

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No. 122 & 123 of 2009

Dated: 24th February, 2011

Present: Hon'ble Mr. Justice M. Karpaga Vinayagam,
Chairperson
Hon'ble Mr. Rakesh Nath, Technical Member

Appeal No. 122 of 2009

In the matter of

Uttar Haryana Bijli Vitran Nigam
Shakti Bhawan
Sector 6,
Panchukla-134 109
(Haryana)

... Appellant(s)

Versus

- 1. N.T.P.C. Limited**
NTPC Bhawan, Core-7,
Scope Complex, Lodhi Road,
New Delhi-110 003

- 2. Central Electricity Regulatory Commission**
3RD & 4TH Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001

3. **National Regional Load Despatch Centre**
18A, Katwaria Sarai
New Delhi-110 016
4. **Northern Regional Power Committee**
18A, Katwaria Sarai
New Delhi-110 016 Respondent(s)

Counsel for Appellant **Mr. Pradeep Misra**
 Mr. Shashank Pandit

Counsel for Respondent **Ms. Swapna Seshadri**
 Ms. Sneha Venkataramani &
 Ms. Ranjitha Ramachandran
 for NTPC

Appeal No. 123 of 2009

Delhi Power Company Limited ... **Appellant(s)**

Versus

1. **N.T.P.C. Limited**
NTPC Bhawan, Core-7,
Scope Complex, Lodhi Road,
New Delhi-110 003
2. **Central Electricity Regulatory Commission**
3RD & 4TH Floor, Chanderlok Building,
36, Janpath, New Delhi-110 001

- 3. Uttar Pradesh Power Corporation Ltd.,
10th Floor, Vidyut Bhawan,
14, Ashok Marg,
Lucknow-226 001 (U.P.)**

- 4. Rajasthan Rajya Vidyut
Prasaran Nigam Ltd.,
Jaiur Vidyut Bhawan,
Janpath (Rajasthan)**

- 5. Haryana Vidyut Prasaran Nigam Limited
Shakati Bhawan,
Sector VI, Panchkula – 134 109
(Haryana)**

- 6. Himachal Pradesh State Electricity Board
Vidyut Bhawan,
Shimla-171 004 (Himachal Pradesh)**

- 7. Punjab State Electricity Board
Through: Chief Engineer
(System Operation,
220 KV)
Sub-Station, Ablowal
Patiala-147 001 (Punjab)**

- 8. Power Development Department
Government of Jammu & Kashmir,
Lottery Building,
Behind Civil Secretariat,
Srinagar (J&K)**

**9. Power Department, Chandigarh
Through: Chief Engineer-cum-Secretary,
Union Territory of Chandigarh,
Additional Office Building,
Sector-0,
Chandigarh.**

**10. National Regional Load Despatch Centre
18A, Katwaria Sarai
New Delhi-110 016**

**11. Northern Regional Power Committee
18A, Katwaria Sarai
New Delhi-110 016**

....Respondent(s)

Counsel for Appellant(s) Mr. Pradeep Misra
Mr. Shashank Pandit

Counsel for Respondent(s) Ms. Swapna Seshadri
Ms. Sneha Venkataramani
Ms. Ranjitha Ramachandran
for NTPC
Mr. Daleep Kumar Dhayani
Mr. M.K.Tomar
Mr. V.K.Gupta

JUDGMENT

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,
CHAIRPERSON**

1. Uttar Haryana Bijli Nigam Limited, Appellant in Appeal No. 122/09 and Delhi Power Company Limited, Appellant in Appeal No. 123/09 have filed these Appeals challenging the impugned order dated 31.07.2008 passed by the Central Commission, on being aggrieved that they were directed to pay the energy charges for the period 01.01.2000 to 30.06.2001, with interest if payment is not made within the stipulated date. Since these two Appeals have been filed against the common impugned order, this common judgment is being rendered.

2. The short facts relevant for the disposal of these Appeals are as follows.

3. The Appellants, being the distribution licensees purchase the electricity from the 1st Respondent (NTPC) the generator for distribution of the same in their respective areas. The grid frequency was above 50.5 Hz for substantial periods during 1988-89, 1989-90 and 1990-91. Since the generation over the frequency of 50 Hz. amounts to wasteful burning of fuel, the Northern Regional Electricity Board (NREB) implemented overlay accounting scheme. The said scheme encouraged the overdrawl by the State from the Regional Grid by backing down their own generation through application of concessional rate for energy overdrawn during high frequency conditions. The said scheme was meant to operate between the states only and the central sector generators like NTPC were not parties to the scheme.

4. As the high frequency problem continued in spite of the implementation of the said scheme, the NREB convened a meeting which felt the need for analysing the

excess generation under high frequency and overdrawl at low frequency. The NTPC 1st Respondent, being the generator is one of the members of the NREB. Though the said scheme was formulated by the NREB, the NTPC (1st Respondent) did not agree to it. Then a proposal was brought in October, 1998 to stop the payment towards energy charges for generation in excess of quantum advised by the Northern Region Load Despatch Centre. The commercial committee of NREB was asked to prepare the methodology for working out the excess generation which was put up in NREB meeting held on 3.12.1999. In the meeting conducted by the NREB on 3.12.1999, NTPC raised objections. However, by majority decision it was agreed to implement the scheme w.e.f. 01.01.2000 by NREB. Accordingly the payment towards energy charges for excess energy generation of NTPC computed as per the methodology approved by majority decision of NREB was stopped.

5. Then NTPC (1st Respondent) sent a letter dated 21.02.2004 to the beneficiaries along with the bills raised as per the NREB's decision without prejudice to NTPC's rights and contentions. However, there was no response from the beneficiaries. Therefore, NTPC (1st Respondent) filed a Petition before the Central Commission praying for adjudication upon the dispute between the NTPC and the beneficiaries on this issue and also prayed for direction to the beneficiaries to pay an amount of Rs. 31.8 crores towards energy charges to NTPC. On entertaining the said Petition, the Central Commission, by the order dated 31.10.2006 appointed one-member Bench to to into the issue and make recommendations.

6. The Single Bench, after conducting the enquiry and hearing the parties, found that NTPC was entitled for the amount towards energy charges claimed and accordingly recommended that the said amount be directed to be paid by the beneficiaries to the NTPC along

with interest @ 1.25% per month if payment is not made within the stipulated period. This report of recommendation was placed before the Central Commission.

7. The Central Commission thereupon heard the parties again and passed the impugned order dated 31.07.2008 accepting the recommendations of the Single Bench and directed the beneficiaries to pay the energy charges in accordance with the notification issued by the Government of India and the Regulations of the Central Commission, for the period 01.01.2000 to 30.06.2001 along with interest for non payment within the stipulated period. The Appellants being the beneficiaries, on being aggrieved over this direction, have filed these two separate Appeals.

8. The Learned Counsel for the Appellants has raised the following 3 grounds:

- (i) The Central Commission has wrongly interpreted the provisions of section 55 of the Electricity (Supply) Act, 1948 by holding that the decision taken by the NREB under section 55(7) of the Electricity (Supply) Act, 1948 requires the consent of all the participants, and not by a mere majority and in the absence of the consent of NTPC, it was not binding on NTPC.

- (ii) There is an unexplained delay and latches on the part of NTPC in filing the Petition No. 32/06 before the Central Commission for adjudication on this dispute; and

- (iii) The NTPC having acted illegally and against the interest of the grid ought not be paid the

energy charges for generation during high frequency as was agreed by the beneficiaries.

9. In reply to the above grounds, the Learned Counsel for the NTPC (R-1) has argued in justification of the reasonings contained in the impugned order and explained as to how the findings rendered by the Central Commission are valid.

10. In the light of the rival contentions of the parties, the following questions may arise for consideration of this Tribunal:

- (i) What is the true scope and ambit of the section 55 of Electricity (Supply) Act, 1948?
- (ii) What is the effect of latches on the part of NTPC in filing the Petition No. 32/06 before the Central Commission belatedly?

- (iii) Whether the NTPC is entitled to claim the amount of energy charges for excess generation during high frequency conditions.

11. Let us now discuss each of these issues.

12. According to the Appellants, under section 55 (7) of the Electricity (Supply) Act, 1948, the decision taken at the meeting of NREB does not require consent of all its members but the decision taken by the beneficiaries by majority is sufficient and the same is binding on all the members and, therefore, in view of the decision taken by the beneficiaries the majority in the 119th meeting of the NREB dated 03.12.1999 backing down of generation by NTPC during high frequency conditions the same was binding on NTPC. It is further contended the word “mutually” used in section 55(7) of Electricity (Supply) Act, 1948 has to be interpreted as by majority.

13. In order to deal with this point, it is appropriate to refer to section 55 of the Electricity (Supply) Act, 1948. Section 55 of the Electricity (Supply) Act, 1948 reads as under:

“55. Compliance of directions of the Regional Electricity Board, etc. by licensees or generating companies. (1) Until otherwise specified by the Central Government, the Central Transmission Utility shall operate the Regional Load Despatch Centers and the State Transmission Utility shall operate the State Load Despatch Centers.

(2) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(3) The Regional Load Despatch Centre may give such directions and exercise such supervision and control

as may be required for ensuring integrated grid operation and for achieving the maximum economy and efficiency in the operation of the power system in the region under its control.

(4) Subject to the provisions of sub-section (3), the State Load Despatch Centre in a State may give such directions and exercise such supervision and control as may be required for ensuring the integrated grid operations and for achieving the maximum economy and efficiency in the operation of the power system in that State.

(5) Every licensee, transmission licensee, Board, generating company, generating stations, sub-stations and any other person connected with the operation of the power system shall comply with the directions, issued by the Load Despatch Centers under subsection (3) and (4).

(6) All directions issued by the Regional Load Despatch Centers to any transmission licensee of State transmission lines or any other licensee of the State or generating company (other than those connected to inter-State transmission system) or sub-station in the State shall be issued through the State Load Despatch Centre and the State Load Despatch Centers shall ensure that such directions are duly complied by the transmission licensee or licensee or generating company or sub-station.

(7) Subject to the above provisions of this section, the Regional Electricity Board in the region from time to time may mutually agree on matters concerning the smooth operation of the integrated grid and economy and efficiency in the operation of the power system in that region and every licensee, transmission licensee and

others involved in the operation of the power system shall comply with the decision of the Regional Electricity Board.

(8) The Regional Load Despatch Centre or the State Load Despatch Centre, as the case may be, shall enforce the decision of the Regional Electricity Boards.

(9) Subject to regulations made under the Electricity Regulatory Commissions Act of, 1998 (14 of 1998) by the Central Commission, in the case of Regional Load Despatch Centres or the State Commission in the case of State Load Despatch Centres, any dispute with reference to the operation of the power system including grid operation and as to whether any directions issued under sub-section (3) or sub-section (4) is reasonable or not shall be referred to the Authority for decision:

Provided that pending the decision of the Authority, the directions of the Regional Load Despatch Centres or the State Load Despatch Centres, as the case may be, shall be complied with.”

14. The plain reading of whole of section 55 of the Electricity (Supply) Act, 1948 clearly show that the decision under section 55(7) of the Electricity (Supply) Act, 1948 must be taken by the parties on the basis of the mutual agreement by all the parties. The decision through **mutual agreement** or through **majority decision** cannot be read as synonymous since both these terms have different connotations and meanings. The mutual agreement presupposes agreement between the two parties who are in dispute over the issue. In other words, each party creating independent obligation on other and the other party reciprocally acting on such obligation, must both come together to take a mutually agreed decision. In the present case, there are two parties

for mutual agreement of scheduling in the NREB forum, i.e. generators (NTPC) and beneficiaries (Appellants)

15. In the instant case, admittedly, the NTPC has been consistently voicing its reservation to the decision on the scheduling taken by the beneficiaries in the NREB forum. Thus, the decision taken at the NREB forum in its 119th meeting dated 03.12.1999 is one sided, i.e. decision taken by only one party and as such it cannot be said to have been taken through mutual agreement in accordance with the provisions of the Electricity (Supply) Act, 1948. When such being the case, it cannot be said that the said decision is binding on the NTPC, the member of the NREB, who is not a consenting party to the Agreement.

16. It is true that the decision taken in accordance with the provisions of sub-section 7 of section 55 are enforceable by the Regional Load Despatch Centres under

sub-section 8 of Section 55 of the Electricity (Supply) Act, 1948. But the decision taken at the NREB is not in compliance with sub-section 7 of section 55 as the consent of its member NTPC was not obtained. In the absence of the same, the decision taken by NREB cannot be legally enforced by the Regional Load Despatch Center as provided under sub-section 8 of section 55 of the Electricity (Supply) Act, 1948.

17. In other words, no decision can be taken and enforced under section 55(7) of the Electricity (Supply) Act, 1948 unless there is mutual agreement between all the parties. The provision does not confer any mandatory power to break or to take a decision and enforce the same. On the other hand, it only provides an avenue to the stake-holders to reach a consensual decision upon any matter concerning smooth operation of the integrated grid and economy and efficiency in the operation of the power system.

18. It is contended by the Appellants that the term “may mutually agree” in sub-section 7 of section 55 should be construed as decision by majority. In other words, as per interpretation of the Appellants, the term “may mutually agree” shall be replaced by the term “may by majority agree.” This would be adding words to the provisions. Such an interpretation is contrary to the plain meaning of the provisions.

19. It is a well settled principle of law, as laid down by the Hon’ble Supreme Court, that the court cannot read anything into the statutory provisions which is plain and unambiguous. We have to find out the legislative intent only from the language employed in statutes. Surmises and conjectures cannot be resorted to for interpretation of statutes. The contention of the Appellants that the term “may mutually agree” shall be construed to be “may by majority agree” would be against the intention behind the

provisions of section 55(7) of the Electricity (Supply) Act, 1948.

20. The real intention behind the provisions was to provide a mechanism to both the parties to mutually agree on any matter for smooth operation of the grid.

21. It is also clear from the fact that the decision taken by the Load Despatch Center under sub-section (3) and (4) of section 55 of the Electricity (Supply) Act, 1948 can be questioned before the Central Electricity Authority whereas there is no such remedy provided for the decision taken through mutual agreement under sub-section 7 of section 55 of Electricity (Supply) Act, 1948. Thus, it is clear that the mutual decision requires consent of all the parties having conflicting interest. And in that event, no appeal is necessary.

22. There cannot be the situation where the beneficiaries (Appellants) having common interest, take a decision against the party (NTPC) having conflicting interest without its consent and the decision is still said to be by mutual agreement. Therefore, the term “may mutually agree” cannot be anything other than agreement through consensus. If NREB is allowed to decide by majority, in the matter of smooth operation of the grid and economy and efficiency in the region, then it would mean vesting the power of Regional Load Despatch Center with the Regional Electricity Board which is not contemplated under the Electricity (Supply) Act, 1948. Therefore, there is no merit in this ground urged by the Appellants. The decision arrived at by the Central Commission on this issue is perfectly legal and valid.

23. The next issue is with reference to the delay and latches on the part of NTPC. According to the Appellants, the Petition filed by the NTPC before the Central

Commission was not only barred by limitation but also would suffer from long delay and latches in filing the Petition before the Central Commission.

24. At the outset it shall be stated that the Hon'ble Supreme Court in a number of cases has held that the Limitation Act would not apply to the proceedings before the quasi-judicial bodies. This issue was considered in the Nityananda M. Joshi Vs LIC [(1969) 2 SCC 199] and Sakuri Vs. Tanaji [(1985) 3 SCC 590. In these decisions it was held that Limitation Act would not apply to the Petition filed before the Quasi-Judicial Authorities, notwithstanding, the fact that such Authorities may be vested with certain specified powers under the Code of Civil Procedure. In view of this dictum, the question of Limitation would not arise in this case.

25. In regard to the delay and latches, it is contended by the Appellant that the NTPC approached the Central

Commission only in the year 2006 claiming the energy chargers in relation to the period 2000-2001. There is also no merit in this contention. The period in issue is from 01.01.2000 to 30.06.2001. The energy accounting is maintained by the NREB. For the above period the regional energy accounting was revised by NREB in September 2003 whereby the energy charges of NTPC was deducted on account of the decision taken by the beneficiaries in NREB meeting. Thus, the cause of action arose only when the regional energy account for the period from 01.01.2000 to 30.06.2001 was revised in the NREB meeting held in September 2003. As a matter of fact, the NTPC proceeded to raise objections from the beginning as against the unilateral action on the part of the beneficiaries in deducting a part of the energy charges payable to the NTPC claiming to implement the decision taken by the NREB for non-payment of energy charges to NTPC during high frequency conditions.

26. In fact, by a communication dated 21.02.2004, the NTPC revised the invoices on a provisional basis while conveying its non-acceptance of the decision taken by the Regional Electricity Board (NREB), without prejudice to its rights to pursue the issue further. Pursuant to the above, NTPC filed a Petition before the Central Commission for adjudication of the said dispute on 12.05.2006, which was within 3 years from the date when the cause of action arose. It is to be reiterated in this context that when NTPC was compelled to raise the provisional bills in February 2004, the NTPC has conveyed its non-acceptance to the decision unilaterally taken at the NREB forum by the letter dated 21.02.2004. Therefore, it cannot be said there is any delay or laches on the part of the NTPC. As such this ground also would fail.

27. The next issue is relating to entitlement of NTPC to claim energy charges for excess generation of electricity in high frequency conditions. According to the Appellants,

the NTPC ought to have backed down its generation during high frequency conditions to protect the grid and in the absence of taking suitable action, the NTPC is not entitled to energy charges for the excess generation during high frequency conditions. On the other hand, the Learned Counsel for the NTPC contends that NTPC has been claiming the energy charges only for the generation of electricity as per schedule given and it has never claimed any charges for over generation beyond the schedule in high frequency conditions.

28. In this connection we would like to reproduce the relevant extracts from the impugned order of the Central Commission.

“ 35. The one-Member Bench of this Commission in its order dated 25.7.2007 has observed as under:

“ 19. It was pointed out by the petitioner that the period of dispute (1.1.2000 to 30.6.2001) spans over two tariff periods. One up to 31.3.2001 and the other starting from 1.4.2001. During the first

tariff period the tariff for the petitioner's generating stations had to be according to the tariff notifications and orders issued by the Government of India their validity having been extended up to 31.3.2001 by the Commission vide its order dated 21.12.2000 in Petition No. 4/2000 and other related petitions. In the second tariff period, it was governed by the regulations and orders issued by the Commission. During both of these periods (prior to ABT) variable charges were to be paid based on actual energy sold on ex-bus bar basis. Neither the Govt. of India notifications/orders nor the Commission's regulations/orders made any mention about curtailment of payments under high-frequency conditions. The petitioner has, therefore, contended that the NREB decisions in the matter were without any authority and were illegal because NREB had no jurisdiction. There is a considerable merit in the above contention of the petitioner. NRPC Secretariat has sought to establish NREB's jurisdiction quoting some provisions in the Electricity(Supply) Act, 1948 and the Indian Electricity Grid Code. I have already dealt with the former and the latter has been

dealt with in this order later on. Based on my analysis, I am unable to accept the contentions of NRPC Secretariat.”

36. *The respondent No. 6 relying on the provisions under Clause 7.4 of the IEGC (1999 issue) submitted that the petitioner had not acted in terms of the IEGC. The one-Member Bench in para 25 of its order has observed that the entire chapter was premised on the commercial mechanism as contemplated under para 1.7 being in place. Such a commercial mechanism in the form of ABT was implemented in the Northern Region with effect from 1.12.2002. Prior to that, the provisions of clause 7.4 of IEGC were unworkable and the petitioner cannot be said to have violated the IEGC.*

37. *We agree with the conclusion of one-Member Bench as discussed in para 35 and 36 above and are convinced that the decision of respondent No. 10 to curtail payments of energy charges under high frequency conditions to the petitioner is de hors the GOI notifications/orders and the IEGC/orders of the Commission. There is no*

denial of the fact that the respondents have consumed the power generated by the petitioner. Accordingly, we direct that the petitioner shall be entitled to the payment of energy charges supplied during the period 1.1.2000 to 30.6.2001 in four monthly instalments from the date of issue of this order. We have modified the date of payment from 31.10.2007 to the date of this order keeping in view the interest of consumers who would ultimately bear the burden of wrong decision by respondent No. 10. The petitioner shall also be entitled to interest @ Rs. 1.50 per month on the outstanding amount if payment is not made within the stipulated date.”

29. Thus it is clear that during the period 1.1.2000 to 31.3.2001, the tariff for NTPC's station had to be done according to the tariff notifications and orders of Government of India and from 1.4.2001 to 30.6.2001 the tariff has to be as per the Regulations and orders of the Central Commission. During both the periods the variable charges were to be paid based on actual energy

sold on ex bus bar basis. There was no provision for curtailment of payment under high frequency conditions.

30. As mentioned above, the clear stand taken by the NTPC is that NTPC has never claimed for any charges not provided for in the notification of the Government of India and the Regulations framed by the Central Commission as applicable at the relevant time and on the other hand it has been claiming charges strictly as per the relevant notification and the regulations as applicable from time to time. On the other hand, the Appellants have failed to place any material to show that the stand taken by the NTPC was not correct.

31. According to the NTPC, the issue of payment of incentives for excess generation during high frequency conditions was subject matter of the earlier proceedings before the Central Commission and the Central Commission decided in the said proceedings by the order

dated 31.07.2001 after hearing all the concerned parties including the Appellants to the effect that for the purpose of calculation of incentives the excess generation at high frequency should be excluded. During the said proceedings, no objection was raised by the beneficiaries on the payment of energy charges on the schedule energy during high frequency conditions. This fact is not disputed. In spite of this fact, the beneficiaries have taken a unilateral decision to deduct the amounts payable to NTPC towards energy charges on generation in high frequency conditions.

32. In the light of the above fact situation, it cannot be claimed by the Appellants that the NTPC is not entitled for the energy charges for generation during high frequency conditions. Hence there is no merit in this contention also.

33. NTPC has contended that NTPC had been claiming energy charges only for the generation of electricity as per the schedule given by the Northern Regional Load Despatch Centre (NRLDC). This does not seem to be correct as in another proceeding regarding incentive on excess generation under high frequency conditions the Central Commission by order dated 31.07.2001 had decided to exclude excess generation under high frequency for the purpose of calculation of incentive. The excess generation is calculated with respect to the schedule only. However, what has been disputed by NTPC is method of scheduling and generation backing down instructions given to NTPC without following the merit order principle. No proper mechanism was developed in the Northern Region conducive to merit order operation prior to implementation of Availability Based Tariff which was introduced by the Central Commission's order with effect from 1.12.2002.

34. It is a fact that the Northern Regional Grid was experiencing huge frequency for considerable periods due to reduction in demand in certain periods. NREB devised some schemes for inducing the state power utilities and NTPC to back down their generation under high frequency conditions. Unfortunately no consensus could be reached in NREB on such schemes.

35. The One-member Bench constituted by the Central Commission to examine the matter in its order dated 25.7.2007 has recorded that NTPC was also not reasonable and is responsible for the situation leading to the dispute. Accordingly, the Bench decided not to ask the beneficiaries to pay interest on the amounts withheld. However, it recommended interest @ 1.25% per month if the payment is not made within the specified period. The CERC in the impugned order has, however, imposed interest @ 1.5% per month. In view of the observation of One-man Bench we feel that backing down by NTPC as

per the directions of NRLDC under high frequency condition would have saved some fuel without affecting recovery of tariff of NTPC. It might have been a sub optional solution but it would have helped in controlling high frequency and saving of fuel. In view of this, we feel that the levy of interest @ 1.5% per month will be harsh to the beneficiaries. Accordingly, we direct to reduce the rate of interest to 0.5% per month upto one month from the date of this judgment and @ 1% per month thereafter for the outstanding dues beyond the period specified by the Central Commission.

36. Summary of our findings:

(I) According to the Appellants, under section 55(7) of Electricity (Supply) Act, 1948, the decisions taken at the meeting of Northern Regional Electricity Board (NREB), do not require consent of all its members, whereas the decision taken by the beneficiaries by

majority is binding on all its members, including NTPC, even though the consent was not obtained from NTPC. This contention of the Appellants is wrong. The plain reading of the whole section 55 of Electricity (Supply) Act, 1948, clearly shows that the decisions taken by the parties under Section 55(7) of the Electricity Supply Act, 1948, shall be taken on the basis of the mutual agreement by the parties and not on the basis of the majority decision. In the present case, NTPC has been consistently voicing its objection to the decision taken by the majority of the beneficiaries in the NREB meeting. Therefore, the said decision is not binding on the NTPC. Therefore, there is no merit in the first ground urged by the Appellants.

(II) The plea regarding the Period of Limitation cannot be accepted, since the Limitation Act does not apply to the proceedings initiated before Regulatory Commissions namely quasi-judicial authority as held by the Hon'ble Supreme Court in various decisions. Even with regard to the ground of delay and latches, it is to be pointed out that in the present case the cause of action arose only when the regional energy account for the period from 01.01.2000 to 30.06.2001 was revised in the NREB meeting in September, 2003 and then when the NTPC sent a communication on 21.02.2004 not accepting the said decision taken by them. The Petition has been filed before the said Commission in May, 2006, i.e. within three years from the date when the cause of action

arose. Therefore, there is no delay or latches on the part of NTPC.

(III) According to the Appellants, the NTPC is not entitled to energy charges for the generation during high frequency conditions. In the Petition filed before the Central Commission, the NTPC claimed energy charges only in accordance with Government of India tariff notification and orders and Regulations/Orders of the Central Commission. Therefore, the Appellants cannot contend that the NTPC is not entitled for the energy charges for generation during high frequency conditions. However, in view of our observations in para 35 above we decide to reduce the interest rate to 0.5% per month upto one month from the date of this

judgment and 1% per month thereafter on the outstanding amount beyond the period specified by the Central Commission in the impugned order.

37. In view of the above findings, there are no merits in these Appeals. Hence, the Appeals are dismissed. No orders as to cost.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 24th February, 2011

REPORTABLE/NON-REPORTABLE