

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

CORAM:

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

**Review Petition No.72/2003
in Petitions No. 23/1999 and 81/2002**

In the matter of

Review of Commission's order dated 30.6.2003 and 14.8.2003 in Petitions No. 23/99 and 81/2002 - Approval of tariff in respect of Faridabad Gas Power Station for the period from 1.9.1999 to 31.3.2001 and from 1.4.2001 to 31.3.2004 respectively.

And in the matter of

Haryana Vidyut Prasaran Nigam Ltd	Petitioner
Vs		
National thermal Power Corporation Ltd.	Respondent

The following were present:

1. Shri Parag P. Tripathi, Senior Advocate, HVPN
2. Shri Jayant Mehta, Advocate, HVPN
3. Smt. Seema, Advocate, HVPN
4. Shri R.K. Arora, XEN, HVPN
5. Shri R.S. Sharma ED(C), NTPC
6. Shri M.G. Ramachandran, Advocate, NTPC
7. Shri K.V. Balakrishnan, Advocate, NTPC
8. Shri V.B.K. Jain, GM (Comml), NTPC
9. Shri M.S. Chawla, AGM (Comml), NTPC
10. Shri S.K. Samvi, NTPC
11. Shri D.G. Salpekar, NTPC
12. Shri A.K. Poddar, NTPC
13. Shri S.K. Sharma, Sr. Mgr. (C), NTPC
14. Shri T.R. Sohal, NTPC
15. Shri N.N. Sadasivan, NTPC
16. Shri R. Singhal, Mgr (C), NTPC
17. Shri Ajay Dua, NTPC
18. Shri Sandeep Mehta, Dy. Manager (Comml), NTPC

ORDER
(DATE OF HEARING: 11.3.2004)

This application has been made by Haryana Vidyut Prasaran Nigam Ltd for review of the composite order dated 30.6.2003 in petitions No 23/1999 and 81/ 2002. The petition No 23/1999 was filed for approval of tariff in respect of Faridabad Gas Power Station from the date of commissioning of GT 1 of the generating station, that is, 1.9.1999 to 31.3.2001. Petition No 81/2002 was filed for approval of tariff in respect of the same station for the period from 1.4.2001 to 31.3.2004. The tariff was finally decided by the Commission by its order dated 30.6.2003, review of which has been sought by the petitioner. The petitioner has raised two principal grounds for review, which we will discuss in the succeeding paras.

Debt-Equity Ratio

2. In accordance with Ministry of Power notification dated 30.3.1992 and the Commission's notification dated 26.3.2001, the interest on loan capital and the return on equity are to be computed as per the financial package approved by CEA or an appropriate independent agency, as a case may be. The respondent herein in its petitions for approval of tariff had claimed the debt and equity in the ratio of 50:50. It was submitted by the petitioner that debt and equity should be considered in the ratio of 80:20 as applicable to Independent Power Producers. The matter was considered by the Commission in the order dated 30.6.2003. It was noted that the approved financial package for the generating station was not available on record. However, the Feasibility Report for the generating station

was based on the provision of debt and equity in the ratio of 50:50. Accordingly, debt and equity in the ratio of 50:50 was adopted for working out the fixed charges, which also include interest on loan capital and return on equity.

3. It has been contended by the petitioner that the Commission ought to have followed the debt and equity in the ratio of 80:20. According to the petitioner, for deciding the debt-equity ratio, reliance on the Feasibility Report in isolation was unfair and unjust, since the Feasibility Report does not indicate any date and is too old to be relevant in the present day context. It has been pointed out that as per the Feasibility Report, the capacity of Faridabad Gas Power Station was to be 800 MW and the project was to be completed at a total cost of Rs 701.14 crore. However, the present capacity of Faridabad Gas Power Station is only 432 MW with the approved project cost of Rs 1163.00 crore. Therefore, according to the petitioner, the Feasibility Report with total cost of Rs 701.14 crore for a 800 MW capacity could not be relevant for tariff determination in the present context. The petitioner has also relied upon Ministry of Power letter dated 28.10.1994 wherein debt-equity ratio of 4:1 has been suggested for all new projects provided the viability of the project and that of organisation was not affected thereby. According to the petitioner, this is an apparent error which may be corrected in exercise of review jurisdiction.

4. According to the respondent, the Feasibility Report was part of the record. It is further stated that in the note submitted to the Public Investment Board for approval, specified the debt and equity in the ratio of 50:50 for Faridabad Gas

Power Station. The relevant documentary evidence has been placed on record. Thus, according to the respondent, the project was approved with the debt-equity ratio of 50:50. It is submitted that the note to Public Investment Board made by Ministry of Power subsequently based on which the project was finally approved made it explicit that the project was approved by the concerned authorities with the clear understanding that debt and equity had to be in the ratio of 50:50. It is also contended by the respondents that the Power Purchase Agreement dated 22.12.1995 signed between the parties proceeded on the basis that the debt-equity ratio of the project would be 50:50. Therefore, according to the respondent, there is no merit in the contention of the petitioner that the debt-equity ratio for approval of tariff should be changed to 80:20.

5. The petitioner has clarified that in the Power Purchase Agreement, the ratio of 1:1 was mentioned for working out incentive formula and it was nowhere agreed that for computation of tariff debt-equity ratio of 1:1 would be considered.

6. We have heard learned counsel for the parties and have considered the rival submissions on the issue. The contention of the petitioner that the debt and equity in the ratio of 80:20 should be followed was duly taken note of by the Commission in its order dated 30.6.2003. It, however, proceeded to determine tariff by considering the debt-equity ratio of 50:50 on the ground that the Feasibility Report was prepared on the basis of ratio of 50:50. A conscious decision taken by the Commission based on available records cannot be said to be a case of error necessitating review. Accordingly, the order dated 30.6.2003

on the question of consideration of the debt and equity ratio is outside the scope of review. Although it is not admissible to rely upon any additional evidence brought on record in the present review proceedings for the purpose of a decision on the issue, in our opinion, even if the matter is reconsidered, evidence on record is enough to strengthen the view already taken in the original proceedings. Accordingly, the case review of the order dated 30.6.2003 on the ground that the debt-equity ratio of 50:50 was erroneously considered must fail.

Interest on Working Capital

7. Interest on Working Capital is one of the components of fixed charges in tariff. While considering working capital, the Commission had considered naphtha stock as during March 2000 in the books of accounts of the respondent for the determination of tariff for the years 1999-2000 and 2000-2001. Similarly, naphtha stock as on March 2001 in the books of accounts for fixation of tariff for the years 2001-2002 and onwards was considered. According to the petitioner, the dual fuel firing facility at Faridabad Gas Power Station was commissioned during February 2002. Therefore, it was contended that considering naphtha stock for computation of interest on working capital for the period prior to February 2002 is an error. At the hearing, the representative of the petitioner did not press the issue so far as it related to computation of working capital for the years 1999-2000 and 2000-2001 on the ground that the amount involved was nominal.

8. The respondent has submitted that it had arranged naphtha stock for dual

fuel firing facility in the turbine to be commissioned. Naphtha was actually stocked during the period 1999-2000 and was used for cleaning the generation plant. The delay in commissioning of the turbine was not on account of any default attributable to the respondent. It has been submitted that minimum necessary stock was maintained for liquid fuel commissioning at all times.

9. In our view it was necessary for the respondent to maintain the naphtha stock even before actual commissioning of dual fuel firing facility at Faridabad Gas Power Station in the normal course. That is why naphtha stock for 7 days (against 10 days stock claimed in the petitions) was considered in the order dated 30.6.2003. The consideration of naphtha stock as a part of working capital was also through the deliberate decision of the Commission, which is beyond the scope of review. Therefore, we reject this ground also urged in support of review of order dated 30.6.2003.

Conclusion

10. In the light of above discussion, the application for review is dismissed with no order as to costs.

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRMAN

New Delhi dated the 17th March 2004