

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 14/2011

Sub: Review of the order dated 10.5.2011 in Petition No.75/2010 regarding fixation of generation tariff of Tanakpur Hydroelectric Project (3x31.4 MW) for the period from 1.4.2009 to 31.3.2014.

Review Petition No. 15/2011

Sub: Review of the order dated 27.6.2011 in Petition No. 104/2010 regarding fixation of generation tariff of Salal Hydroelectric project (6x115 MW) for the period from 1.4.2009 to 31.3.2014.

Review Petition No. 18/2011

Sub: Review of the order dated 12.7.2011 in Petition No. 84/2010 regarding approval of generation tariff of Chamera-I Hydroelectric project (540 MW) for the period from 1.4.2009 to 31.3.2014.

Review Petition No. 19/2011

Sub: Review of the order dated 27.6.2011 in Petition No. 90/2010 regarding approval of generation tariff of Bairasuil Hydroelectric project (198 MW) for the period from 1.4.2009 to 31.3.2014.

Date of hearing: 8.12.2011

Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Petitioner: NHPC Ltd

Respondents: PSPCL and others

Parties present: Shri R.Raina, NHPC
Shri Amrik Singh, NHPC
Shri S.K.Meena, NHPC
Shri C.Vinod, NHPC
Shri Padamjit Singh, PSPCL
Shri T.P.S.Bawa, PSPCL
Shri R.B.Sharma, Advocate for BSEB, JSEB, GRIDCO and BSES (BRPL & BYPL)

Record of Proceedings

During the hearing, the representative of the petitioner submitted as under:

(a) There is error apparent on the face of the record, since the Commission has not allowed the claims of the petitioner as under:

(i) Due to want of proper justification and information on the gross value of old assets some of the additional capitalization claims for 2009-14 in respect of assets required for the successful and efficient operation of the plant has been disallowed. The detailed justification in respect of these assets and the gross value of old assets, wherever applicable, has been furnished and the same may be considered.

(ii) There are errors in the computation of O&M expenses which have been allowed. As per accounting policy of the corporation, interest on settlement of old contracts relating to the period after the date of commercial operation of the station has to be claimed under O&M expenses only. The same was not claimed for the period 2004-09, which has benefited the beneficiaries. As the expenditure has been actually incurred and not claimed, the same may be considered either as O&M expenses or as additional capitalization for 2009-14 or as a one-time reimbursement. This aspect was earlier considered by the Commission in Review Petition No. 68/2006 (*pertaining of Tanakpur Power Station*) for the period 2004-09 *vide order dated 5.2.2007*).

(iii) The error in the calculation of employee cost allowed during the years 2006-07 and 2007-08 may be corrected.

(iv) Errors in not considering the Regional office expenses, Rent under administrative expenses may be rectified. Similarly, the filing fee of ₹25.00 lakh for 2004-05 under O&M expenses has not been considered under administrative expenses for determination of tariff. These may be considered.

(v) The grounds raised in the review petition may be considered and the order of the Commission may be reviewed accordingly.

2. The representative of Respondent No.1, PSPCL (*erstwhile* PSEB) submitted as under:

(a) In terms of Regulations 103 of the CERC (Conduct of Business) Regulations, 2009, the review petition should have been filed by the petitioner within 45 days from the date of order. In terms of this regulation, the power of review is to be exercised only for correction of clerical or arithmetical mistakes arising from accidental slip or omission.

- (b) Detailed reasoning has been given by the Commission in its order for disallowance of the claims of the petitioner and no clerical/arithmetical mistakes have been pointed to by the petitioner in the said order.
- (c) The grounds raised by the petitioner as regards inconsistency in the approach/methodology adopted by the Commission in its order, cannot be a subject matter for review of the said order
- (d) The reasons submitted by the petitioner for delay in filing the review petition are unsustainable and hence, the delay should not be condoned. Letters addressed to the Commission pointing out the errors in the tariff order cannot be considered as a ground for condoning the delay in filing the review petition. Even otherwise, collection of information from various divisions of the petitioner corporation could have been completed within the limitation period of 45 days.
- (e) The submission of the petitioner that it would suffer recurring financial loss if the order is not reviewed by the Commission is unacceptable. A comparative chart, giving details of the annual fixed charges for 2004-09 as against the claim for 2009-14 in respect of four generating stations of the petitioner, is submitted for consideration of the Commission.
- (f) The submission of the petitioner that tariff is subject to review at the time of truing-up of expenses may be considered by the Commission and the review petition may be dismissed.

3. The learned counsel for the Respondent No. 3, BRPL submitted as under:

- (a) Replies have been filed in the above said matters and copies served on the petitioner.
- (b) The review petition is not maintainable as the petitioner has not pointed out to any error apparent on the face of the record. The Commission has given a detailed and reasoned order and the petitioner cannot be allowed to give fresh justification or reargue his case on the ground that there is an error apparent on the face of record.
- (c) The power of the Commission to review its own decision has been provided under Section 94(1)(f) of the Electricity Act, 2003. The Commission is guided by the principles governing review as laid down under Order 47 Rule 1 of the Civil Procedure Code, 1908. Pleas akin to those which can be raised in appeal cannot be ground for review. The petitioner has stated in paragraph 2 of the petition that it reserves its right to file an appeal under Section 111 of the Electricity Act, 2003. The petitioner has raised issues which are necessarily 'errors in judgment' and the same cannot be considered in a review petition.

- (d) The petitioner has prayed for re-consideration of the issues which have been disallowed by the Commission and has submitted new justifications for the same. Providing new /additional justification for issues already decided by the Commission is not permissible in law.
- (e) The expenditure disallowed by the Commission under additional capitalization and under O&M expenses does not suffer from any infirmity and there is no error apparent on the face of record.
- (f) As settled by the Hon'ble Supreme Court and followed by the Appellate Tribunal for Electricity in its various judgments, the review petition cannot be an 'appeal in disguise' and the issues raised by the petitioner are in the nature of appeal, which cannot be permitted on review. Referring to the judgments of the Tribunal, (as enclosed in Annexure I to IV of its reply), it was submitted that there are definite limits to the exercise of power of review and the review is by no means an appeal in disguise, whereby an erroneous decision is reheard and corrected, but lies only for patent error. In terms of the decision of the Hon'ble Supreme Court in *Parsion Devi & others vs. Sumitri Devi* [(1997) (8 SCC 715)] the review petition is not maintainable and the petitioner can seek relief before the appropriate appellate authority.
4. The representatives of the petitioner submitted that it has not received copies of the reply filed by the Respondent No. 3 BRPL in the above matters. The learned counsel handed over copies of the reply in Petition No. 14/RP/2011, (which was acknowledged by the petitioner) and undertook to serve copy of its reply in other matters also.
5. The representative of the petitioner prayed for time to file its rejoinders to replies of the respondents. The representative of the respondent No. 1, PSPCL also prayed for time to file its reply in the matter.
6. The Commission accepted the prayer of the parties. The Respondent No. 1 (PSPCL) is directed to file its reply on or before 20.12.2011 with advance copy to the petitioner. The petitioner is directed to file its rejoinders to the replies of the respondents, on or before 4.1.2012. The parties are directed to complete the pleadings in the matter prior to the next date of hearing.
7. Matters shall be listed for hearing on 12.1.2012.

Sd/-
(T.Rout)
Joint Chief (Law)