

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 5/RP/2015
in
Petition No. 115/GT/2013

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Date of Hearing: 09.06.2015
Date of Order: 18.09.2015

In the matter of

Review of Commission's order dated 22.1.2015 in Petition No.115/GT/2013 regarding approval of generation tariff of Teesta Low Dam Project Stage - III Hydroelectric project.

And in the matter of

NHPC Limited
NHPC Office Complex,
Sector-33, Faridabad,
Haryana-121003

...Petitioner

Vs

West Bengal State Electricity Distribution Company Ltd,
Vidyut Bhawan, 8th Floor,
Block DJ, Sector II,
Salt Lake, Kolkata – 700091

....Respondent

Parties present:

Shri A.K. Pandey, NHPC
Shri J.K. Jha, NHPC
Shri K.Nayak, NHPC
Shri Dhanush C.K., NHPC
Shri Ananda Shrivastava, WBSEDCL

Order

This review petition has been made by the petitioner, NHPC Ltd, for review of order dated 22.1.2015 in Petition No.115/GT/2013 whereby the Commission had determined the tariff of Teesta Low Dam Project Stage-III Hydroelectric project (hereinafter "the generating station") in terms of the Central Electricity Regulatory



Commission (Terms and Conditions of Tariff) Regulations, 2009 for the period from 1.4.2013 to 31.3.2014.

2. Aggrieved by the said order, the petitioner has sought review on the ground of error apparent on the face of the order on the following issues:

- (i) Reduction in the capital cost considered due to excess deduction of undischarged liability;*
- (ii) Error in calculation of interest on loan;*
- (iii) Error in calculation of O&M Expenses and*
- (iv) Applicability of interest in the absence of provisional tariff.*

3. The petition was heard on 7.4.2015 and the Commission by interim order dated 10.4.2015 admitted the review petition and ordered notice on respondent. The parties were directed to complete the pleadings in the matter. Thereafter the petition was listed for hearing on 9.6.2015 wherein, the respondent prayed for grant of time to file reply in matter. The Commission reserved its order in the petition after directing the parties to complete the pleadings in the petition.

4. No reply has been filed by the respondent in the said petition. During the hearing on 9.6.2015 the representative of petitioner prayed that the error apparent on the face of the order may be corrected and the order dated 22.1.2015 may be revised accordingly. We therefore, proceed to issues raised by the petitioner in this petition based on the submissions and documents available on record.

Reduction in the capital cost considered due to excess deduction of un-discharged liability

5. The petitioner in the original petition had claimed a capital cost of ₹192580.13 lakh on projected basis as on 1.4.2013 excluding un-discharged liability of ₹3269.45 lakh. The Commission relying upon the balance sheet liability figures for working out the capital cost for the purpose of the tariff, in order dated 22.1.2015 had deducted the



balance sheet liability (including provisions) amounting to ₹15013.84 lakh (instead of ₹3269.45 lakh) and accordingly, allowed the capital cost of ₹180773.16 lakh as on 1.4.2013.

6. The petitioner has now submitted that the Commission has deducted a higher liability amount of ₹15013.84 lakh from the capital cost as on 1.4.2013 instead of the amount projected by the petitioner. The petitioner has also submitted that the Commission has considered the amount of ₹3269.45 lakh towards discharge of liability in 2013-14 instead of ₹15013.84 lakh thereby causing reduction in input capital cost. According to the petitioner, the un-discharged liability of ₹15013.84 lakh as on 1.4.2013 and the deduction of the same from the capital cost should have been considered as discharge of liability in 2013-14 or upto the cut-off date (31.3.2016). The petitioner has further submitted that since the capital cost allowed as on 1.4.2013 is on projected basis, the same is required to be trued-up based on the actual expenditure as on actual COD of the generating station.

7. We have examined the matter. The issue for consideration is with regard to the un-discharged liability to be considered for the purpose of working out the capital cost in terms of Regulation 7 of the 2009 Tariff Regulations. In para 21 of the order dated 22.1.2015 the Commission has approved as under:

“21. The petitioner has claimed the capital cost of ₹192580 lakh as on 1.4.2013 (expected COD of station as considered in petition), which represents the actually incurred expenditure of ₹169158 lakh up to 30.6.2012 as per audited balance sheet and projected expenditure of ₹26692 lakh from 1.7.2012 to 1.4.2013, less un-discharged liabilities of ₹3270 lakh. The petitioner has not yet submitted the unit-wise actual capital cost duly audited, after commissioning of the generating station on 19.5.2013. The petitioner has claimed IDC, FC & ERV of ₹41854 lakh, including IDC of ₹4708 lakh on normative loan on projected basis upto 1.4.2013. The petitioner while working out the interest on normative loan has considered the rate of interest on annualized basis. However, the Commission has worked out IDC on normative loan on the basis of actual rate of interest. In this manner, IDC on normative loan works out to ₹4645 lakh. Thus, the petitioner has considered excess IDC of ₹63 lakh. This excess IDC has been adjusted against total IDC, FC & ERV of ₹41854 lakh while determining the capital cost. The adjusted IDC works out to ₹41791 lakh. Further, the petitioner in its petition has submitted the un-discharged liabilities of ₹3270 lakh as on 1.4.2013 on projected basis,



whereas on examination of the Balance Sheet of the generating station as on 31.3.2013, it has been observed that there are un-discharged liabilities amounting to ₹5908 lakh and provisions of ₹9106 lakh. Therefore, ₹15014 lakh (₹5908 lakh + ₹9106 lakh) (instead of ₹3270 lakh), has been deducted from the capital cost claimed to arrive at the admissible capital cost.”

8. It is evident from above that there is un-discharged liability of ₹5908 lakh and provision of ₹9106 lakh. The provisions made by the petitioner is considered as un-discharged liabilities for the purpose of capital cost in accordance with the 2009 Tariff Regulations and hence not allowed for capitalization as on COD of the generating station. Moreover, in the absence of a comprehensive break-up of un-discharged liabilities, it is impossible to identify as to whether the liabilities claimed by the petitioner falls under the head provision or un-discharged liability. In this background, the total amount of ₹15013.83 lakh has been deducted from the capital cost as on COD.

9. In terms of Regulation 9 of the 2009 Tariff Regulations, the liabilities discharged are admissible as additional capital expenditure during the period of discharge. As per balance sheet submitted by petitioner, it was noticed that the petitioner has actually discharged liabilities for ₹3269.45 lakh and hence the said amount was considered. Considering the factors in totality, the claim of the petitioner for considering the amount towards Provisions as un-discharged liabilities, is not admissible in terms of Regulation 9 of the 2009 Tariff Regulations. Hence, there is no error apparent on the face of the order dated 22.1.2015 and review on this count is rejected. However, the petitioner is directed to furnish on affidavit the detailed break-up of the expenditure towards un-discharged liabilities and Provisions along with the actual amount discharged by the petitioner, at the time of revision of tariff based on truing up exercise in terms of Regulation 6 (1) of the 2009 Tariff Regulations and the same is considered in accordance with law.



Error in calculation of interest on loan

10. The petitioner has submitted that the Commission in its order dated 22.1.2015 had calculated the interest on normative loan on annualized basis by considering the repayment equal to annualized depreciation. It has also pointed out that the annualized depreciation calculated has been directly deducted from the net loan opening as repayment of loan without pro-rata deduction of the same according to the period of the operation of the respective units of the generating stations. The petitioner while pointing out that the depreciation of the entire units declared under commercial operation has been calculated for the entire year (2013-14), has submitted that the depreciation should have been calculated on pro-rata basis from the COD of the respective units to 31.3.2014 and the same should have considered as repayment in the calculation of interest of loan. Accordingly, the petitioner has prayed that the error apparent on the face of the record may be corrected and the order dated 22.1.2015 may be reviewed on this count.

11. We have examined the matter. It is noticed that while working out calculations for interest on loan, the repayment of loan has also been inadvertently considered on annualized basis. In our view, the pro-rata depreciation is to be considered for the respective period for the calculation of interest on loan. This according to us is error apparent on the face of the order and the same is required to be reviewed. However considering the fact that the tariff of the generating station is to be revised based on actual at the time of truing-up, the error in the calculation of interest of loan will be rectified at the time of truing-up in terms of the Regulation 6(1) of the 2009 Tariff Regulations. The prayer of the petitioner on this count is disposed of as above.



Error in calculation of O&M Expenses

12. The petitioner has submitted that in terms of Regulation 19 (f) (v) of the 2009 Tariff Regulations, the O&M Expenses in respect of the generating station was worked out and submitted in the original petition. It has pointed out that the Commission's in its order dated 22.1.2015 has considered the capital cost as on COD including the additional capital expenditure upto 31.3.2014. Accordingly, the petitioner has submitted that there is error apparent in the calculation of O&M Expenses on account of (a) non consideration of capital cost upto the cut-off date and (b) the consideration of additional capital expenditure for 2013-14 (including liabilities discharged) only after COD of the generating station without pro-rata distribution of the same as on the COD of the 2 Units and 3 Units.

13. The matter has been examined. It is noticed that the O&M Expenses was worked out and allowed in order dated 22.1.2015 based on the capital cost of the COD of the generating station (19.5.2013), as the details of capital cost as on the cut-off date of the generating station (31.3.2016) was not available. As stated by the petitioner the Commission in its order dated 23.1.2015 in Petition No. 3/GT/2013 while determining the tariff of Chutak HE Project of the petitioner for the period from COD to 31.3.2014 had worked out and allowed the normative O&M Expenses considering the capital cost upto the cut-off date including the liabilities discharged. The decision in respect of Chutak HEP is applicable to this generating station of the petitioner. In this background, the prayer of the petitioner for revision of O&M Expenses is allowed. However the error will be rectified at the time of revision of tariff based on truing-up exercise in terms of the Regulation 6(1) of the 2009 Tariff Regulations.

14. The petitioner has also prayed for the revision in the calculations of interest of working capital and the consequential changes in the annual fixed charges in order



dated 22.1.2015. This prayer of the petitioner has been considered and the interest on working capital and annual fixed charges shall be revised based on the truing-up exercise to be undertaken in terms of Regulation 6(1) of the 2009 Tariff Regulations.

Applicability of interest / opportunity cost

15. The petitioner has submitted that in the original petition filed on 6.11.2012 for the period from the anticipated COD (1.4.2013) to 31.3.2014 it had prayed for grant of provisional tariff at 95% of the annual fixed charges during the pendency of the petition, in order to raise bills on the beneficiaries after COD. It has also submitted that it has been supplying power to the respondent from the COD of the 1st Unit and in the absence of any provisional/ final tariff order, it was not in a position to raise energy bills on the beneficiaries. The petitioner has further stated that during the intervening period from COD till the date of order (i.e. 1.4.2013 to 22.1.2015) the petitioner was supplying power to the respondent and only adhoc payments from July 2014 (₹169.20 crore) has been received which is less than the actual payment due as per tariff order dated 22.1.2015. Accordingly, the petitioner has prayed for recovery of the interest / opportunity loss from the beneficiary after adjustment of the payment made during the intervening period as stated above.

16. We have examined the matter. In terms of Regulation 5 (1) of the 2009 Tariff Regulations the petitioner had filed the petition on 6.11.2012 based on the anticipated COD of the generating station (1.4.2013) and had also prayed for grant of provisional tariff. It is noticed that after technical validation of the petition, the petitioner was directed by letters dated 20.12.2012 and 1.2.2013 to file additional information. Thereafter, the matter was heard on 25.7.2013 and orders were reserved by the Commission with direction to the parties to complete pleadings. However, keeping in view the objections of the respondent on the DIA report and the additional information



filed by the petitioner, the matter was re-heard on 15.4.2014 and after affording sufficient opportunity to the parties, the Commission passed orders in the said petition on 22.1.2015. Even otherwise, the provisions of the 2009 Tariff Regulations do not provide for the grant of interest/opportunity cost from the COD of the unit/station upto the date of determination of tariff of the generating station. Considering the factors in totality, we are not inclined to consider the relief prayed for by the petitioner.

Consideration of affidavit dated 13.8.2014

17. The petitioner vide affidavit dated 11.5.2015 has submitted that the affidavit dated 13.8.2014 (amended petition) filed in respect of original petition, based on actual/ audited cost as on COD and as on 31.3.2013 has not been considered by the Commission in order dated 22.1.2015. Accordingly it has prayed that the affidavit dated 13.8.2014 may be considered as truing-up petition for the tariff period 2013-14 for this generating station.

18. The matter has been examined. It is noticed that Petition No. 115/GT/2013 was finally heard by the Commission on 15.4.2014 and orders were reserved with directions to the parties to complete pleadings by 7.5.2014. As the said affidavit has been filed after the due date, the same was not considered in order dated 22.1.2015 while determining tariff of the generating station from COD to 31.3.2014. Hence, the contention of the petitioner is not acceptable. However, the said affidavit dated 13.8.2014 shall form part of the truing-up petition filed by the petitioner vide affidavit dated 12.8.2015 and will be considered on merits at the time of revision of tariff of the generating station based on truing-up exercise in terms of the Regulation 6(1) of the 2009 Tariff Regulations.

19. Review petition 5/RP/2015 is disposed of in terms of the above.

**-Sd/-
(A.S. Bakshi)
Member**

**-Sd/-
(A.K.Singhal)
Member**

**-Sd/-
(Gireesh B. Pradhan)
Chairperson**

