

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 1/RP/2013**

Subject: Review of the order dated 16-01-2013 of Nathpa Jhakri Hydroelectric Power Station (6x250 MW) passed by the Commission in Petition No. 27/2011.

Date of hearing: 23.5.2013

Coram: Dr. Pramod Deo, Chairperson  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member  
Shri A.S. Bakshi, Member (EO)

Petitioner: SJVNL Limited, New Shimla

Respondents: PSPCL & 9 others

Parties Present: Shri Rajeev Agarwal, SJVNL  
Shri Satyabad Sahoo, SJVNL  
Shri H.B Sahay, SJVNL  
Shri R.K.Bansal, SJVNL  
Shri R.Kapoor, SJVNL  
Shri A.S. Bindra, SJVNL  
Shri R.B. Sharma, Advocate, BRPL  
Shri Manish Garg, UPPCL

**Record of Proceedings**

During the hearing, the learned counsel for the petitioner submitted as under:

(a)The additional capital expenditure claimed by the petitioner which is not included in the approved RCE-III can be serviced through tariff after approval of RCE-IV to the extent of the approval. There is error apparent on the face of the order dated 16.1.2013 as the additional capital expenditure including discharged liabilities up to the cost approved in RCE-III should have been allowed and considered for the tariff.

(b)The decision of the Commission not to consider the capitalization of expenditure till approval of RCE by the Central Government and to consider them after approval, in terms of the 2009 Tariff Regulations, instead of the 2004 Tariff Regulations, being the prevalent regulations at the time when the capital assets were put to use, would create serious complications and will not be consistent with the Tariff regulations notified by the Commission and the provisions of the Electricity Act, 2003. The

capital expenditure incurred and the elements of tariff admissible are to be admitted from COD and the effective servicing of capital expenditure cannot be postponed or deferred to a future date.

(c) The un-discharged liabilities in respect of this generating station may be considered in line with judgments of Appellate Tribunal for Electricity pertaining to the generating stations of NTPC. The Commission had considered the same in respect of the generating stations of NTPC and DVC subject to the final decision of the Supreme Court in the second appeal filed by the Commission.

(d) The inadvertent error in the calculation of FERV of ₹15.67 crore for 2005-06 may be rectified as detailed in para-4 of the petition.

2. In response, the representative of the respondent, UPPCL submitted as under:

(a) The Commission in its order dated 31.12.2008 in Petition no. 20/2008 had rejected some of the claims of the petitioner for capitalization during 2004-09 while granting liberty to the petitioner to claim the said expenditures after same is incurred. The petitioner may take up the matter to the Central Government for approval and if approved, the petitioner may approach the Commission to claim the expenditure as additional capital expenditure in accordance with the prevailing regulations.

(b) The Commission has not permitted any FERV and therefore the correction of error, if any, on this count does not arise.

(c) The expenditure of ₹14500 lakh was not approved by the Central Government while approving the RCE-III and this expenditure is related to the advances to the contractors on account of extension of time. These are disputed bills and the same is required to be examined.

(d) The Commission has rightly observed that some expenditure have been incurred during 2004-09 tariff period and certain liabilities are yet to be discharged. The approval of RCE-IV by GOI is still awaited. At such long distance of time it would not be prudent to keep the tariff for the period 2004-09 open to be finally determined after approval of RCE-IV. Thus, the petitioner should approach the Commission for capitalization of additional expenditure after approval of RCE-IV in accordance with the provisions of the 2009 Tariff Regulations, which is consistent with Commission's order dated 31.12.2008. The petitioner had not challenge the Commission's order dated 31.12.2008 and hence the petitioner cannot raise this issue now.

3. The learned counsel for the respondent, BRPL submitted as under:

(a) The additional capital expenditure claimed by the petitioner for the period 2004-09 is based on the RCE-IV approved by the Board of SJVNL but not yet approved by the Govt. of India. The claim of the petitioner for consideration of un-discharged liabilities is not maintainable as Commission in para-11 of its order dated 16.1.2013

has observed that the petitioner should approach the Commission for capitalization of additional expenditure after approval of RCE-IV by the Govt. of India.

(b) In order dated 16.1.2013, the Commission had not permitted any FERV and therefore, the correction of error, if any, on this account does not arise. The error pertains to the Commission's order in Petition No. 20/2008 dated 31-12-2008, which is sought to be reviewed. Since the petitioner had not filed review against order dated 31.12.2008 in Petition No. 20/2008, the review of error in FERV for ₹15.67 crore is not tenable in this petition.

4. The representative of the respondent, NDPL submitted that as per para -5 of the order dated 16.1.2013, various issues have been deliberated by the Commission and there is no error apparent in the order as raised in the review petition. The review petition filed by the petitioner is an appeal in disguise which is not permissible.

5. On a specific query by the Commission as to the status of RCE –IV, the learned counsel for the petitioner clarified that the same is still pending before the Government of India.

6. The Commission directed the parties to file their written submissions, on or before 20.6.2013. Subject to this, order in the petition was reserved.

By order of the Commission

Sd/-  
(T. Rout)  
Joint Chief (Law)