

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 1/RP/2020
in
Petition No. 43/GT/2018

Coram:
Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member

Date of Order: 22nd July, 2020

In the matter of

Review of Commission's order dated 28.10.2019 in Petition No.43/GT/2018 pertaining to approval of tariff of Kishanganga Hydroelectric Project (330 MW) for the period from 18.5.2018 to 31.3.2019.

And

In matter of

NHPC Limited
NHPC Office Complex, Sector-33, Faridabad,
Haryana - 121 003

..... **Petitioner**

Vs

1. Power Development Department
New Secretariat
Jammu - 180001
2. Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14-Ashok Marg,
Lucknow- 226001
3. Chhattisgarh State Power Distribution Company Limited
Vidyut Seva Bhavan, Danganiya
Raipur - 492 013

..... **Respondents**

Parties Present

Shri Sachin Datta, Senior Advocate, NHPC
Shri Rajiv Shankar Dwivedi, Advocate, NHPC
Shri M G Gokhale, NHPC



ORDER

The Petitioner, NHPC Limited, has filed this Review Petition against the Commission's order dated 28.10.2019 in Petition No. 43/GT/2018 whereby the tariff of Kishanganaga hydroelectric project having capacity of 330 MW (hereinafter referred to as 'the generating station') for the period from the actual COD of the Units (Units 1 to 3) till 31.3.2019 was determined in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "the 2014 Tariff Regulations").

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

- a) *Treatment of normative IDC up to scheduled COD;*
- b) *Treatment of normative IDC from scheduled COD to actual COD;*

3. The Commission heard the learned Senior Counsel for the Petitioner on 'admission' through Video Conferencing on 25.6.2020. The above issues are discussed in the subsequent paragraphs.

Treatment of Normative IDC up to Scheduled COD

4. As regards normative IDC up to scheduled COD, the Commission in its order dated 28.10.2019 held as under:

"15. The Petitioner has furnished the details of the amount, date of drawl, rate of interest etc. in respect of loans. In addition to above and in terms of Regulation 9 (2) (b) (ii) of the 2014 Tariff Regulations, the Normative IDC (up to SCOD) over and above the actual IDC has been worked out, considering the quarterly debt-equity position corresponding to actual cash expenditure as per Form-14A. It is pertinent to mention that the Petitioner has drawn subordinate debt amounting to Rs 267667 lakh up to the COD. However, there is no interest on the subordinate debt during construction and the interest which accrues shall be paid annually after commissioning. Accordingly, IDC and normative IDC have been allowed as under:



(Rs in lakh)

	As on 18.05.2018 (Unit-1)	As on COD of the station (24.05.2018) - all units
IDC	2573.14	7737.44
Normative IDC	1450.51	4351.52
Total	4023.65	12088.96

5. The Petitioner in this review petition has submitted the following:

(a) The Petitioner in Form 14 of the original petition has given details of the fund inflows, the fund provided by the Central Government as well as the loan taken from commercial banks. It also highlighted that though the Government had provided the subordinate debt, it was not fulfilling the debt requirement and, therefore, the Petitioner had also provided funds from its internal resources. This chart also provided details of loan taken from commercial banks. Accordingly, normative IDC was claimed based upon the applicable regulations.

(b) Based on Regulation 9(2) of the 2014 Tariff Regulations, the Petitioner had claimed interest on its contribution to debt portion which was in excess of 30% of equity amount and claimed interest at the weighted average rate of interest applicable upon the petitioner company for those amounts. The Petitioner had further claimed interest at the rate of commercial borrowing after the loan was taken from the commercial banks. However, the Commission in para 15 of its order dated 28.10.2019 had deducted an amount of Rs. 32454.00 lakh from the capital cost on account of reduction in normative IDC for the purpose of tariff.

(c) The Commission has considered zero rate of interest for computation of normative IDC during the period from September 2010 to December 2011. Thereafter, from January 2012, when the Petitioner started drawing commercial loan, the Commission has considered interest rate of 0.62% to 0.87% only for the computation of normative IDC.

(d) The Commission has restricted the computation of normative IDC upto scheduled COD of the generating station only and IDC on normative loan has not been allowed beyond SCOD. On a detailed analysis of the normative IDC allowed by the Commission as against the amount claimed by the Petitioner, it is observed that the Commission has not considered the material facts while calculating the normative IDC. This is an error apparent on the face of the record.

(e) As per sanction of CCEA (Cabinet Committee on Economic Affairs), MOP (Ministry of Power), GOI has to provide budgetary support in the form of subordinate debt (approx. 65% of project cost) based on financial and physical progress of the project. This subordinate debt would not carry any interest during construction of the project but would attract interest @1% per annum after commercial operation date (COD). Its repayment would start from the 11th year after the COD and it would be repaid in 10 years.



(f) In respect of the generating station, the funds were deployed since 2001 whereas MOP, GOI started funding the project through subordinate debt from September 2010 onwards. Further, the Petitioner started drawing commercial loan for this project from January 2012. Accordingly, the interest rate applicable to the Petitioner Company as a whole has been considered by the Petitioner during the period 2001-02 to December 2011 for computation of interest on normative loan.

(g) January 2012 onwards, the Petitioner has considered the interest rate of commercial loan for computation of normative IDC, as the Petitioner had started drawl of commercial loan from January 2012. In short, the Petitioner calculated the interest on normative loan till the start of drawl of commercial loan based on weighted average rate of interest applicable to the Petitioner Company as a whole. Once the petitioner started drawing commercial loan, the interest on commercial loan has been considered on excess equity capital for computation of normative IDC.

(h) It is presumed that the Commission has considered the weighted average rate of interest as 'zero' because of subordinate debt which has zero rate of interest during construction, but the Commission has not considered that the funding gap in the total debt portion of 70% of the capital expenditure (so as to fulfill the debt-equity ratio of 70:30) has been met by the Petitioner from its internal resources which is eligible for normative interest. Thus, the Commission has erred in not allowing the interest on normative loan for the portion which has been met through internal resources.

(i) The internal resources deployed by the Petitioner carry a cost which cannot be taken as 'zero'. Had the internal resources not been deployed, then the commercial loan would have been required to fund the above gap and then the commercial loan would have a rate of interest much more than that of weighted average rate of interest of the loan portfolio of the Petitioner Company.

(j) Further, from January 2012 to SCOD, the Commission has considered the reduced weighted average rate of interest (by considering 'zero' rate of interest for subordinate debt) to the tune of 0.62%-0.87% for computation of normative IDC. While the Commission has considered both the subordinate loan and commercial loan in working out the weighted average rate of interest, it has not considered the fact that there is a funding gap in meeting the total capital expenditure, which the Petitioner has met from its internal resources.

(k) The consideration of the interest rate of 0.00% for subordinate debt and actual rate of interest in respect of commercial loan has resulted in substantial reduction in the weighted average rate of interest and consequent reduction in normative IDC. The Commission has mentioned that IDC and normative IDC has been calculated in line with Regulation 9(2)(b) of the 2014 Tariff Regulations, which is silent on the rate at which interest is to be calculated. The Commission has invoked the provisions of Regulation 26(5) of the 2014 Tariff Regulations for computation of rate of interest for calculation of normative IDC. As this Regulation is meant for computation of 'interest on loan capital' post COD, the application of



the same during construction phase for providing 'zero'/ negligible return on investment is not justified.

(l) The Petitioner has been penalized in the instant case for funding through its internal resources by providing interest on normative loan at 'zero'/'negligible' rates. This is against the principle of natural justice.

(m) The methodology adopted by the Commission for calculating the normative IDC is also against the basic intent of Tariff Policy 2016 where it is mentioned that reasonable return on investments should be allowed to the developer. Further, it is also mentioned in the Policy that equity in excess of 30% should be treated as loans advanced at the weighted average rate of interest after ascertaining the reasonableness of the interest rates.

Accordingly, the Petitioner has submitted that there is an error apparent on the face of the order dated 28.10.2019 in the computation of normative IDC and the same may be revised to the normative IDC as claimed by the Petitioner in the original petition.

6. During the hearing, the learned Senior counsel for the Petitioner reiterated the above submissions and prayed that review on this ground may be allowed.

7. We have examined the submissions of the Petitioner and the documents on record. Admittedly, the Petitioner in the original petition had furnished the details of the amount, date of drawl, rate of interest etc., for the purpose of calculation of normative IDC. The Petitioner had drawn subordinate debt amounting to Rs.2,67,667 lakh up to the actual COD of the generating station. Before the drawl of subordinate debt in September 2010, the corporate rate of interest of the Petitioner company, varying between 7.97% and 12.52%, as submitted by Petitioner, was considered and applied for the calculation of normative IDC for the period from first infusion of fund in 2001-02 till 2010-11. However, after the drawl of subordinate debt during 2010-11 (September 2010), which had 'zero' interest obligation up to the COD, the reference



rate for weighted average rate of interest became 'zero' for the period from September 2010 to December 2011, taking into account the claimed corporate rate of interest for the Petitioner company and 0% rate of interest for subordinate debt, since the drawl of commercial loan commenced only in January 2012. Consequent upon this, no normative IDC was allowed for the period from September 2010 to December 2011. As the commercial loan was deployed from January 2012, the weighted average rate of interest on loan was calculated considering the interest rate of 0.00% for subordinate debt and actual rate of interest for commercial loan.

8. The Petitioner has contended that the Commission has invoked the provisions of Regulation 26(5) of the 2014 Tariff Regulations for computation of rate of interest for calculation of normative IDC, which is meant for computation of 'interest on loan capital' post COD and the application of the same during the construction phase for providing 'zero'/ negligible return on investment is not justified.

9. This submission of the Petitioner is misconceived. It is pertinent to mention that in any project, in general, loans taken are not different for different periods i.e. pre-COD and post COD and the loan duration is such that it encompasses both the construction as well as operation period. As such, the interest on loan as applicable is payable to the bank/ lender on the terms and conditions of loan. Only the expenditure during construction period is capitalized and the expenditure during the operation period is charged to revenue in books and allowed in tariff as a distinct element under the head interest on loan. Even in the present case when there was no loan drawn by the Petitioner during the construction period, the claim of the



Petitioner for interest on loan during construction period was allowed based on the second proviso to Regulation 26(5) which provides as under:

“Provided further that if the generating station or the transmission system, as the case may be, does not have actual loan, then the weighted average rate of interest of the generating company or the transmission licensee as a whole shall be considered.”

10. As stated, the subordinate debt (given by Government of India) is also an actual loan with 0% interest rate during the construction period. Once the said loan gets drawn, the rate of interest shall be the weighted average rate of interest calculated on the basis of the actual loan portfolio after providing appropriate accounting adjustment for interest capitalized in terms of the proviso to Regulation 26(5) of the 2014 Tariff Regulations. The weighted average rate computed as above gets further modified when in addition to the subordinate debt another actual loan is added to the loan portfolio of the generating station. It is pertinent to mention that while calculating the interest on loan post COD of the generating station, the applicable rate of interest for subordinate debt i.e. 1% p.a. has been taken into consideration. Thus, as stated above, the Commission in the impugned order had worked out the weighted average rate of interest and allowed the normative IDC up to the scheduled COD in terms of the Regulation 9(2)(b)(ii) of the 2014 Tariff Regulations. In our view, no case is made out for review of the order on the ground that Regulation 9(2) is silent on the rate at which interest is to be calculated and, therefore, requires amendment and that the calculation of normative IDC is against the basic intent of Tariff Policy 2016. Further, it is settled law that review is by no means an appeal in disguise, whereby an erroneous decision is re-heard and corrected, but lies only for patent error. In view of this, we do not find any error apparent on the face of the



order and the prayer of the Petitioner for review of order dated 28.10.2019 on this count is rejected.

Treatment of normative IDC from SCOD to actual COD

11. The Petitioner has submitted that as against the claim made in the main petition, the Commission in its order dated 28.10.2019 had not allowed IDC on normative loan from the scheduled COD to the actual COD as tabulated under:

(Rs in crore)

Year / Month	Cumulative expenditure	Equity (30%)	Debt (70%)				Claimed in main petition		Allowed in order dated 28.10.2019	
			Commercial loan	Subordinate Debt	Normative Loan	Total Loan	Weighted Average rate	NIDC amount	Weighted Average rate	NIDC amount
1	2	3	4	5	6=2-3-4-5	7=4+5+6	8	9	8	9
2015-16 (from SCOD)	4476.20	1342.86	168.25	2380.44	584.65	3133.34	9.90%	4.70		0.00
2016-17	4818.99	1445.70	160.11	2380.44	832.74	3373.29	9.45%	69.41		0.00
2017-18	5310.55	1593.17	154.02	2676.67	886.69	3717.38	9.04%	82.58		0.00
2018-19 to 24.5.2018	5322.37	1596.71	154.02	2676.67	894.97	3725.66	7.88%	9.15		0.00

12. The Petitioner while pointing out that the Commission in para 13 of the order dated 28.10.2019 has concluded that the delay in execution of the project was due to reasons beyond the control of the Petitioner, has submitted that once the delay in project execution is not attributable to the project developer, the entire capital cost including IDC & FC should be allowed for the purpose of tariff. It has also stated that as the normative IDC form part of the project funding, disallowing IDC on normative loan is not justified. The Petitioner has further submitted that the Commission in a similar case in respect of another hydro power project in Petition No. 315/GT/2018 has allowed the normative IDC beyond SCOD and up to actual COD by order dated



26.6.2019 during the tariff period 2014-19 and hence the approach in the present case cannot be different. The Petitioner has added that since the delay in the execution of the project were due to reasons beyond the control of the Petitioner and for consistency in approach, the Commission may allow the IDC on normative loan from the scheduled COD to actual COD as prayed for by the Petitioner.

13. During the hearing, the learned Senior counsel for the Petitioner reiterated the above submissions and prayed that review on this ground may be allowed.

14. We have examined the matter and the documents available on record. Regulation 11(A) of the 2014 Tariff Regulations provides as under:

“(A) Interest during Construction (IDC)

(1) Interest during construction shall be computed corresponding to the loan from the date of infusion of debt fund, and after taking into account the prudent phasing of funds up to SCOD.

(2) In case of additional costs on account of IDC due to delay in achieving the SCOD, the generating company or the transmission licensee as the case may be, shall be required to furnish detailed justifications with supporting documents for such delay including prudent phasing of funds:

Provided that if the delay is not attributable to the generating company or the transmission licensee as the case may be, and is due to uncontrollable factors as specified in Regulation 12 of these regulations, IDC may be allowed after due prudence check:

Provided further that only IDC on actual loan may be allowed beyond the SCOD to the extent, the delay is found beyond the control of generating company or the transmission licensee, as the case may be, after due prudence and taking into account prudent phasing of funds.”

15. In terms of the second proviso to the above Regulation, only IDC on actual loan is allowable in case the delay is found to be beyond the control of the generating company, on prudence check. In the present case, the Commission in its order dated 28.10.2019 had condoned the time overrun of 28 months and 1 day and the cost overrun involved in the generating station was allowed on the ground that the same



was found not to be attributable to the Petitioner, on prudence check. Accordingly, in terms of the second proviso, the Commission had allowed IDC on actual loan beyond SCOD and till actual COD. As there is no provision for the grant of IDC on normative loan beyond SCOD till the actual COD as per the second proviso of the above Regulation, the same was not allowed in the case of the Petitioner.

16. It is pertinent to mention that at the time of framing the 2014 Tariff Regulations, some of the stakeholders including generating companies had submitted that if the delay in commissioning of project is found beyond control of the developer, then, in addition to the IDC on actual loan, IDC on normative loan too should be allowed as part of capital cost. Rejecting this submission, the Commission in the Statement of Reasons to Regulation 11 of the 2014 Tariff Regulations had observed as under:

“13.9 Some developers and generating companies submitted that if delay in commissioning of project is found beyond control of the developer, then, in addition to the IDC on actual loan, IDC on normative loan (viz. Equity investment in excess of 30%) too should be allowed as part of Capital Cost. Further, equity infusion beyond the prescribed debt: equity ratio should be treated as normative debt and interest on such normative debt should be considered as IDC.

13.10 POWERGRID requested clarification on the provisions of IDC to be allowed on the normative loan (in case equity deployment is higher than 30% of the project cost) and suggested to add following proviso in sub-clause (2) of clause 11(A) of the draft Regulations:

“Provided that in case the actual equity deployment is more than 30%, the excess equity will be treated as normative loan and normative IDC shall be allowed on such equity invested by the generation or transmission company as the case may be.”

17. The Commission having considered and rejected the submissions of the stakeholders for permitting the IDC on normative loan at the time of framing of the 2014 Tariff Regulations, the same cannot be reviewed based on the submissions of the Petitioner. The submissions of the Petitioner, if accepted, would amount to amendment of the said Regulations which has been notified after extensive



stakeholder consultations. In our view, there is no error apparent on the face of the record and the Petitioner has sought to argue the case on merits, which is not permissible in review. As regards the contention of the Petitioner that the Commission had allowed IDC on normative loan from SCOD to actual COD in its order dated 26.6.2019 in Petition No. 315/GT/2018 and the same approach should be adopted in the present case of the Petitioner, we notice that the tariff determined by the said order dated 26.6.2019 is subject to revision based on truing-up exercise. Hence, the reliance on the said decision by the Petitioner, which is also subject to revision is not acceptable. Therefore, we find no reason to review the order dated 28.10.2019 and accordingly the review on this count also fails.

18. Petition No. 1/RP/2020 in Petition No. 43/GT/2018 is disposed of in terms of the above at the admission stage.

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

Sd/-
(P.K. Pujari)
Chairperson

