

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.216/2009 with I.A.No. 2/2011

**Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member**

DATE OF ORDER: 8.6.2011

IN THE MATTER OF

Determination of impact of annual fixed charges on account of additional capital expenditure incurred during the year 2008-09 in respect of Teesta HE Project, Stage-V (510 MW).

And in the matter of

NHPC Ltd

.....**Petitioner**

Vs

1. West Bengal State Electricity Distribution Company Ltd, Kolkata
2. Damodar Valley Corporation, Kolkata
3. Jharkhand State Electricity Board, Ranchi
4. Bihar State Electricity Board, Patna
5. Department of Power, Govt. of Sikkim, Gangtok
6. Grid Corporation of Orissa Limited, Bhubaneswar

.....**Respondents**

ORDER

This petition has been filed by the petitioner, NHPC for determination of impact of annual fixed charges on account of additional capital expenditure incurred during the year 2008-09 in respect of Teesta HE Project, Stage-V (hereinafter referred to as “the generation station”) based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, (hereinafter referred to as “the 2004 regulations”).

Background

2. During the pendency of this petition which was filed on 25.9.2009, the Commission by its order dated 5.1.2010 in Petition No.132/2009 determined the tariff



of the generating station for the period from 1.3.2008 to 31.3.2009. However, in the said order, the Commission did not consider the discharge of liabilities amounting to ₹100.64 lakh during the year 2008-09, as claimed by the petitioner. The relevant portion of the order is extracted hereunder:

“32. The capital cost of Rs 248943.71 lakh as on the date of commercial operation of the generating station being less than the sanctioned capital cost of Rs 250049.90 lakh is allowed for the purpose of tariff. The petitioner is directed to submit the Revised Cost Estimates as and when received along with details of liabilities discharged.”

3. During the hearing on 21.1.2010, the petitioner submitted that out of the total un-discharged liability of Rs 13015.87 lakh as on 10.4.2008, an amount of ₹10064.00 lakh was discharged during 2008-09 and not allowed by the Commission in order dated 5.1.2010. It was also submitted that the balance amount of ₹2951.87 lakh, as on 31.3.2009 would be claimed separately after discharge of the said liability. The learned counsel for the respondent No.5, BSEB submitted that apart from the submission of the Revised Cost Estimate (RCE) by the petitioner in terms of para 32 of the order dated 5.1.2010 in Petition No.132/2009, the petitioner should not be permitted to claim the un-discharged liability of ₹10064.00 lakh which was disallowed by the Commission earlier, along with the claim of ₹2951.87 lakh in the present petition.

4. Based on the above submissions, the Commission directed the petitioner to file Revised Cost Estimate along with the interlocutory application for amendment of the petition, after service of copy on the respondents.

5. While so, the petitioner by its letter dated 11.5.2010 prayed that the petition be kept pending since the RCE for the generating station was under examination by the Standing Committee of the Government of India. The prayer of the petitioner was accepted and the petition was kept pending for want of RCE.

Interlocutory Application

6. Meanwhile, on 4.2.2011 the petitioner filed Interlocutory Application (I.A.No.2/2011) revising the annual fixed charges of the generating station taking into consideration the order of the Commission dated 5.1.2010 in Petition No.132/2009 and the un-discharged liability of ₹13016.00 lakh as on date of commercial operation of the generating station along with the additional capitalization during 2008-09. However, RCE was not filed by the petitioner. The respondent No.5. BSEB in its reply affidavit dated 25.3.2011 has submitted that the interlocutory application for determination of the impact of annual fixed charges due to additional capitalization was premature and the petitioner may be directed to file the approved RCE of the generating station. In its rejoinder dated 15.4.2011, the petitioner has clarified that the Standing Committee on Time and Cost over-run has recommended the revised capital cost of the generating station and the approval of RCE by the Government of India was in process. It has also been submitted that the approved RCE is only to examine the excess expenditure over the sanctioned cost, as otherwise tariff is to be determined based on additional capital expenditure. The petitioner has thus prayed for consideration of the matter on merits.

7. We have examined the submissions of the parties. The Commission in its order dated 5.1.2010 in Petition No.132/2009 had approved the capital cost of the generating station, which was less than the sanctioned cost and had directed the petitioner to submit the RCE. The submission of the petitioner that the approval of RCE by Government of India was in process and that the matter be considered on merits is not acceptable, since the report of the Standing Committee cannot be considered equivalent to the approved RCE by the Government of India. We are of the view that no useful purpose would be served in keeping the petition pending, more so, when it appears that the petitioner would require some more time to obtain approved RCE for the generating station. Hence, we are inclined to dispose of this petition.

8. Accordingly, this petition along with the interlocutory application (I.A.2/2011) is disposed of with a direction that the petitioner is at liberty to approach the Commission with an appropriate petition for revision of tariff for the generating station in accordance with the 2004 regulations, based on the approved RCE, which would be considered in accordance with law.

Sd/-
[M.DEENA DAYALAN]
MEMBER

Sd/-
[V.S.VERMA]
MEMBER

Sd/-
[S.JAYARAMAN]
MEMBER

Sd/-
[DR.PRAMOD DEO]
CHAIRPERSON