

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 28/RP/2020 with I.A No. 53/IA/2020**

in

**Petition No. 308/GT/2018**

**Coram:**

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

**Shri I.S. Jha, Member**

**Date of Order: 27<sup>th</sup> July, 2021**

**In the matter of**

Review of Commission's order dated 5.2.2020 in Petition No. 308/GT/2018 pertaining to the determination of tariff of Uri-II Hydroelectric project for the period from 1.4.2014 to 31.3.2019

**And**

**In the matter of**

Punjab State Power Corporation Limited,  
The Mall, Near Kali Badi Mandir,  
Patiala – 147 001.

**.... Petitioner**

**Vs**

1. NHPC Limited,  
NHPC Office Complex, Sector-33,  
Faridabad, Haryana-121003.
2. Haryana Power Purchase Centre,  
Shakti Bhawan, Sector-6,  
Panchkula- 134109.
3. Dakshin Haryana Bijli Vitran Nigam Limited,  
Vidyut Sadan, Vidyut Nagar, Hisar- 125005.
4. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow – 226 001.
5. Engineering Department,  
UT of Chandigarh, 1st floor, UT Secretariat,  
Sector 9D, Chandigarh – 160 009.
6. BSES Rajdhani Power Limited,  
BSES Bhawan, Nehru Place,  
New Delhi – 110 019



7. BSES Yamuna Power Limited,  
Shakti Kiran Building, Karkardooma,  
New Delhi – 110 032.
8. Tata Power Delhi Distribution Limited,  
33 KV Sub-station, Hudson Lane,  
Kingsway Camp, Delhi – 110 009.
9. Uttarakhand Power Corporation Limited,  
Urja Bhawan, Kanwali Road,  
Dehradun – 248001.
10. Jaipur Vidyut Vitran Nigam Limited,  
Vidyut Bhawan, Janpath,  
Jaipur – 302 005.
11. Ajmer Vidyut Vitran Nigam Limited,  
Old Power House, Hatthi Bhatta,  
Jaipur Road, Ajmer – 305 001
12. Jodhpur Vidyut Vitran Nigam Limited,  
New Power House, Industrial Area,  
Jodhpur – 342 003.
13. Power Development Department,  
New Secretariat,  
Jammu (J&K) 180001.

...Respondents

**Parties Present:**

Ms. Swapna Seshadri, Advocate, PSPCL  
Shri Anand K. Ganesan, Advocate, PSPCL  
Shri Amal Nair, Advocate, PSPCL  
Shri Rajiv Shankar Dvivedi, Advocate, NHPC  
Shri M.G.Gokhale, NHPC  
Shri Piyush Kumar, NHPC

**ORDER**

The Petitioner, Punjab State Power Corporation Limited (PSPCL) has filed this Review Petition seeking review of the Commission's order dated 5.2.2020 in Petition No. 308/GT/2018, whereby the tariff of Uri-II Hydroelectric Project (240 MW) (in short 'the generating station') for the 2014-19 tariff period was determined in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "the 2014 Tariff Regulations").



2. Aggrieved by the said order, the Review Petitioner has sought review of the said order dated 5.2.2020 on the ground of error apparent on the face of the order, limited to the issue of “*Non-consideration of actual PAF while fixing NAPAF of the generating station for the period 2014-19*”.

3. The Review Petitioner has submitted the following:

(a) The Commission in its order dated 5.2.2020 in Petition No. 308/GT/2018, while determining the tariff of the generating station had decided the Normative Annual Plant Availability Factor (in short ‘NAPAF’) at 55% for the 2014-19 tariff period. The review is being sought on the limited aspect of not rendering any finding on the pleading and arguments of the Review Petitioner that the actual NAPAF being achieved by the Respondent NHPC, is much higher and, therefore, NAPAF of 55% allowed is extremely low.

(b) The Review Petitioner in its reply to Petition No. 308/GT/2018 had categorically raised the issue of actual Plant Availability Factor being much higher than determined NAPAF of 55%. The Review Petitioner had pointed out that as per REA (Regional Energy Accounts), the year-wise average value of PAF for the months of 2017-18 was 79.27% and for 2018-19 (till January 19<sup>th</sup>), the same was 88.33%. These figures, as pointed out by the Review Petitioner were substantially higher than NAPAF of 55%.

(c) During the course of the hearing in Petition No. 308/GT/2018, the counsel for the Review Petitioner had specifically argued that since the 2014-19 tariff period is almost over, NAPAF of the generating station should be fixed according to actuals, as achieved by the Respondent NHPC, during the 2014-19 tariff period.

(d) The reply of the Review Petitioner has been noted in paragraph 6 of the Commission’s order dated 5.2.2020 in Petition No. 308/GT/2018. However, the issue of fixing NAPAF as per actuals being achieved by Respondent NHPC, which is much in excess of the normative NAPAF of 55%, has escaped the attention of this Commission while passing the order dated 5.2.2020 in Petition No. 308/GT/2018. This Commission has not dealt with the submissions of the Review Petitioner on the aspect of NAPAF at all.

(e) The fixation of lower NAPAF at 55% results in an unfair advantage to the Respondent NHPC, because its generating station is clearly able to achieve much higher PAF juxtaposed with the fixed NAPAF. As a result, the Respondent NHPC gets incentivized for over-achieving NAPAF. Such incentives being accorded to the Respondent NHPC cannot be proceeded at



the cost of the consumers of the State of Punjab. The actual PAF being achieved by NHPC for the last three years is as under:

Financial Year	Cumulative PAF%	NAPAF as per Order dated 5.2.2020
2016-17	81.75%	55%
2017-18	79.30%	55%
2018-19	90.29%	55%

(f) It is well settled that when an issue raised and pleaded has escaped the attention of the Court and no finding has been rendered on the issue, a review petition would lie. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in *Moran Mar Basselios Catholicos and Another v. the Most Rev. Mar Poulouse Athanasius and Others.* (1954 AIR 526).

Accordingly, the review petitioner has submitted that the review petition is maintainable.

4. The review petitioner has also filed IA No.53/2020 for condonation of delay of 18 days in filing this review petition.

#### **Hearing on 18.6.2021**

5. The IA along with the review petition was heard on 'admission', through video conferencing, on 18.6.2021. During the hearing, the learned counsel for the Review Petitioner reiterated the submissions made in the review petition. The learned counsel also submitted that the details of the actual NAPAF was submitted by the Review Petitioner with a prayer to relax the relevant regulations, at the time of hearing in Petition No.308/GT/2018, but the same escaped the attention of the Commission while passing the order dated 5.2.2020. She accordingly submitted that since the tariff period is over and the data was available, NAPAF of the generating station may be fixed at actuals, as achieved by the Petitioner. The learned counsel further submitted that the IA filed by the Review Petitioner for condonation of delay of 18 days in filing the review petition, may be allowed for the reasons stated therein.



6. The learned counsel for the Respondent NHPC while opposing the review petition submitted that Regulation 37(4) of the 2014 Tariff Regulations provides for NAPAF of 55% for the generating station and the same was specified by the Commission, based on the data which was then available. He also submitted that the Petitioner has sought to challenge Regulation 37(4) of the 2014 Tariff Regulations pertaining to NAPAF of the generating station and the same is not permissible by way of review petition. He accordingly prayed that the review petition may be rejected.

7. The Commission after hearing the parties reserved its order on the 'admissibility' of the review petition. Based on the submissions of the parties and the documents available on record, we proceed to examine the issue raised in the review petition as stated in the subsequent paragraphs.

#### **Interlocutory Application - IA No.53/2020**

8. The Review Petitioner has filed this IA for condonation of delay of 18 days in filing the review petition and has submitted that decision to file review was taken by the management after perusing the order dated 5.2.2020 and discussing it with the counsel and on the grounds of review being satisfied. It has also submitted that the process of drafting and finalisation took time, but due to outbreak of covid-19 pandemic, there was some unavoidable delay in filing the review petition, which was filed on 8.4.2020. As the reasons for the delay in filing the review petition as submitted by the Review Petitioner is found justifiable, the delay of 18 days in filing the review petition is condoned. IA No. 53/2020 is disposed of in terms of the above.

#### **Analysis and Decision**

9. The Commission in paragraph 86 of the order dated 5.2.2020 in Petition No.308/GT/2018 had allowed NAPAF as under:



**“Normative Annual Plant Availability Factor (NAPAF)**

86. In terms of Regulation 37(4) of 2014 Tariff Regulations, NAPAF of 55% has been considered for the generating station for the period 2014-19.”

10. The Review Petitioner has submitted that the actual Plant Availability Factor of the generating station is substantially higher than NAPAF of 55% allowed vide order dated 5.2.2020. It has also submitted that the Review Petitioner had pointed out this fact in its reply, but the same has escaped the attention of this Commission while passing the order dated 5.2.2020 in Petition No.308/GT/2018. The Review Petitioner has further submitted that the actual PAF achieved by the Respondent NHPC is 81.75% in 2016-17, 79.30% in 2017-18 and 90.29 in 2018-19. It has added that since the 2014-19 tariff period is over and the data was available, NAPAF of the generating station may be fixed at actuals, as achieved by the Petitioner, in relaxation of Regulation 37(4) of the 2014 Tariff Regulations. Per contra, the Respondent NHPC has submitted that Regulation 37(4) of the 2014 Tariff Regulations provides for NAPAF of 55% for the generating station and the same was specified by the Commission, based on the data which was then available. He also submitted that the Review Petitioner cannot be permitted to challenge the regulations pertaining to NAPAF of the generating station by way of review petition.

11. The submissions have been examined. Regulation 37(4) 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:*

xxxxxxx

*(4) Based on the above, the Normative annual plant availability factor (NAPAF) of the hydro generating stations already in operation shall be as follows :-*

Station	Type of Plant	Plant Capacity No. of Units x MW	NAPAF (%)
NHPC			
Uri-II	Pondage	4 x 60	55%



12. It is noticed that the Review Petitioner in its reply filed on 27.3.2019 in the original petition, had raised the issue of low NAPAF of this generating station and had submitted that as per REA, the year-wise average value of Plant Availability Factor for the month for the year 2017-18 was 79.27% and for 2018-19 (till January 1) was 88.33%. The Review Petitioner has contended that this submission was inadvertently not considered while passing the order dated 5.2.2020 and that the same is an error apparent on face of the record necessitating a review. In this regard, it is pointed out that while finalizing the 2014 Tariff Regulations, NAPAF for hydro generating stations were specified by the Commission, considering the actual PAF of the period from 2008-09 to 2012-13. However, in respect of the generating station, which had achieved COD on 1.3.2014, no past performance data was available during the finalisation of the 2014 Tariff Regulations. Accordingly, the Commission, based on theoretical calculations corresponding to the Design year fixed NAPAF of this generating station as 55% and same is specified in Regulation 37(4) of the 2014 Tariff Regulations. Regulation 37(4) of the 2014 Tariff Regulations do not provide for truing-up of NAPAF of the generating station for the 2014-19 tariff period, based on actuals. Therefore, even though the Review Petitioner had pointed out achievement of higher NAPAF in respect of the generating station, the same could not be considered while passing order dated 5.2.2020 in Petition No. 308/GT/2018, since there is specific provision in Regulation 37(4) of the 2014 Tariff Regulations fixing NAPAF of the generating station at 55%. Also, the prayer of the Review Petitioner to revise NAPAF, in exercise of the power to relax, if considered, would have the effect of amendment of the said regulations, which is not permissible in review. In this background, we find no reason to allow the prayer of the Review Petitioner to revise NAPAF of this generating station based on actuals. The prayer of



the Review Petitioner for review of order dated 5.2.2020 in Petition No.308/GT/2018 on this count is, therefore, rejected.

13. Review Petition No.28/RP/2020 along with IA No.53/2020 is disposed of in terms of the above.

**Sd/-  
(I.S.Jha)  
Member**

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

