

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Shri Bhanu Bhushan, Member**
- 2. Shri R. Krishnamoorthy, Member**

**Review Petition No. 1/2008
In
Petition No.56/2007**

In the matter of

Review of order dated 31.10.2007 in Petition No 56/2007 - Approval of provisional generation tariff of Omkareshwar Hydro Electric Project of Narmada Hydroelectric Development Corporation Limited, under Regulation 79(1) of the CERC (Conduct of Business) Regulations, 1999 and Section 79 (1) (a) of the Electricity Act, 2003.

And in the matter of

M.P. Power Trading Company Ltd, Jabalpur

...Petitioner

Vs

1. Narmada Hydro Electric Development Corporation, Bhopal
2. Narmada Valley Development Department, Bhopal

...Respondents

The following was present:

Shri Pradeep Misra, Advocate, MPPTCL

**ORDER
(DATE OF HEARING : 26.2.2008)**

This application has been made by M.P. Power Trading Company Ltd, (hereinafter referred to as "the review applicant") seeking review of order dated 30.10.2007 in Petition No 56/2007 vide which provisional tariff in respect of Omkareshwar Hydro Electric Project (hereinafter referred to as "the generating station") for the period 1.5.2007 to 31.3.2008, in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2004 (hereinafter referred to as "the 2004 Regulations"), was awarded.

2. We have gone through the application and heard the learned counsel for the review applicant.

3. The lone prayer in this application is that the provisional annual fixed charges awarded vide the Commission's order dated 30.10.2007 be reduced corresponding to generation of 50 MW per machine as per P1/P formula applied in the case of Indira Sagar Hydel Project in Petition No 119/2005.

4. According to the review applicant, a request to the above effect was made by it in para 3 (A) (ii) of its reply to the original petition and the same was erroneously turned down by the Commission. The review applicant has relied on the following extract in the Commission's order dated 30.10.2007 in Petition No. 56/2007:

"9. At the hearing of the petition, it was submitted by the petitioner that on account of the ongoing court proceedings and the delay in shifting the project-affected families, the reservoir of the Omkareshwar project could be filled up to EL 189.0M only, compared to the Full Reservoir Level at EL 196.60 M, as a result of which the maximum output achieved on continuous basis is 50 MW per machine after conducting the requisite tests, as against the installed capacity of 65 MW per machine.

10. As regards the reasons for delay in Rehabilitation & Resettlement (R&R) works causing loss of peak power, the petitioner has submitted that under R & R cost being charged to the project, they have provided sufficient funds to the Govt. of Madhya Pradesh, for making necessary payments to the affected families. It has been urged by the petitioner that the Govt. of Madhya Pradesh is responsible for implementing the various activities relating to the R & R and the petitioner should not be held responsible for the restricted filling of reservoir and consequent loss of peak power from the generating station.

xxx

13. The petitioner is not responsible for loss of peak power from the generating station (on account of delay in R&R work by the respondent) and therefore we consider this to be a fit case for relaxation of the provision under clause 13 of the 2004 regulations. The petitioner is entitled to recover full annual fixed charges on provisional basis. However, the petitioner is not entitled to claim incentive on account of capacity index until full maximum output of 65 MW per machine is achieved."

5. The review applicant has stated that pursuant to the above observation, it sought clarification from Narmada Valley Development Department of the Government of Madhya Pradesh (hereinafter referred to as “the State Government”), who had clarified the position as under:

“Govt. of Madhya Pradesh is not responsible for the restricted filling of the reservoir and consequent loss of peak power from the generating station. R&R of the oustees is the joint responsibility of the Joint Venture and GoMP. R&R works are being carried out by JV, and GoMP is providing necessary assistance. MOU entered between NHPC and GoMP for implementation of the project, clearly states about this provision. The relevant clause (VII) (a) of MOU is reproduced below :

“The work of R&R of the oustees of the two projects would be the joint responsibility of the joint venture and GoMP. The entire expenditure incurred on this account would be borne by joint venture. This activity would be implemented in accordance with the R&R policy as already approved for these projects. GoMP would provide staff on deputation to enable the joint venture to carry out this task. It shall be the responsibility of the GoMP to ensure the timely acquisition of the land, resettlement of PAPS and vacation of lands required for the project in accordance with the project implementation schedule.”

The delay in filling the reservoir is due to NBA’s petition pending in Hon’ble High Court of MP and status quo orders issued by the Hon’ble Supreme Court with regard to the reservoir level. Looking to the above facts it cannot be concluded that GoMP is responsible for restricted filling of reservoir and consequent loss of peak hour from the generating station.”

6. The review applicant contends that the first respondent, Narmada Hydro Electric Development Corporation (hereinafter referred to as “NHDC”) did not raise any issue in the petition that it had provided sufficient fund to the State Government for making necessary payment to affected families and, therefore, it should not be held responsible for restricted filling of the reservoir and consequent loss of peak power from the generating station. The MOU between NHDC and the State Government states that work of Resettlement and Rehabilitation of oustees is joint responsibility of NHDC and the State Government. The review applicant has urged

that simply on the basis of the statement by NHDC, it should not have been concluded that the State Government was responsible for the delay in Resettlement and Rehabilitation

7. The review applicant has further pleaded that it is not at fault for restricted filling of the reservoir. The Commission's order cannot prejudice the review applicant since under the agreement as also by the court's order, NHDC with the State Government is responsible for implementing Resettlement and Rehabilitation works so that the reservoir could reach FRL level. Thus, because of non-compliance of the joint responsibility of NHDC and the State Government, the applicant should not be prejudiced by being required to pay full capacity charges when peaking is not achieved.

8. The review applicant has stated that it is not concerned with the Resettlement and Rehabilitation work and is responsible for safeguarding the interest of the consumers. In these circumstances and in the interest of ultimate consumers, it would be justified to apply PI /P formula.

9. We have given our careful consideration to the submissions made by the review applicant and proceed to dispose of the matter.

10. On the face of it, we observe that the review applicant has neither brought out any mistake or error apparent on the face of record nor any new fact not available earlier, justifying review. It has tried to re-argue a decided issue. Accordingly, the application is not maintainable and is liable to be dismissed on this preliminary ground. However, in the interest of justice and to facilitate satisfaction of the parties, we would like to clarify the issues in the succeeding paras.

11. On the question of application of P1/P formula for the tariff of the generating station as was applied in the case of Indira Sagar HEP, it is apparent that the ground realities of the two cases are different. In the case of Indira Sagar, full reservoir level could not be achieved because the dam for storage of water was incomplete on the dates of commercial operation of different units. As such, the Commission was able to adopt a reasonable compromise by reducing the annual fixed charges to be recovered by applying PI/P formula. On the contrary, in case of this generating station, the dam is already complete but could not be filled up to its FRL because of the orders issued by the Hon'ble High Court of Madhya Pradesh, which have not been vacated by the Hon'ble Supreme Court of India with regard to reservoir level not to be filled beyond EL 189 M, on account of rehabilitation measures to be taken up by the concerned authorities of the State Government and NHDC. In this case, the dam is complete to get the reservoir filled up to FRL of EL 196.6 M and correspondingly generate so as to achieve the maximum peaking of 65 MW per machine but NHDC has been constrained to restrict the filling up to EL 189 M to generate 50 MW. Thus, failure to provide peak power is attributable to reasons beyond the control of NHDC. Hence, there is no justification for application of PI/P formula while deciding the provisional tariff for the generating station. As NHDC is not held responsible for the failure to achieve peak power, it is entitled to recover full annual fixed charges. The Commission, at para-18 of its order dated 30.10.2007 had only expressed its hope that the State Government would make all out efforts to solve the Resettlement and Rehabilitation problems of the project affected families in the interest of consumers at large.

12. It is also pertinent that clause (VII) (a) of the MOU signed between State Government and NHPC provides as under::

“The work of Resettlement and Rehabilitation (R&R) of the oustees of the two projects would be the joint responsibility of the joint venture and GOMP. The entire expenditure incurred on this account would be borne by the joint venture. This activity would be implemented in accordance with the R&R policy as approved for these projects. GOMP would provide staff on deputation to enable the joint venture to carry out this task. It shall be the responsibility of GOMP to ensure the timely acquisition of land, resettlement of PAPs and vacation of lands required for the project in accordance with the project implementation schedule.”

13. Above quoted clause of the MOU establishes beyond doubt that the State Government has a primary role to play in term of timely acquisition of land, resettlement of PAPs and vacation of lands required for the project, which, for obvious reasons is not in the hands of NHDC. While we appreciate the fact that it is the joint responsibility of NHDC and the State Government to take care of Resettlement and Rehabilitation problems and that had it been properly implemented, the matter would not have been escalated, we are unable to hold NHDC responsible for the delay in this regard and disentitle it for the full recovery of the fixed charges due to it.

14. We do hope that all Resettlement and Rehabilitation related problems of the project-affected families will get settled quickly with the joint efforts of NHDC and the State Government so that reservoir could be filled up to its FRL during the ensuing monsoon, so as to achieve maximum peaking power of 65 MW per unit , failing which the zero cost hydro energy will be allowed to spill.

15. In view of the above, this review petition is dismissed at the admission stage itself.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

New Delhi dated 9th June 2008