BEFORE THE HIMACHAL PRADESH ELECTRICITY REGULATORY COMMISSION SHIMLA

In the matter of :-

M/s Harisons Hydel Construction Co. Pvt. Ltd.
having its registered office at
Akhara Bazar, Kullu, H.P.

….Petitioner

Versus

The HP State Electricity Board Ltd. thro' its,
Executive Director (Pers.)
Vidyut Bhawan, Shimla-171004

….Respondent

Petition No. 96 of 2015

(Decided on **15th March, 2016**)

CORAM

S.K.B.S. Negi
CHAIRMAN

Counsels: -

for petitioner:	Sh. Ajay Vaidya Advocate
for respondent:	Sh. Ramesh Chauhan, Authorised Representative

ORDER

(Last heard on 27.02.2016 and orders reserved)

M/s Harisons Hydel Construction Co. Pvt. Ltd., a registered Company under the Companies Act, 1956, having its registered office at Akhara Bazar, Kullu, (H.P.) (hereinafter referred as "the petitioner Company") through Sh. Ghanshyam Sood, its Director, has moved this petition under sections 86 and 94 of the Electricity Act, 2003(hereinafter referred as "the Act") read with the Himachal Pradesh Electricity Regulatory Commission (Power Procurement Renewable Sources and Co-generation by the Distribution Licensee) Regulations, 2007, seeking relief to quash and set aside the demands raised, on 01.12.2014 and 06.07.2015, by the Himachal Pradesh State Electricity Board Ltd (hereinafter referred as "the Respondent Board") on account of the annual O&M cost for the Interconnection Facility at Sub-station Jari for Brahmganga (5.00 MW) HEP, for the years 2008-2009 to 2014-2015; and also to restrain the Respondent Board from imposing delayed payment penalty beyond the scheduled payment date i.e. penalty @ 1.5% per month.

2. The facts leading to filing the present petition are that the petitioner Company entered into a Power Purchase Agreement dated 8th June, 2004 (hereinafter referred as "PPA") with the predecessor of the Respondent Board, whereby the latter agreed to purchase the entire electric energy, excluding Government Supply, received from the Brahmganga (5.00MW) HEP, located on Brahm Ganga Khad, a tributary of the Parwati river, in Distt. Kullu (H.P.) (hereinafter referred as "the project"). Pursuant to Clause 3.3 of the PPA, a separate agreement for execution, operation and maintenance of interconnection facilities was executed on the 19th September, 2009, between the petitioner Company and the HPSEB, providing that to facilitate evacuation of power from the Project, the Board shall, at the cost of petitioner Company, plan, design, execute and commission the works relating to interconnection facilities and the petitioner Company shall be liable to pay O&M charges as per Clause 6.4 with effect from the actual date of commissioning or the scheduled commissioning date of the Project, whichever is later. The relevant Clauses 6.2, 6.4, 8 and 11.1 of the Interconnection Facility Agreement are reproduced below:-

"*6.2 The Board shall intimate the tentative amount required to be deposited for normal operation and maintenance of the Interconnection Facility for each ensuing year on or after 15th February of each preceding year. The charges payable by the Company on this account shall be worked out on pro-rata basis i.e. by apportioning the total expenses relating to operation and maintenance of Sub-station (including infrastructural works such as approach roads, staff quarters, sanitation, repair of building etc.) in the ratio of number of bays comprised in "Inter-connection Facility" to the total number of incoming/outgoing bays/ feeders in the Sub-station. The pro-rata amount worked out on this basis in respect of Interconnection Facility shall be suitably increased to account for applicable departmental charges."*

xxx xxx xxx xxx xxx

6.4 The Board shall intimate the actual expenses payable by the Company to the Board on account of operation and maintenance of the Sub-station for a year on the above basis (including the departmental charges) to the Company on or after the expiry of 30 days from the closure of financial year to which the expenses relate.

xxx xxx xxx xxx xxx

8 Late Payment

8.1 In the event of non receipt of amounts in full by the Board from the Company, as per the schedule mentioned in Clauses 7.1 (c),(d), & (e), the unpaid amount shall bear penalty at a rate of 1.5% per month. For this purpose, the month shall be considered to be comprising of thirty days. The penalty shall be payable for each day of delay in making such payment beyond the scheduled date of payment as per Clause-7.

8.2 In case the Company does not make the payment within three months from the scheduled date of payment as per Clauses 7.1 (c), (d) & (e) the Board shall, after giving ten days notice to the Company, be at liberty to adjust the outstanding amount together with the penalty amount accrued there upon as per Clause 8.1 against any other dues payable by the Board to the Company.

xxx xxx xxx xxx xxx

11 Arbitration

11.1 If at any time, any question, dispute or difference, whatsoever, shall arise, between the Board and the Company upon or in relation to or in connection with the Agreement, both the parties shall meet and endeavour to settle the dispute through mutual conciliation, failing which either party may forthwith give to the other, notice in writing of existence of such question(s), dispute (s) or difference(s) and the same shall be referred to the sole arbitration of adjudication of the Chairman HPSEB, or his/her nominee and shall be subject to the provisions of the "Arbitration and Conciliation Act, 1996" or any statutory modification or re-enactment thereof and the rules framed thereunder and for the time being in force. The arbitral award shall state the reasons upon which it is based and the said award shall be final and binding on the Parties hereto.

3. With the background, as set out in the preceding para, the Respondent Board demanded the O&M charges from time to time vide various communications sent to the petitioner and subsequently vide its letter dated 23.07.2013, intimated the petitioner recoverable outstanding amount as per terms and conditions of the O&M Agreement and asked for payment of O&M charges amounting to Rs. 25,85,763/- with the further direction to pay penalty for late payment for the period from 2008-2009 to 2013-2014. The petitioner Company, being aggrieved, requested the Respondent Board to recalculate the O&M charges by taking into consideration 8 Nos. of bays/feeders instead of 6 Nos. of 33 kV and 11 kV feeders /bays considered by the Respondent Board for apportioning and debiting annual maintenance cost to the petitioner Company. It was also requested that 2 Nos. of Vacuum Circuit Breakers(VCBs), installed for the coupling arrangement and Station Transformer, which are also being maintained and operated by the staff of Sub-station at Jari, are as good as feeders be taken into consideration for apportioning and debiting annual O&M cost.

4. The petitioner Company further submitted that under the tripartite agreement dated 23.11.2011, entered amongst the Respondent Board, HHCCPL (petitioner Company) and M/s Kapil Mohan Associates Hydro Power Pvt. Ltd. for interim arrangement for evacuation of power from Jirah and Toss and tripartite agreement dated 05.01.2013 entered amongst the Respondent Board, HHCCPL (petitioner Company) and M/s Sandhya Hydro Power Project Balarga Pvt. Ltd. for evacuation of power from Jirah, Chakshi and Toss

HEPs the 50% of the O&M Charges have to be borne by M/s Kapil Mohan Associates Hydro Power Pvt. Ltd. and M/s Sandhya Hydro Power Project Balagra Pvt. Ltd. Therefore, the petitioner Company requested the Respondent Board to recalculate the O&M charges after deducting 50% share of the aforesaid IPPs.

5. The Respondent Board reconsidered the demand raised by it and revised the O&M charges for the years 2011-2012 and 2012-2013, by reducing the O&M charges for the periods from 26th December, 2011 to 28th February, 2012 and from 5th January, 2013 to 15th March, 2013 to 50% in view of the Tri-party Agreement as referred to in the preceding para of this Order.

6. The petitioner Company deposited the O&M charges amounting to Rs. 16,83,063/- for the years 2008-2009 to 2012-2013, but did not deposit Rs. 6,91,430/- i.e. the O&M charges for the year 2013-2014, because the details of the same were stated not to have been supplied by the Respondent Board. The Respondent Board on 01.12.2014 revised the O&M charges for the year 2013-2014, amounting to Rs. 4,70,084/- instead of Rs. 6,91,430/-.The petitioner deposited amount of Rs. 4,70,084/- on 19.01.2015.

7. The Respondent Board asked, on 06.07.2015, the petitioner Company to deposit actual O&M charges for the year 2014-2015, amounting to Rs. 5,96,530/- with the further directions to deposit penalty for late payment of tentative amount from 2008-2009 to 2013-2014, within 30 days of demand notice and also intimated that the delayed payment beyond the scheduled date will attract penalty @ 1.5% per month as per Clause 8 of the Interconnection Facility Agreement entered on 19.09.2009.

8. Now the petitioner Company submits that the Respondent Board is calculating the O&M charges on the strength of the feeders, whereas the calculations have to be done on the total number of incoming/outgoing bays to the Sub-station as per terms and conditions of the Operation and Maintenance of Interconnection Facilities Agreement dated 19.09.2009 and the petitioner Company is seeking following relief:-

(i) Annexure P-6, dated 01.12.2014 and Annexure P-8, dated 06.07.2015, where by the Respondent Board imposed penalty for tentative and actual O&M charges for the years 2008-2009 to 2014 to 2015 be quashed and set aside;

(ii) the Respondent Board be restrained from imposing delayed payment beyond scheduled date i.e. penalty @ 1.5% per month;

(iii) the Respondent Board be directed to work out the cost of the O&M for the interconnection facility based on the calculation of numbers of bays/Feeders/VCBs in station/substation and as per regulations issued by the HPERC with regard to the O&M charges;

(iv) the HPSEB be restrained from making recovery of the O&M charges from the energy bills of the petitioner Company till the decision of this petition.

9. In response to the petition, the Respondent Board submits-

(a) that This Commission vide its decision dated 23.11.2010 rendered in petition No. 81 of 2010- **M/s Astha Projects (India) Ltd. V/s HPSEBL & another** (hereinafter referred as 'the Astha Case')**,** has laid down the guidelines to work out the cost of O&M for interconnection facilities for the SHPs (upto 25 MW), whereunder only the outgoing and incoming feeders are to be considered while levying O&M Charges. The Respondent Board is charging the O&M cost on the basis of Astha guidelines i.e. numbers of incoming/outgoing feeders and is complying the orders of the Commission in their letter and spirit. The Bus Coupler does not qualify to be a feeder, as its role is quite different. Although VCB is installed in the Bus Coupler, but its function is only to connect/disconnect the two incomers. Further the Station transformer is also not a feeder, as it is supplying auxiliary supply to LT Distribution System of the Sub-station. Thus the total number of feeders for the purpose of O&M charges is 6 Nos. as per the Astha Guidelines and not 8 Nos. as pleaded by the petitioner Company;

(b) that the Commission in its interim Order dated 16.03.2013 made in petition No. 49/2012 has ordered as under:-

"Sh. Ramesh Chauhan, the authorised representative of the Board submits that the Respondent Board has revised its orders to the extent that O&M charges shall now be determined in accordance with the guidelines given by the Commission in its decision dated 23.11.2010 passed in petition No. 81 of 2010. Hence the grievances of the petitioner will be resolved accordingly.

In view of the above submissions of the Board, the petition is dismissed as withdrawn with the liberty to the petitioner in case their grievances remain unresolved, to approach again to the Commission";

(c) that the Petitioner has executed the O&M agreement with the Chief Engineer (Operation) Central Zone Mandi on 22-09-2009. In this agreement, Clause 8.1 specifies as under:-

> "*In the Event of non receipt of amounts in full by the Board from the Company as per the schedule mentioned in clause 7.1 (c) (d) & (e), the unpaid amount shall bear penalty at a rate of 1.5% per month. For this purpose, the month shall be considered to be comprising of thirty days. The penalty shall be payable for each day of delay in making such payment beyond the scheduled date of payments as per clause -7*"

(d) that although, the IPP has made the payment of O&M charges to the Board upto FY 2015-16 (except the penalty for late payment) yet it is liable to pay the penalty amounting to Rs. 11,29,261/- (w.e.f. 12/2009 to 31.03.2015 @ 1.5% per month) for late payment as per the agreement executed between the two parties for the reason that the petitioner has not adhered to the time schedule as mentioned in Clause 8.1. Thus the petitioner is under legal obligation to pay the penalty as per the agreed terms and conditions of the agreement. Therefore the petitioner cannot claim exemption from the levy of penalty under the O&M Agreement;

(e) that the third prayer of the petitioner in which it is submitted that the Respondent Board may be directed to work out the cost of O&M for the interconnection facility based on the calculation of number of feeders/ bays/VCBs in station/substation and as per regulations issued by the HPERC with regard to O&M charges is not correct, as the respondent has already worked out the O&M charges based on the Astha Guidelines issued by this Commission vide Order dated 23.11.2010 passed in petition No. 81/2010;

(f) that the fourth prayer of the petitioner in which it is submitted that the Respondent Board may be restrained from making recovery of the O&M charges from the energy bills of the petitioner Company till the decision of this petition is also not correct and justified as the Respondent Board is authorised by Clause No. 8.2 of O&M agreement to adjust this amount together with penalty amount against any other dues payable by the Board to the Company. Any such order would tantamount to blockage of public money hence this prayer of the petitioner deserves outright rejection.

10. In response to the Board's reply the petitioner has filed the rejoinder mainly reiterating the facts, as set out in the petition, and also stating -

(i) that 2 Nos of VCBs, which are as good as feeders, are also required to be taken into consideration for apportioning and debiting annual O& M cost;

(ii) that when the petitions filed by the petitioner were pending due to the interpretation of the O&M charges, before the Commission and repeatedly the petitioner was making representation to the Board regarding the clarification and after the issuance of the Astha Guidelines, even thereafter the Board has not implemented the guidelines or has calculated the O&M charges according to the agreement as signed between the parties. Hence no penalty can be imposed.

11. In light of the above rival contentions, the following points arise for consideration:-

(A) Whether the Vacuum Circuit Breakers (VCB) installed for coupling arrangement and the Station Transformer installed at the 33 kV Sub-station are as good as feeders to be taken into consideration for apportioning the O&M Cost?

(B) Whether the petitioner is liable to pay the penalty @ 1.5% per month for late payment, as per the agreement executed between the parties?

12. Let us now deal with these issues, one by one.

POINT- A

13. This point relates to apportionment of the O &M Charges of the Sub-station by the number of 33/11kV feeders/bays in the Sub-station. This Commission had occasion to consider, in Petition No. 81 of 2010, decided on 23.11.2010, **M/s Astha Project (India) Ltd. V/s HPSEBL**, the issue of the apportionment of the O&M Cost of a Dehar SHP, inter-facing Astha 33 kV Sub-station, which had only two 33 kV breaker bays, including the terminal bay from the Power House of the IPP, two 33/11 kV transformers and a number of 11 kV breaker bays, a station transformer and some of the feeders without breakers and bus coupler equipments etc. After perusal of clause 6.3 of the Intra-connection Agreement (which is in para materia reproduction of Clause 6.2 of the Intra-connection Agreement in the present case) clinched the issue in para 16 of the said Order, which reads as under:-

"16. The Commission is aware that it lacks jurisdiction to interfere with the agreement voluntarily entered into between the parties but simultaneously such agreements are to be interpreted keeping in view its provisions vis-à-vis the

objective to be achieved. The Commission has also perused the Clause 6.3 of the Interconnection Agreement as referred to by the respondent Board, as reproduced in para 14 of this Order, and finds that the same does not make any distinction between 33 kV and 11 kV bays/feeders. A plausible interpretation of the said Clause would also imply that all the incoming and outgoing feeders should be considered for working out the proportionate amount to be charged to SHPs for normal O&M of the interconnection facilities."

14. The Commission in that case found it appropriate that the normal O&M costs of Sub-station should be apportioned amongst the beneficiaries on the basis of the number of incoming and outgoing feeders at the Sub-station, and vide para 18 of the Order, passed in Astha Case, laid down the guidelines to work out the cost of O&M for inter-connection facilities for SHPs (upto 25 MW), which reads as under:-

"18. The Commission, therefore, lays down the guidelines to work out the cost of O&M, for inter-connection facilities for SHPs upto (25MW) as under:-

(i) the total amount of normal O&M costs of the interconnecting manned Sub-station shall be apportioned in the ratio of umber of feeders for which interconnection facilities are provided to SHPs to the total number of incoming and outgoing feeders irrespective of the voltage level of such feeders. The normal O&M cost of Sub-station shall also include the maintenance costs of the infrastructure works, such as approach roads, staff quarters, sanitation, repair of buildings etc., as per provisions of the agreement;

(ii) the prorate amount worked out on the above lines in respect of the interconnection facilities shall be suitably increased to account for the applicable departmental charges as stipulated in the agreement;

(iii) the other provisions including those relating to detailed mechanism for payment of the charges in this regard as contained in the agreement executed by the petitioner with the respondent Board shall remain unchanged. However, the amount billed/recovered by the Board on account of normal O&M charges in excess of that determined as per the above formulation shall be withdrawn/refunded alongwith the penalty, if any, charged on such excess amount."

15. The petitioner in the present case asserts that VCBs installed for coupling arrangement and the Station Transformer installed for operation of the Sub-station are required to be maintained and operated by the staff of the Sub-station and involves annual

maintenance cost as of normal 33 kV Breaker/ transformer installed at 33 kV Sub-station, as such these are as good as feeders and should be taken into consideration for apportioning and debiting annual O&M cost.

16. Per contra, the Respondent Board submits that as per the Astha guidelines it is specified that only outgoing and incoming feeders shall be considered while levying O&M charges. The Bus Coupler does not qualify to be a feeder as its role is quite different. Although VCBs is installed in the Bus Coupler, but its function is only to connect/disconnect the two incomers. Further, the Station Transformer is also not a feeder, as it is supplying auxiliary supply to the L.T. Distribution system of the Sub-station. These averments of the respondent Board, have not been controverted by the petitioner Company.

17. The Commission fully agrees with the views of the Respondent Board and endorses the view that the bus couplers installed for the coupling arrangement and Station Transformer do not qualify to be feeders, as claimed by the petitioner, and these cannot be considered for computing the petitioner's share in O&M cost. However in order to dispel the doubt of the petitioner, the Commission would like to point out that the person(s) owning incoming feeders and outgoing feeders are the real beneficiaries of the activities carried out in the Sub-station. The incoming feeders i.e. the feeders directly connected to the Sub-station which, under normal operation, inject power into the sub-station, for being taken away by one or more feeders connected to the Sub-station at the same voltages or different voltage, help in evacuation of power from the upstream system. Similarly the outgoing feeders i.e. the feeders which may, under normal operation, carry away the power from the Sub-station after its injection into the Sub-station by one or more incoming feeders, help in delivery of power to the downstream systems. The O&M costs of any devices, other than those directly connected to the incoming or outgoing feeders, installed at the Sub-station for conveyance or for facilitating conveyance of electricity from incoming feeders to outgoing feeders, cannot be allocated to any particular feeder and the O&M costs of such devices have essentially to be shared by the incoming and outgoing feeders. Accordingly, even if, purely for argument sake, the bus coupler and the station transformer were to be considered as two additional feeders for the purpose of working out the petitioners share in O&M cost, the O&M costs related to these two additional feeders would again have to be loaded on the 6 Nos incoming and outgoing feeders only. For example, if the total O&M cost is Rs. 1200/- and 8 number feeders are to be considered, as claimed by the petitioner, the share of each feeder shall workout to Rs. 150/- (i.e. 1200/8), then in that case, the recoverable amount for each incoming and outgoing feeder shall have to be increased in the ratio of 8:6 in order to load the O&M costs of so called 2

number additional feeders which cannot be allocated to any particular incoming or outgoing feeder. The end result will, therefore, remain the same as in both the cases, the share of each incoming feeder shall be 150x 8/6 =200 or 1200/6=200. This will equally hold good even if the O&M costs were to be worked out on the basis of incoming/outgoing bays and in that case also the bays, other than those directly connected to the incoming and outgoing feeders, shall not qualify to be treated as incoming/outgoing bays.

In view of above, petitioner's contention that number of feeders/bays should be considered as eight instead of six for working out the petitioners share in O&M cost is not accepted.

POINT –B

18. The point B relates to the imposition of the penalty for delayed payment beyond the scheduled payment date. In the present case the petitioner has made payment of O&M charges to the Respondent Board for the years 2008-09 to 2014-15 (i.e. for the period 12/2009 to 31-3-2015) but has not paid penalty for late payment @ 1.5% per month leviable, under Clause 8.1 of the O&M Agreement dated 19.9.2009. The Respondent Board mentioned that since the petitioner did not adhere to the time schedule laid down for payment of the consideration amounts under Clause 6 and mentioned in Clause 7.1(c),(d) and (e) of the said Agreement, it is liable to pay the penalty vide Clause 8.1 of the said Agreement. It has also been mentioned that the petitioner Company had been evading the payment of the O&M Charges, contending that the O&M Charges should be apportioned considering that the total number of feeders as 8 and not 6, and as such it is not liable to pay the penal rate.

19. The petitioner urges that the levy of penalty for delayed payment is not justifiable, when the petitions of the petitioner were pending due to interpretation of the O&M charges before the Commission and repeatedly the petitioner was making representations to the Respondent Board regarding clarification. After the issuance of the Astha guidelines, the Board has not implemented the said guidelines. The issue involved is predominantly and legally inter-pretetative in nature. In his support the petitioner has cited the following decisions of the Hon'ble Supreme Court rendered in-

(a) Hitendra Vishu Jhaler V/s State of Maharashtra (1994) 4 SCC 692;

(b) Zee Telefilms Vs Commissioner, 2004(166) ELT, 34;

(c) Uniflex Cables Ltd. V/s Commissioner, Central Excise decided on 24.08.2011 in Civil Appeal No. 5870 of 2005.

The facts involved in these cited cases are totally different from those involved in the present case. In the cases before the Hon'ble Apex Court, the Court was dealing with cases where a dispute in relation to the payment of penalties retrospectively had arisen, by and large, out of the rival interpretations of the relevant provisions either of section 65 of the Finance Act, 1994, or of the Central Excise Act, 1944 or of notifications exempting excise duty. In the case in hand, the dispute has arisen from the O&M Agreement executed by the parties. The petitioner Company has not adhered to the payment schedule mentioned in the Agreement and further under Clause 8.1 thereof, the petitioner company is under legal obligation to pay the penalty as per the agreed terms and conditions of Agreement. It will not be wrong to say that the rate of interest amount, which was long due, should be payable at a penal rate. Thus the Apex Court decisions cited by the petitioner are of not helpful in the present context.

20. In the case in hand the entire transaction between the parties is governed by the stipulations in the Bilateral Agreement and the dispute has arisen between them has to be resolved only in terms of the Arbitration Clause in the Agreement. There is no provision in the Electricity Act, 2003, to oust the arbitration Clause agreed to between the parties. Due to his own lapses the petitioner Company cannot seek the protection of interpretations made in different context and justify his case for exemption of penalty levied for late payment under Clause 8.1 of the Agreement.

21. Clause 11 of the Inter-connection Facility Agreement specifically provides for settlement of disputes, or differences arising between the Board and the petitioner company, through conciliation, failing which either party may forthwith give the other party notice, in writing, of existence of such dispute or difference, and the same shall have to be referred to the sole arbitration/adjudication of the Chairman, HPSEB, or his / her nominee. On the face of the said stipulation in the Agreement, this Commission vide its Order dated 16.03.2013 in the earlier petition of the petitioner Company bearing No. 49 of 2012 gave the opportunity to the petitioner Company to meet and endeavour to settle its difference through mutual conciliation, especially when the respondent Board undertook to resolve the difference and to revise their demands keeping in view the guidelines laid down on 23.11.2010 in the Astha Case. The petitioner Company for the reasons well known to it did not seek any clarification from the Commission on the issue as to whether the VCBs installed at the Sub-station for the coupling arrangement and Station Transformer qualify to be considered as feeders for apportionment of the O&M Charges of the Sub-station, and further being aggrieved by the decision of the Respondent Board, has not invoked provisions of Clause 11 of the Agreement by giving a written notice, of the existence of

such question/dispute and for further reference to the arbitrator named therein. Now the petitioner, due to lapses on its own part cannot raise plea that since its petitions seeking clerifications were either pending before the Commission or its representation remained unattended by the respondent Board, levy of the penal rate is not justifiable.

22. The Commission feels that even otherwise the petitioner cannot be entitled to claim any relief in the penalty provisions contained in the O&M Agreement simply because it had raised certain issues about the quantum of the payable amount. Assuming the petitioner had certain differences in view, about the payable amount it should have at least made the payments which were considered to be justified according to him and the balance disputed amount, if any, could then have been paid/withdrawn depending on the resolution of differences. In that case penalty would have been imposed only in the event such amount would have become payable. In this case no such payment has been made. It is worth mentioning that the Astha guidelines also did not dispense with the penalty for delayed payment and the said guidelines permit the adjustment for the excess amount if found charged. Sub-para (iii) of para 18 of the Order dated 23.11.2010 passed in Astha Case clearly states that *"the other provisions including those relating to detailed mechanism for payment of the charges in this regard as contained in the agreement executed by the petitioner with the respondent Board shall remain unchanged. However the amount billed/recovered by the Board on account of normal O&M charges in excess of that determined as per the above formulation should be withdrawn/refunded alongwith the penalty, if any charged on such excess amounts"*

23. The payment of penalty is a natural consequence of the delayed payment of amount due. The petitioner Company was in fact in default in not making payments of full amount demanded by the Board which remained unpaid for considerable long time and as such the petitioner becomes liable to pay the penal amount per terms and conditions of the Agreement. Thus, the contention of the petitioner Company that he is not required to pay penal rate, per terms of the Agreement, for the period taken in the issuance of the guidelines or their implementation does not hold good.

In light of the above discussions, the Commission finds no force in the petition and hence it is dismissed.

No Order as to costs.

--Sd/-
(S.K.B.S. Negi)
Chairman