

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. **Shri D.P. Sinha, Member**
2. **Shri G.S. Rajamani, Member**
3. **Shri K.N.Sinha, Member**

Petition No.71/2000
and
IA 87/2001
in
Petition No.71/2000

In the matter of

Approval of Revised Fixed Charges due to Additional Capital Expenditure Capitalisation and Foreign Exchange Rate Variation for Kahalgaon STPS (1600 MW).

And in the matter of

National Thermal Power Corporation Ltd.

.... Petitioner

VS

1. West Bengal State Electricity Board, Calcutta
2. Bihar State Electricity Board, Patna
3. Grid Corporation of Orissa Ltd, Bhubaneshwar
4. Damodar Valley Corporation, Calcutta
5. Power Deptt., Govt of Sikkim, Gangtok
6. Assam State Electricity Board, Guwahati
7. The Transmission Corp. of Andhra Pradesh Ltd., Hyderabad
8. Tamil Nadu Electricity Board, Chennai
9. Kerala State Electricity Board, Thiruvananthapuram
10. Karnataka Power Transmission Corp. Ltd., Bangalore
11. Uttar Pradesh Power Corp. Ltd., Lucknow
12. Madhya Pradesh State Electricity Board, Jabalpur
13. Gujarat Electricity Board, Baroda
14. Union Territory of Pondicherry, Pondicherry

.....Respondents

The following were present:

1. Shri K.K. Garg, GM (Comml), NTPC
2. Shri M.S. Chawla, DGM (Comml.), NTPC
3. Shri S.K. Sharma, Sr. Mgr (Comml.), NTPC
4. Shri M. Sravan Kumar, SM (F), NTPC
5. Shri T.R. Sohal, NTPC
6. Shri R.Singhal, NTPC
7. Shri V.K. Padha, NTPC
8. Shri A.K. Juneja, NTPC
9. Shri S.K. Agnihotri, Advocate for MPSEB
10. Shri Rohit K. Singh, Advocate for MPSEB
11. Shri D.K. Srivastava, EE, MPSEB
12. Shri K. Khandelwal, SE, MPSEB
13. Shri M.H. Parviz, Controller, KPTCL

**ORDER
(DATE OF HEARING 20-12-2001)**

This petition was filed by the petitioner, NTPC, a generating company owned or controlled by the Central Government, seeking the Commission's approval to the Revised Fixed Charges due to additional capital expenditure and Foreign Exchange Rate Variation (FERV) for the years 1997-98 and 1998-99 for Kahalgaon Super Thermal Power Station. Subsequently, the petitioner filed IA (No.29/2001) praying for amendment to the petition so as to claim the Revised Fixed Charges due to above noted two components of tariff for the year 1999-2000, in addition to the years 1997-98 and 1998-99 claimed in the original petition. The prayer was granted by the Commission vide its order dated 23-8-2001. The petitioner filed another IA No.87/2001 to further amend the petition so as to claim Revised Fixed Charges for the year 2000-01, as well and also implead Secretary, Electricity Deptt., Union Territory of Pondicherry. This IA was listed before us on 20-12-2001. Through an oral order we had allowed the IA. The amended petition was directed to be taken on record. Thus in the present petition, as amended, the petitioner seeks Revised Fixed Charges due to additional capital expenditure capitalisation and

FERV in respect of Kahalgaon STPS for the years 1997-98 to 2000-01 as under:

Effective period	Fixed charges as per tariff notification (Rs.Cr./year)	Impact Additional capital Expenditure capitalisation (Rs. Cr./yr.)	Impact of FERV (Rs.Cr./yr)	Revised Fixed Charges (Rs.Cr./yr)
1997-98	441.10	1.552	0.303	442.955
1998-99 (upto 31-10-98)	441.10	5.999	2.244	449.343
1998-99 (1-11-98 to 31-3-99)	447.88	6.663	2.546	487.089
1999-2000	447.88	10.706	7.637	496.223
2000-01	447.88	15.450	10.884	504.215

The relevant details/calculations in support of the Revised Fixed Charges claimed have been furnished.

2. The tariff for sale of power from Kahalgaon STPS was determined on two part basis by Ministry of Power as notified on 9.12.1998 in exercise of powers under Section 43 A(2) of the Electricity (Supply) Act, 1948. This notification was valid from 1.8.1996 to 31.3.2000. The tariff notified by Ministry of Power is stated to be based on the audited accounts for the year 1996-1997.

3. Clause 2.0 of the notification dated 9.12.1998 *inter-alia* provided that the impact of additional capital expenditure capitalised in each financial year during the tariff period would be determined by the Central Government immediately on finalization of accounts. Clause 5 of the notification further provided that effect of FERV to be paid to/by the petitioner by/to the beneficiaries would be determined by the Central Government at the end of each financial year. Thus, under the notification issued by Ministry of Power, determination of

impact of additional capital expenditure capitalised and FERV was to be determined by the Central Government in exercise of its powers under Section 43 A(2) of the Electricity (Supply) Act 1948 at the end of a financial year when the audited accounts for that year were available.

4. Section 43 A(2) of the Electricity (Supply) Act 1948 was omitted by the Central Government, Ministry of Power in exercise of powers under Section 51 of the Electricity Regulatory Commissions Act 1998 w.e.f. 15-5-1999 in terms of notification dated 22-3-1999 and from that date power to regulate tariff of the generating stations owned or controlled by the Central Government came to be vested in the Commission. By that date, the Central Government did not determine the impact of the above-noted two components of tariff for the years 1997-98 and onwards. Therefore, with the vesting of power of regulation of tariff in the Commission, the Central Government did not have the jurisdiction to determine the above-noted two components of tariff. The Commission is in *seisin* of the issue raised in the petition against the above backdrop.

5. The respondents in their replies have raised a number of issues. Without advertent to these issues, we propose to dispose of the petition on a brief point. We find that when the project was approved by the Central Government vide No.5/53/88-US(TP) dated 1.6.1992, it was stated that the total cost of the project "shall not exceed" Rs.1700.74 crores. As against this, Ministry of Power while fixing tariff for the period 1.8.1996 to 31.3.2000 vide tariff notification dated 9.12.1998 considered a project cost of Rs.1838.97 crores. The reasons for this shift from Rs.1700.74 crores to 1838.97 crores are not discernible from the records. Additional capitalisation of Rs.63.52 crores up to 1999-2000 now sought by the petitioner will take the project cost beyond the

approved capital cost of the project further. We are of the view that the additional capitalisation pertaining to works included in the scope of approved project cost are of the nature of deferred expenditure and should be allowed to be capitalised, even if the works are undertaken after the date of commercial operation. However, the additional capitalisation should be within the overall ceiling of the project cost. The additional capitalisation pertaining to works, which were not within the scope of approved cost, may be allowed in exceptional cases, depending upon the purpose for which the additional capital expenditure has been incurred. In the instant case the nature of additional capitalisation has not been established, nor has the petitioner been able to establish reasonableness of Rs.1838.97 crores as the project cost. In view of above, the claims for additional capitalisation cannot be entertained. Further, since the base figure capital cost of the project itself has not been established by the petitioner, the component of base foreign exchange involved does also not get established. Hence no claim for FERV can also be entertained.

6. In the present case, we have been informed that revised cost estimates for Rs.2081.25 crores (based on first quarter of 2001 price level) are pending consideration before PIB. We are not aware whether the items of additional capitalisation claimed by the petitioner in the present petition have been included in the revised cost estimates under consideration with PIB. In view of this, we are unable to allow the additional capitalisation claimed by the petitioner in the present petition. The petitioner is, however, given liberty to approach the Commission for appropriate relief in accordance with law after the revised cost estimates of Rs.2081.25 crores are approved by the competent authority.

7. This disposes of the petition No.71/2000.

Sd/-

(K.N. Sinha)
Member

Sd/-

(G.S. Rajamani)
Member

Sd/-

(D.P. Sinha)
Member

New Delhi dated the 18th June 2002