

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 640/MP/2020

**Coram:
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri P.K. Singh, Member**

Date of Order: 8th August, 2023

In the matter of

Petition seeking clarification regarding levy of carrying cost inter alia in terms of Regulation 7 and 52 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and amendment thereof under Regulation 55 of the said Regulations.

And

In the Matter of:

Haryana Power Purchase Centre,
Through Chief Engineer
Shakti Bhawan, Sector-VI,
Panchkula, Haryana-134109

..... Petitioner

VERSUS

- 1. Pragati Power Corporation Limited,**
Himadri, Corporate Office,
Rajghat Power House Complex,
New Delhi- 110002
- 2. BSES Yamuna Power Limited,**
Shakti Kiran Building, Karkardooma,
Delhi- 110092
- 3. New Delhi Municipal Council,**
Regd. Office: Palika Kendra,
Sansad Marg,
New Delhi- 110001
- 4. Tata Power Delhi Distribution Limited,**
33 kV Substation, Hudson Line,
Kingsway Camp, Delhi-110009
- 5. BSES Rajdhani Power Limited,**

BSES Bhawan, Nehru Place,
New Delhi- 110019

6. Punjab State Power Corporation Limited,
The Mall, Patiala-147 001

7. Military Engineering Services,
Gopi Nath Market,
Delhi Cantonment- 110010

...Respondents

Parties present:

Shri Samir Malik, Advocate, HPPC
Ms. Nikita Choukse, Advocate, HPPC
Ms. Swapna Seshadri, Advocate, PPCL
Shri Anand Ganesan, Advocate, PPCL
Shri Amal Nair, Advocate, PPCL
Ms. Shallu Sharma, HPPC

ORDER

The Petitioner, Haryana Power Purchase Centre (HPPC), has filed the present Petition seeking a clarification regarding levy of carrying cost on the Petitioner by the Respondent No.1, Pragati Power Corporation Limited (PPCL) (a) on difference in the tariff provisionally billed and final tariff approved by this Commission till the date of issuance of invoices by the Respondent No.1 i.e. beyond the date of tariff order, in terms of Regulation 7 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as 'the Tariff Regulations, 2014'); (b) on Petition filing fees and administrative/ publication expenses incurred by the Respondent No. 1 in terms of Regulation 52 of the Tariff Regulations, 2014 ; and (c) during the period from 1.4.2014 to 23.11.2015 considering that the First Amendment to the Tariff Regulations, 2014, amending the Regulation 7 therein, came into force only on 24.11.2015. The Petitioner has made the following prayers:

“(a) Admit the present Petition;

(b) *Provide the clarification as to whether Respondent No. 1, PPCL is entitled to claim carrying cost on the Differential Tariff from its beneficiaries including the Petitioner herein beyond the date of the Tariff Order dated 26.11.2019 passed by this Hon'ble Commission in Petition No. 221/GT/ 2015 in terms of the CERC Tariff Regulations 2014;*

(c) *Provide clarification as to whether Respondent No. 1, PPCL is entitled to claim carrying cost on the petition filing fees & administrative expenses from its beneficiaries including the Petitioner herein;*

(d) *Further clarify if Respondent No. 1, PPCL is entitled to claim carrying cost during the period from 01.04.2014 to 23.11.2015 considering that the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2015 came into force from the date of its publication in the official gazette i.e. 24.11.2015.*

(e) *In case it is held that Respondent No. 1, PPCL is not entitled to claim the excess carrying cost in terms of the submission made in instant Petition, direct PPCL to refund the excess amount or adjust it in subsequent bills along with interest/ carrying cost in terms of the CERC Tariff Regulations 2014 as undertaken by PPCL in its email dated 10.02.2020.*

(f) *Pass such other and further order(s) that this Hon'ble Commission may feel in the interests of justice and the facts and circumstances of the case.*

(g) *Condone any error/omission and to grant an opportunity to the Petitioner to rectify the same;*

(h) *Permit the Petitioner to make such further submission(s), addition(s) and alteration(s) to this Petition as may be necessary from time to time."*

Background

2. The Petitioner, Haryana Power Purchase Centre ('HPPC') a joint forum created and owned by the State Distribution licensees of Haryana and the Respondent No.1, Pragati Power Corporation Limited ('PPCL') (a Generating Company) executed Power Purchase Agreement (PPA) dated 23.6.2009. The Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (in short "the Tariff Regulations, 2009") and its amendments thereof for a period of five years from the date of notification. Regulation 5 (3) of the said Regulations provided that the generator will be entitled to recover difference in the tariff provisionally billed and the final tariff approved by the

Commission (“Differential Tariff”) along with interest/ carrying cost payable up to the date of tariff order. On 21.2.2014, the Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 effective from 1.4.2014 for a period of five years from 1.4.2014 to 31.3.2019. On 5.11.2015, the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2015 (in short “Amendment Regulations, 2015”) were notified by the Commission amending the Tariff Regulations, 2014 w.e.f 24.11.2015. According to the proviso (i) under Clause 8 of Regulation 7 Amended Regulations, the Differential Tariff between the tariff determined in accordance with proviso (i) and the tariff determined in accordance with Regulation 6 of the said Regulations shall be recovered or refunded with simple interest at the rate equal to the bank rate as on 1st April of the respective year, in three equal monthly instalments.

3. Respondent No.1, PPCL had filed Petition No. 221/GT/2015 for determination of tariff. The Commission vide its order dated 26.11.2019 had determined the tariff for PPCL for the period from 2014-19 in terms of the provisions of the Tariff Regulations, 2014 (“Tariff Order dated 26.11.2019”). As per the Tariff Regulations, 2014, PPCL was required to claim the difference in tariff approved by this Commission in its Tariff Order dated 26.11.2019 & Tariff already billed (Haryana share) for the period from April, 2014 to March, 2019 i.e. the Differential Tariff amounting to Rs.84.56 crore (approximately) in 3 equal instalments from the procurers along with carrying cost. PPCL has worked out the total carrying cost to the tune of Rs.30.85 crore (approx.). Thereafter, PPCL has raised three invoices dated 24.12.2019, 24.1.2020 and 25.2.2020 respectively to claim its Differential Tariff in three equal instalments as decided by the Commission vide Order dated 26.11.2019.

4. After receipt of the invoices, various communications were exchanged between HPPC and PPCL relating to the issue of the carrying cost being wrongly claimed by PPCL till the date of issuance of the invoice rather than the date of the Tariff Order. Payments against the above mentioned three invoices were made by HPPC to PPCL subject to clarification to be obtained from the CERC on the issues, namely, (i) Whether PPCL is entitled to claim the carrying cost on the Differential Tariff from its beneficiaries beyond the date of order dated 26.11.2019, and (ii) Whether PPCL is entitled to claim the carrying cost on the Petition filing fees and administrative expenses. A table reflecting the instalment-wise amount claimed & recovered by PPCL from HPPC is given below:

Invoice date & Instalment No	As per PPCL invoices (In Rs.)			Payment released by HPPC (In Rs.)	Date of payment by HPPC
	Principal	Interest	Total		
24.12.2019 1st	281665838	102825067	384490905	384490905	20.02.2020
24.01.2020 2nd	282068058	102825067	384893125	384893125	24.03.2020
25.02.2020 3rd	281866948	102825067	384692015	384692015	24.04.2020
Total	845600844	308475201	1154076045	1154076045	

5. HPPC had released the full amount of the invoices of Differential Tariff to PPCL under the *bona-fide* presumption that PPCL will be seeking clarification on the issues flagged by HPPC from the Commission and revise its invoices. Despite various efforts made through communications, PPCL refused to revise the invoice.

Submissions of the Petitioner

6. The Petitioner, has mainly, submitted as under:

Re: Claim of carrying cost on Differential Tariff beyond the date of Tariff Order dated 26.11.2019.

(a) Despite repeated request of the Petitioner, PPCL in its invoices dated 24.12.2019, 24.01.2020 and 25.02.2020 has claimed carrying cost on the

Differential Tariff till the date of issuance of the invoices and not till the date of the Tariff Order dated 26.11.2019. PPCL allegedly contends that the extant Tariff Regulations, 2014 do not clarify that the carrying cost on Differential Tariff is to be charged till the date of the passing of tariff order by the Commission and therefore, the levy of carrying cost till the date of issuance of the invoice is allegedly in line with the extant Regulations.

(b) It is imperative that Regulation 5(3) of the Tariff Regulations, 2009 explicitly stipulated that the generator will be entitled to recover Differential Tariff along with interest/ carrying cost payable up to the date of tariff order and not beyond that. Unfortunately, the Tariff Regulations, 2014 is silent on this issue and do not specifically state that the carrying cost is payable only up to the date of tariff order. It is noteworthy that the Commission in its order dated 17.9.2018 in Petition No. 235/MP/ 2015 had specifically allowed the generators to claim carrying cost till the date of issuance of the order of the Commission i.e. till 17.9.2018.

(c) Several other generators from whom HPPC is procuring power have been claiming carrying cost on Differential Tariff till the date of passing of the tariff order by the Commission and not till the date of issuance of bills. In the given circumstances, PPCL vide its e-mail dated 17.1.2020 and 10.2.2020 had initially proposed to seek clarification from the Commission on the above issue. However, subsequently PPCL refused to seek the clarification from this Commission by way of an appropriate Petition and arbitrarily insisted HPPC to make payments against the pending invoices for the Differential Tariff and the carrying cost.

Re: Claim of carrying cost on the petition filing fees & administrative expenses

(d) Regulation 52 of the Tariff Regulations, 2014 allows the generator to recover the Application filing fee and the publication/ administrative expenses from the beneficiaries subject to approval of the Commission.

(e) A bare perusal of Regulation 52 reflects that the said Regulations do not stipulate claiming of carrying cost by the generator to the beneficiaries for the application/petition filing fees and administrative expenses. It merely allows

the generator to recover the principal/ actual amount incurred by the generator on application/petition filing fees and administrative expenses from the beneficiaries. The Commission vide its Tariff Order dated 26.11.2019 allowed PPCL to recover the application/ petition filing fees and publication expenses from the beneficiaries on pro-rata basis.

(f) Pertinently, recovery of interest/ carrying cost on application/petition filing fees and administrative expenses was neither sought by the Petitioner in Petition No. 221/GT/2015 nor allowed by this Commission in the Tariff Order dated 26.11.2019. However, as reflected in the invoices issued by PPCL to HPPC, PPCL is claiming interest/ carrying cost on the application/petition filing fees and administrative expenses to the Petitioner despite there being no provision for such levy in the extant Regulations or in the Tariff Order dated 26.11.2019. The Petitioner had requested PPCL to revise the invoices on several occasions as stated in preceding paragraphs of this Petition. However, PPCL refused to revise the invoices.

Re: Claim of carrying cost during the period from 1.4.2014 to 23.11.2015

(g) As per Regulation 1 (2) of the Amendment Regulations, 2015, the Petitioner is entitled to claim carrying cost from 24.11.2015 instead of 1.4.2014 considering that the carrying cost is being claimed by the Petitioner under proviso to clause 8 of Regulation 7 which was added by way of the Amendment Regulations, 2015 which apparently came into effect from 24.11.2015.

(h) It is a settled law that unless specified otherwise, the regulations/ statute operate prospectively. In this regard, reference is further made to the Statement of Objects and Reasons dated 4.12.2015 issued by the Commission for notifying the Amendment Regulations, 2015. It is noteworthy that while answering specific suggestion of NTPC regarding prospective applicability of the amendment to Regulation 7 of the Tariff Regulations, 2014, the Commission in the Statement of Objects and Reasons had clarified that the Regulations will operate prospectively except where specifically provided for retrospective operation.

(i) However, PPCL has been claiming the carrying cost under Regulation 7 from 1.4.2014 instead of 24.11.2015. HPPC raised the instant issues with PPCL vide email dated 28.2.2020. However, PPCL never replied to the same.

RE: Regulation 55 of Tariff Regulations, 2014: Power to Remove Difficulties

(j) The Commission is empowered under Regulation 55 of the Tariff Regulations, 2014 to remove difficulties in case any difficulty arises in giving effect to any provision of the extant Regulations. Thus, the Petitioner by way of this Petition has approached the Commission under Regulation 55 to seek clarification *inter alia* with respect to carrying cost under Regulation 7 read with Regulation 52 of the Tariff Regulations, 2014.

Hearing dated 25.6.2021

7. The Petition was admitted on 25.6.2021 and notices were issued to the parties to complete their respective pleadings. Pursuant to the above direction, replies and rejoinders have been filed by the Respondent Nos. 1 & 4 (i.e. PPCL and TPDDL) and the Petitioner respectively.

Reply of Pragati Power Corporation Limited (PPCL)

8. Respondent No.1, Pragati Power Corporation Limited, in its reply dated 23.7.2021, has mainly submitted as under:

(a) The Petitioner has clearly misunderstood the concepts namely, carrying cost on tariff, introduction of carrying cost on the component of differential tariff, and generally the concept of time value of money. The concept of carrying cost on the component of differential tariff was first introduced in the regulatory regime through the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2004 (in short “the Tariff Regulations, 2004”).

(b) In the Statement of Objects and Reasons of the Tariff Regulations, 2009, the Commission noted that till the time the tariff for 2009-14 period is determined, the tariff as applicable as on 31.3.2009 shall continue to apply. The Commission was mindful of the fact that the final tariff which would eventually be determined for the 2009-14 period would be either higher or lower than the tariff as on 31.3.2009. Thus, in order to compensate the developers for the time value of money and also protect the beneficiaries of power, the Commission consciously remarked that such differential cost shall be recovered along with carrying cost.

(c) The Tariff Regulations, 2014 dealt with the determination of tariff. Though the fact that the generating companies should continue to bill the tariff determined till 31.3.2014, even though the period 1.4.2014 onwards was captured in the Tariff Regulations, 2014, the corresponding provision for carrying cost got missed out. The Tariff Regulations, 2014 are crystal clear on the concept of carrying cost on the component of the differential tariff. The words 'date of issuance of the final order' was dropped by the Commission while formulating the Tariff Regulations, 2014.

(d) By way of the Amendment Regulations, 2015, the Commission in addition to allowing the carrying cost on the component of differential tariff, further gave the option of realizing the differential tariff through three equal instalments. Coming into force of the said amendment does not negate the fact that carrying cost on the differential tariff accrues for the entire period 2014-19 as the difference in tariff has been financed by the generating company in order to run the project smoothly and to supply uninterrupted electricity.

(e) The addition to the proviso brought in by way of the Amended Regulations cannot be read in isolation. It is a settled principle of law that different clauses have to be given a harmonious construction and such a construction has to be in line with the intention of this Commission for formulating such law in the first place. There cannot be any *lis* on the fact that the intention of the Commission was to compensate the parties for time value of money because simply allowing differential cost without interest would

mean denying recovery of the interest paid by the transmission licensee (in the present case) on the differential cost as the same is always serviced through loans.

(f) Both the Tariff Regulations, 2004, and the Tariff Regulations, 2009, contained similar provisions for refund/recovery of differential tariff along with carrying cost and in instalments. Further, in both sets of the Tariff Regulations i.e., 2004 and 2009, it was envisaged that the tariff already determined would continue in the subsequent tariff period till such time the tariff for the subsequent period gets determined. However, while notifying the Tariff Regulations, 2014, even though the provision of continuing to bill at existing tariff till final tariff was incorporated, the corresponding provision with regard to carrying cost was missed out.

(g) In the present case, the tariff order for the period 2009-2014 was issued on 26.5.2015. Upon passing of the said order, the Respondent had revised the bills issued earlier and claimed the difference for the entire period from 27.12.2011 to 31.3.2014 along with carrying cost up to 26.5.2015 in three instalments as per the provision of the Tariff Regulations, 2009. Further, the carrying cost was billed not only till the date of order but till the date of the respective bills. The Petitioner accepted the bills and paid them in full without any protest. If the Amendment to the Tariff Regulations, 2014, came only on 5.11.2015, the Petitioner would not have paid the above amounts and contended that the above treatment is only applicable for the bills raised for the period from 27.12.2011 to 31.3.2014. However, the Petitioner also understood that there cannot be any discontinuity and carrying cost as a principle is to be levied on any differential tariff billed by the generating company.

(h) Clause (ia) introduced by the Amended Regulations is subservient to the proviso already in place i.e., proviso (i) to Regulation 7 (8) of the Tariff Regulations, 2014 which stipulate that “the generating company or the transmission licensee, as the case may be, shall continue to bill the beneficiaries or the transmission customers / DICs at the tariff approved by the Commission and applicable as on 31.3.2014 for the period starting from

1.4.2014 till approval of tariff by the Commission in accordance with these regulations.” The phrase “for the period starting from 1.4.2014” clarifies the intent of the Commission that the differential tariff is to be calculated from 1.4.2014.

(i) Since the project developers arrange a major portion of the capital expenditure by taking loans and such loans are repaid along with the accrued interest and major part of the tariff determined for the initial years goes towards servicing of these loans. The final tariff determined included the interest on loan as a major component.

(j) The carrying cost at the simple interest rate equivalent to the bank rate is allowed as time value of money in view of the delayed determination of the actual amount due to under recovery. In such cases of under recovery, the developer is required to be compensated by carrying cost. Therefore, there is no merit in contending that even though the distribution company will get three instalments to make the payment of differential tariff, the carrying cost will be restricted till the date of issuance of the final order.

Re: *Claim of carrying cost on differential tariff beyond the date of Tariff Order dated 26.11.2019.*

(k) The contention of the Petitioner that the Respondent should raise the invoice on the very same day passing of the order, is not correct as such a position cannot exist as raising of invoices has to be done after calculating the impact of the final order on the tariff and as such the same is impossible to be done on the very same day. The Commission found it prudent to remove any limitation of time lines for claiming carrying cost in the Tariff Regulations, 2014 and any inference to the contrary is denied. As already stated, the PPA which was subject matter of Petition No. 235/MP/2015 clearly stipulated the carrying cost to be applicable till the passing of the tariff order and hence is not applicable to the facts of the present case. Further, in Petition No.235/MP/2015 the carrying cost was being claimed as a result of Change in Law, which is entirely different from the issue of differential tariff. There is no *lis* in the raising of the invoices or that any clarification regarding the same is

liable to be obtained when the applicable regulations on the issue are amply clear.

Re: *Claim of carrying cost on the petition filing fees & administrative expenses*

(l) Regulation 52 of the Tariff Regulations, 2014 have to be read conjointly with other Regulations. Regulation 52 lays down that the application/filing fees and the administrative fees are to be reimbursed subject to the approval of the Commission. It is an admitted position that the Commission has allowed the application/filing fees and the administrative fees to be recovered from the beneficiaries. The application/filing fees and the administrative fees have been financed by the Respondent by way of loans and hence are required to be serviced. Therefore, application/filing fees and the administrative fees also falls under the ambit of proviso to Regulation 7 (8) and, therefore, the same is eligible to be recovered along with carrying cost.

Re: *Claim of carrying cost during the period from 1.4.2014 to 23.11.2015*

(m) The clarification being sought for by the Petitioner on whether carrying cost is to be calculated prior to the coming into force of the Amended Regulations is patently erroneous. As pointed out in the preliminary submissions, it is reiterated that the Amended Regulations have merely been introduced to ease the burden of paying the carrying cost on the parties and as such it is incorrect to aver that the Amended Regulations bars the Respondent from computing carrying cost from 1.4.2014. The Amended Regulations merely made additions to the proviso to Regulation 7 (8) and such insertion cannot be construed in a manner so as to render the proviso otiose.

RE: *Regulation 55 of Tariff Regulations, 2014: - Power to Remove Difficulties*

(n) The provisions of Regulation 55 of the Tariff Regulations, 2014, cannot be invoked to seek clarification of an aspect which is amply clear by way of

the applicable regulations. The Petitioner will not suffer any loss since the invoices raised by the Respondent are in line with the applicable regulations.

Rejoinder of the Petitioner:

9. The Petitioner, in its rejoinder dated 29.12.2021, has reiterated the submissions made in the Petition and has mainly submitted as under:

(a) Regulation 5(3) of the Tariff Regulations, 2009 explicitly stipulated that the generator will be entitled to recover Differential Tariff along with interest/ carrying cost payable up to the date of tariff order and not beyond that.

(b) Recovery of interest/ carrying cost on application/petition filing fees and administrative expenses was neither sought by the Petitioner in Petition No. 221/GT/2015 nor allowed by this Commission in the Tariff Order dated 26.11.2019. However, as reflected in the invoices issued by PPCL to HPPC, PPCL is claiming interest/ carrying cost on the application/petition filing fees and administrative expenses to the Petitioner despite there being no provision for such levy in the extant Regulations or in the Tariff Order dated 26.11.2019.

(c) The Amended Regulations, 2015 came into force from the date of its publication in the official gazette i.e. 24.11.2015. Hence, the Petitioner is entitled to claim carrying cost from 24.11.2015 instead of 1.4.2014 considering that the carrying cost is being claimed by the Petitioner under proviso to clause 8 of Regulation 7 which was added by the Amended Regulations, 2015. While answering specific suggestion of NTPC regarding prospective applicability of amendment to Regulation 7 of the Tariff Regulations 2014, the Commission in the Statement of Objects and Reasons had clarified that Regulations will operate prospectively except where specifically provided for retrospective operation.

(d) The Respondent No. 4, Tata Power Delhi Distribution Limited vide its reply dated 27.9.2021 has supported the present Petition in its entirety. Therefore, the Petitioner adopts the contents of the reply filed by the Respondent No. 4, Tata Power Delhi Distribution Limited.

Reply of Tata Power Delhi Distribution Limited (TPDDL)

10. Respondent No.4, Tata Power Delhi Distribution Limited (TPDDL), in its reply dated 28.9.2021, has supported the contentions made by the Petitioner and has mainly submitted as under:

(a) It is wholly erroneous and unjustified to pass the extra carrying cost post the issuance of the Tariff Order on the beneficiaries due to delay in generating the invoices on the part of the Respondent No. 1. It is a settled principle of law that nobody should benefit from its own wrongdoing. In this regard, reliance has been placed on the judgment of the Hon`ble Supreme Court in the case of Kusheshwar Prasad Singh Vs. State of Bihar (2007) 11 SCC 447). TPDDL has also placed reliance on the CERC order in the case of Azure Power Forty-One Private Limited v. Solar Energy Corporation of India Limited &Ors. [2023 SCC OnLine CERC 16].

(b) The Commission vide its order dated 17.9.2018 passed in Petition No. 235/MP/2015 allowed the generators to claim carrying cost only till the date of Tariff Order passed by the Commission i.e. till 17.9.2018. In the present case, the Respondents No. 2 to 7 have sought similar relief as the Petitioner has claimed carrying cost beyond the date of the Tariff Order dated 26.11.2019 which goes against the principles laid down in the aforementioned order of the Commission.

(c) PPCL is not entitled to claim carrying cost for the invoices raised between 1.4.2014 to 23.11.2015 considering that the Amendment Regulations, 2015 under which the carrying cost is being claimed only came into force from 24.11.2015 onwards.

In Re Issue 1: Whether PPCL is entitled to charge carrying cost beyond the date of tariff order

(d) PPCL has erroneously charged carrying cost on the differential tariff till the date of issuance of the invoices and not till the date of the Tariff Order dated 26.11.2019. Though in Regulation 5(3) of the Tariff Regulations, 2009 it is stipulated that the generator will only be able to recover carrying cost up to the date of issuance of the tariff order. However, under the provisions of the

Tariff Regulations, 2014, even such cost is not explicitly allowed and accordingly, there is no cause for claiming this amount under the extant regulatory framework.

In Re Issue 2: Whether PPCL is entitled to claim carrying cost on the petition filing fees & administrative expenses from its beneficiaries

(e) In terms of Regulation 52 of the Tariff Regulations, 2014, the generators are allowed to recover the Application filing fees and the publication /administrative fees from the beneficiaries subject to the approval of this Commission. A bare perusal of Regulation 52 reflects that the generators are allowed to recover the principal/actual amount incurred on application/petition filing fees and administrative expenses. The generators cannot claim interest/carrying cost on the same. The Commission in its Tariff Order had allowed PPCL to recover the application/petition filing fees and administrative expenses from the beneficiaries on a pro rata basis as the recovery of interest/carrying cost on the application/petition filing fees and administrative expenses was neither sought by the Petitioner nor allowed by this Commission in its Tariff Order dated 26.11.2019.

Re Issue 3: Whether PPCL is entitled to claim carrying cost during the period from 1.4.2014 to 23.11.2015

(f) Since the Amendment Regulations, 2015 came into force from the date of publication in the official gazette i.e. 24.11.2015, the Petitioner is entitled to claim carrying cost from 24.11.2015 and not from 1.4.2014 as it has done. Unless specified otherwise, regulations/statutes always operate prospectively. In support of the its contention, TPDDL has placed reliance on the judgment passed by Hon'ble Supreme Court in the case of CIT v. Vatika Township (P) Ltd. [(2015) 1 SCC 1].

Hearing dated 23.3.2023

11. During the course of the hearing, learned counsels for the parties argued at length. Based on the request, the parties were allowed to file their respective written

submissions. Written submissions have been filled by the Respondent No.1, PPCL, Respondent No.4, TPDDL and the Petitioner on 12.4.2023, 10.5.2023 and 5.4.2023 respectively wherein parties have reiterated their submissions already made in their replies and rejoinders and the same is not repeated for the sake of brevity.

Analysis and Decision

12. We have considered the submissions of the Petitioner and the Respondents and perused the documents available on record. Based on the above, the following issues arise for our consideration:

Issue No. 1: Whether the Respondent No.1, PPCL is entitled to claim the carrying cost on Differential Tariff beyond the date of tariff order dated 26.11.2019 passed by this Commission in Petition No. 221/GT/2015 in terms of the Tariff Regulations 2014?

Issue No. 2: Whether Respondent No.1, PPCL is entitled to claim carrying cost on the petition filling fee & administrative expenses from the Petitioner?

Issue No. 3: Whether Respondent No.1, PPCL is entitled to claim carrying cost during the period from 1.4.2014 to 23.11.2015 considering that the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2015 came into force from the date of its publication in the official gazette i.e. 24.11.2015?

The above issues have been dealt with in the succeeding paragraphs.

Issue No. 1: Whether the Respondent No.1, PPCL is entitled to claim the carrying cost on Differential Tariff beyond the date of tariff order dated 26.11.2019 passed by this Commission in Petition No. 221/GT/2015 in terms of the Tariff Regulation, 2014?

13. The Petitioner has submitted that the Respondent No.1, PPCL has claimed carrying cost on the Differential Tariff from its beneficiaries including the Petitioner beyond the date of the Tariff Order dated 26.11.2019 passed by the Commission in Petition No. 221/GT/2015 in terms of the Tariff Regulations, 2014. The Petitioner has further submitted that the PPCL was to claim the difference in tariff approved by the

Commission in its Tariff Order dated 26.11.2019 & tariff already billed (Haryana share) for the period from April, 2014 to March, 2019 i.e. the Differential Tariff amounting to Rs.84.56 crore (approximately) in 3 equal instalments from the procurers along with carrying cost computed till the date of the Tariff Order i.e. 26.11.2019. Instead, the Respondent No.1 has wrongly claimed the carrying cost till the date of issuance of the invoice i.e. 24.12.2019. It is unjustified and unreasonable to pass on the excess carrying cost upon the beneficiaries including HPPC on account of delay on the part of the generator i.e. PPCL in issuing the invoices. Regulation 5(3) of the Tariff Regulations, 2009 explicitly stipulated that the generator will be entitled to recover the Differential Tariff along with interest/ carrying cost payable up to the date of tariff order and not beyond that.

14. On the other hand, PPCL, while referring to the Tariff Regulations, 2014, contended that the said Regulations are crystal clear on the concept of carrying cost on the component of the Differential Tariff. The words 'date of issuance of the final order' was dropped by the Commission while formulating the Tariff Regulations, 2014. The Commission found it prudent to remove any limitation of time lines for claiming carrying cost in the Tariff Regulations, 2014. Moreover, PPCL in no manner has delayed in issuing the invoices. It is not possible for the PPCL to issue invoices on the very same day of passing Tariff Order as raising of invoices has to be done after calculating the impact of the final order on the tariff.

15. We have considered the submissions made by the parties. The brief issue involved is the cut-off date or threshold date for claiming the interest on the differential tariff i.e. difference in tariff as applicable on 31.3.2014 and the tariff came to be determined for the control period 2014-19. On the above aspect, we may refer

to the relevant provisions of Regulation 7(8) of the Tariff Regulations, 2014, which read as under:

“7. Application for determination of tariff:

.....

(8) In case of the existing projects, the generating company or the transmission licensee, as the case may be, may be allowed tariff by the Commission based on the admitted capital cost as on 1.4.2014 and projected additional capital expenditure for the respective years of the tariff period 2014-15 to 2018-19 in accordance with the Regulation 6:

Provided that:

(i) the generating company or the transmission licensee, as the case may be, shall continue to bill the beneficiaries or the transmission customers / DICs at the tariff approved by the Commission and applicable as on 31.3.2014 for the period starting from 1.4.2014 till approval of tariff by the Commission in accordance with these regulations:

[(i a) The difference between the tariff determined in accordance with proviso (i) above and the tariff determined in accordance with Regulation 6 of these regulations shall be recovered or refunded with simple interest at the rate equal to the bank rate as on 1st April of the respective year, in three equal monthly instalments.”.

16. Proviso (i) to Regulation 7(8) permits the generating company or transmission licensee to continue billing the beneficiaries or the transmission customers/ DICs at the tariff approved by the Commission and applicable as on 31.3.2014 for the period starting from 1.4.2014 till the approval of the tariff by the Commission under the Tariff Regulations, 2014. Further, Clause (ia) thereunder, which came to be inserted by Amendment Regulations, 2015, provides that the difference between the tariff determined in accordance with proviso (i) and the tariff determined in accordance with Regulation 6 of the said Regulations shall be recovered or refunded with simple interest at the rate equal to the bank rate as on 1st April of the respective year, in three equal monthly instalments. Pertinently, the proviso (i) to Regulation 7(8) permits the generating company to bill the tariff as applicable as on 31.3.2014 (i.e. during previous control period) only “till the approval of tariff by the Commission” in accordance with Tariff Regulations, 2014 and not

beyond and consequently, the clause (ia), entitles the generating company to claim the interest only on such Differential Tariff. Although, the said proviso or the Clause (ia) thereunder, as such, does not expressly provide for a cut-off date or threshold date for entitlement of an interest on Differential Tariff, it may be relevant to note that both the proviso (i) to Regulation 7(8) as well as Clause (ia) thereunder are tied to the determination of tariff under Tariff Regulations, 2014. In other words, they permit the generating company to provisionally bill the tariff as applicable on 31.3.2014 for the control period 2014-19 only till determination of tariff under Tariff Regulations, 2014 and entitle the generating company to an interest only on the Differential Tariff, which would also run upto the determination of tariff under Tariff Regulations, 2014 and not beyond. Hence, in the above circumstances, it would not be proper to link the entitlement of a generating company to the interest on Differential Tariff to any other point than the determination of tariff under Tariff Regulations, 2014, which beyond any dispute, could only be date of the Tariff Order determining the tariff for control period 2014-19, which in the present case is 26.11.2019.

17. The Respondent No.1, PPCL has, however, placed the emphasis on the Regulation 5(3) of the Tariff Regulations, 2009 to submit that the said regulation specifically provided the computation of interest till the date of issuance of final order by the Commission and such wordings are not present in the Tariff Regulations, 2014 read with Amendment Regulations, 2015. The relevant provisions of Regulation 5(3) of the Tariff Regulations, 2009 read as under:

“5. Application for determination of tariff.

.....

(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 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 Base Rate as on 01.07.2010 plus 350 basis points for the 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.”

18. Indisputably, the proviso to Regulation 5 of the Tariff Regulations, 2009 provided for simple interest on the Differential Tariff from the date of provisional billing to the date of issue of final tariff order of the Commission and such wordings are not present in the Tariff Regulations, 2014. However, the absence of such express wordings cannot simply be interpreted in manner that the generating company or transmission licensee is entitled to carrying cost on the Differential Tariff till the date of issuance of first invoice raised by them pursuant to the Tariff Order. As we already noted above, even in the absence of express wordings “date of issue of the final tariff order of this Commission”, the proviso (i) and Clause (ia) under the Regulation 7(8) of Tariff Regulations, 2014 are tied to the determination of tariff by the Commission under Tariff Regulations, 2014 and consequently, the entitlement to the interest on the Differential Tariff has to be linked to the date of determination of tariff under Tariff Regulations, 2014 i.e. the date of the Tariff Order.

19. The Respondent No.1 has also argued that interest is nothing but the time value of money for the delayed recovery and when the recovery is only from 24.12.2019 (i.e. issuance of invoice) and the Respondent has rightfully charged the

interest/carrying cost on the Differential Tariff till the date of issuance of the invoice. The Respondent No.1 has further stated that raising of invoices has to be done after calculating the impact of the final order on the tariff and it is impossible to be done on the very same day. Only after duly considering this aspect, the Commission has found it appropriate to remove any limitation of timelines for claiming the carrying cost in Tariff Regulations, 2014. We have considered the aforesaid submissions. While there cannot be any contrary argument that provision for interest on the Differential Tariff under Clause (ia) under Regulation 7(8) of the Tariff Regulations, 2014 is aimed at compensating the affected party for time value of money, but it would not be proper to link the computation of interest to the date of raising of invoices. Apart from the fact that the above provisions do not expressly provide so, there is another aspect which may be relevant to note. The raising of invoice(s) after the issuance of the Tariff Order by the Commission is entirely within the purview of a concerned generating company / transmission licensee, as the case may be, and in absence of the Regulations providing for any specific timeline for raising such invoice(s) for Differential Tariff, it would not be proper to undertake scrutiny of the time taken by a generating company / transmission licensee objectively as the complexity of the calculation for determining the net impact, be it over-recovery or under-recovery, may vary from case to case. Thus, on this count also, it would not be proper to link the entitlement of the generating company or the transmission licensee to interest on Differential Tariff to the date of (first) invoice(s).

20. In view of the above observations, we hold that the Respondent No.1 will be entitled to the interest on the Differential Tariff, in accordance with Clause (ia) of Regulation 7(8) of the Tariff Regulations, 2014 only till the date of Tariff Order i.e. 26.11.2019 and the interest recovered beyond the said period will be refunded/

adjusted in the subsequent billing with the Petitioner along with interest applicable under Tariff Regulations, 2014.

21. This issue is answered accordingly.

Issue No. 2: Whether Respondent No.1, PPCL is entitled to claim carrying cost on the petition filing fee & administrative expenses from the Petitioner?

22. The Petitioner has submitted that Regulation 52 of the Tariff Regulations, 2014 allows the generator to recover the Application filing fee and the publication/administrative expenses from the beneficiaries subject to approval of the Commission. The Commission in its Tariff Order dated 26.11.2019 allowed PPCL to recover the application/petition filing fees and publication expenses from the beneficiaries on pro-rata basis. But as reflected in the invoices issued by PPCL to HPPC, PPCL is claiming interest/ carrying cost on the application/petition filing fees and administrative expenses to the Petitioner despite there being no provision for such levy in the extant Regulations or in the Tariff Order dated 26.11.2019. The Petitioner had requested PPCL to revise the invoices on several occasions. However, PPCL refused to revise the invoices.

23. On the other hand, PPCL has submitted that such an inference being drawn by the Petitioner is incorrect since it negates the intent of allowing carrying cost on the differential tariff. The application/filing fees and the administrative fees have been financed by the Respondent by way of loans and hence is required to be serviced. Therefore, application/filing fees and the administrative fees also falls under the ambit of proviso to Regulation 7 (8) of the Tariff Regulations, 2014 and, therefore, the same is eligible to be recovered along with carrying cost. The Respondent, PPCL has further submitted that the Petitioner is trying to draw an artificial distinction between various components of tariff. As per Regulation 7 (8) of the Tariff

Regulations, 2014, all cost components are subsumed into the same. Further, recovery of the filing fees and the expenses incurred on publication of notices is at the discretion of the Commission. Therefore, such recovery being discretionary in nature, the Respondent (generator) could not have sought for recovery of the same before it being allowed in the order dated 26.11.2019 and the said recovery was made only after the tariff order along with carrying cost, though paid much in advance. The time value for this delayed recovery is the interest component, which is only compensatory in nature.

24. We have considered the submissions made by the parties. Regulation 52 of the Tariff Regulations, 2014 allows the generator to recover the Application filing fee and the publication/ administrative expenses from the beneficiaries. Relevant extract of the Regulation 52 of the Tariff Regulations, 2014 is produced below:

“52. Application fee and the publication expenses: The following fees, charges and expenses shall be reimbursed directly by the beneficiary in the manner specified herein:

(1) The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, may in the discretion of the Commission, be allowed to be recovered by the generating company or the transmission licensee, as the case may be, directly from the beneficiaries or the long term transmission customers /DICs, as the case may be:

(2) The following fees and charges shall be reimbursed directly by the beneficiaries in proportion of their allocation in the generating stations or by the long term transmission customers /DICs in proportion to their share in the inter-State transmission systems determined in accordance with the Central Electricity Regulatory Commission (Sharing of inter-State Transmission Charges and Losses) Regulations, 2010, as amended from time to time;

(a) Fees and charges paid by the generating companies and inter-State transmission licensees (including deemed inter-State transmission licensee) under the Central Electricity Regulatory Commission (Fees and Charges of Regional Load Despatch Centre and other related matters) Regulations, 2009, as amended from time to time or any subsequent amendment thereof;

(b) Licence fees paid by the inter-State transmission licensees (including the deemed inter-State transmission licensee) in terms of Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012 or any subsequent amendment or re-enactment thereof;

(c) Licence fees paid by NHPC Ltd to the State Water Resources Development Authority, Jammu in accordance with the provisions of Jammu & Kashmir Water Resources (Regulations and Management) Act, 2010;

(3) The Commission may, for the reasons to be recorded in writing and after hearing the affected parties, allow reimbursement of any fee or expenses, as may be considered necessary.”

25. A bare perusal of the Regulation 52 reflects that the said Regulation allows to recover fees and expenses (the Principal/ actual amount) and does not stipulate charging of interest by the generator on the beneficiaries for the application/petition filing fees and administrative expenses. Moreover, recovery of such fees and expenses having covered under a specific regulation, we fail to appreciate the submission of the Respondent No.1 that they fall under the ambit of proviso to Regulation 7(8) of the Tariff Regulations, 2014 entitling it an interest as permitted on the Differential Tariff.

26. Moreover, the Commission vide its Tariff Order dated 26.11.2019 in Petition No. 221/GT/2015 has clearly stated that PPCL will recover the application/ petition filing fees and publication expenses from the beneficiaries on pro-rata basis. Relevant portion of the Tariff order dated 26.11.2019 is extracted hereinbelow for ease of reference:

“Application filing fee and Publication Expenses

59. The Petitioner has sought reimbursement of filing fee and also the expenses incurred towards publication of notices for application of tariff for the periods 2014-19. The Petitioner has deposited the filing fees in terms of the provisions of the Central Electricity Regulatory Commission (Payment of Fees) Regulations, 2012. The Petitioner has also incurred charges towards publication of the tariff petition in the newspapers. Accordingly, in terms of Regulation 52 of the 2014 Tariff Regulations, the Petitioner is entitled to recover the filing fees and the expenses incurred on publication of notices for the period 2014-19 directly from the respondents. Accordingly, the expenses incurred by the Petitioner towards tariff application filing fees and for publication of notices for the above said tariff periods shall be directly recovered from the respondent beneficiaries on pro rata basis, on submission of documentary proof of the same.”

27. Pertinently, it is clear from the Tariff Order dated 26.11.2019 that recovery of interest/ carrying cost on application/petition filing fees and administrative expenses was neither sought by the Petitioner in Petition No. 221/GT/2015 nor allowed by this Commission.

28. In light of the discussion of the foregoing paragraph, we are of the view that the generator is entitled to recover only the principal/ actual amount incurred for application/ petition filing fees and administrative expenses from the beneficiaries without any interest/ carrying cost.

29. This issue is answered accordingly.

Issue No. 3: Whether Respondent No.1, PPCL is entitled to claim carrying cost during the period from 1.4.2014 to 23.11.2015 considering that the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2015 came into force from the date of its publication in the official gazette i.e. 24.11.2015?

30. The Petitioner has contended that as per Regulation 1 (2) of the Amendment Regulations, 2015 (came into force from 24.11.2015), the Petitioner is entitled to claim carrying cost from 24.11.2015 instead of 1.4.2014 considering that the carrying cost is being claimed by the Petitioner under proviso to clause 8 of Regulation 7 which was added by way of the Amendment Regulations, 2015 which apparently came into effect from 24.11.2015. It is a settled law that unless specified otherwise, the regulations/ statute operates prospectively. However, PPCL has been claiming the carrying cost under Regulation 7 from 1.4.2014 instead of 24.11.2015. HPPC raised the instant issues with PPCL vide email dated 28.2.2020. However, PPCL never replied to the same.

31. On the other hand, PPCL has submitted that the Amended Regulations have merely been introduced to ease the burden of paying the carrying cost on the parties

and as such it is incorrect to aver that the Amended Regulations bars the Respondent from computing carrying cost from 1.4.2014. The Amended Regulations merely made additions to the proviso to Regulation 7 (8) and such insertion cannot be construed in a manner so as to render the proviso otiose. The proviso to Regulation 7 (8) stipulates that the provisional tariff is to be applicable from 1.4.2014 and therefore, the insertion cannot be read to concur otherwise.

32. We have considered the submissions made by the parties. Prior to examining whether the present case involves any retrospective operation of Amendment Regulations, 2015, we may at the cost of repetition again reproduce the relevant provisions of Clause (ia) to Regulation 7(8) as came to be incorporated in Tariff Regulations, 2014 by Amendment Regulations, 2015:

“
Provided that:

(i) the generating company or the transmission licensee, as the case may be, shall continue to bill the beneficiaries or the transmission customers / DICs at the tariff approved by the Commission and applicable as on 31.3.2014 for the period starting from 1.4.2014 till approval of tariff by the Commission in accordance with these regulations:

[(i a) The difference between the tariff determined in accordance with proviso (i) above and the tariff determined in accordance with Regulation 6 of these regulations shall be recovered or refunded with simple interest at the rate equal to the bank rate as on 1st April of the respective year, in three equal monthly instalments.”

Perusal of the Clause (ia) above would reveal two crucial aspects. Firstly, the clause covers within its sweep the entire Differential Tariff i.e. the difference arising out of the tariff determined in accordance with proviso (i) (tariff applicable as on 31.3.2014) and the tariff determined in accordance with Regulation 6 of Tariff Regulations, 2014 (tariff for the control period 2014-19). It does not distinguish such difference on the basis of its notification date i.e. 24.11.2015. Secondly, the trigger point for the applicability of the said clause - thereby entitling the generating company or the transmission licensee to interest on Differential Tariff - would only be

upon the determination of tariff for the 2014-19 control period under the Tariff Regulations, 2014 and not prior to that.

33. Admittedly, it is not the case that the tariff for the control period had already been decided in respect of the generating station of the Respondent No.1 prior to the coming into the effect of the Amendment Regulations, 2015 and the Respondent No.1 has sought to raise its interest claim on Differential Tariff basis. The tariff for the control period 2014-19 for the Respondent No.1 came to be determined only vide Tariff Order dated 26.11.2019 i.e. only after the notification of Amendment Regulations, 2015. While it is a well settled that no statute shall be construed to apply retrospectively, unless such construction appears clear from the language of the enactment or otherwise necessary by implication, it is equally trite that a statute is not retrospective merely because it affects existing rights or because a part of the requisites for its action is drawn from a time antecedent to its passing. Had it been the case that the tariff for the control period for 2014-19 was already been decided prior to 24.11.2015 and the generating company was raising the claim for interest on the concluded transaction then it would have been an entirely different case. However, in the present case, the tariff of the Respondent No.1 for the control period 2014-19 came to be decided only on 26.11.2019 and by said time, the Amendment Regulations, 2015 had already come into the effect which as noted above, entitled the generating company to an interest on the entire Differential Tariff. In view of the above, we do not find any force in the submission of the Petitioner that computing the interest on the Differential Tariff w.e.f 1.4.2014 instead of 24.11.2015 would amount to a retrospective operation of Clause (ia) as incorporated via Amendment Regulations, 2015. Accordingly, we hold that the Respondent No.1 will be entitled to

interest on the entire Differential Tariff in accordance with Clause (ia) to the Regulation 7(8) of the Tariff Regulations, 2014.

34. This issue is answered accordingly.

35. The Petition No. 640/MP/2020 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member