

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

- 1. Shri Ashok Basu, Chairman**
- 2. Shri G.S. Rajamani, Member**
- 3. Shri K.N. Sinha, Member**

**Petition No. 6/2003**

**In the matter of**

Approval of Generation Tariff for sale of power to M/s. Power Trading Corporation (PTC) from the proposed 5x4 MW Samal Hydro Electric Power Project at Samal, Angul District, State of Orissa.

**And in the matter of**

Orissa Power Consortium Ltd.	....	<b>Petitioner</b>
<b>Vs</b>		
Power Trading Corporation of India Ltd.	...	<b>Respondent</b>

**The following were present:**

1. Shri V.K. Gambhir, GM(P), OPCL
2. Shri S. Kalyan, OPCL
3. Shri A.K. Maggu, AVP, PTC
4. Shri S. Sethvedantham, Consultant, PTC

**ORDER  
(DATE OF HEARING: 14.2.2003)**

Through this petition, the petitioner, Orissa Power Consortium Ltd. seeks approval of the Commission for tariff for sale of power to the respondent, Power Trading Corporation of India Ltd. of power generated from Samal Hydroelectric Project (for short "Samal HEP") in the State of Orissa under Clause (b) of Section 13 of the Electricity Regulatory Commissions Act, 1998 (for short, "the Act"). The petition is listed for admission.

2. The petitioner, which is stated to have been notified as a generating company under Section 18A of the Electricity (Supply) Act, 1948 by the State Government of Orissa, vide its letter dated 3.1.2002 has been permitted to build, own and operate 5x4 MW Samal HEP at Samal, Angul District in the State of Orissa. The Government of Orissa has approved the Detailed Project Report in respect of Samal HEP and the State Technical Committee, Government of Orissa has cleared the project at a total cost of Rs.9760.90 lakhs, subject to certain conditions, which are not relevant for the purpose of present petition and therefore, are not being reproduced here. The other necessary steps prescribed under the different statutes are stated to have been completed by the petitioner.

3. The petitioner has entered into a Memorandum of Understanding with the respondent, according to which the petitioner is willing to sell and the respondent is willing to purchase, the entire power generated from Samal HEP for a term of 30 years. As per the Memorandum of Understanding, the respondent is entrusted with the responsibility to locate the buyers for the electricity purchased by it from the petitioner. It has been further stipulated in the Memorandum of Understanding that a petition for approval of tariff and other conditions, if required as per law will have to be made to the Commission at an “appropriate stage”.

4. The proposal for tariff contained in the petition is stated to be based on the Commission’s notification dated 26.3.2001. It is stated that the financial closure

date of the project is 1.4.2003 and Unit I of the Project is likely to be commissioned 20 months thereafter. The commissioning of the remaining four units will follow the commissioning of Unit I.

5. The first question that falls for consideration is in regard to the jurisdiction of the Commission. The petition has been filed under Clause (b) of Section 13 of the Act, which is reproduced below:

“(b) to regulate the tariff of generating companies, other than those owned or controlled by the Central Government specified in Clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State”

6. In order to invoke jurisdiction under Clause (b) of Section 13 of the Act, it is essential that the generating company, whose tariff is to be regulated by the Commission, enters into or otherwise has a composite scheme of generation and sale of electricity in more than one State. The representative of the petitioner submitted at the hearing that the petitioner would be selling power to the respondent within the State of Orissa, though the respondent may further sell power to one or more states outside the State of Orissa. The representatives of the respondent, who were present before us, could not categorically state whether the power would be sold to one State or more. In fact, it was stated that the buyers of power had not been identified and the matter was under active consideration of the respondent. Under these circumstances, it is not possible for the petitioner to invoke Clause (b) of Section 13 of the Act. In fact, the respondent

might have to approach the Commission for approval of tariff as it had done in case of Hirma Mega Power Project in Petition No.24/2000 if the conditions laid down under Section 13 of the Act are satisfied.

7. There are other reasons also for which the petition cannot be entertained at this stage. The basis for determination of tariff in terms of the Commission's notification dated 26.3.2001 is the "Cost plus" basis. Therefore, it is necessary that the completion cost of the project and other details like amount of loan, rate of interest, repayment schedule, etc. are known. As all the necessary details for determination of tariff are not on record, it is premature to undertake the exercise of actual tariff determination. It is also to be noticed that the norms for determination of tariff contained in the Commission's notification dated 26.3.2001 are valid up to 31.3.2004. The Commission is in the process of reviewing norms for tariff determination for the period beyond 31.3.2004. As it appears from the petition, Samal HEP is likely to be commissioned during 2005, for which period the norms for tariff determination are yet to be laid down by the Commission.

8. At the hearing before us, the representative of the petitioner submitted that the lending institutions are insisting that tentative approval of the Commission for tariff should be obtained before they entertain the petitioner's request for loan. We are keen on the private sector's participation in generation, transmission and distribution etc. of electricity and feel that all possible steps need to be taken to encourage entry of private players in the field. However, in view of the reasons

recorded above, we are unable to take up this petition for hearing or pass an order for tariff chargeable for sale of power to the respondent at this stage. Commission also feels that the lending institutions should take a practical and constructive view in the matter, as approval of tariff will be part of the regulatory process which can be taken up only after the project is on steam and nearing completion.

9. In view of the foregoing, the petition is disposed of at the admission stage itself with the observation that the petitioner or the respondent, in this case may approach the Commission for approval of tariff at an appropriate stage, in accordance with law.

**Sd/-  
(K.N. SINHA)  
MEMBER**

**Sd/-  
(G.S. RAJAMANI)  
MEMBER**

**Sd/-  
(ASHOK BASU)  
CHAIRMAN**

New Delhi dated the 24<sup>th</sup> February, 2003