

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Shri Ashok Basu, Chairman**
- 2. Shri K.N.Sinha, Member**
- 3. Shri Bhanu Bhushan, Member**

**Review Petition No.75/2004
in
Petition No 2/2002**

In the matter of

Review of order dated 19.5.2004 in Petition No.2/2002 for approval of tariff in respect of Simhadari Thermal Power Project for the period from 1.9.2002 to 31.3.2004.

And in the matter of

National Thermal Power Corporation Ltd., New Delhi

.... **Petitioner**

Vs

Transmission Corporation of Andhra Pradesh Ltd, Hyderabad.... **Respondent**

The following were present:

1. Shri M.G. Ramachandran, Advocate, NTPC
2. Shri K.V. Balakrishnan, Advocate, NTPC
3. Shri V.B.K. Jain, NTPC
4. Shri I.J. Kapoor, NTPC
5. Shri T.R. Sohal, NTPC
6. Shri Balaji Dubey, Dy. Mgr Law, NTPC
7. Shri S.K. Samvi, SM (C), NTPC
8. Smt. Taruna Bachel, NTPC
9. Shri D.G. Salpekar, Sr, Mgr, NTPC
10. Shri A.K. Juneja, DGM
11. Smt. Rachna Mehta, NTPC
12. Shri K.B. Singh, NTPC
13. Shri A. Sardana, NTPC
14. Shri K. Nageswara Rao, NTPC
15. Shri R. Datt, NTPC

ORDER
(DATE OF HEARING 19-8-2004)

In this petition the petitioner, NTPC seeks review of the order dated 19.5.2004 in Petition No.2/2002, filed for approval of tariff in respect of Simhadri Thermal Power Project (TPP).

2. Simhadri TPP comprises two units, each with capacity of 500 MW. The first unit of Simhadri TPP was declared under commercial operation on 1.9.2002 and the second unit was so declared on 1.3.2003. Therefore, the petitioner had filed the petition (No.2/2002 for approval of tariff for Unit I from 1.9.2002 to 28.2.2003 and for the generating station as a whole from 1.3.2003 to 31.3.2004 based on the terms and conditions for determination of tariff contained in the Commission's notification dated 26.3.2001. The tariff was determined by the order dated 19.5.2004.

3. Based on the information submitted by the petitioner in support of the expenditure on the dates of commercial operation of the respective unit, the following details emerged in regard to the capital cost:

(Rs in lakh)

	2002-03		2003-04
	From 1.9.2002 to 28.2.2003	From 1.3.2003 to 31.3.2003	From 1.4.2003 to 31.3.2004
Capital Cost			
Opening Balance	179638	324308	318076
Addition-Due to FERV	-659	-6232	0
Addition-Due to ACE	7697	0	0
Closing Balance	186676	318076	318076

4. The above capital cost was considered for the purpose of tariff determination. The petitioner had deployed debt and equity in the ratio of 75.4:24.6 while incurring

the above capital expenditure. Therefore, this ratio was considered for the purpose of working out different elements of the fixed charges. The petitioner has sought review of the order dated 19.5.2004 claiming that debt-equity in the ratio of 70:30 ought to have been considered.

5. According to the petitioner, in accordance with the Commission's notification dated 26.3.2001, the interest on loan capital and return on equity are to be computed as per the financial package approved by CEA. It is submitted by the petitioner that the financial package was approved by CEA considering debt-equity in the ratio of 70:30. It is further submitted that the Central Government while approving the project cost in its order dated 24.7.1992 had also considered the debt-equity in the ratio of 70:30. The interest during construction forming part of the approved project cost was calculated on the basis that debt would be to the extent of 70% of the total project cost. Therefore, according to the petitioner, debt-equity ratio of Simhadri TPP for tariff determination at all times should be taken as 70:30, based on the approval granted by various authorities including CEA and Public Investment Board. The petitioner has, along with the present application for review placed on record a statement showing deployment of funds at different stages of construction of the project. According to this statement, deployment of funds was mostly by employing equity and it was only by 31.3.2004, the actual deployment of funds was in the ratio of 72:28.

6. The petition was listed for admission. We heard Shri M.G. Ramachandran, Advocate for the petitioner.

7. The Commission in its order dated 19.5.2004, review of which has been sought now, took note of the provisions made in the notification. It considered debt-equity in the ratio of 75.4:24.6, the actual debt-equity employed, as the final approved financial package was not made available by the petitioner. For facility of reference we reproduce below the relevant extracts of the order:

“24. As per the notification dated 26.3.2001, the interest on loan capital and return on equity are to be computed, as per the financial package approved by CEA or an appropriate independent agency, as the case may be.

25. TEC for Simhadari TPP was approved by CEA with the financial package with debt-equity in the ratio of 70:30. However, the actual debt and equity employed is in the ratio of 75.4:24.6. The actual debt-equity ratio has been considered for computation of tariff as the final approved financial package has not been placed on record by the petitioner.”

8. Thus, the Commission while considering debt-equity in the ratio of 75.4:24.6 took cognizance of all the relevant facts, namely, provisions made in the notification dated 26.3.2001 and the fact that TEC for Simhadri TPP was approved by CEA with debt-equity in the ratio of 70:30. TEC of Simhadri TPP was approved by CEA for 12.8.1996, with a tentative financial package of 70:30 (approximate). The final approved financial package for the generating station was not placed on record in the proceedings in the original petition No.2/2002. Neither has this been placed now in the present review proceedings. In the review proceedings, the petitioner has stated that the financial package of the project was approved by considering the debt-equity in the ratio of 70:30 though no such statement was made in the original petition nor any evidence to that effect was brought to the notice of the Commission. Therefore, the Commission while approving tariff had allowed tariff based on actual debt-equity ratio, the details of which are given hereunder:

(Rs in lakh)

	As on the date of commercial operation of the station, that is, as on 1.3.2003
Capital cost	324308
Actual debt employed	244479
Actual equity employed	79829
Debt Ratio(%)	75.4%
Equity Ratio(%)	24.6%

9. The above facts would reveal that it is not a case of error apparent on the face of record since the actual debt-equity ratio of 75.4:24.6 was considered by the Commission deliberately and consciously with complete knowledge of facts. Therefore, in our opinion, the case for review of the order dated 19.5.2004 is not made out as the case does not satisfy the conditions for review of order prescribed under Section 114 read with order 47, Rule 1 of the Code of Civil Procedure.

10. Before parting with the case, we may add that even on merits, we do not find any justification in the petitioner's claim. The petitioner cannot be allowed return on an amount not actually deployed by it since it may amount to unjust enrichment of the petitioner at the cost of respondent. The petitioner was allowed return @ 16% on the actual equity employed by it.

11. With the above observations, the review petition stands dismissed at the admission stage itself.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 6th September, 2004