

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 18/RP/2019**

in

**Petition No. 315/GT/2018**

**Coram:**

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

**Dr. M.K. Iyer, Member**

**Date of Order: 8<sup>th</sup> November, 2019**

**In the matter of**

Petition for review of Commission's order dated 26.6.2019 in Petition No. 315/GT/2018 for approval of tariff of Rampur Hydroelectric Project (412 MW) for the period from actual COD of first unit (13.5.2014) to 31.3.2019

**And**

**In the matter of**

SJVN Limited

SJVN Corporate Office Complex,

Shanan, Shimla-171006,

Himachal Pradesh

..... **Petitioner**

**Vs**

1. Uttaranchal Power Corporation Ltd.  
Urja Bhawan, Kanwali Road,  
Dehradun- 248001

2. Power Development Department  
Government of J&K,  
Mini Secretariat, Jammu

3. Jaipur Vidyut Vitran Nigam Ltd.  
Vidyut Bhawan, Janpath,  
Jaipur - 302005

4. Ajmer Vidyut Vitran Nigam Ltd.  
Old Power House, Hathi Bhata,  
Jaipur Road, Ajmer

5. Jodhpur Vidyut Vitran Nigam Ltd.  
New Power house, Industrial Area,  
Jodhpur



6. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector VI,  
Panchkula - 134019

7. Himachal Pradesh State Electricity Board Ltd,  
Vidyut Bhawan, Shimla - 171004

8. Government of Himachal Pradesh,  
H.P. Secretariat, Shimla -171002

9. Uttar Pradesh Power Corporation Ltd.  
Shakti Bhawan, 14, Ashoka Road,  
Lucknow - 226001

10. Punjab State Power Corporation Ltd.  
The Mall, Patiala - 147001

11. Power Department  
Union Territory of Chandigarh,  
Additional Office Building, Sector 9D,  
Chandigarh

.....Respondents

**Parties Present:**

Shri Romesh Kapur, SJNVL  
Shi Rajeev Aggarwal, SJNVL

**ORDER**

This Review Petition has been filed by the Petitioner, SJNVL seeking review of the Commission's order dated 26.6.2019 in Petition No. 315/GT/2018, wherein the Commission had approved the tariff Rampur Hydro Electric Project (412 MW) (hereinafter referred to as 'the generating station or RHPS') for the period from the actual COD of first unit (13.5.2014) till 31.3.2019 in terms of the provisions of the CERC (Terms and Conditions for Tariff), 2014 (hereinafter called 'the 2014 Tariff Regulations'). The dates of commercial operation of the units of the generating station are as under:



Units	Actual COD
I	13.5.2014
II	13.5.2014
III	8.8.2014
IV	18.6.2014
V	13.5.2014
VI	16.12.2014

## **Background**

2. Petition No. 184/GT/2014 was filed by the Petitioner for approval of tariff of RHPS and the Commission by order dated 27.1.2015 granted interim annual fixed charges based on actual COD of Units I to VI for the period from 13.5.2014 to 31.3.2016, subject to adjustment after determination of final tariff of the generating station for 2014-19. In the said order, NAPAF of 82% was allowed to the generating station for the period from 2014-16. Thereafter, Petition No. 315/GT/2018 was filed by the Petitioner for approval of tariff of the generating station for the period from actual COD of first unit (13.5.2014) to 31.3.2019 and the Commission vide its order dated 26.6.2019 had determined the tariff for the said period. In the said order, the Commission had also determined the Normative Annual Plant Availability Factor (NAPAF) of the generating station as under:

*“102. The Petitioner in this Petition has submitted that the generating station is a tail race extension of its upstream project (NJHPS) and is operative only in tandem with the diurnal storage of NJHPS. It has also submitted that water coming out from the tail race of NJHPS is diverted in the generating station through TRT Pond. There is no balancing reservoir in between the two facilities and is having a small storage in the Jhakri tail Race pond, from where the water enters the Head Race Tunnel of the generating station. The Petitioner has further added that for implementation of tandem operation of NJHPS and this project, teething problems were faced during initial years before stabilization of machines. Accordingly, the Petitioner has proposed NAPAF of 82% for 2014-19 in line with the NAPAF fixed for NJHPS by the Commission.*

*105. The matter has been examined. It is observed that the Commission vide order dated 27.1.2015 had approved NAPAF of 82% for the period 2014-16 as under:*

*“25. The Petitioner has claimed NAPAF of 77%, in consideration of the tandem operation of Nathpa Jhakri HEP with this generating station and the teething problems likely to be faced during initial years before stabilization of machines of the generating stations. NAPAF of 82% was allowed in respect of upstream Nathpa Jhakri hydro-electric project during the initial years before stabilization of machines and during the tariff period 2009-14. However, the*



*same has been revised to 90% during the tariff period 2014-19, based on actual performance of the station during tariff period 2009-14. Thus, keeping in view the teething problems likely to be faced during initial years before stabilization of machines of this generating station, due to its tandem operation, as envisaged by the Petitioner, we allow NPAF of 82% for a period of two years i.e. from 2014 to 2016. However, the NPAF shall be reviewed after 2 years based on actual performance of the generating station, considering the fact that the Petitioner may not unduly earn any incentive, after teething problems are resolved.”*

106. Accordingly, in line with the above decision, NPAF of 82% is allowed for the period 2014-16. However, for the period 2016-19, we allow the NPAF of 90% considering the actual PAF for the said period.”

3. Aggrieved by the above order, the Petitioner has filed this review Petition and has sought revision of the NPAF of RHPS as 85% for the period 2016-19 as against the NPAF of 90% allowed vide order dated 26.6.2019, based on the following grounds:

(i) This generating station is operating in tandem with Nathpa Jhakri HPS (NJHPS) and cannot be operated independently. It is dependent upon water released from NJHPS. The NPAF of NJHPS has been considered as 82% for the period 2009-14 in terms of the 2009 Tariff Regulations and 90% for the period 2014-19 in terms of the 2014 Tariff Regulations, based on the performance of previous year. However, this generating station was commissioned on 16.12.2014 and therefore, the NPAF of this generating station was not covered in the 2014 Tariff Regulations.

(ii) The Commission in its order dated 27.1.2015 while allowing the NPAF of 82% for the period 2014-16 for this generating station had observed that the same shall be reviewed after two years based on the actual performance of this generating station. The Commission while specifying the norms of operation in the 2014 Tariff Regulations had provided that the NPAF of 85% shall be applied for pondage type plants, where plant availability is significantly affected by silt.

(iii) NJHPS and RHPS are operating in high silt conditions. In case of forced outage/ planned outage of NJHPS, where the units of this generating station are available for generation, the DC/ PAF of downstream generating station would be reduced in spite of its machine availability, due to non-release of water by upstream NJHPS. In order to account for such situation, NPAF of this generating station & NJHPS may not be considered equal (90%) for 2016-19.

(iv) The Commission in its order dated 16.5.2018 in Petition No. 150/MP/2016 relating to the consideration of Declared Capacity of NJHPS and this generating



station had observed that the NAPAF of this generating station needs to be lower by 1.96% in comparison to NAF of NJHPS so that RHPS does not suffer in terms of capacity charges/ incentives. It had also observed that the gap of 8% in NAF between NJHPS and this generating station is considered reasonable to take care of tandem in operation where unit availability of this generating station are more in comparison to units available at NJHPS for 2014-16. Therefore, there is difference in consideration of NAF of this generating station in Commission's order dated 26.6.2019 and in order dated 16.5.2018.

4. The matter was heard on 6.11.2019 on 'admission'. During the hearing, the representative of the Petitioner reiterated the submissions made in the Petition as above and prayed that the Commission may revise the NAF of RHPS as 85% for the period 2016-19, instead of the NAF of 90% allowed vide Commission's order dated 26.6.2019. Accordingly, the Commission reserved its order in the Petition.

### **Analysis and Decision**

5. We have heard the representative of the Petitioner and perused the pleadings and documents on record. Section 94(1)(f) of the Electricity Act, 2003 provides that the Commission shall have the same power as are vested in a Civil court under the Code of Civil Procedure, 1908 (CPC) for reviewing its decisions, directions and orders. Order 47 Rule 1 of CPC provides that any person considering himself aggrieved by an order may apply for its review to the court which passed the order under the following circumstances;

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

*(b) On account of a mistake or error apparent on the face of the record, or*

*(c) For any other sufficient reasons.*



6. Regulation 37 of the 2014 Tariff Regulations provides as under:

*“37. Norms of operation for hydro generating stations:*

*(1) The following Normative annual plant availability factor (NAPAF) shall apply to hydro generating station:*

*(a) Storage and Pondage type plants with head variation between Full Reservoir Level (FRL) and Minimum Draw Down Level (MDDL) of up to 8%, and where plant availability is not affected by silt : 90%*

*(b) In case of storage and pondage type plants with head variation between full reservoir level and minimum draw down level is more than 8% and when plant availability is not affected by silt, the month wise peaking capability as provided by the project authorities in the DPR (approved by CEA or the State Government) shall form basis of fixation of NAPAF.*

*(c) Pondage type plants where plant availability is significantly affected by silt: 85%.*

*(d) Run-of-river type plants: NAPAF to be determined plant-wise, based on 10-day design energy data, moderated by past experience where available/relevant.*

*(2) A further allowance may be made by the Commission in NAPAF determination under special circumstances, e.g. abnormal silt problem or other operating conditions, and known plant limitations.*

*(3) A further allowance of 5% may be allowed for difficulties in North East Region.”*

7. The Petitioner in this Petition has submitted that RHPS is operating in tandem with NJHPS and is dependent upon water released from NJHPS. It has also submitted that NJHPS and RHPS are operating in high silt conditions and in case of forced outage/planned outage of NJHPS, where units of RHPS are available for generation, the DC/PAF of RHPS would be reduced in spite of its machine availability due to non-release of water by upstream NJHPS. The Petitioner has added that in order to account for such situation, NAPAF of RHPS may not be considered as 90% equal to NJHPS for 2016-19. According to the Petitioner, the NAPAF of 85% for pondage type plants significantly affected by silt may be allowed for the period 2016-19 in terms of the 2014 Tariff Regulations.

8. The submissions of the Petitioner are not acceptable. It is noticed that the issues regarding the teething problems faced by RHPS in initial years, due to its tandem



operation with NJHPS, were already considered by the Commission while fixing the NAPAF of 82% for 2014-16 vide its Order dated 27.1.2015 in Petition No. 184/GT/2014. In the said order, it was made clear by the Commission, that NAPAF of RHPS shall be reviewed after two years, based on the actual performance of the generating station. The relevant portion of the order is as under:

*“25.....Thus, keeping in view the teething problems likely to be faced during initial years before stabilization of machines of this generating station, due to its tandem operation, as envisaged by the Petitioner, we allow NAPAF of 82% for a period of two years i.e. from 2014 to 2016. However, the NAPAF shall be reviewed after 2 years based on actual performance of the generating station, considering the fact that the Petitioner may not unduly earn any incentive, after teething problems are resolved.”*

9. Similar submissions were made by the Petitioner in Petition No. 315/GT/2018 wherein, the Commission fixed the NAPAF of 82% for 2014-16 in line with aforesaid order dated 27.1.2015 and 90% for 2016-19, based on the actual PAF of RHPS. It is therefore evident that the NAPAF for RHPS of 82% (for 2014-16) and 90% for 2016-19, were fixed by Commissions' orders dated 27.1.2015 and 26.6.2019, after prudence check of the submissions made by the Petitioner. The Petitioner cannot therefore be permitted to seek revision of NAPAF of RHPS raising the same issues, in review. In our view, the Petitioner has sought to re-argue the case on merits and the same is not permissible in review. Further, the submission of the Petitioner that RHPS and NJHPS are being operated under high silt conditions and that NAPAF of 85% shall be applied for pondage type plants significantly affected by silt, in terms of the 2014 Tariff Regulations, cannot also be considered, as these submissions were never raised or argued by the Petitioner during the proceedings in Petition No. 315/GT/2015. The Petitioner therefore cannot also be permitted to raise new or additional grounds, in review, and seek revision of NAPAF for 2016-19. Accordingly, we hold that there is no error apparent on the face of the order dated 26.6.2019 and



the submission of the Petitioner is therefore rejected. Hence, review on this ground is not maintainable.

10. One more submission of the Petitioner is that the Commission in its order dated 16.5.2018 in Petition No.150/MP/2016 had observed that NAPAF of RHPS needs to be lower by 1.96% in comparison to NAPAF of 90% of NJHPS so that RHPS does not suffer in terms of the capacity charges /incentives. It has stated that the Commission in the said order had also observed that the gap of 8% in NAPAF between NJHPS and RHPS is considered reasonable to take care of tandem in operation where the unit availability is more in comparison to units available at NJHPS for 2014-16. Accordingly, the Petitioner has submitted that NAPAF of RHPS may be revised as 85% for the period 2016-19.

11. We have examined the submissions. The relevant observations of the Commission in order dated 16.5.2018 is extracted hereunder:

*“23. We have examined the matter. In normal parlance, forced outages of 2% per annum is considered while deciding the NAPAF of the storage/pondage stations and as such in probabilistic terms, the simultaneous occurrence of forced outages in two plants is 0.04%. This would mean that in all likelihood there are chances that 1.96% of the time, Scenario 2 may occur i.e machines available at NJHPS are 5 (five) and number of units available at Rampur are 6 (six). In order to account for such situation so that the Rampur Project does not suffer in terms of capacity charges/ incentive, the NAPAF of Rampur needs to be lower by 1.96% in comparison to NAPAF of Nathpa Jhakri Project. In this context, it is pertinent to mention that NAPAF of Rampur Project has been fixed at 82% for the first two years under the 2014 Tariff Regulations as against NAPAF of 90% for Nathpa Jhakri Project. This gap of 8% is considered reasonable to take care of tandem operation, teething problems in this scenario where the units available at Rampur are more in comparison to units available at Nathpa Jhakri Project. Therefore, we are not inclined to accept the Petitioner's contention that it would suffer financial loss if PAF of either of the Projects are reduced on account of non-availability of generating units/ machine of the other. Based on the above discussions, we are inclined to accept the recommendations made with regard to Scenario 2 in the said Report that recommends that DC of downstream project (Rampur) should be declared on basis of both i.e. machine and water availability.”*





12. It is pertinent to mention that the Petitioner had not relied upon the order dated 16.5.2018 in its submission in the main Petition (Petition No. 315/GT/2018) filed on 12.9.2018 or during the proceedings before the Commission in the said Petition. That being the case, we find no reason to entertain the submissions of the Petitioner for revision of NAPAF for 2016-19, in review, by placing reliance on the said order dated 16.5.2018. Even otherwise, the observations of the Commission in the said order dated 16.5.2018 that NAPAF needs to be lowered by 1.96% in comparison to NAPAF of NJHPS and that the gap of 8% which was considered reasonable to take care of tandem operation, were only in the context of fixation of NAPAF of 82% for the first two years (2014-16) for RHPS under the 2014 Tariff Regulations, in comparison to the NAPAF of 90% for NJHPS. These observations cannot, in our view, prevent the Commission from revising the NAPAF of RHPS on prudence check, based on the actual PAF for 2016-19, in terms of the Commission's order dated 27.1.2015 as quoted in para 8 above. As the NAPAF of 90% for the period 2016-19 allowed in order dated 26.6.2019, is based on the actual performance of the RHPS for the said period, the reliance placed by the Petitioner on Commission's order dated 16.5.2018 in Petition No. 150/MP/2016 for review of NAPAF is misconceived. Also, it is not the contention of the Petitioner that the NAPAF allowed for RHPS was not achievable or that there was shortfall in the recovery of capacity charges. In the above background, there is no error apparent on the face of the order dated 26.6.2019 and review on this ground is rejected.

13. Under Order 47 Rule 1 of CPC, a judgment may be open to review inter alia if there is a mistake or an error apparent on the face of the record. In exercise of the jurisdiction under Order 47 Rule 1, it is not permissible for an erroneous decision to



be reheard and corrected. A Review Petition has a limited purpose and cannot be allowed to be an appeal in disguise. The Supreme Court in the case of Lily Thomas etc. vs Union of India & Ors., [JT 2000 Vol.5 SCC 617] had held that in exercise of power of review, the Court may correct the mistake but not to substitute the view. We are of the considered view that the application for review filed by the Petitioner does not satisfy the conditions for review as laid down under Order 47 Rule 1 of CPC. For the foregoing reasons, the application for review of order dated 26.6.2019 is not maintainable and is accordingly dismissed at admission stage.

14. Petition No. 18/RP/2019 is disposed of in terms of the above.

*Sd/-*  
(Dr. M.K.Iyer)  
Member

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

