

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairman**
2. **Shri K.N. Sinha, Member**

Petition No. 49/2003

In the matter of

Notification of Independent Agencies for Project Appraisal

And in the matter of

National Thermal Power Corporation Ltd.

.... **Petitioner**

Vs

1. Transmission Corp. of Andhra Pradesh Ltd, Hyderabad
2. Grid Corporation of Orissa, Bhubaneswar
3. Damodar Valley Corporation, Kolkata
4. Bihar State Electricity Board, Patna
5. Jharkhand State Electricity Board, Ranchi
6. West Bengal State Electricity Board, Kolkata
7. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
8. Delhi Transco Ltd., New Delhi
9. Uttar Pradesh Power Corp. Ltd., Lucknow
10. Uttaranchal Power Corporation, Dehradun
11. Punjab State Electricity Board, Patiala
12. Madhya Pradesh State Electricity Board, Jaipur
13. Chattisgarh State Electricity Board, Jabalpur
14. Haryana Vidyut Prasaran Nigam Ltd., Haryana
15. Maharashtra State Electricity Board, Mumbai
16. Power Grid Corporation of India Ltd,
17. National Hydro Power Corporation Ltd., Faridabad
18. Neyveli Lignite Corporation Ltd., Chennai
19. Karnataka Power Transmission Corp. Ltd., Bangalore
20. Tamil Nadu Electricity Board, Chennai
21. Assam State Electricity Board, Guwahati
22. Gujarat Electricity Board, Vadodara
23. Himachal Pradesh State Electricity Board, Shimla
24. Power Development Department, Srinagar
25. Power Department, Chandigarh
26. Kerala State Electricity Board, Thiruvananthapuram
27. Electricity Department, Pondicherry
28. Department of Power, Gangtok
29. Electricity Department, Goa
30. Electricity Department, Daman
31. Electricity Department, Admn of Dadra Nagar Haveli
32. NEEPCO, Shillong

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Respondents

The following were present:

1. Shri M.S. Chawla, AGM(C), NTPC
2. Shri S.N. Goel, NTPC
3. Shri N.K. Sharma, NTPC
4. Shri R. Khetrapal, NTPC
5. Shri M. Saxena, NTPC
6. Shri V.B.K. Jain, NTPC
7. Shri Balaji Dubey, Sr. Law Officer, NTPC
8. Shri Umesh Chadra, ED (Comml), PGCIL
9. Shri U.K. Tyagi, PGCIL
10. Shri C. Kannan, PGCIL
11. Shri Pawan Singh, PGCIL
12. Shri Arun Gautam, PGCIL
13. Shri A.K. Behl, PGCIL
14. Shri P.C. Pankaj, PGCIL
15. Shri R.P. Padhi, PGCIL
16. Shri S. Garg, DGM (JV), PGCIL
17. Shri Arun Kumar, PGCIL
18. Shri TSP Rao, PGCIL
19. Shri Sanjay Rai, PGCIL
20. Shri S.K. Agarwal, NHPC
21. Shri Prashant Kaul, NHPC
22. Shri A.K. Srivastava, NHPC
23. Shri K. Sekar, NLC
24. Shri R. Suresh, NLC
25. Shri D.P. Chiraniya, CE, RVPN
26. Shri K.K. Mittar, XEN(ISP), RVPN
27. Shri H.K. Sharma, ASEB
28. Shri R.K. Gupta, HVPN
29. Shri Y Agarwal, KPTCL
30. Shri A.K. Tandon, UPPCL
31. Shri Rakesh, BSEB
32. Shri S.A. Ullah, BSEB
33. Shri T.P.S. Bawa, SE, PSEB

ORDER
(DATE OF HEARING: 23.12.2003)

The petitioner seeks that the Commission may notify independent agencies in terms of clause 1.9 of the Commission's notification dated 26.3.2001 on terms and conditions of tariff, applicable for the period from 1.4.2001 to 31.3.2004.

2. The Commission in its notification dated 26.3.2001 has specified that for the purpose of fixation of tariff for sale and transmission of electricity, the capital

expenditure of the project shall be financed as per the approved financial package set out in the techno-economic clearance of CEA or as approved by an appropriate independent agency, as the case may be. The notification further lays down that the actual capital expenditure incurred on completion of the project is to form the basis for tariff fixation and where the actual expenditure exceeds the approved project cost, the excess expenditure as approved by CEA or the appropriate independent agency is to be considered for the purpose. Clause 1.9 of the notification defines the independent agency as the agency approved by the Commission.

3. According to the petition, the petitioner has been declared as a Navratana Company by the Central Government, which has also empowered its Board of Directors to approve capital cost of the new projects, including investment for Renovation and Modernisation activities, after due diligence by an independent agency. The petitioner feels that before investment approval of new projects and R&M activities of the existing projects by the Board of Directors, appraisal by an independent agency notified by the Commission in terms of clause 1.9 of the notification dated 26.3.2001, would serve the purpose of exercise of due diligence. It would also enable the Commission to consider the expenditure incurred by the utilities, like the petitioner, for tariff fixation, based on the project appraisal by such an independent agency. According to the petitioner, the necessity to notify the independent agency is more pressing in the present day context and with the enactment of the Electricity Act, 2003, which has dispensed with the requirement of obtaining techno-economic clearance from CEA. Accordingly, the petitioner has prayed that Commission may consider ICICI Bank Ltd., IDBI, SBI Capital Markets Ltd and CRISIL Infrastructure Advisory for notification as independent agencies.

4. The petitioner had impleaded the State Electricity Boards and other state utilities. At our instance, the certain central power sector utilities were also impleaded when the petition was admitted for further hearing.

5. We have heard the representatives of the parties present at the hearing. The representative of the petitioner explained the procedure being currently followed before approaching the Board of Directors for approval of its projects. He stated that the project cost estimates are prepared in the first instance, which are considered by CEA or appraised by the independent agency chosen by the petitioner and the Board of Directors accords its approval thereafter. The representatives of the respondents opposed the notification of the independent agencies as prayed for in the petition and stated that if at all an agency is required to be notified, it should be the CEA. According to the central power sector utilities, other than the petitioner, they have not been accorded the status of Navratna Company and investments in their cases are approved by the Central Government after elaborate examination at different levels, which depending upon the project cost, include Standing Finance Committee (SFC), Expenditure Finance Committee (EFC) Pre-Public Investment Board/ Public Investment Board and Cabinet Committee on Economic Affairs. It has been submitted on their behalf that appointment of independent agencies under these circumstances will result in duplication of work and effort, without any corresponding benefit or utility.

6. We have gone through the records of the case and have also considered the substantive prayer made in the petition and the views of the respondents. During the hearing, the representative of the petitioner brought to our notice the instructions issued by the Central Government on delegation of enhanced powers to Boards of public sector enterprises to incur capital expenditure, in particular, the letter dated

22.7.1997 from Ministry of Industry, Department of Public Enterprises. The enhanced autonomy and delegation of powers granted to the public sector undertakings are exercisable subject to guidelines mentioned in the letter dated 22.7.1997. It was submitted by the representative of the petitioner that some generation projects are to be taken up soon. However, the Board of Directors would prefer according investment approvals for these projects based on project appraisal by any of the above-named agencies after approval of the Commission, as it will give some indication of the cost likely to be adopted by the Commission for the purpose of tariff. The representative of the petitioner drew our specific attention to Para 2(g) of the said letter dated 22.7.1997, which is reproduced verbatim herein below:

“All the proposals, where they pertain to capital expenditure, investment or other matters involving substantial financial or managerial commitments or where they would have a long term impact on the structure and functioning of the PSE, should be prepared by or with the assistance of professionals and experts and should be appraised, in suitable cases, by financial institutions or reputed professional organisations with expertise in the areas. The financial appraisal should also preferably be backed by an involvement of the appraising institutions through loans or equity participation.”

7. We have considered the matter in the light of the guidelines issued by the Central Government in so far as the central power sector utilities are concerned. These guidelines enjoin upon the public sector enterprises, including the petitioner, declared as Navratna Company, to follow certain fundamental principles of prudence and financial propriety before undertaking the investment decisions. On the other hand, the purpose of the notification of the independent agency in terms of the Commission's notification dated 26.3.2001 is to assist the Commission in evaluation of the project cost for tariff, since, as per the terms and conditions contained in that notification, tariff is determined on cost-plus basis. The provisions of the notification dated 26.3.2001 come into play only when a petition for approval of tariff is filed before the Commission. It was thought that when a proposal for approval of tariff is filed, the

Commission could, in its discretion, take the assistance of any outside agency for the purpose of evaluation of the capital cost and structure. The evaluation could also be done by the Commission through its in-house resources. The notification of “independent agency” is thus not a pre-requisite even for consideration of capital cost for the purpose of tariff fixation. Therefore, in our view, the notification by the Commission of an independent agency at this stage is not called for since no proposal for determination of tariff of a generating station, whose financial package is not approved by CEA, is before the Commission. The representatives of the petitioner explained that some investment approvals are in fact accorded by the Board of Directors in accordance with the procedure currently in vogue. Accordingly, this decision of ours should not come in the way of the Board of Directors of the petitioner taking appropriate investment decisions in accordance with the guidelines issued by the Central Government. Absence of independent agency notified by the Commission does not affect the investment decisions by the Board of Directors, as they can continue to follow the current procedure. As and when petitions are received, the Commission will get the issue of capital expenditure examined through the staff. However, in certain other cases, as may be considered appropriate by the Commission, the Commission may take assistance of any outside agency on case-by-case basis, in keeping with the facts and circumstances of each case. The Commission may prescribe the procedure for this purpose, if and when necessary.

8. With the above observations, the petition stands disposed of.

**Sd/-
(K.N. SINHA)
MEMBER**

**Sd/-
(ASHOK BASU)
CHAIRMAN**

New Delhi dated the 15th January, 2004