

**Central Electricity Regulatory Commission
New Delhi**

Petition No. 4/RP/2013

in

Petition No. 229/GT/2012

Coram:

Shri V.S.Verma, Member

Shri M.Deena Dayalan, Member

Date of Hearing: 23.7.2013

Date of Order: 15.10.2013

In the matter of

Review of order dated 25.3.2013 in Petition No.229/GT/2012 regarding determination of tariff of Teesta-V Hydroelectric project (510 MW) for the period from 10.4.2008 to 31.3.2009.

And in the matter of

NHPC Ltd

.....**Petitioner**

Vs

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

.....**Respondents**

Present:

1. Shri Parag Saxena, NHPC
2. Shri S. K. Meena, NHPC
3. Shri R. B. Sharma, Advocate, GRIDCO
4. Shri S.R.Sarangji, GRIDCO

ORDER

This application has been made by the petitioner, NHPC Ltd, for review of order dated 25.3.2013 in Petition No. 229/GT/2012, whereby the Commission had determined the impact on annual fixed charges on account of additional capital expenditure incurred during the year from 10.4.2008 to 31.3.2009 in respect of Teesta Hydroelectric Project, Stage-V (3 x 170 MW) (hereinafter "the generating station") based on the provisions of the 2004 Tariff Regulations. The annual fixed charges determined by the said order are as under:

	(₹ in lakh)
	2008-09
	All units (10.4.2008 to 31.3.2009)
Depreciation	6057.30
Interest on Loan	7928.12
Return on Equity	15006.89
Advance against Depreciation	0.00
Interest on Working Capital	1021.76
O & M Expenses	3642.08
Total	33656.15

2. Aggrieved, the petitioner has sought review of the said order dated 25.3.2013 on the specific issue of 'error in the calculation of interest on loan'.

3. The Commission after hearing the petitioner on 11.6.2013 directed the completion of pleadings in the matter and accordingly listed the application for maintainability on 23.7.2013. The Commission after hearing the parties on 23.7.2013 granted time to the petitioner to file its rejoinder and reserved its orders in the application.

4. Reply to the application has been filed by the respondent No.6, GRIDCO and rejoinder to the said reply has been filed by the petitioner on 30.7.2013.

5. During the hearing, the representative of the petitioner made his submissions on the above issues and prayed that the order dated 25.3.2013 be reviewed for the reasons mentioned in the application. The learned counsel for the respondent GRIDCO objected to the prayer of the petitioner for review of the said order and submitted that the decisions of the Commission as regards calculation of 'Interest on loan' in order dated 25.3.2013 is in accordance with the past principles and practices adopted by the Commission in such cases. He also submitted that the scope and operation of the review petition should be limited to order dated 25.3.2013 and the reference to order dated 5.1.2010 in Petition No. 132 of 2009 is not acceptable as the petitioner has not filed any review or appeal against the said order dated 5.1.2010 and the same has attained finality. As regards 'interest on the difference in tariff' approved by order dated 25.3.2013, the learned counsel submitted that the review petition is not maintainable in the light of the observations of the Commission in its order dated 27.8.2007 in R.P No. 70/2007 wherein

it was held that the relief sought for by the petitioner and not expressly granted is deemed to have been refused. The learned counsel further submitted that there is no error apparent on the face of the order as submitted by the petitioner and the error in judgment if any cannot be cured in the review petition. Accordingly, the learned counsel prayed that the review petition may accordingly be dismissed as not maintainable. The petitioner in its rejoinder has submitted that Regulation 38(i) of the 2004 Tariff Regulations do not provide for treatment of depreciation as deemed repayment of loan during the year and accordingly, there is error in the calculation of repayment of normative loan during the year 2008-09 in the Commission's order dated 25.3.2013. The petitioner has also submitted that the judgments of the Appellate Tribunal (Tribunal) have been quoted in support of its contention that depreciation can be treated as repayment of loan when there is moratorium (zero repayment) and in all other years normative repayment has to be made pro rata of actual repayment and actual loan outstanding. It has also submitted that there is no moratorium in this generating station as actual repayment of ₹6.00 crore has been made during 2008-09 and hence depreciation cannot be treated as repayment of loan during 2008-09. The petitioner has further submitted that the methodology as interpreted by the Tribunal is applicable and binding on the Commission. It has been submitted that though order dated 5.1.2010 in Petition No. 132/2009 has not been challenged, the mention of order dated 5.1.2010 is unavoidable since the base figures for computation of tariff of 2008-09 has been derived from order dated 5.1.2010. Accordingly, the petitioner has prayed that the error apparent on the face of the order may be reviewed and tariff revised accordingly.

6. The submissions of the parties and the documents available on record have been examined. Regulation 38(i)(f) of the 2004 Tariff Regulations provides that "in case moratorium period is availed of by the generating company, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be worked out accordingly". The Commission, considering the historical background and the provisions of the 2004 Tariff Regulations, interpreted the said provision of the regulations to mean that if depreciation recovered in a year is more than the amount of

repayment during the year, the entire amount of depreciation is to be considered as repayment of loan for tariff computation. This methodology was applied uniformly by the Commission in all the petitions for determination of tariff of the generating stations of the petitioner for the period 2004-09, including this generating station. Against the said methodology adopted by the Commission in its orders, the petitioner filed several appeals before the Tribunal. In Appeal No.130/2006 filed by the petitioner in respect of Salal HEP, the Tribunal had held that the Commission, in the absence of any Regulation to this effect, has erred in coming to the conclusion that when depreciation recovered in an year is more than the amount of repayment during that year, the entire amount of depreciation is to be considered as repayment of loan for tariff computation. The relevant extract of the observations of the Tribunal in its judgment dated 10.12.2009 in Appeal No.130/2006 is as under:

"36. We are unable to agree with the view of the Commission that when depreciation exceeds the actual repayment the difference between depreciation and repayment amount be taken as normative repayment of loan as regulations only state that whenever the repayment amount exceeds the depreciation recovered, excess amount is to be allowed as Advance Against Depreciation. In our earlier judgment cited above this Tribunal has ruled that depreciation is an expense and not an item allowed for repayment of loan. In our view the Commission, in the absence of any Regulation to this effect has erred in coming to the conclusion that when depreciation recovered in an year is more than the amount of repayment during that year, the entire amount of depreciation is to be considered as repayment of loan for tariff computation".

7. Against the judgments of the Tribunal on this issue, the Commission has filed second appeals before the Hon'ble Supreme Court and the same are pending. No stay has been granted by the Hon'ble Court in the said appeals, except in case of Tanakpur generating station of the petitioner for 2004-09. In the above background and considering the fact that the findings of the Tribunal on this issue pertain to the interpretation of the provisions of Regulation 38(i) of the 2004 Tariff Regulations in respect of the tariff determined by the Commission for 2004-09 for other generating stations of the petitioner, the same should have been considered in order dated 25.3.2013 while working out the interest on loan. This aspect has been lost sight of inadvertently at the time of passing the order dated 25.3.2013. Non consideration of the findings of the Tribunal on this issue at the time of passing the order dated 25.3.2013 is according to us an error apparent on the face of the order which is required to be reviewed. Accordingly, review

on this count is allowed and the error is rectified by this order. Our decision in this case is subject to the final outcome of the appeals pending before the Hon'ble Supreme Court. We proceed accordingly.

8. In our order dated 25.3.2013, depreciation of ₹6057.30 lakh was considered as repayment of loan. Based on the discussions in para 7 above, the normative repayment of loan has been considered while calculating the interest on loan on account of which the repayment of loan has been revised to ₹593.15 lakh from ₹6057.30 lakh. Accordingly, interest on loan and Interest on Working capital as worked out in order dated 25.3.2013 have been revised as under:

Interest on loan

(₹ in lakh)	
2008-09	
All Units (10.4.2008 to 31.3.2009)	
Gross Opening Loan	139041.71
Cumulative Repayment up to Previous year	0.00
Net Loan-Opening	139041.71
Repayment during the year	593.15
Add: Additional Capitalization/drawl	13942.40
Net Loan-Closing	152390.96
Average Loan	145716.34
Weighted Average Rate of Interest on Loan	5.68%
Interest on Loan	8079.60

Interest on Working Capital

(₹ In lakh)	
2008-09	
All Units (10.4.2008 to 31.3.2009)	
Maintenance Spares	2428.05
O & M expenses	303.51
Receivables	5635.13
Total	8366.69
Rate of Interest	12.25%
Interest	1024.92

9. Based on the above, the annual fixed charges for the period 2008-09 determined by order dated 25.3.2013 is revised as under:

(₹ in lakh)	
2008-09	
All Units (10.4.2008 to 31.3.2009)	
Depreciation	6057.30
Interest on Loan	8079.60

Return on Equity	15006.89
Advance Against Depreciation	0.00
Interest on Working Capital	1024.92
O & M Expenses	3642.08
TOTAL	33810.79

10. The claim of the petitioner that the tariff determined by order dated 5.1.2010 is provisional and therefore it is entitled for adjustment with interest in terms of Regulation 5A of the 2004 Tariff Regulations deserve no merit, as the tariff of this generating station had been determined by the Commission in Petition No.132/2009 for the period 2008-09 by order dated 5.1.2010. The liberty granted by the Commission in Petition No.216/2010 with direction to the petitioner to file fresh petition after approval of RCE cannot in any way render the tariff determined by order dated 5.1.2010 as provisional tariff for the generating station. Hence, the prayer is not accepted. The petitioner shall claim the difference between the fixed charges approved vide order dated 25.3.2013 and this order, from the beneficiaries in three equal monthly installments.

11. Petition No. 4/RP/2013 is disposed of in terms of the above.

Sd/-
[M.DEENA DAYALAN]
MEMBER

Sd/-
[V.S.VERMA]
MEMBER