# CHAPTER XIV: MINISTRY OF POWER

## NHPC Limited

### *14.1.1 Avoidable expenditure on preparation of Detailed Project Report of an unviable Project*

**The Company incurred Rs.8.29 crore on repeated feasibility studies of an unviable Project including avoidable expenditure of Rs.5.03 crore on preparation of DPR.**

Government of India, Ministry of Power entrusted (May 2001) NHPC Limited (Company), the work of survey and investigation of Bav Hydro Electric Project stage II, in Konkan region of Maharashtra. The Company conducted the feasibility studies for the Project as detailed below:

- In July 2002 it submitted the Feasibility Report (FR) of the Project for 50 MW (2x25 MW) at a levellised tariff of Rs.7.34 per unit to Central Electricity Authority (CEA) for financial concurrence. CEA considered the per unit cost very high and advised for review of the Project to bring down the cost to a reasonable level.

- In April 2003, the Company again submitted a revised FR of the Project with the same installed capacity at a levellised tariff of Rs.5.59 per unit which was also not found (May 2003) commercially viable.

- In January 2004 the Company scaled down the capacity of the Project to 20 MW and submitted the FR with the levellised tariff of Rs.3.65 per unit. CEA considered the project as viable but made it clear that the viability was based solely on the inputs of cost and energy estimates prepared and submitted by the Company. It also cautioned that in case the project was not found commercially viable again on the basis of the Detailed Project Report (DPR) prepared by the project authorities, the entire expenditure incurred would become infructuous.

- In March 2006 the Company submitted DPR to CEA at the levellised tariff of Rs.6.53 per unit. CEA felt that the levellised tariff was very high making the Project commercially unviable.

Subsequently, the Company approached the Maharashtra State Government (June 2006 and August 2006) for purchasing the power to which the State Government did not agree (August 2006) stating that as per Maharashtra State Regulatory Commission Guidelines, the tariff for the Project below 25 MW had already been determined at Rs.2.84 per unit with annual increase by Rs.0.03 per unit till the 10$^{th}$ year.

The Board of Directors (BOD) of the Company ultimately decided (May 2007) to close the Project after incurring an expenditure of Rs.8.29 crore on various feasibility studies and preparation of Detailed Project Report.

Audit observed that:

- The Company continued to incur expenditure on investigations and studies on the Project that was commercially unviable *ab-initio*.
- The State Government intimated in March 2004 that tariff should be maintained at or below Rs.2.75 per KWH. The Company, however, went ahead and prepared a DPR in April 2006 incurring a cost of Rs.5.03 crore.
- While conducting the feasibility of the 2X10 MW Project, the Company did not exercise due diligence with regard to the various cost elements, resulting in increase in the cost between FR (Rs.97.78 crore) and DPR (Rs.167.04 crore) on account of the following:

  (a) The status of the land was not ascertained properly and the land which was assessed to be forest/state land was actually a private land (Rs.7.02 crore).

  (b) Gated spillway structure and consequential increase of other items of work was not envisaged in FR (Rs.7.16 crore).

  (c) Height of the Dam was envisaged 27 m in FR against the DPR provision of 36 m (Rs.15.39 crore).

Had the Company exercised due diligence while conducting the feasibility study, it could have avoided an expenditure of Rs.5.03 crore spent on preparation of DPR of an unviable project.

The Management in their reply (April 2009) contended that the power tariff was to be determined by the Central Electricity Regulatory Commission and Maharashtra Electricity Regulatory Commission had no role to play in the tariff fixation.

The reply of the Management is not convincing as the Government of Maharashtra was the sole beneficiary of the project and the Company decided (May 2007) to close the Project because the Government of Maharashtra was not willing to purchase power at a higher price. The Company was already aware of this fact before taking up the work of preparation of DPR.

Thus, repeated studies on a project, which was commercially unviable *ab-initio*, resulted in wasteful expenditure of Rs.8.29 crore. Further, the Company could have avoided an expenditure of Rs.5.03 crore on preparation of DPR if it had taken due care.

The matter was reported to the Ministry in July 2009; their reply was awaited (November 2009).

## NTPC Limited

### *14.2.1 Wrongful retention of interest earned on the funds of beneficiaries*

**The Company did not pass on the benefit of interest income of Rs.16.58 crore earned by it on the funds of beneficiaries withheld by it.**

As per the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (Regulation), Tariff for sale of electricity from thermal power generating stations *inter-alia* consists of energy (variable) charges which include the landed cost of coal, royalty, taxes and duties as applicable. Accordingly, any taxes and duties payable by a Generating company to the coal suppliers are recoverable from the beneficiaries as part of tariff.

The power plants of the NTPC Limited (Company) located at Rihand, Vindhyachal and Singrauli meet their coal requirement from the mines of Northern Coalfields Limited (NCL) located in Madhya Pradesh. In March 2005, the Government of Madhya Pradesh notified Madhya Pradesh Gramin Avsanrachna Tatha Sadak Vikas Adhiniyam 2005 (Act) whereby the Coal Companies, with effect from September 2005, were required to pay five *per cent* tax to the State Government on the value of coal sold. Accordingly, NCL preferred (April 2006) a claim of Rs.69.88 crore on the Company for the period 30 September 2005 to 31 March 2006 and thereafter till March 2008 through monthly invoices for coal supplied. Meanwhile, High Court, Jabalpur on a petition filed by the NCL on the legality and validity of the tax, passed an order (April 2006) directing the Government of Madhya Pradesh not to take any coercive measures to recover this tax and also not to impose any penalty for non-payment of tax.

Taking this into account, the Company did not pay the subject tax to the NCL. It, however, continued to recover the same from the beneficiaries (State Electricity Boards and other power purchasers) as a part of fuel cost which accumulated to Rs.384.47 crore till March 2008.

Audit observed that, the Company ultimately credited the amount recovered in the accounts of the beneficiaries in June 2008 but did not pass on the interest income of Rs.16.58 crore[♠] earned thereon for two years to the beneficiaries.

The Management stated (April 2009) that imposition of tax had not been stayed and only its coercive collection was stayed by the Court. Therefore, to protect the interest of its beneficiaries, the amount of tax billed by NCL was withheld and was credited to beneficiaries on subsequent development.

However, the Company only credited the amount of tax recovered and not the interest of Rs.16.58 crore earned by it thereon. As this amount was used by it, the interest thereon was also required to be credited to the beneficiaries.

Thus, the beneficiaries were deprived of the interest of Rs.16.58 crore on the amount collected from them and withheld by the Company. The Company should pass on the

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♠ ***Minimum rate of interest of 3.5 per cent on investments in bank***

interest earned by it to the beneficiaries (State Electricity Boards and other power purchasers).

The matter was reported to the Ministry in August 2009; their reply was awaited (November 2009).

## Power Grid Corporation of India Limited

### *14.3.1 Changes in terms and conditions after opening of bids*

**Transparency of the bidding process was compromised by the Company/Ministry by changing bid conditions from Build Own Operate Transfer (BOOT) to Build Own Operate (BOO) in two projects after opening of bids.**

Power Grid Corporation of India Limited (Company) decided to execute the following two transmission projects through private sector participation on Build, Own, Operate and Transfer (BOOT) basis:

- Part of transmission system for Parbati-II & Koldam hydro project (Project 1) by forming a Joint Venture Company (JVC), and

- Projects B and C of Western Region System Strengthening Scheme-II (Project 2) by selecting Independent Private Transmission Company (IPTC).

Bids for Projects 1 and 2 were invited in February 2004 and November 2005 through international competitive bidding. In case of Project 1 the transmission service charges as determined by Central Electricity Regulatory Commission were to be paid for operation and maintenance of the lines to the JVC formed with the successful bidder. The bidding terms provided for buy out during the implementation and operation as well as at the end of the licence period of 25 years at the price formula defined in the draft agreement. Reliance Energy Limited (REL) was adjudged (September 2004) as successful bidder for Project 1 based on the technical, financial and managerial criteria fixed by the Company and letter of selection was also issued to them in December 2005.

In case of Project 2 the bidders were required to quote the Annual Transmission Service charges and buy out price for the Company at the end of the licence period of 25 years. The bidding conditions also provided for the buyout during the licence period as per the price formula fixed in the draft agreement. The bidder with lowest sum of NPVs of the annual transmission service charges and the discounted buy out price was to be awarded the project. Reliance Energy Transmission Limited (RETL) emerged (November 2006) as the lowest bidder.

Meanwhile, the Government of India issued (January 2006) guidelines for Public Private Partnership (PPP) projects which required clearance of Public Private Partnership Appraisal Committee (PPPAC) for PPP projects with capital costs exceeding Rs.100 crore. On enquiry by the Company regarding applicability of these guidelines to the power sector transmission projects, Ministry of Finance clarified (Jan 2007) that

clearance by PPPAC was necessary if the projects entailed any contingent liability on the company by way of buy-out, etc.

Against this background, Ministry of Power constituted (May 2007) an in-house committee headed by Shri A.K. Khurana, Additional Secretary to look into various aspects of competitive bidding for transmission projects. The Khurana Committee suggested (May 2007) deletion of buy-out provisions (during construction and operation period).

Subsequently, in a meeting taken by Secretary (Power) (6 August 2007), it was decided that if the bidder agreed to the deletion of the buyout provisions, the case may not require PPPAC approval. Re-tendering was also not considered necessary as deletion of buy-out provisions was seen as hardening of contract conditions for the bidders. Accordingly, the Ministry requested the Company to hold discussion with the bidders in the light of the recommendations of the Khurana Committee. The negotiations were held by the Company with the bidders on 29 August 2007 wherein it was agreed to change the project model from BOOT to BOO without any change in bid price.

Audit observed that the bidding process was vitiated on account of change of bid conditions after opening of the financial bids/selection of JV partner. Though the Khurana Committee did not recommend deletion of buy-out provision at the end of the licence period, this was done by the Company by changing the projects from BOOT model to BOO model by negotiating with RETL/REL after opening the bids.

The Ministry mainly contended (December 2008 and August 2009) that:

- Buy-out was deleted in line with the intent of the Khurana Committee report.
- Since no relaxation from the notified conditions was made and removal of buy-out provisions was only a hardening of the contract conditions, re-tendering was not considered. Complete transparency was maintained by the Company as a Bid Coordinator under the direction of CERC.
- Under BOOT model, the Company would have been required to include a contingent liability to the tune of Rs.1275 crore in the financial statements towards transfer of asset in the event of default at a later date.
- By not going in for retendering and making the L1 bidder accept BOO conditions at its quoted price, the benefit of extremely competitive price, which is in the interest of power utilities and public at large, had been retained.

The reply is not convincing as:

- The Khurana Committee recommended deletion of buyout provision only during construction and operation period and not at the end of the license period. The decision to delete the buy-out condition at the end of the licence period was taken by Ministry/Company. Thus, there was no such intent of Khurana committee.

- Changing the project from BOOT model to BOO model after opening of the bids was a significant change in the bidding conditions and compromised on the transparency of the bidding process. It was not a hardening of conditions because it also conferred permanent ownership of assets to the bidder/JVC at the expiry of the licence period.

- Invitation of bids on BOO basis could have led to wider participation in the bidding process in view of prospect of retention of perpetual ownership of assets with the successful bidder and the possibility of the Company getting a better price.

Thus, by changing the bidding terms after opening of bids the transparency of the bidding process was compromised. It is recommended that the tender terms and conditions should not be changed after opening of the bids so as to maintain transparency.