

## CHAPTER I: DEPARTMENT OF ATOMIC ENERGY

### Nuclear Power Corporation of India Limited

#### 1.1 Loss due to omission in the tariff notification

**The Company did not include a clause on reimbursement of income tax in its proposal to the Department of Atomic Energy for tariff notification and could not claim the same from Rajasthan State Electricity Distribution Companies (DISCOMS), resulting in loss of ₹ 94.87 crore.**

The Department of Atomic Energy (DAE) notifies from time to time the tariff rates for the sale of power by various units of Nuclear Power Corporation of India Limited (Company). The tariff rate consists of fixed and variable elements. The fixed cost element is determined with reference to the total estimated operating cost to the normative capacity and the variable element consists of fuel cost, income tax and insurance. The DAE notifies the tariff based on the proposal submitted by the Company. The various units of the Company raise the bills on the bulk purchasers of power at the tariff rates.

The Company negotiated (November 2000) with Rajasthan Rajya Vidyut Prasaran Nigam Limited (RVPNL) and the DAE notified (August 2001) different tariff rates applicable for the Units 3 and 4 of Rajasthan Atomic Power Station (RAPS) for the period 1 June 2000 to 30 November 2005 and 23 December 2000 to 22 December 2005 respectively. The notified tariff specifically provided that the tariff rate would not be adjusted towards Fuel and Heavy Water charges and Income Tax (IT) payable by the Company would not be reimbursed by the beneficiary Boards. The Company proposed (November 2003) a common tariff rate applicable for the Units 2, 3 and 4 of RAPS and submitted a draft tariff notification to the DAE, applicable from December 2003, which contained formula for computation of Fuel and Heavy water charges and insurance charges for dovetailing into the tariff rate but did not include the reimbursement element of IT payable by the Company. Accordingly, the DAE notified (February 2004) a uniform tariff applicable for the Units for the period December 1, 2003 to November 30, 2008 in line with the proposal made by the Company.

The Company started (March 2005) raising demand for reimbursement of IT for the year 2003-04 onwards for an amount of ₹ 84.07 crore pertaining to the billing period December 2003 to November 2005 and for ₹ 21.61 crore for the period December 2005 to January 2007. The RVPNL (which was reorganized into distribution companies as DISCOMS) disputed the claim on the ground that the notified tariff did not contain a specific clause for reimbursement of IT. The DAE clarified (June 2007) that though the tariff notification issued in February 2004 did not specifically provide for the reimbursement of IT, the exemption in the earlier notification was not applicable. The DAE further clarified (December 2008) that the tariff in the power sector was based on post tax return on equity and IT was reimbursable. After a series of correspondence with RVPNL, the Company held (February 2010) a meeting with DISCOMS and decided to waive 50 per cent of the IT dues pertaining to the period December 2005 to January 2007

and the balance 50 *per cent* were to be paid in six equal monthly installments from July 2010. In effect, the IT claim for the period December 2003 to November 2005 for ₹ 84.07 crore was fully waived along with waiver of 50 *per cent* of the claim (₹ 10.80 crore) for the period December 2005 to January 2007 without seeking the necessary approval of the Board.

The Management stated (August 2010) that the tariff notified in February 2004 was in partial modification of earlier 2001 notifications which specifically provided that IT would not be reimbursable and February 2004 notification was silent on this aspect. The reply further stated that in view of the above the claim for IT reimbursement for ₹ 84.07 crore for the period December 2003 to December 2005 was found legally non-sustainable and hence withdrawn.

The reply is to be seen in the light of the fact that February 2004 notification was scripted by the Company for all its contents and the omission on IT reimbursement rested only on the Company. The argument that the claim for reimbursement of IT was not legally enforceable was in contrast to the factual position that the other State Electricity Boards/Companies of Delhi, Chandigarh, Shimla, Uttranchal, Lucknow, Punjab, Haryana and Jammu who were also drawing power from RAPS reimbursed IT.

Thus, the failure of the Company to guide DAE in the tariff notification to protect its financial interests resulted in ambiguity relating to IT reimbursement and loss of ₹ 94.87 crore.

The matter was reported to Ministry in September 2010, reply was awaited (February 2011).