

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 52/MP/2022

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of Order: 19th December, 2024

In the matter of:

Petition under Section 79(1)(f) of the Electricity Act, 2003 for adjudication of the disputes between NHPC Ltd and Power Grid Corporation of India Limited (PGCIL) regarding the interpretation of Regulation 6(5) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009.

And in the matter of:

NHPC Limited,
NHPC Office Complex, Sector-33,
Faridabad (Haryana) - 121003.

...Petitioner

Vs

Power Grid Corporation of India Limited,
"Saudamani", Plot No.2, Sector-29,
Gurgaon - 122001 (Haryana).

...Respondent

Parties Present :

Shri Rajiv Shankar Dvivedi, Advocate, NHPC
Ms. Swapna Seshadri, Advocate, PGCIL

ORDER

The Petitioner NHPC Limited (in short, NHPC') has filed the present petition seeking the following relief(s):

- (a) *Direct the PGCIL to revise bill No. 92101797 dtd. 6.11.2020 to the extent charging of interest from COD of the respective assets to date of order dtd.17.8.2020 and refund the excess amount.*
- (b) *Award interest at the rate of 18% per annum on account of the amount payable in terms of prayer (a) above from the date of payment of bill i.e. 29.10.2021 by NHPC to PGCIL till the date of actual payment by PGCIL to NHPC.*
- (c) *Award the cost of the present litigation in favour of the Petitioner and against PGCIL.*
- (d) *Allow the Petitioner to recover the petition fee amounting to Rs.3,00,000/- (Rupees Three Lakh only) from the respondent.*



- (e) *Pass such other and further order / orders as are deemed fit and proper in the facts and circumstances of the case.*

Submissions of the Petitioner NHPC

2. In justification of the above prayers, NHPC has mainly submitted the following:
- (a) The Petitioner operates Parbati-III power station (520 MW) (in short, 'Parbati-III') in the State of Himachal Pradesh. Units I & III of Parbati-III were commissioned on 24.3.2014. The responsibility for the development of the Associated Transmission System (in short, 'ATS') of Parbati-III was given to the Respondent PGCIL by the CEA.
- (b) The transmission tariff of the ATS of Parbati-III was determined by the Commission vide order dated 26.5.2015 in Petition No.91/TT/2012 (in short, 'order dated **26.5.2015**') for the period 2009-14. Thereafter, vide order dated 17.8.2020 in Petition No.107/TT/2017 (in short, 'order dated **17.8.2020**'), the tariff of the ATS of Parbati-III was trued-up for the period 2009-14 along with the determination tariff for the period 2014-19. It was held in the said Petitions that NHPC should bear the transmission charges of the assets of ATS, commissioned prior to the COD of generating units of Parbati-III.
- (c) Consequent to the order dated 26.5.2015, PGCIL raised bill No. 92100076 dated 17.6.2015 for Rs.74,78,43,000/- on NHPC, and the same was paid under protest, in terms of the directions of APTEL vide order dated 1.10.2020 in Appeal No. 135 of 2020.
- (d) PGCIL has violated the provisions of the 2009 Tariff Regulations by charging interest on the under-recovered amount from the date of COD of the respective assets to the date of order (i.e., 17.8.2020). Since no tariff order was available for billing from the COD (i.e., 1.9.2013) for Assets-3 and 4, no recovery of tariff can take place from 1.9.2013 (i.e., COD) to 17.8.2020 and hence, the recovery of transmission tariff along with interest is not allowed.
- (e) Consequent to the order dated 17.8.2020, PGCIL had raised bill No. 92101797 dated 6.11.2020 for Rs.10,10,51,171/- on NHPC, which includes Rs.547.05 lakh as Principal (Rs.342.59 lakh for Asset-1, Rs.4.66 lakh for Asset-2, Rs.85.15 lakh for Asset-3 and Rs.114.65 lakh for Asset-4) and Rs.463.46 lakh as interest, calculated from the COD of the respective assets (i.e. 1.8.2013 for Assets-1 and 2 and 1.9.2013 for Assets-3 and 4) till the date



of the order (i.e. 17.8.2020). Accordingly, the total amount of Rs.10.11 crore was paid by NHPC on 29.10.2021, under protest.

- (f) The transmission tariff for Assets 3 and 4, was determined for the first time by order dated 17.8.2020, after their COD. As such, there was no transmission tariff available for Assets 3 and 4, and hence, there should not be any interest chargeable on the transmission tariff for the said two assets.
- (g) There are two methodologies provided in the 2009 Tariff Regulations (Regulation 5 and 6) for the calculation of interest on the tariff adjustments, as under:
- (i) Regulation-5 for interest chargeable on tariff adjustment between provisional tariff/provisional billing to the final tariff determined.
 - (ii) Regulation-6 for interest chargeable on tariff adjustment between final tariff and tariff approved after truing up exercise.
- (h) Regulation 5 and Regulation 6 of the 2009 Tariff Regulations provide that interest is to be calculated on the amount to be recovered from / refunded from the date of billing till the date of the final / truing-up order. Therefore, the bill issued by PGCIL is not in line with the extant provisions of the 2009 Tariff Regulations on the following two counts:
- For Assets 3 and 4**
- Incorrect charging of interest from COD to the date of determination of tariff under Regulation 5 and Regulation 6 of the 2009 Tariff Regulations.
- For Assets 1 and 2**
- Incorrect charging of interest from COD to the date of determination of the first tariff under Regulation 6 of the 2009 Tariff Regulations.
- (i) Regulations 5(3), 6(4), 6(5), and 6(6) of the 2009 Tariff Regulations provide for the adjustment of the amount under-recovered or over-recovered along with a simple rate of interest as specified. The issue of under-recovery or over-recovery can be related to the date of billing and not to the year to which these charges pertain. In the present case, two tariff orders were issued by the Commission, one for Assets 1 and 2 (order dated 26.5.2015) and another one for Assets 1, 2, 3, and 4 (order dated 17.8.2020).
- (j) PGCIL charged no interest, rightly so, and in line with the spirit of the regulatory provisions after the order dated 26.5.2015. However, after issuance of the order dated 17.8.2020 (first order after COD of Asset-3 and 4



and truing-up of tariff for Asset-1 and 2), PGCIL, while raising the bill for the difference in the tariff amounts, did not follow the methodology mentioned for under-recovered/over-recovered charges.

- (k) In the Commission's order dated 18.9.2015 in Review Petition No. 5/RP/2015 (in Petition No.115/GT/2013 regarding the approval of generation tariff of the Teesta Low Dam Project Stage-III Hydroelectric project), it was held that there is no provision in the 2009 Tariff Regulations for charging the interest from the COD of unit/station till the date of the order.
- (l) Under Regulation 5 of the 2009 Tariff Regulations, the transmission tariff for Assets 1 and 2 was provisionally determined by an order dated 26.5.2015. For a new asset whose tariff is determined for the first time after the COD of the asset, no interest is allowed under said Regulation from their COD till the date of the tariff order. PGCIL raised a bill for Rs.74.78 crore in June 2015 (after the issue of the order dated 26.5.2015). It followed the methodology provided in the Regulations, and no interest was charged by PGCIL for the tariff determined for the first time after COD of Assets 1 and 2 for the period from 1.8.2013 to the date of order (i.e., 26.5.2015).
- (m) However, PGCIL did not follow the above methodology while billing for the transmission tariff of assets 3 and 4, pursuant to the order dated 17.8.2020. It has charged interest from the COD of these assets to the date of the tariff order, which is a clear violation of the regulatory provisions of the 2009 Tariff Regulations. There was no tariff order available for billing from COD (i.e. 1.9.2013) of Asset- 3 and 4, and no recovery of tariff took place from 1.9.2013 till 17.8.2020. Therefore, the recovery of the transmission tariff, along with interest, ought not be allowed in this case.
- (n) The provisional tariff for Assets 1 and 2 was determined by the order dated 26.5.2015 under Regulation 5 of the 2009 Tariff Regulations. Bill of Rs.74.78 crore was raised by PGCIL in June 2015, which was the first bill after COD of said two assets. So, the recovery took place in 2015, i.e., when the first billing was done. Subsequently, the trued-up tariff was determined for the said two Assets (Asset-1 & 2) under Regulation 6 of the 2009 Tariff Regulations. Therefore, the final bill for the difference amount in tariff due to the truing-up of the tariff was raised in November 2020 along with interest. However,



PGCIL has charged interest from the COD of these assets (Asset-1 & 2) till the date of order, which is a clear violation of the said Regulation. Since the recovery took place in 2015, i.e., after the first billing by the Respondent, interest should be calculated from the date of first billing to the date of truing-up of the tariff order.

- (o) PGCIL is circumventing the provisions of the 2009 Tariff Regulations by charging interest on the under-recovered amount from the date of COD of respective assets till the date of order (17.8.2020).
- (p) The said two issues were brought to the notice of PGCIL by NHPC vide letters dated 15.9.2021 and 6.10.2021. Having made unfruitful attempts to resolve the issue with PGCIL, NHPC has now been constrained to approach the Commission for reimbursement of the excess interest amount billed by PGCIL and paid under protest.

Hearing dated 30.6.2022

3. During the hearing through virtual hearing 'on admission,' on 30.6.2022, the learned counsel for the Petitioner made detailed oral submissions. Accordingly, the Commission admitted the Petition and directed the parties to complete their pleadings. Reply has been filed by the Respondent PGCIL vide affidavit dated 31.7.2023.

Submissions of the Respondent PGCIL

4. Respondent PGCIL, in its reply, has mainly submitted the following:

- (a) NHPC has challenged part of Bill No. 92101797 raised by PGCIL on NHPC on on 6.11.2020. NHPC is contending that the bill of Rs.10.11 crore includes the interest amount of Rs 4.63 crore, which has been incorrectly levied by PGCIL.
- (b) The details of the assets are as follows:

Asset 1: 400 kV D/c Parbati Pooling Point – Amritsar line along with associated bays / COD: 01/08/2013 and **Asset 2:** 80 MVAR bus reactor at Parbati Pooling Point along with associated bays / COD: 01/08/2013

Asset 3: LILO of 2nd Ckt of Parbati-II-Koldam T/L at Pooling Station along with associated bays (portion c - d) / COD: 01/09/2013; and **Asset 4:** LILO of 2nd Ckt of Parbati-II-Koldam T/L at Pooling Station along with associated bays (portion e - f) / COD: 01/09/2013



- (c) The interest of Rs 4.63 crores has been levied by PGCIL on the differential tariffs of Assets 1 & 2 and Assets 3 & 4 as per details below:

(Rs. in lakh)

<i>Asset No.</i>	<i>COD</i>	<i>As per Tariff Order dated 26.05.2015 (Pet no. 91/TT/2012)</i>	<i>As per Tariff Order dated 17.08.2020 (Pet no. 107/TT/2017)</i>	<i>Differential Amount</i>	<i>Interest</i>
Asset 1 & 2	1-8-2013	7478.43	7825.68	347.25	294.91
Asset 3 & 4	1-9-2013		199.80	199.80	168.55
Total				547.05	463.46

- (d) Interest on the differential amount has been calculated on a monthly basis i.e., interest amount on the differential amount for Assets 1 and 2 has been calculated from their COD to 16.8.2020 (date of truing up order dated 17.8.2020). Similarly, in the case of Assets 3 and 4, the interest amount on the differential amount has been calculated from COD to 16.8.2020.
- (e) In so far as transmission assets are concerned, the determination and recovery of tariff under Sections 61 & 62 of the Electricity Act, 2003 based on the capital cost incurred always relates to the COD. The tariff for all Assets 1, 2, 3, and 4 was claimed by PGCIL by filing its tariff Petition (Petition No. 91/TT/2012) on 24.2.2012, even prior to the commissioning of the assets.
- (f) Pursuant to the filing of Petition No. 91/TT/2012, the Commission, vide a common provisional order dated 21.9.2012, had granted a provisional tariff for the Assets to be recovered from the PoC pool, pending the determination of the final tariff for the above assets, and accordingly, the bills were raised. In the said provisional order, the tariff was permitted from the anticipated COD of all 4 assets, i.e., 1.9.2012.
- (g) Thereafter, vide Commission's order dated 26.5.2015 in Petition No. 91/TT/2012, the COD of Assets 1 and 2 was decided as 1.8.2013. Further, for Assets 3 and 4, the COD was decided as 1.9.2013 vide order dated 7.9.2016 in Petition No.19/RP/2015 (in Petition No. 91/TT/2012).
- (h) **Asset-2** mentioned in the review order dated 7.9.2016 is the LILO of the 2nd ckt of the Parbati-II-Koldam transmission line at the pooling station along with associated bays and LILO of the same line at Parbati-III, which was renamed as Assets 3 and 4 in the truing-up Petition. Therefore, it is not that the COD of Assets 3 and 4 has been determined for the first time vide an order dated 17.8.2020. The COD of Assets 3 and 4 stood decided as on 1.9.2013 in an order dated 26.5.2015 and the review



order dated 7.9.2016. Only the crystallization of the tariff pertaining to Assets 3 and 4 was done by the Commission in the order dated 17.8.2020.

- (i) However, in the Commission's order dated 26.5.2015, due to delay in some other assets built by others associated with Assets 3 and 4 of the ATS, the Commission was constrained to confine the determination of tariff only to Asset-1, i.e., 400 kV Parbati pooling point-Amritsar line along with the associated bays and Asset-2 i.e. 80 MVAR Bus reactor at Parbati pooling station along with associated bays, leaving the determination of tariff for Asset-3 and 4. Both Assets 1 and 2 achieved COD on 1.8.2013, and this was duly recognized in the order dated 26.5.2015.
- (j) The fixation of the capital cost and the resultant determination of tariff was also based on the amount incurred as on the date of COD, i.e., 1.8.2013. Therefore, taking into account that the assets have been available in commercial service since 1.8.2013, the capital cost was determined, based on which the transmission tariff for the subsequent tariff period would be worked out.
- (k) Considering the delay in the commissioning of the generation stations by NHPC, the Commission directed that NHPC was liable to pay the charges for Assets 1 and 2 till the COD of its generation. It is not that the provisional tariff or final tariff for Asset-3 and 4 could not be determined due to there being no such petition or prayers. The order dated 17.8.2020 in Petition No. 107/TT/2017 has clarified that the COD of all assets, including Assets 3 and 4 has been approved in an order dated 26.5.2015 and the Review Order dated 7.9.2016 in Petition No. 19/RP/2015.
- (l) The Commission's order dated 17.8.2020 in Petition No. 107/TT/2017 clearly specifies that the Petitioner will pay the transmission charges for Assets 3 and 4 from 1.9.2013 till the COD of Parbati-III. When the transmission charges pertaining to Assets 3 and 4 are to be paid with effect from 1.9.2013, there is no reason why the interest should not be levied from 1.9.2013.
- (m) Having accepted the COD as 1.9.2013 means that Assets 3 and 4 were available for service to the grid. The tariff determined is also with reference to the COD of 1.9.2013. It cannot be the case that due to the delay in the finalization of the tariff, PGCIL will be put out of pocket. Even if there was no tariff determination on the date of 1.9.2013 (when Asset-3 and 4 became commercially available), the capital cost determined in the order dated



17.8.2020 already stood incurred while declaring the COD of Asset 3 and 4 on 1.9.2013. This stand was approved by the review order dated 7.9.2016 and the order dated 26.5.2015.

- (n) The recovery of the tariff had not been possible from 1.9.2013; PGCIL has been maintaining the assets and meeting the debt service obligations obviously through other means for almost seven years until 17.8.2020 (i.e., the date of true-up order). It cannot be that when the tariff determination or truing-up is done with COD as the reference date, and the recovery gets delayed due to various factors such as subsequent determination/truing up of tariff, non-payment of the bills raised, then no interest or carrying cost would be payable and the interim orders passed by the appellate courts, etc. can be ignored completely.
- (o) No money is without cost and there is a time value of money. Interest is nothing but a carrying cost on the time value of money. Accepting the contentions of NHPC would mean that even though the transmission assets from the date of COD were giving service to it, due to a late recovery of transmission tariff, the interest burden for the difference would be to the account of the transmission licensee, i.e., PGCIL. That surely is not the intention of Section 61 of the Act, which provides for the determination of tariffs based on sound commercial principles.
- (p) In so far as Assets 1 and 2 are concerned, the order dated 26.5.2015 accepted the COD as 1.8.2013, and the tariff was determined. Due to the revision in this tariff at the time of truing-up, there is a marginal increase, and therefore, the same is payable along with interest as per the 2009 Tariff Regulations. Therefore, the interest has been levied subsequently, as the liability from COD of assets was imposed on it.
- (q) In so far as Assets 3 and 4 are concerned, COD has been approved as 1.9.2013, the date which it had originally claimed in Petition 91/TT/2012, and therefore was entitled to tariff from that date. The fact that tariff is not available for Asset-3 and 4 from 1.9.2013 is not for any default on the part of PGCIL. It has been funding this amount from its resources, which has been left unrecovered by it for several years until 17.8.2020, when, for the first time, the capital cost and the tariff pertaining to Assets 3 and 4 were recognized in the order dated 17.8.2020.



- (r) The pendency of Petition No. 25/RP/2015 and Appeal No. 281/2016, and Appeal No. 81/2017 filed before the APTEL also delayed the truing-up for Assets 1 and 2 and the determination of tariff for Assets 3 and 4. NHPC itself took these proceedings against the order dated 26.5.2015. Another appeal was filed by NHPC before the APTEL, which is pending. Meanwhile, the Commission, vide its order dated 17.8.2020, determined the truing up tariff for Assets 1 and 2 and also determined the tariff for Asset-3 and 4.
- (s) Regulations 5 and 6 of the 2009 Tariff Regulations deal with two specific instances, namely the interest chargeable on the adjustment between provisional billing and final tariff and the interest chargeable between the tariff determined and the final trued-up tariff. While Regulation 5 provides for simple interest on the provisionally billed tariff and the final tariff and the rate of interest for the same, Regulation 6 also provides for the same treatment insofar as the difference between the final tariff determined and the tariff trued-up.
- (t) The interest on Assets 1 and 2 is squarely covered under the above Regulations. In so far as Assets 3 and 4 are concerned, the Regulations have to be contextually construed. Ultimately, in the order dated 17.8.2020, the tariff for Assets 3 and 4 was determined with reference to this date of COD of 1.9.2013, and the COD was approved as 1.9.2013 in the order dated 26.5.2015 itself. Having found that the Respondent was entitled to tariff for Asset-3 and 4 from this date of 1.9.2013, the carrying cost on the same cannot be denied based on technicalities.
- (u) It was also a case where there was part bilateral recovery from NHPC, after which the transmission tariff was to be pooled and recovered through the POC pool. However, the picture regarding the tariff to be charged became clear in the order dated 17.8.2020, wherein it was clarified that the COD of all the assets had already been approved in the previous orders dated 26.5.2015 and 7.5.2016 in Petition No. 91/TT/2012 and Review Petition No. 19/RP/2015 (in Petition No. 91/TT/2012) respectively. The trued-up tariff was also with reference to the COD and is a recognition of the fact that had PGCIL been paid its transmission charges for Assets 1 and 2 from 1.8.2013 and for Assets 3 and 4 from 1.9.2013, it would have recovered its capital cost in the



correct manner. As there was a substantial delay of 7 years in the tariff determination and for the truing-up of the tariff of the assets, PGCIL is entitled to the interest payments for the differential amounts, as per the provisions of the 2009 Tariff Regulations.

- (v) PGCIL is relying on the following judgments of the Appellate Tribunal and the Hon'ble Supreme Court on the concept of interest or carrying cost in regulatory tariff fixation and re-fixation cases: (1) LS Power Ltd. v. APERC, SCC Online APTEL 209 dated 20.12.2012 in Appeal No. 150 of 2011 and batch. (ii) Lanco Amarkantak Power Limited v. HERC and Ors, in Appeal no. 308 of 2017 (iii) MSEDCL v MERC and Ors in Appeal No. 15 of 2007; and (iv) Alok Shanker Pandey vs. Union of India and Ors (2007) 3 SCC 545
- (w) In another matter, the Commission, vide its order dated 20.5.2015 in Petition No. 109/TT/2013, had recognised that the interest liability in the payment of tariff would accrue from the COD of the assets. On the specific facts of that case, however, the Commission had allowed the interest only from the date of filing of the petition (which was beyond COD of the asset), excluding the intervening period from COD of assets to the date of filing the petition.
- (x) There is no infirmity in the interest levied by PGCIL. It is only recovering the due cost and interest which has accrued since the COD of assets but could only be determined at a later stage, without any default on the part of PGCIL

Hearing dated 3.8.2023

5. The matter was listed on 3.8.2023, and the Commission, while adjourning the matter, directed PGCIL to file certain additional information and the parties to file their written submissions. In response, PGCIL filed the additional information on 3.8.2013. NHPC has filed its rejoinder vide affidavit dated 16.8.2023.

Rejoinder of NHPC

6. In addition to the submissions made in the petition, NHPC has made the following submissions:

- (a) The interest on the differential tariff of Assets 1 and 2 should be levied from the date of billing of the provisional tariff, i.e., 17.6.2015, and not from the



date of COD of Asset-1 and 2, i.e., 1.8.2013 and no interest should be levied on the tariff of Asset-3 and 4. This is the only issue that needs to be decided. All the irrelevant facts which do not touch upon this issue need to be ignored.

- (b) The interest of Rs.4.63 crores has been levied on the differential tariffs of Assets 1 and 2 and Assets 3 and 4. There is no case of the differential tariff as the bill of these assets on the provisional tariff was never raised to NHPC. The tariff of Assets 3 and 4 was determined for the first time by order dated 17.8.2020. Thus, the question of the differential tariff and the interest on the same never arises for Asset-3 and 4.
- (c) NHPC never contended that the interest on the differential tariff of Asset-1 and 2 is not payable. It has only contended that the interest on the differential tariff of Assets 1 and 2 should be levied from the date of billing of the provisional tariff, i.e., 17.6.2015, and not from the date of COD of Assets 1 and 2, i.e., 1.8.2013.
- (d) The premise of the petition of NHPC flows directly from the 2009 Tariff Regulations, wherein the provisions of Regulations 5 and 6 do not talk about levy of interest from the date of COD. It is pertinent to highlight that PGCIL has acted on the same rationale while raising its provisional bill of Assets 1 and 2 based on the order dated 17.6.2015 and no interest was levied from the date of COD till the date of the order.
- (e) As regards the tariff order dated 21.9.2012 in Petition No. 91/TT/2012, which was a bulk provisional tariff order, based on the anticipated commissioning of Parbati-III transmission assets from 1.9.2012, these Assets were never commissioned on 1.9.2012. Even the deemed COD of Assets 1 and 2 is 1.8.2013, and Assets 3 and 4 is 1.9.2013. PGCIL never raised any provisional bills based on the order dated 21.9.2012 nor the reference from this order has been drawn in the orders dated 26.5.2015 and 17.8.2020. Thus, the order dated 21.9.2012 in Petition No. 91/TT/2012 has no relevance in respect of the present petition.
- (f) The review order dated 7.9.2016 only decided the COD of Assets 3 and 4. This, by no stretch of the imagination, can be said to be determining the tariff of Assets 3 and 4. There was no provisional tariff for Assets 3 and 4, nor was



any bill raised on the basis of any such provisional tariff; therefore, the determination of the COD does not have any effect on the determination of the tariff, and for this reason, the interest cannot be claimed from the date of COD. The tariff of these assets was only determined vide order dated 17.8.2020. Thus, the question of levy of interest on the tariff of Assets 3 and 4 does not arise before 17.8.2020.

- (g) The tariff of Assets 3 and 4 (a portion of Asset-II) was not determined as a portion of Asset-II was not commissioned. Further, PGCIL had neither prayed for a declaration of COD under Regulation 3(12)(c) of the 2009 Tariff Regulations nor had disclosed the information that the portion of LILO is not in use. This fact has been highlighted while not granting the tariff of Asset-II in an order dated 26.5.2015.
- (h) It is not clear whether PGCIL is talking about Assets 1 and 2 or Assets 3 and 4. Further, it is once again reiterated that in the present petition, NHPC has not challenged the issue regarding whether Assets 1 and 2 are in service from 1.8.2013 or Assets 3 and 4 are in service from 1.9.2013 or whether the tariff is to be paid w.e.f. 1.8.2013 for Assets 1 and 2 or from 1.9.2013 for Assets and 4. The only issue raised by the Petitioner in the present petition is whether the interest is payable on the differential tariff or the provisional tariff from the date of COD as per provisions of Regulations 5 and 6 of the 2009 Tariff Regulations.
- (i) NHPC has challenged the levy of the transmission charges from 1.8.2013 to 24.3.2014 before the APTEL. As per the provisions of Regulations 5 and 6 of the 2009 Tariff Regulations, the transmission charges of Assets 3 and 4 have been paid from 1.9.2013 till the COD of the generating station, as the deemed COD of these Assets was 1.9.2013. However, the understanding of PGCIL that the interest of these assets is to be paid from 1.9.2013 is contrary to the provisions of Regulations 5 and 6 of the 2009 Tariff Regulations. The Respondent has acted on the same rationale in their bill dated 17.6.2015 for Assets 1 and 2 as per the order dated 26.5.2015.
- (j) It is completely wrong to say that NHPC has refused to pay the transmission charges of Assets 3 and 4 with effect from 1.9.2013. It has paid the transmission charges of these Assets w.e.f. 1.9.2013, when PGCIL raised the



bills, but it cannot be that due to the delay in the determination of tariff of these assets, NHPC has to bear the interest cost for the period as well.

- (k) Regulations 5 and 6 of the 2009 Tariff Regulations do not provide for any interest/opportunity cost from the COD. The same has been held true by an order dated 18.9.2015 in Review Petition No.5/RP/2015. Further, Section 61 of the Act is the guiding principle for notification of terms and conditions of tariff regulations, and while doing so, the Appropriate Commission shall ensure the recovery of cost to the developers in a reasonable manner and as well as safeguarding the consumer's interest. Therefore, the provisions of Tariff Regulations provide for no interest on the tariff from the COD, as the consumer cannot be held liable for interest for the period between the COD and the issuance of the tariff order.
- (l) NHPC has only challenged the levy of interest on the differential tariff for Assets 1 and 2 for the period from 1.8.2013 (COD of Assets 1 and 2) to 17.6.2015 (date of the provisional bill for Assets 1 and 2). It has not challenged the levy of interest by PGCIL on the differential tariff of Asset-1 and 2 beyond 17.6.2015.
- (m) As regards the submission of PGCIL that the non-availability of tariff for Assets 3 and 4 is not for any default of PGCIL and thus, the interest is to be paid on the said tariff, the delay in the determination of tariff of Assets 3 and 4 can never be the fault of the consumers as well. Therefore, the consumers cannot be held liable for payment of interest for the delay in the determination of the tariff. PGCIL, in its Petition No 91/TT/2012, had disclosed the information that the portion of LILO is not in use and had also prayed for the declaration of COD under the Regulation 3(12)(c) of the 2009 Tariff Regulations, as highlighted in the order dated 26.5.2015. Thus, if there is any default of any entity for delay in the determination of tariff, it would be PGCIL.
- (n) The contention of PGCIL that the review or appeal filed by the Petitioner against the order dated 26.5.2015 led to the delay in finalization of the truing-up order is totally unwarranted. Any affected party with the order issued by the Commission is entitled to safeguard its interest, and therefore, this whole mechanism of the petition, Review Petition, and Appeal has been set in place. The affected parties have to represent their case at the Appropriate



Commission / APTEL, and for this, they cannot be held liable for payment of interest beyond the provisions of the 2009 Tariff Regulations.

- (o) Regulations 5 and 6 of the 2009 Tariff Regulations never provide for the levy of interest from the date of COD. This has been the understanding of PGCIL in their bill dated 17.6.2015, and thus, no interest has been charged from the COD of the assets. Further, the contention of PGCIL that for Assets 3 and 4, the Regulations have to be contextually construed is not acceptable, as such contextual interpretation of Regulations shall defeat the purpose of the regulatory framework where there is certainty of interpretation of the Regulations. In the garb of contextual construction of a Regulation, a different interpretation of the law cannot be enforced upon a party for the benefit of one and to the detriment of another.
- (p) The contention of PGCIL that in an order dated 18.9.2015, the interest was not allowed, as certain additional information was to be filed, is completely out of context. Further, it would be appropriate to point out that the order dated 26.5.2015 had not determined the tariff of Assets 3 and 4, and the final petition for determination of tariff of Assets 3 and 4 was only filed in 2017, i.e., 107/TT/2017. The whole reliance placed on the order dated 18.9.2015 in Petition No. 5/RP/2015 is only to highlight the interpretation of provisions of the 2009 Tariff Regulations.
- (q) The contention of PGCIL that the picture regarding the tariff to be charged became clear in an order dated 17.8.2020 is not correct. This became clear in the order dated 26.5.2015. In the tariff order dated 17.8.2020, the tariff of Assets 3 and 4 were determined for the first time w.e.f. 1.9.2013, and the Petitioner had not questioned the payment of the transmission charges from 1.9.2013 till 24.3.2014. However, it cannot be the case that since the tariff determination has been delayed for a period of 7 years, the Petitioner has to bear the interest charges for that period.
- (r) The 2009 Tariff Regulations do not provide for the cost of interest/ opportunity cost, and therefore, no interest shall be levied on the differential tariff from COD of Asset-1 and 2 till 17.6.2015 and for Asset-3 and 4 till the determination of the initial tariff, i.e., 17.8.2020.



- (s) The judgements/orders quoted by PGCIL do not relate to the issue at hand. These relate to changes in law, differential rate of interest rate on delayed payment/penalty and interest to be paid on differential amount to the developers, whereas the present issue is whether interest is payable from the date of COD to the date of determination of tariff as per provisions of the 2009 Tariff Regulations.
- (t) The order dated 20.5.2015 in Petition No. 109/TT/2013 cited is in regard to the specific query of AVVNL regarding not allowing NHPC to charge interest for the period between the COD and the date of filing of the petition. Therefore, it is not applicable in the present case.

Hearing dated 18.8.2023

7. Both the parties were heard at length on 18.8.2023. However, the Commission, after directing PGCIL to file information on whether it is charging interest on all bills raised in similar cases and for the parties to file their responses, reserved its order in the Petition. In compliance with the above directions, PGCIL submitted the additional information on 12.9.2023, and NHPC filed its response to the same on 26.9.2023.

Additional Submissions of PGCIL

8. PGCIL, in its additional information, has submitted a list of 20 similar cases wherein interest has been charged by it. PGCIL has further submitted that the interest of Rs. 4.63 crores has been billed by PGCIL on the differential tariffs of Assets 1 & 2 and Assets 3 & 4. For Assets 1 & 2, the said interest on the differential amount has been calculated from COD to 16.8.2020 (date of truing-up order in Petition No. 107/TT/2017). Similarly, in the case of Assets 3 & 4, the interest amount on the differential amount has been calculated from COD to 16.8.2020. It has added that Regulations 5 and 6 of the 2009 Tariff Regulations deal with two specific instances, namely – the interest chargeable (a) on the differential amount between the provisional tariff and final tariff and (b) on the differential amount between the final tariff and the trued-up tariff. It has stated that interest is nothing but a carrying cost on the capital cost already invested by



PGCIL by commissioning the transmission assets providing services to the beneficiaries, including NHPC on a continuous basis.

Response of NHPC

9. In response, NHPC, in addition to its submissions in the Petition and its rejoinder, has submitted that the question for consideration is whether 'interest can be levied from the COD of the assets or from the date of billing of the provisional tariff.' It has submitted that the provisions of Regulations 5 and 6 of the 2009 Tariff Regulations do not provide for any levy of interest/ opportunity cost from the COD, and based on this understanding, PGCIL in their bill dated 17.6.2015 had not levied any interest from the COD of the Assets 1 and 2. NHPC has pointed out that PGCIL, with the same understanding, had not raised any interest in their bill dated 9.12.2022 in respect of the Kishanganga-Amargarh line. Accordingly, NHPC has submitted that the relief(s) sought in the Petition may be allowed.

Hearing dated 18.3.2024

10. Since the order in the present petition could not be issued prior to one Member of this Commission, who formed part of the Coram, demitting office, the matter was re-listed for hearing. The learned counsels for the parties submitted in the hearing that pleadings and arguments had been completed in the matter, and based on the consent of the parties, the order in the petition was reserved.

Hearing dated 17.9.2024

11. Subsequently, the order in the present petition could not be issued prior to the Members of this Commission, who earlier formed part of the Coram, demitting office; the matter was re-listed and heard through virtual conferencing. However, based on the submissions of the parties that pleadings and arguments have been completed, the order in the petition was reserved.



Analysis & Decision

12. Based on the submissions of the parties and the documents on record, the issue that emerges for consideration is as under:

“Whether the interest charged by PGCIL from the COD of the Assets till the date of determination of tariff is in accordance with the provisions of Regulation 5 and Regulation 6 of the 2009 Tariff Regulations.”

13. NHPC, while pointing out that Regulations 5 and 6 of the 2009 Tariff Regulations do not talk about the levy of interest from the date of COD of the transmission assets, has submitted that the interest on the differential tariff of Assets 1 and 2 of PGCIL should be levied only from the date of billing of provisional tariff, i.e., 17.6.2015 [and not from the date of COD of Assets 1 and 2 [1.8.2013]] and also that no interest should be levied on the tariff of Assets 3 and 4 by PGCIL, as the tariff of these assets was determined for the first time vide the Commission’s order dated 17.8.2020. Per contra, PGCIL has argued that Regulations 5 and 6 of the 2009 Tariff Regulations deal with two specific instances, namely, the interest chargeable on the differential amount between the provisional tariff and final tariff and the differential amount between the final tariff and the trued-up tariff. Accordingly, it has been submitted that the interest on the differential amount has been calculated as per the details given in the table under para 4(c) above, and NHPC is liable to pay the same.

14. We have considered the submissions. Regulation 5 of the 2009 Tariff Regulations, notified on 19.1.2009, is extracted below:

“5. Application for determination of tariff.

(1) The generating company or the transmission licensee, as the case may be, may make an application for determination of tariff in accordance with Central Electricity Regulatory Commission (Procedure for making of application for determination of tariff, publication of the application and other related matters) Regulations, 2004, as amended from time to time or any statutory re-enactment thereof, in respect of the units of the generating station or the transmission lines or sub-stations of the transmission system, completed or projected to be completed within six months from the date of application.

(2) The generating company or the transmission licensee, as the case may be, shall make an application as per Appendix I to these regulations, for determination of tariff based on capital expenditure incurred duly certified by the auditors or projected to be



incurred up to the date of commercial operation and additional capital expenditure incurred duly certified by the auditors or projected to be incurred during the tariff period of the generating station or the transmission system:

Provided that in case of an existing project, the application shall be based on admitted capital cost including any additional capitalization already admitted up to 31.3.2009 and estimated additional capital expenditure for the respective years of the tariff period 2009-14:

Provided further that application shall contain details of underlying assumptions for projected capital cost and additional capital expenditure, where applicable.

(3) In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to provisionally bill the beneficiaries or the [transmission customers] with the tariff approved by the Commission and applicable as on 31.3.2009 for the period starting from 1.4.2009 till approval of tariff by the Commission in accordance these regulations:

Provided that where the tariff provisionally billed exceeds or falls short of the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to or recover from the beneficiaries or the transmission customers, as the case may be, within six months along with simple interest at the rate equal to short-term Prime Lending Rate of State Bank of India on the 1st April of the concerned/respective year.

15. The above regulations provide that the generating company or the transmission licensee, as the case may be, has to make an application for the determination of tariff in respect of the existing or new projects anticipated to be completed within a period of six months from the date of the application. However, in the case of the existing projects, the generating company or the transmission licensee shall continue to provisionally bill the beneficiaries with the tariff, as prevailing as of 31.3.2009, till the approval of the tariff by the Commission, in accordance with the provisions of the 2009 Tariff Regulations. Only after the determination of the final tariff by the Commission the generating company or the transmission licensee shall be entitled to recover the differential amount between the final tariff and the provisionally billed tariff, along with interest at the specified rates, from the beneficiaries. However, there was no provision under the said regulations for provisional billing of tariffs in respect of a new project/transmission system. Since difficulty was observed by the Commission for the provisional billing of the new projects for which tariff petitions were under consideration, amendments were made to Regulation 5(3), and a new regulation [Regulation 5(4)] was inserted as under:



“Regulation 5(3):

In case of the existing projects, the generating company or the transmission licensee, as the case may be, shall continue to provisionally bill the beneficiaries or the long-term customers with the tariff approved by the Commission and applicable as on 31.3.2009 for the period starting from 1.4.2009 till approval of tariff by the Commission in accordance with these regulations.

Provided that where the tariff provisional billed exceeds or falls short of the final tariff approved by the Commission under these regulations, the generating company or the transmission licensee, as the case may be, shall refund to or recover from the beneficiaries or the transmission customers, as the case may be, within six months along with simple interest at the following rates for the period from the date of provisional billing to the date of issue of the final tariff order of the Commission:

- (i) SBI short-term Prime Lending Rate as on 01.04.2009 for the year 2009-10.*
- (ii) SBI Rate as on 01.07.2010 plus 350 basis points for the Base year 2010-11.*
- (iii) Monthly average SBI Base Rate from 01.07.2010 to 31.3.2011 plus 350 basis points for the year 2011-12.*
- (iv) Monthly average SBI Base Rate during previous year plus 350 basis points for the year 2012-13 and 2013-14.*

Provided that in cases where tariff has already been determined on the date of issue of this notification, the above provisions, to the extent of change in interest rate, shall be given effect to by the parties themselves and discrepancy, if any, shall be corrected at the time of truing up.”

Regulation 5(4):

Where application for determination of tariff of an existing or a new project has been filed before the Commission in accordance with clauses (1) and (2) of this regulation, the Commission may consider in its discretion to grant provisional tariff upto 95% of the annual fixed cost of the project claimed in the application subject to adjustment as per proviso to clause (3) of this regulation after the final tariff order has been issued:

Provided that recovery of capacity charge and energy charge or transmission charge, as the case may be, in respect of the existing or new project for which provisional tariff has been granted shall be made in accordance with the relevant provisions of these regulations.

16. Similarly, Regulation 6 of the 2009 Tariff Regulations provides as under:

6. Truing up of Capital Expenditure and Tariff.

(1) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2014, as admitted by the Commission after prudence check at the time of truing up.

Provided that the generating company or the transmission licensee, as the case may be, may in its discretion make an application before the Commission one more time prior to 2013-14 for revision of tariff.

(2) The generating company or the transmission licensee, as the case may be, shall make an application, as per Appendix I to these regulations, for carrying out truing up exercise in respect of the generating station a unit or block thereof or the transmission system or the transmission lines or sub-stations thereof by 31.10.2014;

(3) The generating company or the transmission licensee, as the case may be, shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2009 to 31.3.2014, duly audited and certified by the auditors;



(4) Where after the truing up the tariff recovered exceeds the tariff approved by the Commission under these regulations the generating company or the transmission licensee, as the case may be, shall refund to the beneficiaries or the transmission customers, as the case may be, the excess amount so recovered along with simple interest at the rate equal to short-term Prime Lending Rate of State Bank of India as on 1st April of the respective year.

(5) 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, as the case may be, shall recover from the beneficiaries or the transmission customers, as the case may be, the under-recovered amount along with simple interest at the rate equal to the short-term Prime Lending Rate of State Bank of India as on 1st April of the respective year.

(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 1st 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 installments starting within three months from the date of the tariff order issued by the Commission after the truing up exercise.”

17. Thus, Regulation 5(4) gave the discretion to the Commission to grant the provisional tariff up to 95% of the annual fixed cost of the project claimed in the application by the generating company or the transmission licensee, in respect of an existing or a new project. However, the provisional tariff so granted is subject to adjustment after the final determination of the tariff in accordance with clause (3) of Regulation 5 of the 2009 Tariff Regulations.

18. In the present case, the Commission vide its order dated 21.9.2012 in Petition No. 91/TT/2012 had granted provisional transmission tariff for the combined assets of the transmission system of PGCIL associated with Parbati-III HEP viz., (Asset-I): LILO of 400 kV Parbati-II-Koldam ckt-I at Parbati Pooling point along with associated bays, (Asset-II): LILO of 400 kV Parbati-II-Koldam ckt-II at Parbati Pooling point along with the associated bays and LILO of 400 kV Parbati-III-Koldam at Parbati Pooling point along with associated bays (Asset-III): 400 kV D/C Parbati Pooling Point-Amritsar line along with associated bays and (Asset-IV) 80 MVAR Bus Reactor Parbati at Pooling Point along with associated bays in the Northern Region from the anticipated COD (as 1.9.2012) till 31.3.2014, i.e for the period 2009-14. The provisional tariff allowed was made applicable from the date of actual commercial operation of the aforesaid assets



and was also subject to adjustment in terms of Regulation 5 of the 2009 Tariff Regulations.

19. Subsequently, the Commission, vide its order dated 26.5.2015 in Petition No. 91/TT/2012, had approved the transmission tariff in respect of Asset-1 (400 kV D/C Parbati Pooling Point-Amritsar line along with associates bays) and Asset-2 (80 MVAR bus reactor at Parbati Pooling Point along with associated bays) only, for the period from the date of their actual COD of 1.8.2013 till 31.3.2014. No tariff in respect of Asset-II (LILO of 400 kV Parbati-II-Koldam ckt-II at Parbati Pooling point along with the associated bays and LILO of 400 kV Parbati-III-Koldam at Parbati Pooling point along with associated bays assets) and Asset-IV (LILO of 400 kV Parbati-II-Koldam ckt-I at Parbati Pooling point along with associated bays) were approved in the said order. Consequent upon the splitting of Asset-II (in Petition No. 91/TT/2012) into four assets vide order dated 7.9.2016 in Review Petition No. 19/RP/2015, two portions of the said Asset-II (in Petition No. 91/TT/2012) was included in Petition No.107/GT/2017 as Asset-3 (i.e. LILO of 2nd ckt of Parbati-II-Koldam T/L at Parbati-III (Portion c-d) with COD as 1.9.2013 and Asset-4 i.e. LILO of 2nd ckt of Parbati-II-Koldam T/L at Parbati Pooling Station along with associated bays (Portion e-f) with the COD as 1.9.2013. However, for Asset-IV (LILO of 400 kV Parbati-II- Koldam ckt I at Parbati Pooling Point along with associated bays), the Commission vide the order dated 26.5.2015 (in Petition No. 91/TT/2012) opined that the asset was put into commercial operation on 1.4.2014 and that Petition No. 411/TT/2014 has been filed by the Petitioner claiming its tariff as per the 2014 Tariff Regulations. Thereafter, PGCIL had filed Petition No.107/TT/2017 before this Commission, for truing-up of the tariff for the period 2009-14 and for the determination of the transmission tariff for the period 2014-19, in respect of Assets 1 and 2 (from 1.8.2013) and also for the final/truing-up of tariff for the period 2009-14 in respect of Assets 3 and 4 (from 1.9.2013) and the Commission vide its order dated



17.8.2020, had accordingly approved/trued up the tariff of these assets. Thus, the COD of Assets 1 and 2 is 1.8.2013 the COD of Assets 3 and 4 is 1.9.2013, and the payment of the transmission charges to PGCIL in terms of this order, from the date of COD of the assets have not been disputed by NHPC.

20. It is relevant to note that the order dated 26.5.2015 (in Petition No. 91/TT/2012) determining the transmission tariff of Assets 1 and 2, was subject to truing-up in terms of Regulation 6(1) of the 2009 Tariff Regulations. In the absence of any billing by PGCIL based on the provisional tariff order dated 21.9.2012, the billing for Rs 74.78 crore on NHPC by PGCIL on 17.6.2015, in terms of the order dated 26.5.2015 for Assets 1 and 2 (which was paid by NHPC), can only be construed as a provisional billing, which was subject to adjustment, after the final determination of tariff/truing-up of tariff of these Assets in terms of the 2009 Tariff Regulations. It is only after the determination of the final tariff/ truing-up of the tariff of Assets 1 and 2 vide order dated 17.8.2020 in Petition No.170/TT/2017 that PGCIL became entitled to 'interest' on the differential amount (tariff) from the date of provisional billing in terms of the order dated 26.5.2015 till the order dated 17.8.2020. In other words, while PGCIL was not entitled to any interest on the amount of Rs 74.78 crore, based on the order dated 26.5.2015, it became entitled to the 'interest' on the differential amounts (as mentioned in the table under para 4(c) above) for Assets 1 and 2, only after the determination of final tariff/ trued-up tariff vide Commission's order dated 17.8.2020. Therefore, the contention of PGCIL that it is entitled to interest from the COD of Assets 1 and 2 (1.8.2013) is contrary to the provisions of Regulation 5 (4) and Regulation 6(6) of the 2009 Tariff Regulations, and the same is not acceptable. Similarly, in respect of Assets 3 and 4, there was neither any provisional tariff nor any provisional tariff billing made by PGCIL on NHPC, in terms of the order dated 21.9.2012, even after the COD of these assets. The transmission tariff of Asset 3 and Asset 4 was finally determined /trued-up for the period 2009-14,



only vide order dated 17.8.2020. Being the first and the only transmission tariff order for these assets (Assets 3 and 4) for the period 2009-14, the question of the differential tariff to be considered for the levy of interest on these assets from COD (1.9.2013), does not arise. Therefore, PGCIL's claim for interest on the differential tariff from the COD of Assets 3 and 4 (from 1.9.2013) is contrary to the provisions of Regulation 5 (4) and 6(6) of the 2009 Tariff Regulations and, therefore, not permissible. We direct accordingly.

21. PGCIL has contended that 'interest' is nothing but a carrying cost on the time value of money. It has, however, pointed out that though the transmission assets of PGCIL had given service to NHPC from the date of COD, but due to a late recovery of the transmission tariff, the interest burden for the difference would be to the account of PGCIL. This, according to PGCIL, this is not the intention of Section 61 of the 2003 Act, which provides for the determination of tariff based on sound commercial principles. *Per contra*, NHPC has argued that Section 61 of the 2003 Act is the guiding principle for the notification of terms and conditions of Tariff Regulations, and while doing so, the Appropriate Commission shall ensure the recovery of cost to the developers in a reasonable manner and as well as safeguarding the consumer's interest. Accordingly, NHPC has submitted that the provisions of Tariff Regulations provide for no interest on the tariff from COD, as the consumer cannot be held liable for interest for the period between the COD and the issuance of the tariff order.

22. We have examined the submissions. As stated, PGCIL, despite being granted the provisional tariff (by order dated 21.9.2012) in respect of Assets 1 and 2, had not raised any bill on NHPC from their COD (1.8.2013) of the assets. Consequent upon the COD of the project of the NHPC being declared on 24.3.2014, the Commission had directed NHPC to pay the transmission charges for Assets 1 and 2 (from 1.8.2013 till 23.3.2014) vide its order dated 26.5.2015. This has been paid by NHPC to PGCIL *albeit* without



any claim for interest. In case of any provisional billing/provisional tariff raised by PGCIL (as per order dated 21.9.2012) upon NHPC till the tariff determination vide order dated 26.5.2015, PGCIL, the same would have been entitled to 'interest' on the differential tariff amount from the date of provisional billing till the date of order (26.5.2015) from NHPC. Having not done so, PGCIL cannot now make submissions regarding the time value of money, to justify its claim for interest from the COD of the assets. Further, the contention of PGCIL that it is entitled to the interest payments from the COD of assets for the differential amounts as per the provisions of the 2009 Tariff Regulations, due to the substantial delay in the determination of tariff is misconceived. In our view, the levy of interest on the differential tariff amounts, is to be guided by the provisions of Regulation 5 and Regulation 6 of the 2009 Tariff Regulations. As pointed out by the Petitioner, the Commission, in its order dated 18.9.2015 in Petition No.5/RP/2015 (in Petition No.115/GT/2013), held that the provisions of the 2009 Tariff Regulations do not provide for the grant of interest /opportunity cost from the COD of the unit/station up to the date of determination of tariff. Further, APTEL vide its judgment dated 24.1.2013 in Appeal No. 82/2012 & 90/2012 has interpreted the Regulations 5(3) and 5(4) of the 2009 Tariff Regulations and held that interest can be charged only after the determination of final tariff. In line with the above, PGCIL became entitled to 'interest' on the differential amounts in respect of the Assets 1 and 2 as stated in para 20 above. As regards the Assets 3 and 4, there has been no differential amounts for the levy of interest by PGCIL, as stated in the said para. Even otherwise, it would not be in the interest of consumers to permit the levy of interest on the differential tariff from the COD of assets, as the same would be contrary to the provisions of Regulations 5 and 6 of the 2009 Tariff Regulations. The submissions of PGCIL are, therefore, not acceptable as the interest levied by PGCIL from the COD of these assets on NHPC, is contrary to the provisions of the 2009 Tariff Regulations. To put it simply , PGCIL would be entitled to



'interest' on the differential amount in respect of Assets 1 and 2 from the Commission's order dated 26.5.2015 in Petition No. 91/TT/2012 (tariff determination for these assets) till 17.8.2020 (after truing-up of tariff for these assets) and not from the COD of the assets. However, in respect of the Assets 3 and 4, no interest is payable, since there was no provisional billing/ provisional tariff raised upon NHPC till 17.8.2020 (when the tariff was determined for these assets for the first time).

23. In light of the above discussions and findings, we direct PGCIL to refund to NHPC the excess amounts recovered if any, from the COD of the respective assets, along with interest (the rate at which PGCIL had levied NHPC), within two months from the date of this order. We direct accordingly.

22. Petition No. 52/MP/2022 is disposed of in terms of the above.

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V)
Member

Sd/-
(Jishnu Barua)
Chairperson

