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12.Shri	D.S. Ahluwalia, SM (F&A), NHPC
13.Shri	V.K. Kanjlia, NHPC
14.Shri	R.K. Arora, XEN (T), HVPNL
15.Shri	G.M Agrawal, Dy. CE (Comm), RVPN
16.Shri	K.K. Mittal, XEN (ISP), RVPN
17.Shri	D. Chandra, XEN, NREB
18.Shri	Amarjeet Singh, S.E., NREB
19.Shri	T.P.S. Bawa, S.E., PSEB
20.Shr	S.R. Narasimhan, NRLDC
21.Shr	H.C. Verma, EE, UPPCL
22.Shr	S.P. Srivasta, Sr. AE, UPPCL

**ORDER (DATE OF HEARING  
6.3.2003)**

The application for review has been filed by National Hydroelectric Power Corporation Ltd. (in short, NHPC) with a prayer for modification of the order dated 27.7.2002 in Petition No.64/2001, to the extent of alleged errors and on the grounds mentioned in the application for review, with a further prayer to modify and allow the annual fixed charges for the power sold from Salal Hydro Electric Project (in short, Salal HEP) for the period from 2000-01 to 2003-04 as per para (I) of the application for review.

2. The Commission in its order dated 27.7.2002 in Petition No.64/2001 had approved tariff, which included fixed charges as well as the energy charges for the power sold from Salal HEP to the respondents, based on the norms contained in the Commission's notification dated 26.3.2001. The prayer for review is confined to fixed charges only. The replies to the application for review have been filed on behalf of respondent No.1, Punjab State Electricity Board; respondent No.2, Haryana Vidyut Prasaran Nigam Ltd and respondent No.4, Uttar Pradesh Power Corporation Ltd.

3. The different issues raised in the application for review are discussed in the succeeding paragraphs.

**Gross Block as on 31.3.1997**

4. Prior to enactment of Electricity Regulatory Commissions Act, 1998, the terms, conditions and tariff for sale of electricity by a generating company wholly or partly owned by the Central Government was determined by the Central Government by virtue of powers under Section 43A (2) of the Electricity (Supply) Act, 1948. In exercise of these powers, the Central Government in Ministry of Power had notified tariff for the period from 1.4.1997 to 31.3.2002 in respect of Salal HEP. However, after the enactment of Electricity Regulatory Commissions Act, 1998 and establishment of the Commission, these powers came to be vested in the Commission. The Commission notified the terms and conditions of tariff, which came into effect on 1.4.2001. Therefore, NHPC filed an application for approval of tariff for the period from 1.4.2001 to 31.3.2004 based on terms and conditions of tariff notified by the Commission.

5. NHPC in the petition for approval of tariff had submitted details of actual expenditure of Rs.882.15 crore, including initial spares of Rs.6.24 crore as on 31.3.1997 and sought approval of tariff accordingly. It also claimed additional capitalisation of Rs.58.73 crore during the period from 1.4.1997 to 31.3.2001. The Commission, however, considered the gross block as on 31.3.1997 of Rs.874.02 crore, excluding cost of initial spares of Rs.6.24 crore as considered by the Central Government in

Ministry of Power while notifying tariff for the period from 1.4.1997. According to NHPC, the Commission should have considered the actual expenditure of Rs.882.15 crore, the details of which duly audited and certified by statutory auditors of the company were furnished along with the petition. According to NHPC, non-consideration of gross block of Rs.882.15 crore is an error apparent on the face of record and can be corrected through the process of review.

6. The respondents have supported the order of the Commission and have submitted that gross block decided by Ministry of Power for earlier tariff period should not be deviated from.

7. We have considered the matter very carefully. We find that the Commission in its order dated 27.7.2002 had considered the gross block of Rs.874.02 crore, excluding the initial spares of Rs.6.24 crore as on 31.3.1997. The Commission has not deliberated upon the claim of NHPC for not considering the gross block of Rs.882.15 crore. Although the Commission took a conscious view to consider the gross block of Rs.874.02 crore as on 31.3.1997, the order does not state the reasons for not accepting the gross block of Rs.882.15 crore claimed by NHPC. In view of this error, we allow review on this account.

### **Additional Capitalisation**

8. Against additional capitalisation of Rs.58.73 crore claimed in the petition by NHPC, the Commission had allowed additional capitalisation of Rs.58.03 crore for the

years 1997-98 to 2000-01. Thus, the Commission did not allow additional capitalisation to the extent of Rs.0.70 crore, the details of which along with reasons were duly incorporated in the order. According to NHPC, the Commission has erred in not considering the amount of Rs.0.70 crore as a part of O&M expenses during the period 1997-98 to 2000-01, after it had not allowed additional capitalisation of this amount. NHPC has not disputed the correctness of amounts of additional capitalisation allowed and disallowed by the Commission.

9. We have considered the submission. In our opinion whether or not the sum of Rs.0.70 crore can be considered as a part of O&M expenses, once disallowed to be capitalised, needs detailed deliberation and decision under the head "O&M expenses". As there is no dispute or difference so far as the amount allowed to be capitalised, we do not feel it appropriate to allow review on this issue. Accordingly, the review on this ground does not survive.

#### **Effect of Additional Capitalisation on Debt and Equity**

10. The Commission in Para 13 of its order dated 27.7.2002 had observed that financing of additional capital expenditure had been considered for the term loan from LIC raised during 1999-2000 and the balance amount was considered from equity. The return on equity and interest on loan were allowed by considering equity and loan arrived at in this manner. It has been stated that some additional equity had been provided by the Central Government, therefore, additional capitalisation ought to have been considered by the Commission as met out of the additional equity so provided and

loans arranged by NHPC and the balance amount, if any, was to be considered as financed through internal resources which should be considered as a part of equity. It has been averred that the Commission had not considered the additional equity provided by the Central Government for the purpose of financing of additional capitalisation. The respondents have not commented on maintainability of review on this account.

11. We have considered the issue raised on behalf of NHPC. We are satisfied that the issue needs detailed deliberation as regards the sources of financing of additional capitalisation. The issue that needs to be considered is whether the part of additional capitalisation could be considered as financed through equity first as contended by NHPC or through loan as decided in the order dated 27.7.2003 or debt-equity ratio the additional capitalisation be maintained as per the approved financial package. We, therefore, allow review on this account also.

### **Depreciation**

12. The Commission, for the purpose of tariff, had considered the weighted average depreciation rate of 2.34% and it allowed depreciation of Rs.21.76 crore to be recovered through tariff each year during 2001-02 to 2003-04. For the purpose of calculation of depreciation, the amount of Rs.6.24 crore, the cost of initial spares was excluded and depreciation was calculated on gross block of Rs.932.05 crore.

13. It has been pointed out by NHPC that on gross block of Rs.932.05 crore as on 31.3.2001, depreciation works out to Rs.21.81 crore for each year against Rs.21.76 crore allowed by the Commission. It is further submitted by NHPC that amount of Rs.6.24 crore could not be excluded for the purpose of calculation of depreciation as the initial spares capitalised are recoverable through depreciation only. Therefore, according to NHPC, depreciation ought to have been worked out on the gross block without deducting the amount of initial spares and has sought review of order on this count also. The respondents in their replies have not questioned the maintainability of review.

14. On perusal of the order dated 27.7.2002 it is revealed that based on the weighted average depreciation rate of 2.34%, the depreciation has been allowed on the gross block of Rs.932.05 crore which excludes initial spares of 6.24 crore on the gross block calculation by the Commission. The order does not state the reasons for exclusion of initial spares for the purpose of recovery of depreciation. We also find error of calculation of depreciation based on gross block of Rs.932.05 crore as pointed out by NHPC. Therefore, we allow review on this count also.

### **Return on Equity**

15. The Commission for the purpose of return had considered the equity of Rs.499.80 crore. It is submitted by NHPC that equity of Rs.501.21 crore was received by it from the Central Government for Salal HEP, the details of which, duly audited by the statutory auditors of the corporation are given in the prescribed proforma.

According to NHPC, return on equity has to be allowed on the actual equity employed. It is stated that the additional capital expenditure has been made firstly from equity provided by the Central Government and thereafter debt received by NHPC and from other sources. NHPC, therefore, seeks review of order with a further prayer that equity of Rs.501.21 crore should be considered for the purpose of return thereon.

16. The basic grievance of the NHPC is in regard to source of funding of additional capitalisation for the period from 1997-98 to 2000-01. As we have already noticed, in the order dated 27.7.2002 financing of additional capital expenditure has been considered from the loan in the first instance and the balance of amount has been considered from equity. On the contrary, contention of NHPC is that financing of additional capitalisation should be considered first from equity and thereafter from loan. In our opinion, the decision on the issue of return on equity will depend upon our decision on source of financing of additional capitalisation on which ground review is being allowed and will be considered in proper perspective and the decision arrived at should be supported by reasons. The issue of return on equity will have to be addressed in the light of that decision. Accordingly, review is allowed on this issue also.

### **O&M Expenses**

17. As we have already noted, an amount of Rs.0.70 crore was not allowed by the Commission to be capitalised. We have noted the contention of NHPC that in such a case, the amount should have been considered as a part of O&M expenses for the relevant period. Further, the Commission in its order of 27.7.2002 had not allowed the



expenses on account of incentive under the category "staff welfare expenses", as claimed by NHPC in the petition as part of O&M expenses. According to NHPC, the incentive is payable and has been paid as "staff welfare expenses." to all employees and is considered as a part of salary and irrespective of any profit from the project and, therefore, should be considered as O&M expenses for the relevant years. NHPC seeks review of O&M expenses allowed in the Commission's order dated 27.7.2002 on these two counts. The replies filed by the respondents are silent on the maintainability of review of O&M expenses sought by NHPC. The respondents have though submitted that O&M expenses allowed by the Commission are very high and further review may hike them further.

18. So far as the question of considering the amount of Rs.0.70 crore not allowed to be capitalised is concerned, we are of the opinion that this issue needs further deliberation and decision by the Commission. Therefore, we allow review of O&M expenses on this count. However, as regards payment of incentive to the staff under the head "staff welfare expenses", NHPC has submitted before the Commission that incentive being paid was the productivity-linked bonus under the Payment of Bonus Act, 1965. That being the position, the incentive paid by NHPC to its employees has the effect of increasing its productivity, which enables it to earn incentive from respondents, in addition to normal tariff approved by the Commission. Therefore, we do not feel that the productivity-linked bonus paid by NHPC to its employees as incentive should qualify to be considered as a part of O&M expenses for the purpose of tariff. In our opinion this expenditure should be met out of incentive earned by NHPC for achieving higher

productivity. Therefore, we do not allow review of O&M expenses for the purpose of consideration of "staff welfare expenses".

### **Interest on Working Capital**

19. In accordance with the Commission's notification dated 26.3.2001, interest on working capital covers the following :

- (a) Operation and Maintenance expenses for one month;
- (b) Maintenance spares at actuals but not exceeding one year's requirements less value of one fifth of initial spares already capitalized for the first five years;
- (c) Receivables equivalent to two months of average billing for sale of electricity.

20. The issues on which review has been allowed as per our decision in the preceding paras will necessitate review of interest on working capital as some of the elements for the ingredient for calculation of working capital. Accordingly, the interest on working capital as component of tariff (fixed charges) will be considered based on decision on the issues on which review has been allowed as per this order. Thus interest on working capital allowed by the Commission in order dated 27.7.2002 shall also be subject to review.

## **Interest on Loan**

21. NHPC in the application for review has submitted that even after review as prayed for, there will be no reduction in the amount of interest on loan during the tariff period. However, in our opinion, reconsideration of gross block as on 31.3.1997 and decision on financing of additional capitalisation during the period from 1997-98 to 2000-01 would necessitate review on account of interest on loan, allowed in order dated 27.7.2002. Therefore, the decision on interest on loan will be consequential to decision on the different issues considered in earlier part of this order. The entire fixed charges will be required to be recalculated based on the decisions on the issues allowed to be reviewed.

22. Review petition is allowed to the extent indicated in the preceding paras of this order.

23. We direct that Petition No.64/2001 be set down for hearing on 12.8.2003. However, the respondents shall continue to pay tariff as approved by the Commission in its order dated 27.7.2002 till further orders.

24. With the above order, Review Petition No. 101/2002 stands disposed

**W**  
**(K.N. SINHA)**  
**MEMBER**

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**(G.S. RAJAMAM)**  
**MEMBER**

**(J'**  
**(ASHOK BA^SU)**  
**CHAIRMAN**

New Delhi dated the 9<sup>th</sup> May, 2003