

**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.**

No. F.11(568)DERC/2010-11/

**Petition No14/2010**

**In the matter of :**      **Refund of excess Transmission charges collected from the NDPL by DTL towards charges for wheeling of 62.5 MW Power from IPGCL from the IP Station (Unit No. 2, 3 and 4) to Licensees in the State of Haryana.**

North Delhi Power Ltd.  
Through its: **Sr. General Manager**  
33Kv Sub Station Building,  
Hudson Lane,  
Delhi 110 009,

.....Petitioner

**VERSUS**

Delhi Transco Limited  
Through its: **CMD**  
Shakti Sadan, Kotla Road,  
New Delhi-110002.

...Respondent

**Coram:**

**Sh. P.D. Sudhakar, Chairman, Sh. Shyam Wadhera, Member &  
Sh. J.P. Singh, Member.**

**Appearance:**

1. Sh. Sakya Singha Chaudhuri, Advocate, NDPL
2. Sh. Ajay Kapoor, CFO, NDPL
3. Sh. Anurag Bansal, HOG, Corp. Legal, NDPL
4. Sh. Ashish Kr. Datta, AGM, NDPL
5. Sh. Jayan Nath, Sr. Adv. DTL
6. Sh. Vivek Narayan Sharma, Adv. DTL
7. Sh. Venugopal, DGM (ST) DTL
8. Sh. S. Mohari, DGM (Comml.), DTL
9. Sh. N.K. Sharma, Manager (Comml.), DTL
10. Sh. Deepak Sharma, AM(T) SLDC

**ORDER**

(Date of Hearing: 23.04.2012)  
(Date of Order: 15.05.2012)

1. Mr. Sakya Singh Choudhuri, Ld. Counsel for NDPL (Petitioner) submitted that Indraprastha Power Generation Co. Ltd. was supplying 33.03% (62% MW) of the Power Generated for the IP Station (Unit No. 2-3 & 4) to Haryana Government, in accordance with the agreement executed between erstwhile DESU and the Government of Haryana till October, 2009 i.e. the closure of IP Station. Thus, out of the total installed capacity of 247.5 MW of IP

Station, 185MW was supplied to Delhi and the remaining 62.5MW was supplied to the State of Haryana till October, 2009.

2. In exercise of the Powers conferred u/s 60 read with sections 15 and 16 of the Delhi Electricity Reforms Act, 2001 (DERA), the Government of Delhi notified the transfer schemes rules on 20.11.2001 which facilitated the unbundling of the erstwhile Delhi Vidyut Board (DVB) into DPCL, holding company, two Generation Companies (IPGCL and PPCL), Delhi Transco Ltd. (DTL) and three distribution companies. The three distribution companies were subsequently privatized through a competitive bidding process and the NDPL was accordingly formed along with BRPL & BYPL.
3. Ld. Counsel further submitted that during the transition period i.e. 2002-03 to 2006-07 DTL was entrusted with the function of procurement of power and bulk supply of electricity to all the DISCOMs in addition to wheeling of the power. The Government of Delhi vide its direction dated 28.06.2006 directed that w.e.f. 01.04.2007 the responsibility for arranging supply of power in the NCT of Delhi shall rest with the DISCOMs. The Commission was directed to reassign the existing Power Purchase Agreements to BRPL, BYPL, NDPL, NDMC and MES in proportion to their respective load profile.
4. Ld. Counsel for NDPL further submitted that Regulation 6.6 of the Tariff Regulations 2007 provides that Annual Transmission Service Charges shall be divided between beneficiaries of the Transmission system on monthly basis based on allotted transmission capacity or contracted capacity as the case may be. The DTL in its Annual Revenue Requirement Petition distributed its Annual Revenue Requirement proportionately among BRPL, BYPL, NDPL, NDMC and MES. Mr. Choudhury submitted that in the said ARR DTL did not mention that 62.5 MW energy was being transmitted by DTL from IP Station to the State of Haryana.
5. The transmission Tariff of the DTL on the basis of the said ARR Petition was determined by the Commission which was payable by all the Distribution Licensee within NCT of Delhi. The said Tariff Order provides that entire ARR of DTL shall be recovered every month on pro-rata basis and shall be shared by all the Distribution Licensee including deemed licensees and other beneficiaries in proportion to the Generating capacity allocated within Delhi and contracted power on bilateral basis.

6. Mr. Sakya further submitted that DTL from time to time raised and recovered transmission charges from NDPL and other distribution licensees for its entire capacity without making any adjustment for the transmission of 62.5MW power to Government of Haryana from IP Stations; and NDPL in compliance of the said Tariff Orders paid the charges to the DTL.
7. Mr. Sakya further submitted that in a recent internal exercise undertaken by NDPL to review various orders and directions of the Commission to improve upon its efficiency and cost effectiveness of operations, the Officers of the NDPL while perusing the Generation Tariff Order passed by the Commission for IPGCL dt. 14.12.2007, realized that DTL had omitted to include in its ARR the transmission charges recoverable by it towards part of the generation capacity from the IP Station which was supplied to Govt. of Haryana by the DTL. Thus, NDPL alongwith other distribution licensees have been unnecessarily burdened with the transmission charges for the capacity allocated from IP Station to Govt. of Haryana.
8. Ld. Counsel further submitted that NDPL alone has paid an additional amount of Rs. 1,68,90,065/- (Rupees One crore sixty eight lakhs ninety thousand and sixty five only) to DTL and Rs. 8,04,271 (Rupees Eight Lakhs four thousand two hundred seventy one) to the SLDC. DTL did not bring to the notice of the Commission the fact of transmitting 62.5MW power from IP Station to the Government of Haryana. Therefore, the Commission has apportioned the transmission charges recoverable towards transmission of power from IP station to the Govt. of Haryana among the distribution licensees operating in the NCT of Delhi.
9. Mr. Jayant Nath, Ld. Counsel for DTL opposed the contentions raised by NDPL. It is submitted that present petition is essentially a Petition seeking review of the order of the Commission dated 20.12.2007. The Commission determined the Tariff for transmission for FY 2007-08 to FY 2010-11. In accordance with the settled law and as per the Electricity Act, 2003, the present review Petition is not maintainable in law. Further, the present review Petition is barred on the grounds of delay, laches, acquiescence and waiver. It is pertinent to note that the said order was passed by the Commission providing adequate opportunity to the Stakeholders along with NDPL to file its objections/comments. Admittedly, NDPL though in full knowledge of the facts, did not take any such steps. Even after passing of the said order NDPL did not assail this order in appeal before the ATE. Thus the said order has attained the finality.

10. Ld. Counsel further submitted that DTL raised the bills in accordance with the said tariff order and NDPL paid the transmission charges accordingly.
11. Ld. Counsel further submitted that it is a matter of fact that in 1963 there was an understanding between Haryana State Electricity Board (HSEB) and Delhi Electricity Supply Undertaking (DESU) in respect of IP Station. According to the said understanding between these utilities Indraprastha Power Station extension project comprising three units of 62.5 MW was taken up as a joint venture by DESU and HSEB. The Capital Cost of these units was shared by DESU and HSEB in the ratio of 2:1. Accordingly, HSEB was entitled to draw power to the extent of 1/3<sup>rd</sup> of generation of these units. As per the understanding both the parties were to share the Operation and Maintenance costs including fuel charges in the same ratio. The amount of O&M charges consisted of fuel charges, Operation and Maintenance, Salaries and Wages of O&M staff and Generation Establishment & Administration Expenses. The HSEB has not been paying any Transmission charges under the arrangement that has been worked out and in place since 1963.
12. Ld. Counsel further submitted that the Commission in its Tariff Order dated 14.12.2007 for IPGCL observed that it expects the IPGCL to ensure proper allocation of costs, so that neither consumers of Delhi nor Haryana cross-subsidize the other. The Commission also observed that the IPGCL has prepared its MYT Petition considering Delhi's share of total capacity and has appropriated all costs associated with generation, on same basis to determine the generation cost to be applicable for the power sold to Delhi. NDPL was fully aware of the fact that 62.5MW of power generated by the IP Power Station is transferred to Haryana and only 185MW out of installed capacity of 247.5MW is considered for Delhi Consumers. NDPL could have approached the Central Commission for recovery of Transmission Tariff for the Haryana share of IP Station wheeled through PGCIL's system.
13. Ld. Counsel further submitted that at this belated stage there are no grounds for filing this Petition. This Petition is misconceived and liable to be dismissed.
14. Ld. Counsel further submitted that the Commission has passed the Tariff Order for Transmission charges based on the transmission assets of DTL and not based on the actual transmission of electricity.

15. Ld. Counsel further submitted that NDPL had actively participated during the hearing of ARR Petition No. 46/2007 filed by DTL for FY 2007-08 to 2010-11 and had not objected to the methodology of levy of charges proposed by the DTL.
16. Ld. Counsel further submitted that NDPL had the knowledge of non sharing of PGCIL (CTU) charges and STU charges, similar to other share projects in the region, which is available in the Regional Energy Accounts issued by NRPC. Reference may also be had to the list of shared projects as under:

Name of the Shared Projects	Status involved
Dhakrani HEP	Uttar Pradesh, Uttrakhand & Himachal Pradesh
Dhalipur HEP	Uttar Pradesh, Uttrakhand & Himachal Pradesh
Kulhal HEP	Uttar Pradesh, Uttrakhand & Himachal Pradesh
Khodir HEP	Uttar Pradesh, Uttrakhand & Himachal Pradesh
Khara HEP	Uttar Pradesh, Uttrakhand & Himachal Pradesh
Chhibro HEP	Uttar Pradesh, Uttrakhand & Himachal Pradesh
Ranjit Sagar HEP	Punjab & Himachal Pradesh (free power
IP TPS	Delhi & Haryana

The above shows that the system of non-payment of transmission charges for shared projects is a known and well established concept in the past.

17. The Commission heard the arguments advanced by the Ld. Counsel for NDPL and DTL at length. The Commission also perused the review petition, reply filed by the DTL and other records placed before the Commission.
18. The Commission observes that since 1963 there was a clear understanding between Haryana State Electricity Board (HSEB) and Delhi Electricity Supply Undertaking (DESU) in respect of power supply from IP Station to HSEB. According to the said understanding between these utilities IP Station extension project comprising three units of 62.5MW (Unit 2, 3 & 4) was undertaken as a joint venture. The Capital cost of these units was shared by DESU and HSEB in the ratio of 2:1. HSEB was entitled to draw power to the extent of 1/3<sup>rd</sup> share of generation of these units. Further, both the parties were to share the operation and maintenance cost including fuel in the same ratio. The amount of O&M charges consist of fuel charges, operation and maintenance, salaries and wages of O&M staff and Generation establishment and Administration expenses only. It appears from the above that as per the said understanding, HSEB was not paying any transmission charges for 62.5MW power supplied from IP Station. Further, it is noticed that

the said understanding between DESU and HSEB continued till October, 2009 i.e. the closure of IP Station.

19. The Commission further observes that the NDPL participated in the public hearing for determination of the Tariff of IPGCL, PPCL and DTL but no objections were raised regarding recovery of transmission charges for entire 247.5 MW power from IPGCL Station from DISCOMs operating in the NCT of Delhi. The said Tariff Order dated 14.12.2007 of IPGCL and DTL was not assailed before the ATE by the NDPL. Thus, the said Tariff Order of IPGCL & DTL has attained finality.
20. The Commission has considered the arguments raised on behalf of the NDPL. The Commission is of the view that the understanding between DESU and HSEB since 1963 that no transmission charges were to be recovered from HSEB carries forward to all successors entities till the closure of IP Station in October, 2009. The Commission is of the view that by virtue of being a successor entity of the erstwhile DESU/DVB, NDPL should honour and abide by the understanding reached between DESU/DVB and HSEB. The Commission also notes that HSEB is not a regulated entity before the Commission therefore, it would not be appropriate to pass any direction to HSEB. This matter, if at all, should have been raised by NDPL in a Petition before the Central Commission, which is the concerned Commission in respect of matters relating to inter-state transmission of Electricity.
21. In view of the above the Commission is of the opinion that there is no merit in this Review Petition and accordingly dismisses the same without any order as to costs.
22. Ordered Accordingly.

Sd/-  
(J.P. Singh)  
Member

Sd/-  
(Shyam Wadhera)  
Member

Sd/-  
(P.D. Sudhakar)  
Chairman