireesh B Pradhan)
Chairperson**

