

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram :**

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

**Review Petition No.139/2007  
in  
Petition No 65/2007**

**In the matter of**

Approval of generation tariff for the Muzaffarpur TPS, (2X110 MW) for the period from 8.9.2006 to 31.3.2009.

**And in the matter of**

Vaishali Power Generating Company Ltd, New Delhi **.....Petitioner**

**Vs**

Bihar State Electricity Board, Patna **....Respondent**

**The following were present**

1. Shri S.N. Goel, GM, NTPC
2. Shri D. Kar, NTPC
3. Shri Guryog Singh, NTPC

**ORDER  
(DATE OF HEARING: 27.11.2007)**

The petitioner has, through this review petition, sought review and modification of the Commission's order dated 11.9.2007 in Petition No 65/2007 vide which the Commission had disposed of the petition filed for approval of generation tariff in respect of Muzaffarpur TPS, (2X110 MW) (hereinafter referred to as "the generating station") for the period from 8.9.2006 to 31.3.2009.

2. The petitioner is essentially aggrieved by the Commission's following observation in para 9 of the impugned order:

"We are constrained to point out that provisions in clauses 7.1.3 to 7.1.5 are not in order, and should be kept in abeyance"

3. For ease of reference, the relevant clauses of the PPA are extracted hereunder:

### **7.1.3 Provisional Tariff**

Provisional capacity charges shall be Rs. 6.00 Crore per month. The energy charges shall be worked out each month on the basis of landed price of fuel & norms of generation agreed herein at 7.15 below. These charges shall be subject to retrospective adjustment after final determination of tariff by CERC.

7.1.4 Till the end of financial year in which renovation and modernization is completed, the Target Availability for recovery of full charges shall be the actual availability achieved during the year. The Target Availability after completion of R&M shall be as decided by CERC.

7.1.5 Till the end of the financial year in which R&M is completed, the operating parameters of heat rate, Aux. Power Consumption & Specific Fuel Oil Consumption shall be as actually achieved at the station for the purpose

of recovery of energy charges & after this period operating parameters shall be as decided by CERC.

4. We have heard the representative of the petitioner on admission. It has been urged that the generating station was under shut-down for about three years, i.e. from 6.10.2003 to 8.9.2006, when it was taken over by the petitioner. Besides, the performance of the generating station was very poor prior to its take over by the petitioner. As it was not possible to estimate the actual operating parameters that could be achieved, both the parties agreed to the capacity charges, considering ROE @ 14% and O&M expenses based on actuals and the energy charges based on the operating parameters actually achieved by the generating station.

5. It was further submitted that the above noted clauses were incorporated in the PPA based on the earlier experience of Tanda TPS which was taken over from UPPCL by NTPC, the promoter company of the petitioner. According to the petitioner, performance of Tanda TPS was also very poor prior to its take over and significant improvement in operating parameters were achieved within 4 years of take over. Despite this improvement, there is an under-recovery of about Rs. 220 crore for Tanda TPS. The petitioner being a newly formed company, may not be able to withstand the under-recoveries to that extent and this may have the adverse impact of wiping out its capital base. In the light of these facts, the petitioner prays that the tariff for the generating station may be allowed to be determined in accordance with clauses 7.1.3 to 7.1.5 of the PPA.

6. We are not impressed by the submissions of the petitioner. The submissions made by the petitioner do not fall within the ambit of review. Under the guise of review, the petitioner has endeavoured to re-argue the case, which is not permissible in the review proceedings. Under the Electricity Act, 2003 (hereinafter "the Act"), the function of regulation of tariff of the generation companies owned or controlled by the Central Government is vested in the Commission. Therefore, the generating company and the beneficiary, through mutual agreement, cannot be permitted to overreach or defeat the provisions of the Act. The Commission in exercise of its powers under the Act has specified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter "the 2004 regulations"), which presuppose regular scheduling and existence of operational norms for determination of Annual Fixed Charges. Under these circumstances, determination of capacity charges as done by the parties in the instant case is not permissible.

7. Further, the sum and substance of the impugned PPA clauses is that the petitioner has to be paid by the respondent a fixed amount of Rs.6 crore per month in the name of capacity charges, irrespective of whether the generating station runs or not and irrespective of availability, and the actual fuel cost incurred whatever the energy generated. However, the former cannot even be termed as 'capacity charge', since a 'capacity charge' has to be necessarily linked to declared capacity. And the latter means that there is no energy charge rate, but only a reimbursement of the actual fuel cost. In such a

situation, there is no tariff which the Commission can specify in terms of its regulations.

8. The petitioner clarified during the hearing that its intention in the PPA was to receive Rs.6 crore per month w.e.f. 8.9.2006, the takeover date, whereas the generating station is still not able to generate power in a sustained manner. There is, therefore, no question of allowing this amount as tariff, but it could be paid by the respondent towards the cost being incurred by the petitioner, which would otherwise be capitalized. The petitioner wanted an assurance about recovery of return on equity invested by it in the generating station. This aspect could be looked into when the petitioner files a petition as per para 10 or our order dated 11.9.2007.

9. With the above, the Review Petition stands dismissed at admission stage, as not maintainable.

**Sd/-**  
**(R. KRISHNAMOORTHY)**  
**MEMBER**

**Sd/-**  
**(BHANU BHUSHAN)**  
**MEMBER**

**New Delhi, dated the 5<sup>th</sup> December 2007**