Before the Appellate Tribunal for Electricity
Appellate Jurisdiction

Appeal No. 161 of 2006

Dated 22nd December, 2006

Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A. A. Khan, Technical Member

Under Section 111 (2) of Electricity Act, 2003

In the matter of:

M.P. State Electricity Board, Jabalpur,
Now Power trading Co. Ltd.,
Shakti Bhawan, Rampur,
Jabalpur.

…Appellants

Versus

1. Power Grid Corporation of India,
B-9, Kutab Industrial Area,
Katwaria Sarai,
New Delhi- 110016.

2. Central Electricity Regulatory Commission,
Core-3, 6th Floor, Scope Complex,
New Delhi-110 003.

3. Gujarat Urja Vikas Nigam Ltd (GUVNL),
Vidyut Bhawan, Race Course,
Vadodra- 380 007.

4. MAHAADISCOM,
Prakashgarh, Bandra (East),
Mumbai- 440 051.

5. Chhattisgarh State electricity Board,
Raipur.

6. Goa Electricity Department,
Vidyut Bhawan, 3rd Floor,
Panjim, Goa.

7. Electricity Department,
Administration of Dadra & Nagar Haveli, Silvassa, Vapi.

…Respondents

Counsel for the appellant (s): Mr. Hare Krishna Upadhyaya.
Mr. A.K. Garg, Superintending Engineer
Mr. S. Janardan, R.E., MPSEB.
Mr. D. Khandelwal, CE, MPPTCL.

Counsel for the respondent(s):Mr. M.G. Ramachandran
Ms Taruna S. Bhagel,
Mr. Anand K. Ganesan
Mr. Brijesh K. Tamber
Mr. Varun Thakur
Mr. Ajit S. Bhasme,
Mr. A.K. Nagpal, DGM, PGCIL

Judgement

Per Hon'ble Mr. A.A. Khan, Technical Member

Madhya Pradesh State Electricity Board (hereinafter called as MPSEB) preferred this appeal against the order passed on 17.07.2003 by the Respondent No. 2, Central Electricity Regulatory Commission (hereinafter called as 'Central Commission') in Petition NO. 66 of 2002 filed by the Respondent No. 1, Powergrid Corporation of India Ltd. (for brevity called as 'PGCIL') for determining the Transmission Tariff of Vindhyachal Stage –I (Additional Transmission System) in the Western Region for the period 01.04.2001 to 31.03.2004. The Central Commission in its aforesaid order had adopted the projected capital expenditure for the purpose of determination of tariff for the period from 01.04.2001 to 31.03.2001 as Rs. 76,505.20 lakhs as on 31.03.2001. The Appellant has claimed that projected capital expenditure of Rs. 76,505.20 lakhs is not the capital expenditure incurred by the Respondent No. 1, PGCIL and contravenes the Clause 4.3 (c) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations – 2001 (for short to be called as Regulation 2001). The appellant has

further submitted that the Central Commission has allowed an expenditure of Rs.78.42 crores for the year 2001-02; Rs. 69.14 crores for the year 2002-03 and Rs. 59.89 crores for the year 2003-04 on account of Notional Foreign Exchange Rate Variation (to be called FERV) burden I the actual capital expenditure which, in fact, has not been incurred by the Respondent No.1. Thus putting unfair burden on the ultimate consumers of the beneficiary state.

FACTS OF THE CASE:

2. In the Tariff Order dated 17.07.2003 passed by the Central Commission at para-9 of the said tariff order have stated that the Appellant, PGCIL has claimed FERV with the following method:

> *"4.8 Pinciple of sharing of Transmission charges of the inter-regional asset including HVDC system by the beneficiaries.*
>
> *The Transmission Char4ges of the inter-regional assets including HVDC system shall be shared in the ratio of 50:50 by the two contiguous regions. These Transmission Charges shall be recovered from the beneficiaries by pooling 50% of the Transmission Charges for such inter-regional assets with the Transmission Charges for transmission system of the respective regions".*

3. Further the same Tariff Order at para 12 in case of IBRD loan has calculated the FERV amount as under:

> *"7. Full annual transmission charges shall be recoverable at 95 per cent Availability of operation. Payment of transmission charge below 95 per cent shall be on pro-rata basis. There shall*

not be any payment of annual transmission charges for availability level below 95 per cent. The transmission charge shall be calculated on monthly basis. In case of more than one beneficiaries of the transmission system, the monthly transmission charge leviable to each beneficiary shall be computed as per the following formula.

$$\text{Transmission charges} = \frac{TC}{12} \times \frac{EB}{ES}$$

Where TC = Annual Transmission Charges payable by the beneficiaries.
EB = Monthly energy sale from Central Sector Stations as may come in the system to each beneficiary individually as per Regional Energy Account.
ES = Total monthly energy sale from Central Sector Stations.

From the above it may be seen that FERV on the outstanding IBRD loan as on 31.03.2001 was computed to be Rs. 88.189 crores and the said amount was added to the amount of capital expenditure as on 31.03.2001 of Rs. 67,685.50 lakhs which incidentally was also the completion cost of the project.

4. It may be pointed out that in para -9 of the order dated 22nd September, 2004 passed by the Central Commission it is recognized that the FERV in case of IBRD loan for the period from 01.04.1992 to 31.03.01 was paid in accordance with the Notification of Ministry of Power, Government of India dated 16.12.1997 providing norms for the determining of tariff up to 31.03.2001. Para 5 of the said

Notification under the heading "Extra Rupee Liability" provided that the extra rupee liability towards the interest payment and loan repayment actually incurred for the relevant year shall be admissible. This Notification have no reference to the accounting standard issued by the Institute of Chartered Accountants of India. An extract of para 5 of the said Notification is reproduced below:

> *"Extra rupee liability towards interest payment and loan repayment actually incurred, in the relevant year shall be admissible; provided it directly arises out of foreign exchange rate variation and is not attributable to Powergrid or its suppliers or contractors."*

5. It may be pointed out that Regulations 2001 under Regulation 1.13 under the heading "Extra Rupee Liability" provide that extra rupee liability towards interest payment and loan repayment shall be admissible and further every utility shall follow the method as per the Accounting Standard-11 (i.e. AS-11) as issued by the Institute of Chartered Accountant of India (ICAI). And extract of the said Regulation 1.13 is reproduced below:

> ***"1.13 Extra Rupee Liability.***
> *Extra rupee liability towards interest payment and loan repayment actually incurred in the relevant year shall be admissible provided it directly arises out of foreign exchange rate variation and is not attributable to Utility or its suppliers or contractors. Every utility*

shall follow the method as per the Accounting Standard. 11 (Eleven) as issued by the Institute of Chartered Accountants of India to calculate the impact of exchange rate variation on loan repayment.

Any foreign exchange rate variation to the extent of the dividend paid out on the permissible equity contributed in foreign currency, subject to the ceiling of permissible return shall be admissible. This as and when paid, may be spread over the twelve-month period in arrears."

6. Further Regulations 4.3(c) under the heading "Capital Cost and Capital and Structure" provides that

"4.3. (a)------
(b)------
(c) The actual capital expenditure incurred on completion of the project shall be the criterion for the fixation of tariff. Where the actual expenditure exceeds the approved project cost the excesses as approved by the Authority or an appropriate independent agency, as the case may be, shall be deemed to be the actual capital expenditure is not attributable to the 'Transmission Utility or its suppliers or contractors.

Provided further that where a transmission services agreement entered into between the Transmission Utility

and the beneficiary provides a ceiling on capital expenditure, the capital expenditure shall not exceed such ceiling".

7. The aforesaid Regulations clearly provides that the actual capital expenditure incurred on completion of project shall be the criterion for the fixation of the tariff.

8. The senior counsel for the Appellant has submitted that the purpose of Accounting Standards is primarily to ensure that the annual accounts of an entity reflect a true and fair view of its books and accounts and do not take into consideration the mechanism of determination of tariff as envisaged in the Tariff Regulation. We are inclined to accept the contention as for example presently a licensee is required to adopt three rates of depreciations for different purposes namely for the purpose of fixation of tariff, for the purpose of presentation of accounts as per Companies Act 1956 and for the purpose of Income Tax liability calculation ad the treatment given to each of them is different in the books of accounts. Over all the scheme of recovery of tariff as per the Tariff Regulations is to ensure the recovery of prudently incurred future cost of operations and return on investments. Keeping this in view it has to be ensured that the mechanism adopted does not result in duplication in recovery of cost. It has to be borne in mind that the capital cost being a major item will have substantial impact on the

quantum of tariff to be recovered from the beneficiaries. The application of AS-11 is to be read harmoniously with other notifications on the subject. We are of the view that if the cost has been earlier recovered without implementing AS-11, the benefit of AS-11 cannot be taken for recovery of the same cost second time in subsequent years.

9. One may visualize the recovery of cost to take place in two forms as mentioned below:

(a) Recovery of revenue cost incurred during the year and recovered during the year such as operation and maintenance expenditure, interest on loans, return on investments etc.

(b) Recovery of capital costs to be recovered over the useful life of the assets in the form of depreciations.

10. We are of the opinion that once cost incurred has been recovered through tariff it ought not to be capitalized for recovering the same cost again through future tariff. We observe that the Respondent No. 1, PGCIL has recovered additional FERV incurred for the period up to 31.03.2001 in terms of the notification dated 16.12.1997 and that portion of FERV if added back to the capital cost it would allow the entitlement to recover it through depreciations in subsequent years. This would lead to recovery of the same cost, twice.

11. In order to provide the continuity with the related matters, it may be mentioned that this Tribunal in its judgement passed on 4th October 2006 in Appeal No. 135 to 140 of 2005 had concurred that the methodology adopted by the Central Commission for calculation of FERV as actually incurred read with AS-11. The said judgement also provide that any increase on account of FERV is not to be allocated to equity if the entire equity was sourced from the domestic resources only and not through foreign currency.

12. In view of the above the appeal is allowed. The FERV for the period up to 31.03.2001 already paid should not be added to the capital cost and the same be considered for the purpose of determination of tariff only for the subsequent period.

13. The Central Commission is directed to re-compute the affect of FERV on the debt liability in terms of the above judgement. With above observations & directions the appeal is disposed of.

(A. A. Khan)
Technical Member

(Justice Anil Dev Singh)
Chairperson