

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

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

Petition No. 38/2001

In the matter of

Approval of tariff in respect of Rihand Super Thermal Power Station Stage I for the period from 1.4.2001 to 31.3.2004.

And in the matter of

National Thermal Power Corporation Ltd.

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd., Lucknow
 2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
 3. Delhi Vidyut Board, New Delhi.
 4. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
 5. Punjab State Electricity Board, Patiala.
 6. Himachal Pradesh State Electricity Board, Shimla.
 7. Power Development Department, Govt. of J & K, Srinagar
 8. Power Department Union Territory of Chandigarh, Chandigarh.
 9. Uttaranchal Power Corporation Ltd., Dehradun
- Respondents**

Petition No. 151/2004

And in the matter of

Approval of tariff in respect of Rihand Super Thermal Power Station Stage I(1000 MW) for the period from 1.4.2004 to 31.3.2009.

And in the matter of

National Thermal Power Corporation Ltd.

....Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd., Lucknow
 2. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
 3. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
 4. Jodhpur Vidyut Vitran Nigam Ltd., Jaipur
 5. Delhi Transco Limited, New Delhi.
 6. Haryana Vidyut Prasaran Nigam Ltd., Panchkula
 7. Punjab State Electricity Board, Patiala.
 8. Himachal Pradesh State Electricity Board, Shimla.
 9. Power Development Department, Govt. of J & K, Srinagar
 10. Power Department Union Territory of Chandigarh, Chandigarh.
 11. Uttaranchal Power Corporation Ltd., Dehradun
- Respondents**

ORDER

The petitioner filed Petition No. 38/2001 for approval of tariff in respect of Rihand Super Thermal 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 and Petition No. 151/2004 for approval of tariff for the period 1.4.2004 to 31.3.2009 in accordance with the provisions of the Central Electricity Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2004. The Commission had earlier approved tariff for the period 1.11.1997 to 31.3.2001 by order dated 4.10.2002 in Petition No. 30/2002. 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. After notification of the regulations of 2004, a similar notification was issued by the Commission on 30.4.2004 to the effect that till the determination of tariff in accordance with the said regulation, billing of tariff applicable as on 31.3.2004 would be continued on provisional basis.

3. The tariff for the generating station for the period 1.4.2001 to 31.3.2004 was determined by order dated 2.6.2006 in Petition No. 38/2001 and for the period 1.4.2004 to 31.3.2009 by order dated 19.6.2006 in Petition No. 151/2004. Accordingly, till the determination of final tariff, the petitioner was charging tariff on provisional basis at the rates notified by the Central Government and those decided by the Commission in its order dated 4.10.2002. The tariff finally approved by the Commission was less than that charged by the petitioner on provisional basis in terms of the notifications dated 4.4.2001 and 30.4..2004, as extended from time to time.

4. After issue of orders dated 2.6.2006 and 19.6.2006, Punjab State Electricity Board and Delhi Vidyut Board made appeals 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 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