

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

Appeal No. 191 of 2010

Dated: 27th May, 2011

**Present: Hon'ble Mr. Rakesh Nath, Technical Member
Hon'ble Mr. Justice P.S. Datta, Judicial Member**

In the matter of:

**Ratnagiri Gas and Power Private Ltd.,
E-Wing, NFL Premises, A-11, Sector-24,
NOIDA, Gautam Budh Nagar,
Uttar Pradesh-201301.**

... Appellant(s)

Versus

**1. Central Electricity Regulatory Commission,
3rd and 4th Floor, Chandralok Building,
Janpath,
New Delhi-110 001.**

**2. Maharashtra State Electricity Distribution Co. Ltd.,
G-9, Professor Anant Kanekar Marg,
Prakahgad, Bandra (East),
Mumbai-400 051**

...Respondent(s)

Counsel for the Appellant(s): Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan
Ms. Swapna Seshdari

Counsel for the Respondent(s): Mr. Nikhil Nayyar &
Mr. Swapnil Verma for R-1

JUDGMENT

HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

This appeal has been filed by Ratnagiri Gas and Power Private Limited, a generating company, against

the order of the Central Electricity Regulatory Commission (Central Commission) dated 18.8.2010 determining the generation tariff of the appellant for the period from 1.4. 2009 to 31.3.2014.

2. The Central Commission is the respondent no. 1. Maharashtra State Electricity Distribution Company Ltd., Distribution licensee in the State of Maharashtra and a major beneficiary of the appellant's power station, is the respondent no. 2.

3. The brief facts of the case are as under:

3.1. In the year, 1993, the Dabhol Power Co. Ltd. and Enron Group entered into a power purchase agreement with the Maharashtra State Electricity Board for the establishment and sale of power from the gas based generating station at Ratnagiri, Maharashtra.

3.2. In the year 1999 Block-I of the Project was set up. However, Dabhol and Enron Group ran into financial and other difficulties and they could not continue to operate the Project. Dabhol Power Co. Ltd. and Maharashtra State Electricity Board went into litigation. Subsequently, in May 2001, the Ratnagiri Project was closed down and its assets were placed under the control of a Receiver appointed by the High Court of Bombay.

3.3. Following the efforts of the Government of India and the Govt. of Maharashtra for reviving the Dabhol Power Project the appellant's company was incorporated in July 2005 and in October 2005 all the assets of the Ratnagiri Power Project as well as the integrated LNG Terminal and associated infrastructure facilities were taken over by the appellant.

3.4. On 1st September, 2007, Block II was declared commercial after revival. Subsequently, on 21.11.2007, Block-III was declared commercial. From January 2008 onwards the gas turbines of Block-II and Block-III experienced failures resulting in forced outages of the generating units. In May 2009, Block-I was declared under commercial operation after repair.

3.5. The Central Commission determined tariff of the Ratnagiri Power Project for the period 2007-08 and 2008-09 by its order dated 4th June 2009. This order was challenged by the appellant in appeal no. 130 of 2009. On 25th March, 2011 this Tribunal allowed the appeal partly and disallowing some of the issues raised by the appellant.

3.6. On 12th November 2009 the appellant filed Petition no. 283 of 2009 before the Central

Commission for approval of tariff for the period 2009-10 to 2031-32. The Central Commission by its order dated 18.8.2010 decided the petition. Aggrieved by this order dated 18.8.2010 of the Central Commission, the appellant has filed this appeal.

4. The appellant has raised the following issues in the appeal:

- i) **Servicing of cost of LNG Terminal:** The Central Commission has not allowed servicing of cost of LNG terminal as the same has not been commissioned. According to the appellant, servicing of loan on LNG terminal is mandatory as per the scheme for revival and the financial package approved by the Government of India. This will have an impact on the cash flow of the appellant.

- ii) **Determination of the Tariff for the entire life time of the Project upto 2031-32:** The Central Commission has rejected the appellant's claim for fixing of tariff for the period 2009-2010 to 2031-32 on the basis that the appellant had not demonstrated that the levelised tariff over the useful life of the project on the basis of norms in deviation does not exceed levelised tariff calculated on the basis of norms specified in the Tariff Regulations, 2009. In case the Central Commission had allowed the servicing of capital cost of LNG Terminal, the levelised tariff for the period 2009-10 to 2031-32 would have worked out to be less than the levelised tariff calculated in terms of Tariff Regulations, 2009.

iii) The Central Commission has not allowed interim capacity charge of Rs. 420 crores out of tariff periods 2007-08 and 2008-09 to be treated as regulatory asset as proposed under financial restructuring package and agreed to by the purchaser of power, respondent no. 2 herein.

iv) **Consideration of Naphtha Stock for interest on Working capital and station heat rate on Naphtha:** The Central Commission has wrongly rejected fixation of separate station heat rate for Naphtha and failed to consider the cost incurred by the appellant on maintaining 15 days cost for Naphtha for determining the interest on working capital.

5. On the basis of the contentions of the parties, we would frame the following questions for consideration:

- i) Was the State Commission correct in disallowing servicing of the capital cost of LNG terminal in view of the peculiar circumstances of the case?
- ii) Whether the State Commission was correct in not allowing the tariff for the entire life time of the project as submitted by the appellant?
- iii) Has the Central Commission erred in rejecting the claim of the appellant for servicing of the regulatory asset as per the agreement reached between the appellant and respondent no.2?

- iv) Whether the Central Commission should have considered the cost of maintenance of liquid fuel in determining the working capital requirements and also determined the heat rate on Naptha as an alternative fuel?

The above issues have been dealt with in this Tribunal's Judgment dated 25th March, 2011 in appeal No. 130 of 2009. In light of the findings in Tribunal's Judgment dated 25th March, 2011, we will give answers to the questions framed above:

6. The first issue is regarding servicing of cost of LNG Terminal. The very same issue has been dealt with in Tribunal's order dated 25th March, 2011, the relevant extracts of the Judgment are reproduced as under:

“15.3. We have noticed that the Appellant in its petition before the Central Commission had claimed

the apportioned cost of LNG terminal on Block II & III as 1415.51 crores in the total cost of 7121.97 crores. According to Regulation 17 of 2004 Regulations of the Central Commission, subject to prudence check by the Commission, the actual expenditure incurred on completion of the project shall form the basis for determination of final tariff. The LNG terminal has not been commissioned so far. Therefore, its capital cost can not be admitted and serviced through the electricity tariff. If its cost is serviced through electricity tariff it would result in undue burden on the consumer for a facility which has so far not been put to use. Thus, there is no merit in this contention urged by the Appellant. Therefore, this issue is decided against the Appellant”.

Accordingly, we reject the contention of the appellant in regard to the servicing of cost of LNG terminal.

7. The second issue is regarding determination of the Tariff for the entire life time of the Project. Similar issue was raised in appeal no. 191 of 2010 challenging the order of the Central Commission for not allowing the tariff which was agreed between the appellant and respondent no.2, the major beneficiary of the project. The relevant extracts of the Judgment are as under:

“17.4. We find that the Central Commission has determined the tariff as per the 2004 Regulations, rightly so, as the Central Commission can only determine the tariff as per its Regulations and not in any other way. The Central Commission is not expected to mechanically accept the tariff as per the agreements or understanding reached between the Project stakeholders. There is also no provision of Regulatory Assets in the Regulations. Thus, we find that there is no substance in the ground urged by the Appellant. Accordingly, we decide this issue against the Appellant”.

8. In the petition before the State Commission, the appellant claimed the annual fixed charges for the period from 1.4.2009 to 31.3.2032 (i.e. upto the useful life of the generating station) based on levelized calculations after considering a discount factor of 10.19%. Regulation 2 of the 2009 regulations provides that the regulations specified by the Commission shall be in force for a period of 5 years from 1.4.2009. The annual fixed charges claimed by the petitioner for a period upto 31.3.2032 are in deviation of the norms specified in the 2009 Regulations. Regulation 38 of the 2009 Regulations provides for determination of generation tariff in deviation of the norms specified in the 2009 Regulations subject to the condition that the levelized tariff over the useful life of the project on the basis of norms in deviation does not exceed the levelized tariff calculated on the basis of norms

specified in these regulations. The petitioner, in its petition, has not demonstrated the existence of the above condition warranting the consideration of levelized tariff over the useful life of the generating station by the Commission. Hence, the tariff for the generating station is determined for a period of five years from 1.4.2009 to 31.3.2014, based on the norms specified by the Commission in the 2009 regulations. The appellant has contended that if the cost of LNG terminal is allowed then the condition under Regulation 38 would be met. When the servicing of the LNG terminal before its commissioning has not been disallowed then this argument will not hold good.

9. We do not find any infirmity in the order of the State Commission and accordingly confirm the same.

10. The third issue is regarding the creation of regulatory asset. This issue has also been dealt with in the Judgment of this Tribunal in appeal no. 191 of 2010. The relevant extracts of the Judgment (paragraph 17.4) has already been reproduced above in paragraph-7. Accordingly, this issue is decided against the appellant.

11. The fourth issue is regarding consideration of Naphtha stock for interest on working capital and station heat rate on Naphtha. This issue has been decided in this Tribunal's Judgment dated 25th March, 2011 in Appeal No. 130 of 2009. The relevant extracts of the Judgment are as under:

“16.3. We have examined the affidavit of the Appellant dated 14.1.2009 submitted before the Central Commission. The relevant extracts from para 12(iii) & 12(v)(d) is reproduced below:

“iii) Though RGPPL started first of the power blocks using Liquid fuels (Naphtha and HSD), these were never envisaged for commercial operation due to prohibitive cost, reduced hot gas path component life and higher Heat Rate etc. In order to partially tide over the crises, GOI/EGoM decided a contingency arrangement by advancing construction of Dahej-Dabhol pipeline of GAIL and supply of R-LNG from Petronet LNG Limited, Dahej. The arrangement is for 1.5 MMTPA LNG upto September 2009. The quantity is sufficient for about two power blocks of RGPPL.

v).....

(d) Gas/LNG prices are market driven and even if the domestic gas serves as the fuel for the power block, LNG terminal is expected to make financial contribution to the revenue stream thereby justifying the cost incurred in the long run. It is also submitted that as domestic gas has been

allocated for the power project, use of LNG facility is being planned to be utilized for LNG tolling”.

16.4. *The Central Commission has allowed fuel cost for one month taking into account operation of the plant only on LNG. Therefore, we do not find any infirmity in the finding of the Central Commission in this regard.*

16.5. *Learned counsel had also raised a related issue that the Central Commission had not considered heat rate of 2000 Kcal/kWh for generation of a Naphtha. In view of the above findings about operation of the power station only on LNG, this issue does not survive”.*

12. In view of above, this issue is also decided against the appellant.

13. In the above facts and circumstances of the case, we do not find any substance in the appeal and the same is dismissed. No order as to cost.

14. Pronounced in the open court on this **27th day of May, 2011.**

**(Justice P.S. Datta)
Judicial Member**

**(Rakesh Nath)
Technical Member**

REPORTABLE / NON-REPORTABLE

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