

BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION,
SHIMLA

In the matter of:-

M/s Patikari Power Private Ltd.
1st House Bhumian Estate Nav Bahar,
Bhumian Road, Chhotta Shimla-171002.

...Petitioner

V/s

The Himachal Pradesh State Electricity Board Ltd.
Through its Executive Director(P), Kumar House,
Shimla-171004

...Respondent

Petition Nos. 214/2010 & 74/2011

(Decided on 14th June, 2011)

CORAM
Subhash Chander Negi
Chairman

Counsels:

for the Petitioner

Sh. Tarun Johri,
Advocate

for the respondent

Sh. Ramesh Chauhan
(Authorised representative)

Order

(Last heard on 19th May, 2011 and orders reserved)

M/s Patikari Power Private Ltd. a generating company, within the meaning of section 2(28) of the Electricity Act, 2003 and registered under the Companies Act, 1956(having its registered office at Bhumian Estate, Nav Bahar Road, Chhota Shimla-171002, (HP) and the Head Office at 2, Rajdoot Marg, Chanakyapuri, New Delhi (hereinafter referred as “the

petitioner”) is operating/maintaining the Patikari Hydro Electric Power Project (16 MW) (hereinafter referred as “the Project”) on the Bakhli Khad, a tributary of the Beas River in District Mandi of Himachal Pradesh. The petitioner Company achieved the financial closure of the Project on 6.3.2006 and both the units of the Project achieved the commercial operation on 6th February, 2008.

2. The petitioner has filed before this Commission petition No.214 of 2010 under section 86(1)(f) of the Electricity Act, 2003, for adjudication of disputes between the petitioner Company and the Himachal Pradesh State Electricity Board Ltd. (hereinafter referred as “the Board”), in respect of the Power Purchase Agreement dated 5th July, 2004 as a result of alleged recovery/deduction of an amount of Rs.82,00,000/-, on account of expenditure incurred by the Board as Survey & Investigation cost of the Project, from the energy bills for the sale to the Board of 10.916 MUs of electricity generated from the Project. The said petition was also accompanied by an application, registered as MA NO.215/2011, under section 94(2) of the said Act praying for inter-injunction/stay, restraining the respondent Board from deducting any amount from the energy bills of the petitioner on account of sale of power to the Board till the final adjudication of the aforesaid main petition. This Commission, pending the admission of the main petition, vide its interim order dated 19th November, 2010 restrained till 28th February, 2011 the Board from making any further deductions on account of expenditure incurred by the Board on Survey and Investigation of the Project and its infrastructural development, from the monthly energy bills raised by the petitioner. Though the aforesaid stay orders were sent to the respondent Board on 23.11.2010, the respondent Board received the same on 27.11.2010 and by that time another deduction of Rs.51.00 lacs, on account of Survey and Investigation charges, had already been made by the Board from the energy bills submitted by the petitioner for the month of October 2010. Sh. Tarun Johri, the Learned Counsel for the petitioner, moved, on 02.12.2010, another petition i.e. MA No.226/2010, stating that since the petitioner company is facing the financial crunch there is an apparent need for urgent directions to the Board that during the pendency of this petition respondent Board should not make any deduction/recovery etc., on account of expenditure incurred on Survey, Investigation and infrastructural development

of the Project from monthly energy bills being raised by the petitioner. Since the Commission had already stayed further recoveries till the 28th February, 2011, and the main petition was posted for further hearing on 20.12.2010, there was obviously no reason to make immediately further specific orders on MA No.226/2010.

3. The Board in its response to the main petition made the preliminary submissions stating that a complete procedure and mechanism for resolution of disputes, if any, has been provided under Article 15 of the Implementation Agreement executed between the petitioner company and the Govt. of HP and Article 13 of the Power Purchase Agreement, entered into between the petitioner and the Board, the petitioner, therefore, was under legal obligation to exhaust the said remedy before approaching the Commission, which the petitioner deliberately did not avail, hence the petition was alleged not to be maintainable.

4. Having cognizance of the submissions made on behalf of the respondent Board viz-a viz the provisions of Article 13 of the Power Purchase Agreement, the Commission asked the parties to resort to intra party negotiations, with the direction that if the petitioner is not satisfied thereafter, it may revert back to the Commission.

5. In compliance to the Commission's direction for intra party negotiations, the respondent Board constituted a negotiation Committee under the Chairmanship of its Director (Projects), who convened several meetings with the officers of the petitioner company vis-à-vis the officers of the Board. In the aforesaid meetings the petitioner raised the counter claim for the reimbursement of the expenditure, incurred by the petitioner, on strengthening of the transmission line, under the terms and conditions of the Power Purchase Agreement executed by it with the Board. Both the petitioner's claims concerning the Survey and Investigation expenditure, incurred by the Board, and the expenditure, incurred by the petitioner, on strengthening of the transmission line, have been considered at length at the negotiation meetings and the said Committee made its recommendations based on agreed and accepted issues. Though the material issues of difference stood mutually settled, yet the Management of the Board did not accept some of the recommendations. The petitioner has, therefore, moved the amended petition No.74/2011, clubbing both the above issues.

6. Before, considering these petitions i.e. petition Nos. 214/2010 and 74/2011, on merits, it is necessary to have in view the factual matrix of the case. The GoHP and M/s East

India Private Limited (EIPL), the predecessor-in-interest of the petitioner Company signed Implementation Agreement (IA) dated 09.11.2001 for the development of the Project. Simultaneously a tripartite agreement dated 09.11.2001 was also executed between the GoHP, EIPL and M/s Patikari Power Project Limited, which was incorporated with an objective to inter alia build, own, operate and maintain the Project. The clause 6.32 of the IA, reads as under:-

“The Company shall reimburse to the Board the amount, spent by the Board upto the Effective Date, on investigations and infrastructural works of the Project alongwith compounded interest @10% per annum compounded annually on year to year basis from the date of incurrence of such expenditure upto the date of actual reimbursement, within three(3) months of the Financial Closure. The Government shall intimate all such expenditure within two months of the Effective date. In case the Company does not make the payment within the specified period, the Company shall also pay to the Board interest at a rate equivalent to the rate of the State Bank of India for short term unsecured loans plus 3% per annum plus interest tax”.

7. The petitioner and the Board also entered into a Power Purchase Agreement (PPA) dated 5.7.2004 for the sale of power to be generated by the Project, after achievement of the commercial operation date of the project. Vide clause 9.2.(e) of the PPA, the Board agreed with the petitioner Company to provide suitable transmission arrangement beyond the interconnection point for evacuation of power generated at the project and endeavour to minimise the loss of generation at the project on account of transmission bottlenecks.

8. Clause 6.32 of the I.A., as reproduced in the preceding para 6 of this Order, makes it clear that the petitioner Company was under obligation to reimburse to the Board all the expenditure incurred by the Board upto the effective date i.e. the date of execution of the I.A, 9.11.2001, on the Survey and Investigation and Infrastructural works of the project, within three (3) months of the financial closure i.e. 6.3.2006 after the intimation i.e. two (2) months from the date of execution of the I.A by the Government with respect to cost/ expenditure incurred on account of the same.

9. The Board undertook the Survey and Investigation work of the project during 1993-94 to 2001-02 and the Board vide its letter dated 21.9.2004 (i.e. to say after 34 months of the execution

of I.A.) requested the petitioner for reimbursement of the amount of Rs. 1,63,33,160.55 (Principle Rs. 90,29,903 + Interest Rs. 73,03,257.55) on account of expenditure incurred by the Board on Survey and Investigation and Infrastructural works. The petitioner vide its various letters dated 5.10.2004, 3.5.2005, 17.5.2005, 31.5.2005, 13.9.2005, 29.11.2005, 9.1.2006, 28.1.2006, 25.3.2006, 30.6.2006 and 19.8.2006 urged that the cost of Rs. 1.63 crores towards Survey and Investigation of the SHP of the size of 16 MW is certainly far higher than the estimate and conservative cost and requested the Chief Engineer (PSP) of the Board for providing a detailed break up of the expenditure incurred by the Board, as the petitioner was only liable to reimburse such amount, which was actually incurred by the Board in carrying out the Survey, Investigation and Infrastructural works of the project.

10. The petitioner Company also asserted that the respondent Board vide its letter dated 28.8.2006 provided a copy of statement containing details of the amount spent by the Board, which was only a year-wise break up of the expenditure incurred alongwith the interest. But the detailed break up of the expenditure incurred on the Survey and Investigation of the project, alongwith the documentary proof thereon was not provided to the petitioner Company.

11. The respondent Board vide its letter dated 20.9.2008 asked the petitioner Company to deposit an amount of Rs. 308.45 lacs, being the expenditure incurred by the Board, and the petitioner Company again, on 17.10.2008, reiterated its previous stand and demand for details of expenditure. Subsequently, the amount of Rs. 308.45 lacs, which was found to have been worked out erroneously, was corrected by the Board as Rs. 284.73 lacs.

12. The petitioner, from time to time, deputed its representative at the respondent's office, as requested/ intimated by the respondent Board, to examine and verify the details of all expenditure. The petitioner alleges that no details of expenditure or documents relating thereto were provided to its representatives for examination and verification etc. to assess the liability of the petitioner under the I.A.

13. The Board through its various letters dated 12.11.2008, 27.7.2009, 10.11.2009, 11.12.2009, 6.1.2010, 16.1.2010, 10.2.2010, 6.5.2010, 26.5.2010 and 19.7.2010 again asked the petitioner to settle the outstanding payment of the amount spent for Survey and Investigation by the Board and the Board ultimately on 10.9.2010 expressed its intention to recover the

outstanding amount by adjustments from the energy bills payable by the Board to the petitioner Company for the supply of electricity to the Board. As a sequel to this, the Board informed the petitioner on 23.10.2010 about the deduction of Rs. 82,00,000/- from the monthly energy bill for the month of September, 2010. Further, as pointed out in para 2 of this Order, Rs. 51.00 lacs were also deducted by the Board from the energy bill for the month of Oct., 2010.

14. The respondent Board in its support submits that as the petitioner failed to discharge its obligation as per Clause, 6.32 of the I.A, despite repeated reminders in this behalf, the Board was constrained to recover the same from energy bills payable to the petitioner Company. The action of the Board is within the four corners of law; the petitioner cannot allege any kind of grievance against the same, particularly when the petitioner himself has agreed for such reimbursement in unequivocal terms. The petitioner Company was supplied the requisite details, from time to time, indicating therein the break up of expenditure incurred by the Board on Survey and Investigation under various heads such as works, establishment, stock, PLA and DC etc. alongwith interest accrued on such outstanding payments in terms of Clause 6.32 of the I.A, but on one pretext or the other the payments were not made. Resultantly the Board had no option but to recover the same from the monthly energy bills being submitted by the petitioner and final notice to this effect, before resorting to the deductions, was served on the petitioner Company. Since the base expenditure incurred by the respondent Board was 0.77% of project cost as against one to two percent prescribed for Investigations, therefore, the request of the petitioner to supply them the details in shape of muster-rolls, salary records etc. was unjust and aimed at deferring the legitimate payments, to which the respondents were legally entitled. The imposition of interest on the base amount is attributable to the acts of the petitioner and the respondent Board cannot be held guilty for the same in any manner what-so-ever. The respondent Board has worked out the outstanding amount by imposing 10% compound interest only despite the fact that the replying respondent is entitled to levy interest at the rate of State Bank of India for short term unsecured loans plus three percent per annum plus interest tax as per the provisions contained under Clause 6.32 of the I.A. The respondent Board reserves its right to enforce the said provisions and recover the outstanding amount accordingly.

15. The Board further submits that the officers of the petitioner Company frequently visited

the office of the Chief Accounts Officer as well as the Chief Engineer (Central Zone) of the respondent Board and adequate indulgence was shown to them for satisfying the issues raised by them but despite that the petitioner Company opted not to reimburse the Survey and Investigation charges to the respondent Board, which delay on the part of the petitioner invited imposition of compound interest at the rate of 10% as per provisions of Clause 6.32 of I.A and resultantly the amount payable accumulated to the tune of Rs. 284.73 lacs as notified to them vide letter dated 19.7.2010. Since the petitioner Company did not respond to various communications exchanged with it qua reimbursement of the Survey and Investigation charges, only therefore the respondent Board was forced to deduct two instalments of the recoverable amount i.e. Rs. 82.00 lacs and Rs. 51.00 lacs respectably during the months of October and November, 2010 whereafter the petitioner obtained interim stay from the Commission and an amount of Rs. 102.40 lac as per settlement arrived at during the course of negotiations still remains to be recovered from the petitioner Company. Since this amount is public money, therefore, it cannot be allowed to remain with the petitioner Company because of its acts of omission and commission and the interest of justice demands that the petitioner be directed to remit the same without further delay alongwith exemplary penalty so that it may set an example for the other IPPs.

16. As pointed out in para 5 of this Order, in compliance to the Commission's direction for intra party negotiations, the Board constituted a negotiation committee under the chairmanship of its Director (Projects), who convened several meetings with the officers of the petitioner Company vis-à-vis the officers of the respondent Board on 7th Jan, 2011; 25th Feb, 2011; 5th April, 2011 and 8th April, 2011, wherein the Board's claim for reimbursement of the expenditure incurred by the Board on the Survey, Investigation and Infrastructure development of the Project, under the Implementation Agreement and the counter claim of the petitioner for the reimbursement of the expenditure incurred by the petitioner on strengthening of the transmission line under the conditions of the Power Purchase Agreement, have been deliberated upon and duly considered by the negotiation Committee. The material issues raised were mutually agreed/settled and the said Committee made its recommendations based on agreed and accepted

issues. The recommendations of the negotiation Committee were also considered in the meeting of the Whole Time Directors of the Board held on 20.4.2011. The Management of the Board agreed to all the recommendations (excepting the payment of overhead and contingency charges, which has been partly accepted) the relevant extract of which reads as under:-

“The meeting was called for deliberating issues relating to Patikari Hydro Electric Project and Baspa HEP (300 MW). Patikari Power Private Limited had raised certain issues regarding the bills raised to the Company or the bills raised to HPSEBL by the Company. The HPERC had directed the HPSEBL to undertake conciliatory meetings for resolving the dispute. The responsibility was entrusted to Director (Projects) who apprised the WTDs of the proceedings of the conciliatory meetings and presented the recommendations on which the decisions recorded below were taken:-

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9.01 Revision of the bill for Survey and Investigation expenditure to be raised from Patikari Power Private Limited after waiving off the expenditure made in the years 2000-01 and 2001-02.

Agreed.

9.02 Option to the Company to pay in phases, if it desires, with the condition that the amount balance after each payment will continue to attract interest as per Implementation Agreement till the date full payment is made.

Agreed.

9.03 Paying to the company 8.8% overhead charges and contingency charges @ 5% along with interest at 10% compounded annually on the expenditure made by the company on strengthening of transmission line, till the sum is fully paid.

Partly agreed.

The Company will be paid the bill on the basis of the joint measurement of quantities and cost data of HPSEBL applicable during the period of execution of the work. Market rates

shall be used where cost data is not available. The overhead charges proposed at 8.8% and contingency charges proposed at 5% shall not be paid. Compound interest will be paid at 10% from the date of finalization of the bill.

- 9.04 Offsetting of the amount to be paid to the company against the amount to be reimbursed from the company as S&I charges, with due consideration to the amounts already deducted. Balance amount, if any, shall be paid by either side to the party to which it is due.

Agreed.

- 9.05 PPPL will take the issue of Rs, 51 lakh to HPERC.

Not an issue to be decided.

- 9.06 Levying of O&M charges as per relevant orders of the HPERC.

Agreed.

- 9.07 Reimbursement of advance of Rs. 10 Lakh to the Company.

Agreed.

The amount shall be paid with compound interest at 10% from the date it should have been reimbursed (one month after the date of the letter vide which the execution was assigned to the PPPL) upto the date of payment.

- 9.08 Rs.1 Lakh shall also be paid to the Company.

The amount shall be paid with compound interest at 10% from the date it became due (three months after the date on which the poles were received by HPSEBL) upto the date it is paid.”

17. Sh. Tarun Johri, the Learned Counsel appearing on behalf of the petitioner, and Er. J.P. Kalta, C.E. (Comml.), representing the respondent Board, concede that both the disputed claims i.e. the Board's claim concerning the Survey and Investigation expenditure, incurred by the Board, and the counter claim for the expenditure, incurred by the petitioner, on strengthening of the transmission line have been considered at length at the negotiation meetings and the said committee made its recommendations based on mutually agreed and accepted decisions. Sh. Anil

Dutta, Director (Projects), HPSEB, who headed the negotiation meetings and was also happened to be present in the proceedings before this Commission, explained in a lucid and clear way the basis to work out at 8.8% overhead charges and contingencies charges at 5% alongwith the interest at 10% compounded annually on the expenditure incurred by the petitioner on strengthening of transmission line, till the sum is paid.

18. From the averments of the parties it is made out that all the material issues of difference stand mutually settled, but the management of the HPSEBL did not accept some of the recommendations and, therefore, Sh. Tarun Johri, Ld. Counsel of the petitioner pleads that the interest be paid to the petitioner Company from the dates the works were completed and overhead charges and contingency charges be also paid to the petitioner Company.

19. After the intra-parties deliberations, as stated in the preceding paragraphs of this order the dispute between the petitioner Company and the respondent now stands limited only to two issues i.e.:-

- (i) Whether the interest on the principal amount expended by the petitioner on renovation and strengthening the transmission line should be reimbursed by the Board from the date of incurring the expenditure by the petitioner during the year 2007-2008 alongwith interest or from the date of finalization of the by the respondent Board?
- (ii) Whether the petitioner is entitled to claim the overhead charges and contingency charges?

Claim for interest

20. The claim of the petitioner Company for reimbursement of the expenditure incurred by the petitioner Company for the purposes of strengthening of renovation, strengthening and upgradation of 33 kV Pandoh sub-station and the transmission line of the respondent Board upto Bijni, beyond the interconnection point for and on behalf of the Board, for evacuation of power generated from the Project, which had been worked out to be tune of Rs. 1.17 crore during the year 2007-2008; and alongwith interest, as the bill was raised on 29.7.2008. In pursuance of various negotiation meetings, which took place between the petitioner and the respondent Board, the parties agreed to jointly measure and verify the quantities of material provided at the site of

the petitioner for the purposes of strengthening of transmission system and the aforesaid joint measurement had been carried out by the parties and the items executed had duly been verified by the officials of the Board and an amount of Rs. 1,08,66,269.98 is found to be paid by the Board. The petitioner, as such has raised the claim for Rs. 1.08,66,269.98, alongwith interest on delayed reimbursement of the same by the Board @ 10 p.a from the date of incurring of expenditure by the petitioner, in favour of the petitioner and against the respondent Board for the purpose of renovation of 33 kV Pandoh sub-station and strengthening of transmission lines upto Bijni for evacuation of power generated from the Project.

21. The Management of the respondent Board, in its meeting held on 20.4.2011, recorded its decision that:-

“The Company will be paid the bill on the basis of the joint measurement of quantities and cost data of HPSEBL applicable during the period of execution of the work. Market rates shall be used where cost data is not available. The overhead charges proposed at 8.8% and contingency charges proposed at 5% shall not be paid. Compound interest will be charged at 10% from the date of finalisation of the bill.”

22. The Board accordingly further issued an office order dated 25.4.2011, which states that –
“Himachal Pradesh State Electricity Board Limited is pleased to accord approval for paying M/s Patikari Power Private Limited on account of strengthening of transmission line for evacuation of power from Patikari Hydro Electric Project, on the basis of joint measurement of quantities and cost data of HPSEB Ltd. during the period of execution of work. Market rates shall be used where cost data is not available. The overhead charges proposed @ 8.8% and contingency charges proposed @ 5% shall not be paid. Compound interest shall be paid @ 10% from the date of finalization of the bill.

The amount to be paid to the Company may be offset against the amount due to be reimbursed from the Company as S&I charges, with due consideration to the amounts already deducted. Balance amount, if any, shall be paid by, either side by the party to which it is due.”

23. The petitioner submits that during the reconciliation meetings, the officials of the Board

had agreed that interest on the principal amount expended by the petitioner on renovation and strengthening of the transmission line, beyond interconnection point, should be reimbursed by the Board from the date of incurring of the expenditure, alongwith interest and as such the decision of the Board is not in accordance with the discussions held and composite settlement arrived at in the meeting. Apart from this the petitioner also asserts that despite a joint inspection had earlier been conducted, the petitioner even agreed again to conduct a joint inspection after expiry of three years, on the assurance of practical approach to settle the issue. As a result of the second inspection the petitioner Company has already reduced its claim substantially.

24. The Hon'ble APTEL in its decision dated 16.12.2010, given in **Appeal No. 47 of 2010 – Vijyalakshmi Hydro Power Pvt. Ltd V/s Karnataka Power Transmission Corporation 2011 ELR (APTEL) 0112** has laid down that the interest would be chargeable @ as agreed upon between the parties in the agreement to hold otherwise will be recession in the contract which was lawfully entered into by between the parties.

25. Since this disputes has arisen in connection with and out of the implementation of the terms and conditions of the bilaterally executed agreements and keeping in view of the decision of the Hon'ble APTEL, cited in the preceding para of this Order, it has become necessary to have an over view of the agreements i.e. the I.A and the PPA. The execution of separate agreement for strengthening/ augmentation of the transmission lines beyond interconnection point was contemplated by the parties. Clause 6.18(a) of the IA lays down that the evacuation of power from the Project upto the Board's Grid Sub-station, as provided in the DPR, shall be the responsibility of the Company and shall be the part of the Project and Clause 6.21 of the IA stipulates that –

“The Company shall also bear the cost of renovation/augmentation of the kV Sub-station at Pandoh and 33 kV Pandoh-Mandi (Bijni) line, if required after detailed engineering studies. For the maintenance and operation of interconnection facility, by the Board, a separate agreement will be signed between the Company and the Board.”

26. Clauses 3.3 and 9.2(c) of the PPA also provide for the execution of a separate agreement for execution, operation and maintenance of the interconnection facilities. The agreement was

inter alia to lay down the details of interconnection facilities and also for the charges and other terms and conditions for execution, operation and maintenance of the interconnection facilities.

27. Further the perusal of the summary record of discussion held in the Chamber of the Chairman of the Board on 8th June, 2007 makes it clear that a meeting between the Board and the IPP (M/s Patikari Power Pvt. Ltd) developing the project to discuss and finalise the issue of evacuation of power from the project was held on 8th June, 2007, wherein it was decided that the cost of strengthening of transmission system beyond interconnection point shall be recovered by way of adjustment in the monthly energy bills for sale of power from Patikari HEP to the Board. It was also agreed that the Interconnection Agreement shall be signed by Chief Engineer (Op) C.Z, Mandi with the IPP after including additional conditions regarding final payment of amount by the IPP as per directions of the HPERC/ Competent authorities as per law, on the format to be provided to the company by the Chief Engineer (Op) C.Z., Mandi, provided that the summary record of discussions shall also form a part of the said agreement on the draft to be prepared by Chief Engineer (Op) C.Z, HPSEB.

28. There is nothing in the pleadings of the parties to confirm as to whether any separate Interconnection Agreement has been entered into or not by the parties detailing the terms and conditions for execution, operation and maintenance of the works involved and the manner in which the payments thereto are to be made. However, the fact remains that the cost of strengthening /augmentation of the system beyond the interconnection point was agreed to be recovered by way of adjustments, in the same manner as the payments of the energy bills for sale of power from the Project to the Board are made.

29. The procedure for billing and payment is spelt out in Article 8, read with Clauses 2.2.22 of the PPA. Clause 8.1 of the PPA provides that the payment of bills shall be made with 30 days from the date of presentation of the bill by the Company to the Board. The date of presentation of the bill shall mean the date on which the bill is received by the designated officer of the Board as notified from time to time. Clause 8.4 stipulates that the adjustment, if any, on account of errors and omissions in the billing for a month, shall be made through supplementary bills, which shall also be paid/adjusted on the above lines.

30. According to Clause 2.2.29 of the PPA “due date of payment” means with respect to any

bill, the date by which the amount of such bill is required to be paid. This date in case of monthly bill for any billing month and/or supplementary bill, the thirty days from the presentation of the bill by the Company to the Board or vice-versa. Clause 2.2.21 provides that date of reimbursement bears the meaning as set out in Clause 8.7 which reads as under:-

“For the purpose of this Article, date of payment/Date of reimbursement shall mean the date on which the crossed cheque is delivered in person to the representative of the Company or the Board, as the case may be, or the day immediately succeeding the day on which such a cheque is sent through a registered post.”

31. So far as the rate of interest for delayed payment is concerned, Company has as stated in para 20 and 22 of this Order, claimed interest @ 10% p.a. and the Management of the Board has accepted the same. As this issue stands bilaterally settled by the parties, this issue longer remains to be deliberated upon and decided by this Commission.

32. Keeping in view the above discussions, and the fact that the petitioner raised the bill for Rs. 1.17 crore on 29.7.2008, for the expenditure on strengthening and augmentation of the line, beyond the interconnection point, incurred in the year 2007-2008, and subsequently the bill amount has been reduced to Rs. 1.08 crores, the petitioner Company is entitled to claim the interest, at the rate of 10% pa. as claimed by the petitioner and mutually agreed to by the parties during the negotiation process, on undisputed amount which remained unpaid/unadjusted with effect from the due date (i.e. 30 days after the presentation of the bill) till the date of reimbursement.

Claim for overhead charges and contingencies charges.

33. The negotiation committee recommended for the payment to the Company @ 8.8% overhead charges and contingency charges @ 5%, alongwith interest compounded annually on the expenditure made by the Company on strengthening of transmission line, till the sum is fully paid. But the Management of the Board has, without recording any reasons, declined to pay the proposed overhead and contingency charges.

34. The overhead and contingency charges are usually paid where the work was done on emergency basis. In the summary of record of discussions held on 8th June, 2007 in the chamber of the Chairman of the Board, it is mentioned that the Board stated that in order to evacuate

power from the project to the extent of its installed capacity (16 MW) to some fair degree of reliability, the conductor of both the 33 kV from Pandoh to Bijni was required to be augmented on “Wolf Conductor.” 2 Nos. 33 kV bays alongwith associated civil works were to be constructed by the Company/IPP at 33 kV Sub-station at Pandoh by 31st August, 07. From this it is evident that the strengthening/augmentation can be considered to have been done on emergent basis. The petitioner Company raised the bill dated 15.9.2008 (Annexure U) claiming the overheads at 10%. The petitioner Company has neither placed on record the copy of the agreement, if any, executed between the petitioner Company and the Board, nor detailed the specific provisions on the basis of which their claim is raised. It is for the party who claims, to set up its claim. The Commission cannot act in vacuum. Hence this Commission declines to make any Order to that extent.

35. With regard to the release of Rs. 51 lakhs deducted from the energy bill of the petitioner Company, after the passing of the restraint Order dated 19.11.2010, the Board has stated that though the restraint Order was issued on 19.11.2010 and served on the Board 27.11.2010 yet by that time the energy bill for the month of Oct., 2010 for Rs. 1.49,48,744, as submitted by the petitioner, had already passed; deduction of Rs.51 lac on account of Survey and Investigation charges had been effected and the cheque for the balance amount had already been issued in favour of the petitioner on the said day before receiving the interim Order. In view of the explanation given by the Board, the deduction of Rs. 51 lacs cannot be considered to be unreasonable and in violation of the restraint Order made by this Commission on 19.11.2010. Thus this issue is decided against the petitioner.

36. In view of the above, the petition is partly allowed to the extent the petitioner Company is entitled to claim the interest @ 10 % p.a on undisputed amount, which remained unpaid/unadjusted, with effect from the due date 29.8.2008 (i.e. the 30days after the presentation of the bill on 29.7.2008) till the date of reimbursement/ date of payment of the dues. Both the petitions are disposed of accordingly.

It is so ordered.

(Subhash Chander Negi)
Chairman