

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 267/SM/2012

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

Date of Order: 20.12.2012

In the matter of

Filing of application for determination of tariff for generation of electricity from the generating stations and inter-State transmission of electricity through the transmission systems of Sardar Sarovar Narmada Nigam Limited (SSNNL)

And in the matter of

Suo Motu petition by the Commission

And in the matter of:

1. Sardar Sarovar Narmada Nigam Limited, Vadodhara
2. Narmada Control Authority, Indore
3. Narmada Valley Development Authority, Bhopal
4. M.P. State Electricity Board, Jabalpur
5. Maharashtra State Electricity Distribution Company Ltd, Mumbai
6. Gujarat Urja Vikas Nigam Limited

.....Respondents

ORDER

The Electricity Act, 2003 (hereinafter “the EA 2003”) came into force with effect from 10.6.2003, repealing the earlier Acts such as the Indian Electricity Act, 1910, the Electricity (Supply) Act, 1948 and Electricity Regulatory Commission Act, 1998. Section 173 of the EA 2003 provides that “nothing contained in this Act or any rule or regulation made there under or any instrument having effect by virtue of this Act, rule or regulation shall have effect in so far as it is inconsistent with any other provisions of the Consumer Protection Act, 1986 or the Atomic Energy Act, 1962 or the Railways Act, 1989.” Further, Section 174 of the EA 2003 provides that “Save as otherwise provided in section 173, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time

being in force or in any instrument having effect by virtue of any law other than this Act.”

After the operation of the EA 2003, all functions and activities covered under the Act shall have overriding effect on similar functions and activities under any other Act in force except in case of the Consumer Protection Act, 1986 or Atomic Energy Act, 1962 or the Railways Act, 1989.

2. Part III of the EA 2003 deals with generation of electricity, Part IV with licensing, Part V with transmission of electricity, Part VII with tariff and Part X with the Regulatory Commissions. Section 79 under Part X of the EA 2003 vests the following functions in the Central Electricity Regulatory Commission (hereinafter “Central Commission”):

“Section 79. (Functions of Central Commission): (1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(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;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code having regard to Grid Standards;

(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;

(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;

(k) to discharge such other functions as may be assigned under this Act.”

3. The Central Commission has been vested with the power 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, to regulate the inter-state transmission of electricity and to determine the tariff for inter-State transmission of electricity among other functions. By virtue of section 174 of the EA 2003, the Central Commission is the appropriate authority to regulate such functions notwithstanding that such functions were discharged by other bodies prior to 10.6.2003 subject to the exceptions in section 173 of the EA 2003.

4. The creation of the Sardar Sarovar Project (herein referred to as 'SSP') can be traced back to the award of the the Narmada Water Dispute Tribunal (NWDT) which was constituted by the Government of India in 1969, under the Inter State River Water Disputes Act, 1956 to adjudicate upon the water dispute regarding the inter-State river Narmada and its river valley. The Award of NWDT was published in the Gazette of India on 12.12.1979 and became final and binding on the parties to the dispute. Clause VIII of the final order and decision of the NWDT dealt with sharing of cost and benefits of the Narmada waters, relevant portions of which are summerised briefly as under:

(a) Out of the net power produced at Navgam at canal head and river bed power houses on any day, the share of Madhya Pradesh will be 57%, Maharashtra 27% and Gujarat 16%.

(b) The power generated from the canal head and river head power houses at Navgam shall be integrated in a common switchyard. Madhya Pradesh and Maharashtra will be entitled to get 57% and 27% of the power available at the bus bar in the switchyard after allowing for station auxiliaries. The entitlement applies to machine capacity for peak load and to the total energy produced in any day.

(c) Gujarat will construct and maintain the transmission lines needed to supply allotted quantum of power to Madhya Pradesh and Maharashtra upto Gujarat State border, along an alignment as agreed to between the parties and if there is no agreement along such alignment as may be decided by the Narmada Control Authority. The transmission lines beyond Gujarat State border shall be constructed and maintained by Madhya Pradesh and Maharashtra in their respective States.

(d) The power houses and appurtenant works including the machinery and all installations as well as the transmission lines in Gujarat will be constructed, operated and maintained by Gujarat State or authority nominated by that State. The authority in control of the power houses shall follow the directions of the Narmada Control Authority in so far as use of water is concerned.

(e) Sub-clause (ix) of clause VII of the order provides for the elements of the capital costs of the SSP and its sharing by Madhya Pradesh and Gujarat.

5. Clause XIV of the NWDT Order provides for setting up of machinery for implementing the decisions of the Tribunal. It provides that an inter-State, administrative authority to be called Narmada Control Authority shall be established for the purpose of securing compliance with and implementation of the decisions and directions of the Narmada

Water Disputes Tribunal. It further provides that the Authority shall give directions for a phased programme of construction for generation and transmission of power in fulfillment of the shares of power allotted to the three States of Madhya Pradesh, Maharashtra and Gujarat from Sardar Sarovar Project and for payment therefor in accordance with the orders of the Tribunal. The Authority is required to ensure that generation and transmission of power from Sardar Sarovar complex are in accordance with the orders of the Tribunal. It further provides that if and when the Sardar Sarovar Complex is linked with regional or National Power Grid, the operation of the SSP would be governed by such altered system conditions and Narmada Control Authority should take steps to enable the three States to get their entitlement of power and energy from the complex according to Tribunal's order.

6. The Central Government in exercise of its powers under Section 6-A of the Inter-State Water Disputes Act, 1956 framed a scheme known as Narmada Water Scheme, 1980 constituting the Narmada Control Authority and the Review Committee to give effect to the decisions and directions of the NWDT. Accordingly, Narmada Control Authority was set up by the Central Government to implement the decisions and directions of NWDT Awards. Narmada Control Authority has established the Energy Management Centre at Indore in consultation with the Central Electricity Authority to facilitate generation and load dispatch from the SSP in coordination with WRLDC and constituent SEBs. The Scheme also provided for constitution of a Review Committee who may suo motu or on the application by any party State review any decision of the Authority.

7. Sardar Sarovar Project which is at the tail end of the River Narmada is a joint venture of four constituent States, namely, Gujarat, Maharashtra, Madhya Pradesh and Rajasthan. The

cost of the dam has been apportioned in the ratio of 56.1:43.9 between power and irrigation. While the cost of the irrigation component is to be shared between Gujarat and Rajasthan, the cost of the power component is to be shared by Madhya Pradesh, Maharashtra and Gujarat in the same ratio as the sharing of power in terms of the award i.e.57:27:16.

8. Sardar Sarovar Narmada Nigam Limited was incorporated by the Government of Gujarat as a limited company on 24.3.1988 to undertake the execution of the Sardar Sarovar Project including construction of hydro-generating power stations along the Canal System and to construct the tie-lines, main transmission lines as may be specified by the State Government. The project comprises two power houses i.e. River Bed Power House (RBPH) and Canal Head Power House (CHPH). The total installed capacity of the SSP is 1450 MW. The RBPH is an underground power house with six number of Francis type reversible turbine generators having 200 MW installed capacity each. The CHPH is a surface power station with five conventional types Kaplan turbine having 50 MW installed capacity each. All the five units each of 50 MW of CHPH were commissioned during August 2004 to December 2004 and all the six units each of 200 MW of RBPH were commissioned during February 2005 to November 2006. The energy generated from both the power houses is evacuated through 400 KV level through interconnecting transformers at GIS, situated in RBPH switch yard. The 400 KV Switchyard is indoor type having Gas Insulated Switch Gear and Bus bars. The energy is transmitted to party states i.e. Gujarat, Maharashtra and Madhya Pradesh in the proportion of 16:27:57 respectively through 400 KV double circuit transmission lines, namely SSP-Kasor, SSP-Asoj, SSP-Dhule and SSP-Nagda respectively. The operation and maintenance of SSP power complex and transmission lines is being done by Gujarat State Electricity Company Limited (GSECL), in accordance with the O&M agreement between SSNNL and GSECL.

9. From the above analysis, it emerges that SSNNL is a generating company with a composite scheme for generation and supply of electricity in more than one State. Therefore, regulation of tariff of SSNNL falls within the jurisdiction of the Central Commission in terms of section 79(1)(b) of the Act. Further, power from the generating station is evacuated to the States of Maharashtra and Madhya Pradesh through SSP-Dhule and SSP-Nagda transmission lines. Since these transmission lines are used for evacuation of power from the territory of State to the territory of another State, they are covered within the definition of inter-State transmission system in terms of section 2(36)(i) of the Act. Therefore, the regulation and determination of tariff of these transmission lines fall within the jurisdiction of the Central Commission.

10. It will not be out of place to note that Narmada Control Authority in its letter No.NCA/7/2/2003/Power/780 dated 6.3.2003 had approached this Commission seeking clarification on certain issues including whether tariff of SSP is to be decided by the party States themselves in consultation with NCA/CERC. After consideration of the reference by the Commission, the Secretary of the Commission in his letter No.L-7/12(25)/2003-CERC dated 29.8.2003 had conveyed that since it did not involve sale of power from the SSP to any party State, the question of determination of tariff did not arise. The Commission has subsequently reconsidered the said decision and is of the view that since the power is supplied from the generating station to the participating States for some consideration in the form of O&M expenses which is a component of tariff, the tariff of the generating station shall be determined by the Central Commission. We are fortified by the judgement of the Appellate Tribunal for Electricity dated 14.12.2012 in Appeal No.183/2011 (Bhakra-Beas Management Board v. Central Electricity Regulatory Commission and Others) where the Hon'ble Tribunal has held that "section 79(1) has to be read with section 62(1) of the Act,

2003, but if any of the components of section 62(1) is attracted, then the jurisdiction of Central Electricity Regulatory Commission is attracted". Tariff under section 62(1) of the Act is determined by the Commission in respect of the generating stations covered under section 79(1)(a) and(b) and inter-State transmission of electricity in accordance with the tariff regulations specified by the Commission under section 61 read with section 178 of the Act. Since O&M expenses is one of the components of the tariff which is being paid by the party States to SSNNL, the tariff of SSNNL shall be regulated by the Central Commission in view of the law decided by Appellate Tribunal. We make it clear that we are not suggesting that only O&M expenses will be determined by this Commission. The elements of tariff which would require determination will be decided after the tariff petition is filed by SSNNL based on the facts disclosed in the petition.

12. Before we direct SSNNL to file the tariff petition, we intend to give an opportunity of hearing to SSNNL and the beneficiaries of the SSP regarding determination of tariff of SSP by this Commission. Accordingly, the respondents are directed to file their replies by 10.1.2013. The petition shall be listed for hearing on **15.1.2013**.

sd/-
[**M. Deena Dayalan**]
Member

sd/-
[**V. S. Verma**]
Member

sd/-
[**S. Jayaraman**]
Member

sd/-
[**Dr. Pramod Deo**]
Chairperson