

**BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.7/2000

Coram:

1. Shri S.L. Rao, Chairman
2. Shri D.P. Sinha, Member
3. Shri G.S. Rajamani, Member
4. Shri A.R. Ramanathan, Member

In the matter of

Petition for seeking appropriate directions to the beneficiaries for making payment of secondary energy charges.

And in the matter of

National Hydroelectric Power Corporation Limited

...Petitioner

VS

1. The Chairman, Punjab State Electricity Board
.....Respondent
2. The Chairman, Haryana Vidyut Prasaran Nigam Ltd. -do-
3. The Chairman, Delhi Vidyut Board -do-
4. The Chairman, Uttar Pradesh Power Corporation Ltd., -do-
5. The Chairman, Rajasthan State Electricity Board -do-
6. The Chairman, Himachal Pradesh State Electricity Board -do-
7. The Principal Secretary, Power Development Department, J&K -do-

The following were present:

1. Shri B.Datta, Sr.AdvocatePetitioner
2. Shri Sachin Datta, Advocate -do-
3. Shri Ajit Puduserry, Advocate -do-
4. Shri R.K. Sharma, ED (Comm.), NHPC -do-
5. Shri S.K.Agarwal, CE (T), NHPC -do-
6. Shri A.N. Ghosh, DGM, UPPCLRespondent
7. Shri B.K. Saxena, Sr.AE, UPPCL -do-
8. Shri V.K. Gupta, SE(ISP), RSEB -do-
9. Shri H.S. Bedi, Dir., PSEB -do-
10. Shri R.K. Arora, XEN, Tariff, HVPN -do-

**ORDER
(Dates of Hearing 19-6-2000)**

In this petition, the petitioner, NHPC, has sought a direction to the respondents to make payment of the secondary energy charges and to continue to do so within a specified time. The circumstances leading to filing of the petition are narrated in the succeeding paragraphs.

2. In exercise of power conferred under Section 43 A (2) of the Electricity (Supply) Act, 1948, the Central Government had issued a notification dated 30th March, 1992, prescribing the factors for determination of tariff for sale of electricity by the generating companies to the boards and other persons. The said notification dated 30th March, 1992 has been amended from time to time. By a subsequent notification dated 13th January, 1995 issued by Ministry of Power, clause 2.10 was added to the notification dated 30th March, 1992, providing that the rate of incentive for secondary energy shall be mutually agreed between the board and the generating companies, however, the maximum payment on this account in any year cannot exceed 10% return on equity. The above notification was further amended by the notification dated 14th December, 1998 and clause 2.10 (ii) was substituted as under:

“(ii) Energy Charges for Secondary Energy:

The rate of incentive for Secondary Energy shall be equal to per unit cost of Primary Energy.

The incentive on account of higher Availability and Secondary Energy shall be payable on a monthly basis subject to a cumulative adjustment in each month of the financial year and final adjustment at the end of the year.”

3. Subsequent to the amendment by notification dated 14.12.98 Ministry of Power, Government of India issued the tariff notification in respect of individual Stations, prescribing the terms and conditions and tariff for supply of power from the Hydroelectric Power stations for the period from 1st April 1997 to 31st March, 2002. The notifications in respect of Tanakpur and Chamera (Stage-I) were issued on 8th February, 1999, in respect of Salal HEP on 29th March, 1999, and in respect of Uri on 14th May, 1999. The petitioner has also entered into Bulk Power Purchase Agreement with the respondents. The various tariff notifications provide for payment of secondary energy charges. For facility of reference, the relevant extract from the notification dated 29th March, 1999 relating to Salal HEP is reproduced below:

“The rate of incentive for secondary energy shall be mutually agreed between the NHPC and the beneficiaries for the period prior to 14.12.98. However, the maximum payment on this account in a year shall not exceed 10 per cent return on equity.

The rate of incentive for Secondary Energy with effect from 14.12.98 shall be equal to the rate of primary energy as mentioned in para-1 (B) above.

The incentive on account of higher Availability and Secondary Energy Shall be payable on a monthly basis subject to a cumulative adjustment in each month of the financial year and final adjustment at the end of the year.”

4. The jurisdiction to regulate tariff of the central generating stations is vested in the Commission w.e.f. 15th May, 1999. By virtue of proviso to Regulation 79 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 and the Commission's notification dated 12th May, 1999, the petitioner continues to charge the same tariff as was being charged prior to vesting of jurisdiction in the Commission.

5. It has been alleged that the respondents have either not verified the dues as per the notification or have only verified nominal rates of 5 paise per unit or 25 paise per unit for secondary energy. It is also alleged that the State of Jammu & Kashmir and HPSEB have verified the rates as per the notification but have not yet made the full payment. In the

above background, the petitioner has sought direction to the respondents for making the payment of the secondary energy charges equal to per unit cost of primary energy in accordance with the notification issued by Ministry of Power. The project-wise rates (paise/kwh) of primary energy during 1998-99 and 1999-2000 are stated to be as under:

Project	1998-99	1999-2000
	(p/kwh)	(p/kwh)
Salal	39.59	40.49
Chamera	102.02	104.54
Tanakpur	63.07	64.80
Uri	97.23	99.61
Baiasul	42.00	42.00
Loktak	57.00	57.00

The replies to the petition have been filed by PSEB, HVPNL, UPPCL and RSEB. The other respondents, namely DVB, HPSEB and the Power Development Department of Government of J&K have not filed their responses.

6. UPPCL in its response has stated that the question of payment of charges for secondary energy to the petitioner has been the point of discussion at various fora at NREB. However, no decision could be arrived at. It has been contended that rates for secondary energy could not be equal to the rate of primary energy as provided in the tariff notifications. Therefore, the Chairman, NREB has already approached Ministry of Power requesting for a review of rate of secondary energy charges. Similar replies have been filed on behalf of RSEB and HVPNL. PSEB in addition to the points raised on behalf of other respondents, has also submitted that in view of the provisions of clauses 3.3 and 3.4 of the Government of India notification dated 30th March, 1992, the petitioner cannot be permitted to claim the charges for secondary energy at the same rate as for primary energy since the financial package for investment in respect of these stations were approved before 30th March, 1992 and these stations had been put into commercial operation before 1st January, 1997. It has been further contended on behalf of PSEB that the notification dated 14.12.1998 was issued by the Central Government in compliance to the new hydro policy released in August, 1998, according to which it has been proposed to allow the sale rate for secondary energy at the same rate which is applicable for a primary energy in order to provide an additional incentive for attracting investment in hydel project. The crux of the PSEB's contention is that the petitioner is entitled to charge for the secondary energy at the same rate as being charged for the primary energy only in respect of the future stations.

7. In view of the submissions in the petition, it has been contended that the respondents are liable to pay for secondary energy charges at the rate of 5 paise per unit in respect of all stations, except Uri HEP in whose case the secondary energy charges are payable at the rate of 25 paise per unit. It has been argued on behalf of the respondents that the generation of secondary energy does not involve any extra cost to the petitioner and for this reason also, the higher charges for the secondary energy cannot be justified and higher charge puts only an extra burden on the consumers.

8. The Respondents have entered into a Bulk Power Purchase Agreement with the petitioner in respect of Bairasul, Salal, Tanakpur, Chamera and Uri HEPs. Para 6 of the bulk purchase agreement deals with tariff for supply of energy from these stations. According to this para, the tariff and terms and conditions for sale of energy supplied or to be supplied from NHPC stations shall be **as determined by Government of India from time to time** w.e.f. the date as may be notified by the Government of India under Section 43 A (2) of the Electricity (Supply) Act and the notification forms an integral part of the agreement (emphasis supplied). In view of the agreement entered into by the parties, the respondents are liable to pay for the secondary energy as prescribed by the Central Government through the station-wise tariff notifications. They cannot

escape liability to make payment in accordance with the terms and conditions determined by the Central Government and cannot be permitted to deviate from the agreement entered into with the petitioner. The Central Government through the notifications dated 8.2.99, 26.3.99 and 14.5.99 has already decided that the rate of incentive for secondary energy charges for the period prior to 14th December, 1998 is to be mutually agreed to by the parties, subject to the condition that the maximum payment on this account in a year shall not exceed 10 per cent return on equity. However, as regards the rate of incentive for secondary charges w.e.f. 14.12.1998, it is to be equal to the cost of primary energy. In view of this position, the contention raised on behalf of the respondents that the rates prescribed are excessive or the norms prescribed under Government of India notification dated 30th March, 1992 are inapplicable to the NHPC stations in question, does not hold good.

We, therefore, direct that with effect from 14th December 1998, till the expiry of the period fixed under the notifications or revision of terms and conditions of tariff by the Commission, whichever is earlier, the respondents shall make payments on account of secondary energy charges as per the cost per unit of the primary energy fixed by the Central Government. The respondents shall make payment within a period of three months from the date of issue of this order after due verification. The charges for the secondary energy for the period prior to 14th December 1998 may be as agreed to between the petitioner and the respondents.

Sd/-	Sd/-	Sd/-	Sd/-
(A.R. Ramanathan) Member	(G.S.Rajamani) Member	(D.P. Sinha) Member	(S.L.Rao) Chairman

New Delhi,
Dated 17.07.2000

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