

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 27/2011

Coram:

**Shri Pramod Deo, Chairperson
Shri M.Deena Dayalan, Member**

Date of Hearing: 24.1.2012

Date of Order: 16.1.2013

IN THE MATTER OF

Revision of annual fixed charges considering the impact of additional capitalization of Nathpa Jhakri Hydro Power Station (6 x 250 MW) for the period from 1.4.2004 to 31.3.2009.

AND

IN THE MATTER OF

SJVN Limited, New Shimla

...Petitioner

Vs

1. Punjab State Power Corporation Ltd, Patiala
2. (i) Haryana Power Generation Corporation Ltd, Panchkula
(ii) Haryana Vidyut Prasaran Nigam Ltd, Panchkula
3. (i) Delhi Transco Ltd, New Delhi
(ii) North Delhi Power Ltd, Delhi
(iii) BSES-Rajdhani Power Ltd, New Delhi
(iv) BSES-Yamuna Power Ltd, New Delhi
4. (i) Jaipur Vidyut Vitaran Nigam Ltd, Jaipur
(ii) Ajmer Vidyut Vitaran Nigam Ltd, Ajmer
(iii) Jodhpur Vidyut Vitaran Nigam Ltd, Jodhpur
5. Himachal Pradesh State Electricity Board, Shimla
6. Power Development Department, Government of J&K, Jammu
7. Engineering Department, Union Territory of Chandigarh, Chandigarh
8. Uttar Pradesh Power Corporation Ltd, Lucknow
9. Uttaranchal Power Corporation, Dehradun
10. Government of Himachal Pradesh, H.P. Secretariat, Shimla **... Respondents**

Parties Present:

1. Shri Manoj Kumar Mittal, SJVNL
2. Shri R.K.Agarwal, SJVNL
3. Shri Ashok Kumar, SJVNL



4. Ms. Sonia Dogra, SJVNL
5. Shri Prashant Kumar, SJVNL
6. Shri Padamjit Singh, PSPCL
7. Shri T.P.S.Bawa, PSPCL
8. Shri R.B.Sharma, Advocate, BRPL
9. Shri Sanjay Srivastav, BRPL
10. Shri Jitendra Singh, BRPL

ORDER

This petition has been filed by the petitioner SJVN Ltd, for revision of annual fixed charges for Nathpa Jhakri Hydroelectric Power Station, (6x250 MW) (*hereinafter referred to as "the generating station"*) for the period from 1.4.2004 to 31.3.2009, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 ("the 2004 Tariff Regulations").

2. The generating station, located in the State of Himachal Pradesh, with an installed capacity of 1500 MW (6X250 MW) has been constructed by the petitioner, a joint venture between the Government of India and Government of Himachal Pradesh, as a run-of-river project with pondage. The generating station is designed to generate energy to the extent of 6984 MUs per annum in a 90% dependable year and 1500 MW of peak power. The dates of commercial operation of the different units of the generating station are as under:

Units	Date of Commercial operation
Unit- 5	6.10.2003
Unit – 6	2.1.2004
Unit – 4	30.3.2004
Unit – 3	31.3.2004
Unit – 2	6.5.2004
Unit – 1	18.5.2004 (date of commercial operation of the generating station)

3. The petitioner filed Petition No.184/2004 for approval of provisional tariff for the generating station for the period 1.4.2004 to 31.3.2009 and the Commission vide order



dated 17.6.2005 allowed provisional tariff @ ₹2.35/kWh (translated into two part tariff) for the years 2004-05 and 2005-06, based on the consensus reached between the petitioner and the beneficiaries of Northern Region. The Annual fixed charges of ₹133525 lakh and ₹141483 lakh were provisionally allowed for the years 2004-05 and 2005-06 respectively. Subsequently, the Commission approved the continuation of provisional tariff @ ₹2.35/kwh up to 31.3.2007. The Commission extended the continuation of the provisional tariff till 31.3.2008 and approved Annual Fixed Charges of ₹127812 lakh for 2007-08 on the basis of RCE-II approved cost of ₹766631 lakh vide order dated 5.9.2007 in I.A. No.13/2007. Thereafter, Petition No. 20/2008 was filed by the petitioner for approval of final tariff of the generating station for the period 2004-09. The Commission approved the annual fixed charges of the generating station based on the capital cost of ₹501786.89 lakh as on 31.3.2004 by its order dated 31.12.2008 as under:

	(₹ in lakh)						
	1.4.2004 to 5.5.2004	6.5.2004 to 17.5.2004	18.5.2004 to 31.3.2005	2005-06	2006-07	2007-08	2008-09
Days	35	12	318	365	365	366	365
Interest on Loan	2153	942	30413	32321	27847	22911	18134
Interest on Working Capital	17	3	2307	3403	3388	3390	3379
Depreciation	1168	510	16725	19704	19797	19930	19930
Advance Against Depreciation	0	0	5387	19879	19621	20024	20024
Return on Equity	3282	1437	46401	55347	55410	55936	55936
O & M Expenses	703	308	9771	12304	12797	13308	13841
Total	7322	3200	111003	142958	138860	135499	131243

4. Subsequently, by order dated 3.2.2009 in Petition No.20/2008, certain typographical errors as regards capacity index was corrected.



5. The petitioner in the present petition has claimed revision of annual fixed charges considering the impact of additional capital expenditure for 2004-09 as detailed below in terms of the 2004 Tariff Regulations:

- (a) Approve the revised Annual Fixed Charges (AFC) of the generating station considering impact of additional capitalization for the period 2004-09, in accordance with the applicable orders of the Commission and the terms and conditions prescribed through regulations notified on 26.3.2004 and its various amendments from time to time;
- (b) Approve the revision in AFC for the generating station considering the impact of additional capitalization for the period 1.4.2004 to 31.3.2009;
- (c) Approve the additional capitalization for the expenditure incurred against various settled claims;
- (d) Approve the additional capitalization for the advances paid towards the assets in use paid in cash but not capitalized for unsettled claims as mentioned in the petition. Considering this, allow for one more revision of AFC for the period 2004-09;
- (e) Approve not to deduct from gross block for the advances paid to contractors capitalized but not approved by GOI in RCE-III, as these advances were not part of gross block as per balance sheet;
- (f) Consider the un-discharged liability as on 1.4.2004 and 5.5.2004 on pro-rata units commissioned; and
- (g) Approve the weighted average rate of interest on loan as allowed in tariff order 20/2008.

6. Subsequently, the petitioner vide its affidavit dated 21.11.2011 had revised its claims for additional capital expenditure for 2004-09.

7. The respondents PSPCL, BRPL and UPPCL have filed their replies to the petition and the petitioner has filed its rejoinder to the replies filed by respondents, BRPL and PSPCL.

Maintainability

8. The respondent, BRPL in its reply dated 23.1.2012 has submitted that the petition is not maintainable as the Commission in its order dated 31.12.2008 had observed that

the claim for additional capital expenditure, if any, is to be made in accordance with the 'prevailing regulations'. Referring to paragraph 14 of the said order, the learned counsel pointed out that the expression "prevailing regulations" referred to in the said order would mean the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 and not the 2004 Tariff Regulations. He also submitted that the petitioner having failed to comply with the directions of the Commission given in the said order dated 31.12.2008 i.e. by not obtaining approval of the Central Government for Revised Cost Estimates and by not filing the petition in accordance with the prevailing regulations, namely, the 2009 Tariff regulations, the petition is not maintainable. The learned counsel further submitted that the question of retrospective revision of tariff may be considered by the Commission in the light of the judgment dated 3.3.2009 of the Hon'ble Supreme Court in Civil Appeal No.1110/2007. The learned counsel for the respondent reiterated the above submissions during the hearing on 24.1.2012. The representative of the respondent No.1, PSPCL adopted the above submissions and pointed out that the petition is not maintainable as the claim of the petitioner for additional capitalisation would not attain finality, considering the prayers made in serial Nos. 7 and 12 of the petition.

9. The petitioner in its rejoinder dated 23.1.2012 has submitted that Regulation 34(4) of the 2004 Tariff Regulations allows the petitioner to file petition for revision of tariff on account of additional capitalisation twice during the tariff period. Accordingly, this petition has been filed for first revision of tariff considering the impact of additional capitalisation in terms of Regulation 34(1) and (2) of 2004 Tariff Regulations. The petitioner has also submitted that the details of liabilities and expenditure incurred on assets in use, paid in

cash and deemed to be capitalised were submitted to the Commission. After considering the same, the Commission in its order dated 31.12.2008 had permitted the petitioner to claim additional capitalisation of these assets as and when capitalised. The petitioner has submitted that it has filed the present petition after complying with the requirements of the 2004 Tariff Regulations and order of the Commission. The petitioner has further submitted that additional capitalisation towards expenditure already incurred during tariff period 2004-09 has been claimed in the petition and the petitioner is not seeking retrospective revision of tariff as contended by respondent BRPL. The petitioner has submitted that the petition is maintainable.

10. Heard the parties and examined the documents on record. The Commission in its order dated 31.12.2008 in Petition No.20/2008 had rejected some of the claims of the petitioner for capitalisation during 2004-09 while granting the liberty to the petitioner to claim the said expenditures after the same is incurred. The observations of the Commission in the relevant paragraphs of the said order are set forth hereunder:

"14. Since the Central Government while approving the RCE-III had not approved the expenditure of ₹14500 lakh incurred as advances to contractors on account of extension of time (EOT), Dispute Review Board (DRB) and other claims in respect of major civil works, this expenditure has not been admitted for the purpose of tariff. As and when disputes related to these claims are finally settled, the petitioner may take up the case with Central Government for approval and, if approved by the Central Government, the petitioner may approach the Commission to claim the expenditure as additional capital expenditure in accordance with the prevailing regulations.

15. From the reconciliation statement of gross block claimed *vis-a-vis* capitalised gross block as per balance sheet as on 31.3.2007 submitted by the petitioner, it is observed that the petitioner has claimed the additional capital expenditure for the years 2007-08 and 2008-09 on projected basis. As additional capital expenditure can be claimed only when it is actually incurred and not based on projection, the expenditure incurred upto 31.3.2007, subject to prudence check by the Commission shall be considered.

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30. As already noted, the petitioner is at liberty to claim in accordance with law the amount of ₹13983.44 lakh as additional capital expenditure as and when the said expenditure is approved by the Central Government as part of the project capital cost.

31. The petitioner has claimed an additional capital expenditure of ₹ 36866.16 lakh (including FERV adjustment, expenditure on paid up non capitalised assets and interest adjustment of ₹10386 lakh) for the period 18.5.2004 to 31.3.2005 which pertains to the balance works like hydro electric machinery, initial capital spares, balance civil works, reinforced concrete pipelines, tanks, building, transformers, switchgear, batteries, etc which could not be capitalized because of non-completion, the same have been capitalized after the completion and may be allowed by the Commission. The petitioner has certified that the additional capital expenditure claimed has been arrived at after excluding the un-discharged liabilities. As most of the cases are either in dispute or recovery is pending from the contractor, the expenditure has not been capitalised. The petitioner is at liberty to claim additional capitalization for these assets as and when capitalized.”

11. It is evident from the above that the petitioner was granted liberty to approach this Commission for revision of tariff only after the same is included in the RCE and approved by the Central Government. The petitioner after discharging some of the liabilities / settling some of the disputed claims has got the expenditure approved by its Board and submitted the proposal to the Central Government for approval of RCE-IV during 2011. Pending approval by the Central Government, the petitioner has approached this Commission through this petition for revision of tariff based on the approval of its Board. In view of our direction that the expenditure can be capitalised only after the RCE is approved by the Central Government, the present petition is premature to that extent. The Commission had also directed that the petitioner would claim the expenditure as per the prevailing regulations. To this, the respondent BRPL has submitted that the petitioner cannot claim these expenditures under the 2004 Tariff Regulations as it has approached the Commission after expiry of the 2004-09 tariff period. We have considered the objections. It is noticed that most of the expenditures have been incurred after discharging the liabilities/settling the claims during the 2004-09

period and some expenditure have been incurred during the 2009-14 tariff period. Moreover, some more liabilities are yet to be discharged. The petitioner has taken up the matter with the Central Government for approval of RCE-IV which is still awaited. At such long distance of time, it will not be prudent to keep the tariff for the period 2004-09 open to be finally determined after approval of RCE-IV. This will also delay the process for determination of the tariff for the period 2009-14 for which petition has already been filed by the petitioner. In our view, the petitioner should approach the Commission for capitalisation of additional expenditure included in the present petition after approval of RCE-IV in accordance with the provisions of the 2009 Tariff Regulations, which is consistent with our order dated 31.12.2008 granting liberty to the petitioner to approach the Commission in accordance with the prevailing regulations. Though the order in the petition was reserved on the issue of maintainability, we consider it fit to dispose of this petition finally, since all expenditure claimed in the present petition have been included in RCE-IV, and there is no claim left in the petition for consideration and approval. The petitioner is however granted liberty to approach the Commission for capitalisation of expenditure after RCE-IV is approved by Central Government. The staff of the Commission is directed to process the tariff petition filed by the petitioner for the period 2009-14 for disposal at the earliest.

12. Petition No. 27/2011 is disposed of in terms of the above.

Sd/-
[Deena Dayalan]
Member

Sd/-
[Dr. Pramod Deo]
Chairperson

