

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri Bhanu Bhushan, Member**
- 2. Shri R. Krishnamoorthy, Member**

Petition No. 31/2001

In the matter of

Approval of tariff in respect of Kawas GPS for the period from 1.4.2001 to 31.3.2004.

And in the matter of

National Thermal Power Corporation Ltd.

....Petitioner

Vs

1. Madhya Pradesh State Electricity Board, Jabalpur
 2. Maharashtra State Electricity Board, Mumbai
 3. Gujarat Electricity Board, Vadodara
 4. Chhattisgarh State Electricity Board, Raipur
 5. Electricity Department, Govt. of Goa, Panaji.
 6. Electricity Deptt, Admn of Daman & Diu, Daman
 7. Electricity Deptt, Admn of Dadra & Nagar Haveli, Silvassa
- Respondents**

ORDER

The petitioner filed Petition No. 31/2001 for approval of tariff in respect of Kawas Gas Power Station (hereinafter referred to as "the generating station") for the period 1.4.2001 to 31.3.2004 in accordance with the provisions of the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2001. The Commission had earlier approved tariff for the generating station for the period 1.4.1998 to 31.3.2001 by order dated 18.5.2004 in Petition No. 99/2002.

Prior to that, tariff notified by the Central Government in Ministry of Power was applicable.

2. In the meantime, on 4.4.2001, the Commission issued a general notification to the effect that till the final determination of tariff in accordance with the Regulations of 2001, billing of tariff applicable as on 31.3.2001 would be continued on provisional basis.

3. The tariff of the generating station for the period 1.4.2001 to 31.3.2004 was approved by the Commission vide order dated 7.4.2005. Accordingly, till the determination of final tariff, the petitioner was claiming tariff on provisional basis at the rates notified by the Central Government and those decided by the Commission in its order dated 18.5.2004 in Petition No. 99/2002. The tariff finally approved by the Commission was less than that charged by the petitioner on provisional basis in terms of the notification dated 4.4.2001, as extended from time to time. Respondent No. 1 filed Review Petition No. 100/2005 for interest on the excess amount recovered by the petitioner on provisional basis, which was dismissed by the Commission vide order dated 16.2.2006.

4. After issue of orders dated 7.4.2005 and 16.2.2006, Respondent No. 1 made an appeal before the Appellate Tribunal to claim interest on the excess amount recovered by the petitioner on provisional basis. The Appellate Tribunal in its judgment dated 20.4.2007 has directed as under:

“26. We are of the view that the NTPC, being a ‘AAA’ rated company can borrow money from the domestic market at a most competitive terms and at

interest rate below PLR than MSEB and PSEB who are unrated and not financially sound. The cost of borrowing for NTPC is more relevant because it cannot be asked to refund more than what it has gained by such excess amount made available to it. If such free-of-cost funds were not available to NTPC, it may be reasonably presumed that NTPC would have borrowed from the market to run its operations. To that extent we can say that NTPC has benefited as a result of the excessively delayed final tariff orders of the Central Commission. It will be difficult to determine the cost of borrowings applicable for the excess amount charged by the first respondent from the appellant and beneficiaries. We note that as per Regulation 5A of Regulations, 2006, the Central Commission has recognized the appropriateness of levying 6% as the rate of interest liable to be paid by the party(ies) who has enjoyed excess differential amount between the provisional and final tariffs determined by the Central Commission to other party(ies) involved in the sale and purchase of the power. Considering the cost of borrowings we allow for calculation of rate of interest as an average of the prevailing lending rates of the Reserve Bank of India to Banks during the relevant periods.

27. Having regard to the aforesaid discussions, we allow appeal nos. 64, 212 and 237 of 2006 and remand the matter to Central Electricity Regulatory Commission for computation of the interest payable by first respondent to the appellant in the light of the aforesaid observations made by us.”

5. In view of the above directions of the Appellate Tribunal, we direct the petitioner to settle the interest amount payable to the respondents in accordance therewith, the detailed calculations of which shall be filed before the Commission. The action shall be completed latest by 31.7.2007 and a confirmation in this regard shall be filed by the petitioner duly supported by affidavit. In the event that the parties are unable to resolve the matter amicably, any of them is at liberty to approach the Commission for settlement.

Sd/-
(R. KRISHNAMOORTHY)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

New Delhi, dated the 21st May, 2007