

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

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

**Review Petition No.47/2008  
In Petition No.179/2004**

**In the matter of**

Petition for review of order dated 31.1.2008 in Petition No.179/2004-  
Determination of generation tariff in respect of Talcher STPS Stage-II (2000  
MW) for the period 1.4.2004 to 31.3.2009.

**And in the matter of**

Tamil Nadu Electricity Board, Chennai

**....Petitioner**

**Vs**

National Thermal Power Corporation Ltd., New Delhi

**....Respondent**

**The following were present:**

Shri S. Sowmyanarayanan, Consultant for the Petitioner

**ORDER  
(DATE OF HEARING: 24.4.2008)**

**General**

The application for review has been made by Tamil Nadu Electricity Board (hereinafter referred to as "the applicant") for review of the Commission's order dated 31.1.2008 in Petition No.179/2004 whereby the Commission determined tariff for Talcher STPS Stage-II, hereinafter referred to as "the generating station" for the period 1.4.2004 to 31.3.2009.

**Facts**

2. The generating station comprises of four units of 500 MW each. The first two units were declared under commercial operation during 2003-04, and their tariff for that year was approved by the Commission in its order dated

13.6.2005 in Petition No.1/2003. The third and fourth units were declared under commercial operation on 1.11.2004 and 1.8.2005 respectively.

3. Petition No.179/2004 was filed by the respondent for determination of tariff for the generating station wherein it considered the capital cost as under:

	<b>1.4.2004</b>	<b>1.11.2004</b>	<b>1.4.2005</b>	<b>1.8.2005</b>
Capital Gross Block	260623	384197	387163	496110

4. For the purpose of tariff, the respondent considered loan of Rs.347277 lakh (notional) and equity of Rs.148833 lakh in the ratio of 70:30 though in Form 13 it had indicated that the gross loan of Rs.311444 lakh was drawn for the generating station.

5. The capital cost considered by the respondent also included the outstanding and undischarged liabilities for which payments were not made till the date of commercial operation of the generating station. These amounts, the details of which were furnished by the respondent, were adjusted against the capital cost considered for the purpose of tariff. The calculations of capital cost so arrived at are given hereunder.

(Rs. in lakh)

	<b>1.4.2004</b>	<b>1.11.2004</b>	<b>1.4.2005</b>	<b>1.8.2005</b>
Capitalised Gross Block	260533	382151	386243	496110
Undischarged Liabilities	31557	46649	42689	58522
Actual capital cost	<b>228976</b>	<b>335502</b>	<b>343554</b>	<b>437588</b>

6. The capital cost arrived at as above included IDC and FC. The respondent had claimed an amount of Rs.94453 lakh towards interest and FC, based on FIFO method of repayment of loan. The respondent's claim included an excess amount of Rs.156 lakh. After adjustment of this amount, the

petitioner's claim for interest and FC worked out to Rs.94298 lakh by FIFO method of repayment of loan. The respondent claimed IDC of Rs.66644 lakh also.

7. The Commission has all along considered the average method of repayment of loan instead of FIFO method being considered by the respondent, since the latter method results in higher IDC on ongoing and under construction projects, and higher AAD in case of the existing projects and is not considered to be in the consumer's interest. Therefore, for the generating station also, IDC was worked out with average method of loan repayment. After applying this correction, the capital cost worked out for the purpose of tariff was as under:

(Rs. in lakh)

	<b>1.4.2004</b>	<b>1.11.2004</b>	<b>1.4.2005</b>	<b>1.8.2005</b>
Capital cost actually incurred	228976	335502	343554	437588
Reduction in IDC due to average method of repayment	13	31	39	59
<b>Capital cost</b>	<b>228063</b>	<b>335471</b>	<b>343515</b>	<b>437529</b>

8. While working out debt and equity, ratio of 70:30 was applied. For the purpose of tariff, equity considered was as follows:

(Rs. in lakh)

	<b>1.4.2004 to 31.10.2004</b>	<b>1.11.2004 to 31.3.2005</b>	<b>1.4.2005 to 31.7.2005</b>	<b>1.8.2005 to 31.3.2006</b>	<b>2006-07</b>	<b>2007-08</b>	<b>2008-09</b>
Equity	68689	100641	103054	131259	131259	131259	131259

### **Application for review**

9. The petitioner has sought review of the order dated 31.1.2008 on the following grounds, namely:

- (a) Capitalisation of excess IDC,

- (b) Consideration of excess equity,
- (c) Approval of Advance Against Depreciation and depreciation exceeding the loan amount, and
- (d) Redetermination of tariff for the year 2003-04.

10. We heard Shri S. Sowmyanarayanan for the applicant on admission. We now consider the various issues arising out of the application for review.

### **Capitalisation of Excess IDC**

11. According to the applicant, based on thumb rule calculation amount of IDC capitalized is Rs.65256 lakh. Amount of interest claimed by respondent through tariff as per the applicant is Rs.30422 lakh. Thus, as per the applicant total interest claimed by respondent through capitalization and tariff collectively amounts to Rs.95678 lakh. The applicant has stated that this amount exceeds the amount based on its calculation of interest on average repayment basis i.e. Rs.86574 lakh, by Rs.9104 lakh.

12. IDC calculations by the applicant are of no relevance. Based on average method of repayment the Commission has calculated IDC admissible as Rs.65463 lakh against Rs.65521 lakh claimed by the respondent on FIFO method of repayment in capital cost on 1.8.2005. The applicant has overlooked interest charges for the year 1999-2000 and 2000-01 (as construction of the generating station had commenced in the year 1999-2000) while making comparison. Thus, comparison made is erroneous and inference of excess IDC, drawn from the calculations, is wrong. A copy of IDC calculations was handed over to the representative of the applicant. Prima

facie there is no error in IDC capitalization requiring any review of order dated 31.1.2008.

### **Excess Equity**

13. It has been stated by the applicant that against the equity of Rs.131259 lakh considered by the Commission, the actual equity employed on the date of commercial operation, that is, 1.8.2005 was Rs.131001 lakh, after considering the CWIP (additional capitalization) and construction stores as per the details furnished by the respondent vide its affidavit dated 28.2.2007. The applicant has arrived at the equity of Rs.131001 lakh, in the following manner, namely-

	(Rs. in lakh)
Gross block as on 1.8.2005	437529
Add: CWIP	2785
Add: Construction Stores	2131
Total	442445
Less: Loan drawn for the generating station	311444
<b>Equity deployed</b>	<b>131001</b>

14. According to the applicant, in accordance with first proviso to Clause (2) of Regulation 20 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as "the 2004 regulations"), actual equity, in case it is less than 30% of the capital cost, need to be considered for the purpose of tariff determination. It has been urged that equity of Rs.131001 lakh, which is less than 30% of the capital cost of Rs.442445 lakh, should have been considered for allowing return on equity.

15. Clause (2) of Regulation 20 ibid provides as under:

"(2) In case of the generating stations for which investment approval was accorded prior to 1.4.2004 and which are likely to be declared

under commercial operation during the period 1.4.2004 to 31.3.2009, debt and equity in the ratio of 70:30 shall be considered: Provided that where equity actually employed to finance the project is less than 30%, the actual debt and equity shall be considered for determination of tariff:

Provided further that the Commission may in appropriate cases consider equity higher than 30% for determination of tariff, where the generating company is able to establish to the satisfaction of the Commission that deployment of equity higher than 30% was in the interest of general public.”

16. The comparison made by the applicant in funding pattern as given in the application for review is not correct. The respondent had drawn gross loan of Rs.311444 lakh. While claiming tariff, the respondent, however, considered loan of Rs.347277 lakh (notional) against the capital cost of Rs.496110 lakh considered by it after adjusting equity of Rs.148833 lakh (30% of the capital cost considered). The Commission while approving tariff reduced the capital cost to Rs.437588 lakh as on the date of commercial operation of the generating station, after making adjustments for the outstanding and undischarged liabilities. This capital cost was further reduced to Rs.437529 lakh as given in para 7 above by adopting the average method of loan repayment. It is to be noted that actual outstanding loan, as on 1.8.2005, worked out to Rs.272005 lakh, after adjustment of the repayments during the previous years. Thus, the outstanding loan was less than 70% of the capital cost of Rs.437529 lakh, implying thereby that equity actually employed was more than 30%. Therefore, for the purpose of tariff, loan of Rs.306270 lakh and equity of Rs.131259 lakh have been considered in the ratio of 70:30. With the reduction in capital cost, loan and equity amounts were reduced proportionately and apportioned in the ratio of 70:30. The apportionment in the ratio of 70:30 was in accordance with clause (2) of Regulation 20 of the 2004

regulations. As the equity amount has been restricted to 30% of the capital cost considered in accordance with the 2004 regulations, there is no error in computation of thereof. Incidentally, the respondent in the petition for approval of tariff had claimed return on equity of Rs.148833 lakh, but return has been allowed on equity of Rs.131259 lakh, and this has reduced the liability of the petitioner and other beneficiaries of the generating station. Perhaps, this aspect has been overlooked by the petitioner when it made the application for review.

### **Excess of Advance Against Depreciation and Depreciation**

17. The applicant has stated that the Advance Against Depreciation allowed by the Commission in its order dated 31.1.2008 exceeds the amount required for debt service obligations and, therefore, is in contravention of sub-clause (b) of clause (ii) of Regulation 21 of the 2004 regulations, which reads that:

#### **“(b) Advance Against Depreciation**

In addition to allowable depreciation, the generating company shall be entitled to Advance Against Depreciation, computed in the manner given hereunder:

AAD = Loan repayment amount as per regulation 21 (i) subject to a ceiling of 1/10<sup>th</sup> of loan amount as per regulation 20 minus depreciation as per schedule

Provided that Advance Against Depreciation shall be permitted only if the cumulative repayment up to a particular year exceeds the cumulative depreciation up to that year;

Provided further that Advance Against Depreciation in a year shall be restricted to the extent of difference between cumulative repayment and cumulative depreciation up to that year.”

18. It has been illustrated that for the year 2005-06, the weighted average of 10% of the normative loan amounts to Rs.28433 lakh and the depreciation

payable during the year works out to Rs.14629 lakh. In this manner, Advance Against Depreciation payable under the 2004 regulations for the year 2005-06 works out to Rs.20141 lakh. Against this, the Commission has allowed annualized Advance Against Depreciation of Rs.30253 lakh. According to the applicant, the anomaly is on account of the Commission considering gross loan of Rs.306270 lakh as on 1.8.2005, against the weighted average gross loan of Rs.284334 lakh which ought to have been considered for award of Advance Against Depreciation.

19. We do not find any force in the applicant's contention. For the purpose of computation of Advance Against Depreciation, weighted average gross loan is not taken into account. For this purpose, the gross loan on the date of commercial operation considered for computation of interest on loan has to be taken into account. Therefore, 1/10<sup>th</sup> of the gross loan of Rs.306270 lakh as on the date of commercial operation of the generating station has been considered for computation of Advance Against Depreciation. Further, since entire Advance Against Depreciation has been apportioned to last 7 months of the year 2005-06, after the date of commercial operation of the generating station, annualized figure of Rs.30253 lakh on account of Advance Against Depreciation has been shown, so that the amount of Advance Against Depreciation is equal to the admissible amount of Rs.20141 lakh. In view of this, the applicant's contention for review on this ground lacks maintainability.

#### **Tariff for the period 2003-04**

20. The applicant has pointed out that the tariff for the first two units for the year 2003-04 approved vide order dated 13.6.2005 in Petition No.1/2003 was



based on the capital cost which included the outstanding and undischarged liabilities up to 31.3.2004. Therefore, the applicant has sought appropriate directions to the respondents to refund the excess tariff awarded and recovered based on inflated capital cost.

21. The application for review has been made against the order dated 31.1.2008 in Petition No.179/2004. The applicant in the present proceedings cannot be permitted to reopen the tariff for the period ending 31.3.2004 decided by order dated 13.6.2005 in Petition No.1/2003, while seeking review of the order dated 31.1.2008 in Petition No.179/2004. The said order dated 13.6.2005 cannot be reopened by invoking the process of review of a subsequent order.

### **Result**

22. In view of the above discussion, there is no error in computation of tariff, much less an error apparent on the face of record, necessitating review of the order dated 31.1.2008. Accordingly, the application for review is not maintainable and is dismissed at admission stage.

Sd/-  
(R KRISHNAMOORTHY)  
MEMBER  
New Delhi, dated 29<sup>th</sup> May 2008

Sd/-  
(BHANU BHUSHAN)  
MEMBER