

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal No. 143 of 2006

Dated: February 5, 2008

**Present: Hon'ble Mr. A.A. Khan, Technical Member
Hon'ble Mrs. Justice Manju Goel, Judicial Member**

N.H.P.C. Ltd. -Appellant(s)

Versus

PSEB & Ors. -Respondent(s)

Counsel for the Appellant(s) : Mr. Sachin Datta

Counsel for the Respondent(s) : Mr. Daleep Kr. Dhyani for Resp nos. 1,2 & 4
Mr. B.Sreekumar, Asst Chief(L) for CERC

ORDER

Heard.

The present appeal is directed against the order dated 9.05.06 passed by the Central Electricity Regulatory Commission (CERC or Commission for short) in Petition no. 158 of 2004 whereby tariff in respect of Bairasiul Hydroelectric Project for the period from 1.04.04 to 31.03.09 was determined. The appellant had prayed for the fixation of tariff for the of Bairasiul Hydroelectric Project as the owner of the project. The two grounds on which the Commission's order dated 9.05.06 are challenged are:

1. The allocation towards debt and equity by the Commission in respect of the additional capitalization for the years 2001-02 to 2003-04 is completely arbitrary and inconsistent with regulation 36 and Regulation 34 of the CERC [Terms & Conditions of Tariff] Regulations, 2004.

2. The Commission has erred in apportioning the whole amount of additional capitalization (including FERV, Assets not in use) for the period 1.4.2001 to 31.03.2004 amounting to Rs. 246.37 lakhs to the gross loan amounting to Rs. 10081.00 as on 31.03.2001 as allowed in the previous tariff order and not apportioning the amount of Rs. 246.37 Lakhs into Debt and Equity in the ratio of 56.43 : 43.57 as considered by Commission in the previous tariff order.

The Commission has filed its written submission. In the written submission, the Commission has offered to reconsider its decision on the two aspects. The Commission has already revised its opinion on the issue of the debt equity ratio which reflects in the Commission's order in the matter of Loktak HEP project in which the Commission has apportioned the additional capital expenditure(excluding FERV) in the same debt equity ratio as was considered for determination of tariff for the period 2001-2004. The Commission contends that it will take necessary action to apportion the debt equity ratio in respect of Bairasiul Hydroelectric Project on the basis of the principle adopted in the case of Loktak HEP in the Commission's order dated 5.9.07 in review petition no. 144 of 2006 and the judgment dated 4.10.2007 in appeal nos. 135 to 140 of 2005 subject to final direction of this Tribunal. In respect of the other issues, the Commission contends that the calculation of gross loan, return on equity and interest on loan will follow as a consequential relief after re-apportionment of the debt equity ratio in terms of the commission's decision in Loktak HEP project.

The learned counsel for the appellant states that his appeal

challenging the order of the Central Commission dated 9.5.06 has been largely addressed by the written submission of the CERC and requests that the matter be remanded back to the Commission.

We have heard the Commission's representative as also the representatives of the other respondents before us. Having considered the whole matter we allow the appeal and set aside the impugned order and remand the matter to the CERC for reconsideration of appellant's claim

1. with regard to the apportionment of the additional capitalization(including de-capitalization and FERV) for the period of 1.04.2001 to 31.03.2004 in the same debt equity ratio of 56.43 : 43.57 as admitted in the previous tariff period and
2. with regard to the adoption of the new debt equity ratio, the calculations of gross loan, return on equity and interest on loan.

The Commission is at liberty to give further relief which will be consequent upon the Commission decision on the two above issues. The appellant as well as the other respondents will be at liberty to challenge the order that CERC may now pass consequent upon the present directions.

(Manju Goel)
Judicial Member

(A.A. Khan)
Technical Member