

Central Electricity Regulatory Commission

National Hydroelectric Power ... vs Punjab State Electricity Board, ... on 5 February, 2007

Bench: A Basu, B Bhushan, A Jung

ORDER

1. This application has been made by the petitioner, National Hydroelectric Power Corporation Ltd, (NHPC), a generating company, for review of order dated 9.5.2006 in Petition No. 158/2004, determining tariff in respect of Bairasiul Hydroelectric Project (hereinafter referred to as "the generating station"), for the period 1.4.2004 to 31.3.2009.

2. The petitioner has contended that there are certain fundamental errors in the said order dated 9.5.2006 and accordingly has sought review of the order on certain aspects, discussed in the succeeding paras.

ALLOCATION OF ADDITIONAL CAPITALIZATION TOWARDS DEBT AND EQUITY

3. The Commission in its order dated 9.5.2006 considered additional capitalization of Rs. 246.37 lakh for the period 1.4.2001 to 31.3.2004 on account of works and FERV. For the purpose of tariff, the additional capital expenditure was divided into debt and equity so as to bring over all debt-equity ratio closer to 70:30 since the petitioner had not given the approved debt-equity ratio for the generating station. Therefore, for the purpose of tariff, equity of Rs. 7785 lakh was considered. The petitioner has presently claimed equity of Rs. 7892.34 lakh.

4. The petitioner has stated that the allocation of additional capitalisation for the years 2001-02 to 2003-04 towards debt and equity by the Commission is arbitrary and inconsistent with Regulations 34 and 36 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as "the 2004 regulations").

5. It is to be noted that the tariff norms applicable during 2001-04 did not contain any provisions for apportionment of additional capital expenditure between debt and equity. Therefore, the Commission, as a matter of principle decided to divide additional capitalization amount into debt and equity so as to bring the overall debt-equity ratio closer to the approved ratio. However, in the present case, the petitioner had not given the approved debt-equity ratio in the tariff petition. Therefore, the Commission, in the order dated 9.5.2006 decided to divide additional capitalization of Rs. 246.37 lakh in a manner to bring the overall debt-equity close to the ratio of 70:30 considered to be normative in the present context. Regulation 34 of the 2004 regulations on which reliance has been placed by the petitioner, has no application where additional capital expenditure pertain to period prior to 1.4.2004 since these regulations have come into effect on 1.4.2004. It is further noted that additional capitalization pertaining to the period 2001-04 was not considered for revision of tariff for that period. Therefore, Regulation 36 which forms the basis of the petitioner's claim, also has no application to apportionment of additional capital expenditure between debt and equity. In the instant case, while approving tariff for the period 2004-09, debt- equity ratio of 56.43:43.57 as considered by the Commission for tariff for the period up to 31.3.2004 was considered in accordance with Regulation 36 of the 2004 regulations. However, the entire amount of additional

capitalization was considered towards debt (to bring debt-equity ratio close to 70:30) as a result of which debt-equity ratio of 56.43:43.57 considered for the tariff period 2001-04, got revised to 57.02:42.98. This methodology has been uniformly followed by the Commission in all similar cases and therefore, there is no justification for its review, and consequently of apportionment of additional capitalization, as the decision has been arrived at after proper deliberation of the facts on record. The issue raised does not fall within the scope of review of order when tested on the touchstone of the provisions of Section 514 read with Order 47, Rule 1 of the Code of Civil Procedure.

6. The petitioner has further pointed out that in case of Salal Hydroelectric Project, Tanakpur Hydroelectric Project, etc., debt-equity ratio considered for the purpose of tariff during the period 2001-04, has been adopted for the purpose of additional capitalization during the period 2004-09. It is clarified in case of these two generating stations, the Commission had considered the approved debt- equity ratio for the tariff period 2001-04. For the tariff period 2004-09, additional capitalization was also considered in the approved ratio, which happens to be same as considered 2001-04. Therefore, no analogy can be drawn further.

RETURN ON EQUITY AND INTEREST ON LOAN

7. The petitioner's prayer for review of return on equity and interest on loan flow from its prayer for review apportionment of additional capitalization between debt and equity. Since review on that count has been held to be not maintainable, as a consequence, review of return on equity and interest on loan, as claimed by the petitioner are also unwarranted.

DEPRECIATION

8. The petitioner has sought review of depreciation on the ground that there was an error in computation of the balance useful life of the generating station. As review of the methodology for computation of the balance useful life of the generating station has been already turned down by the Commission in its order dated 24.10.2006, review of depreciation approved by order dated 9.5.2006 is also not called for.

ADVANCE AGAINST DEPRECIATION

9. Advance Against Depreciation is directly relatable to repayment of loan and depreciation recoverable. In view of our decision not allow review of interest on loan and depreciation components of the annual fixed charges, review of Advance Against Depreciation too is not maintainable, even though the petitioner's claim under this head is less than Advance Against Depreciation allowed by order dated 9.5.2006.

O&M EXPENSES

10. The 2004 regulations provide that O&M expenses for the existing generating stations, in operation for five years or more in the base year of 2003- 04 are to be derived based on actual

expenses for the years 1998-99 to 2002-03, excluding abnormal expenses, if any. The normalized expenses so arrived at are taken as expenses for the year 2000-01 and are escalated successively @ 4% every year to arrive at O&M expenses for the relevant year. This methodology was followed while allowing O&M expenses by order dated 9.5.2006 and certain expenses, considered to be abnormal were excluded for computation of normalized O&M expenses.

11. The petitioner has submitted that the Commission, while working out the normative O&M expenses to be allowed in the tariff for 2004-09, has excluded the actual expenditure under the category "Security Expenses", "Administrative Expenses", "Employees Cost", "Productivity Linked Incentive" and "Corporate Office Expenses" incurred during the years 1998-99 to 2002-03, thereby putting the petitioner to loss. It is averred that Commission has ignored the fact that the disallowed expenditure pertains to the previous period and has already been incurred by the petitioner, as certified by the statutory auditors. The petitioner has, therefore, sought review of the O & M expenses Security Expenses

12. The petitioner has submitted that the security expenses claimed during 1999-2000, but disallowed were on account of salary arrears of the Fifth Pay Commission, actually paid in this year and not claimed in the previous years. The petitioner has also stated that such expenses were considered and allowed while computing O&M expenses in the tariff for the period 2001-04 and, therefore, the expenses amounting to Rs. 48.3 lakh excluded by the Commission should be included in averaging for computation of O&M expenses for the tariff period 2004-09.

13. The recommendations of the Fifth Pay Commission were implemented with effect from 1.1.1996. This obviously means that some of the arrears even though paid in the year 1999-2000, pertain to the previous years, that is, for the years prior to 1998-2003 and hence those amounts of arrears are to be excluded for normalization of security expenses for the tariff period 2004-09. As per the submission of the petitioner, this expenditure due to salary arrears during the year 1999-2000 has already been considered while computing O&M expenses for the period 2001-04. While computing O&M expenses for the period 2001-04, the expenses for the year 1995-96 and onwards were considered. Therefore, the expenses for the period 1.1.1996 onward on account of arrears of salary actually paid in 1999-2000, were to be considered. However, for the present purpose, the expenses for the period prior to 1.4.1998, cannot be taken into account even if paid on 1.4.1998 or thereafter.

Administrative Expenses- Materials Written Off

14. The petitioner has submitted that losses due to obsolescence of stores and sale of assets are normal business processes and should be included in O&M expenses. In our opinion, any losses of stores and other assets can be avoided by exercise of due diligence and proper care. The petitioner has not established that the losses occurred despite the necessary care and attention. Therefore, the losses of stores and other assets on the part of the petitioner should be borne by the petitioner. These losses are not to be charged to the beneficiaries. The exclusion of the expenses on this count during 1998-99 to 2002-03 for normalization is in order and does not warrant review.

Expenditure on VRS

15. The expenditure on VRS has not been allowed for normalisation because these expenses are not of recurring or regular nature and vary from year to year. We are of the considered view that the expenditure on VRS incurred during 1998-99 to 2002-03 cannot be taken into account for working out the normative expenses for 2004-09. The petitioner is not in a position to give the details of likely expenses on account of VRS during the period in question because it is not certain about the number of employees likely to take VRS. The petitioner has, therefore, prayed that the actual expenses incurred during 1998-99 to 2002-03 may be reimbursed. The present prayer does not flow from the petition filed for approval of tariff for the period 2004-09. However, the petitioner may approach the Commission post facto with complete details of expenditure and savings on account of VRS, if so advised, for the period 2004- 09, in accordance with law, for appropriate decision.

Productivity Linked Incentive

16. The petitioner has submitted that Productivity Linked Incentive being a perquisite, is part of wages and, therefore, qualifies for consideration as "employee cost" for the purpose of normalisation. The Commission has consistently taken the view that that the expenses on account of Productivity Linked Incentive cannot be allowed for tariff purposes as the incentive paid by the petitioner to its employees for maintaining higher availability of the generating station and thereby achieving higher productivity, is not considered towards employee cost since it entitles the petitioner to earn incentive in the form of secondary energy and improved capacity index. These expenses should, therefore, be met by the petitioner from the incentive earned and cannot be overloaded. Review of the order 9.5.2006 on this count is also ruled out.

Corporate Office Expenses - Ex Gratia

17. The petitioner has submitted that the ex gratia expenditure is on account of Productivity Linked Incentive paid to employees of Corporate Office and same should be included in averaging of O & M expenses. As already observed by us, incentive paid to employees for maintaining higher availability of the generating station cannot form part of O & M expenses. On parity of reasoning, productivity linked incentive paid to the employees of Corporate Office too cannot be considered as part of O&M expenses for the purpose of tariff.

IMPACT OF ADDITIONAL CAPITALIZATION FOR THE YEARS 2001-04

18. The petitioner has submitted that the Commission has erred in considering debt-equity ratio for the additional capitalisation for the years 2001- 04 and seeks review of the calculations of impact thereof on interest on loan and return on equity for the years 2001-04. According to the petitioner, financing of additional capitalisation in the manner claimed by it will change debt-equity ratio and consequently its entitlement to interest on loan and return on equity.

19. As debt-equity ratio considered has not been interfered with, its impact on return on equity and interest on loan for the period 2001-04 too does not need any correction in the tariff. Therefore, the question of review does not arise.

PUBLICATION EXPENSES

20. The petitioner has filed an affidavit in Petition No. 158/2004 on 22.5.2006 (after issue of the order sought to be reviewed) in support of expenditure amounting to Rs. 1, 10,292/- incurred on publication of notices therein and has claimed refund of the expenditure. The Commission as a matter of policy has allowed in the past recovery of such expenditure. Therefore, without going into the technicality, this expenditure incurred by the petitioner, is allowed to be recovered from the beneficiaries in one instalment in proportion of the Annual Fixed Charges payable by them for the year 2004-05 for the generating station.

FILING FEE

21. As regards refund of filing fee of Rs. 25 lakh claimed by the petitioner, the matter has already been considered at para 95 of the order dated 9.5.2006. No fresh order in this regard is necessary.

22. With the above, the present applications for review stands disposed of.