

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri Ashok Basu, Chairperson**
- 2. Shri K.N. Sinha, Member**
- 3. Shri Bhanu Bhushan, Member**
- 4. Shri A.H. Jung, Member**

**Review Petition No.123/2005
in Petition No.1/2003**

In the matter of

Review of Order dated 13.6.2005 in Petition No. 1/2003 - Approval of tariff of the Units I and II of Talcher STPS Stage II for the period from 1.8.2003 to 31.3.2004.

And in the matter of

National Thermal Power Corporation Ltd **Petitioner**

Vs

1. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
2. Tamil Nadu Electricity Board, Chennai
3. Karnataka Power Transmission Corp. Ltd., Bangalore
4. Kerala State Electricity Board, Thiruvananthapuram
5. Electricity Department, Govt. of Pondicherry,
Pondicherry **Respondents**

The following were present:

1. Shri V.B.K. Jain, NTPC
2. Ms. Rachna Mehta, NTPC
3. Shri S.K. Samui, NTPC
4. Shri N.K. Narang, NTPC
5. Ms. Alka Saigal, NTPC
6. Shri Ajay Garg, NTPC
7. Shri E. Surendra, NTPC
8. Shri G.S. Aghesh, NTPC

**ORDER
(DATE OF HEARING 17.1.2006)**

The petitioner seeks review of the order dated 13.6.2005 in Petition No.1/2003 wherein the Commission had approved tariff for Units I and II of Talcher STPS Stage II for the period 1.8.2003 to 31.3.2004.

2. The petitioner seeks review of the order dated 13.6.2005 on the following grounds, namely:

- (a) Non-consideration of depreciation for leasehold land;
- (b) Non-consideration of financial charges in case of Bonds XII and XVII series for working out interest on loan;
- (c) Error in calculation of Advance Against Depreciation; and
- (d) Error in calculation of interest on loan based on actual repayment or normative repayment whichever is higher and considering/equating total annual repayment against depreciation computed for part of a year.

3. Unit I of Talcher STPS Stage I was declared under commercial operation on 1.8.2003 and Unit II on 1.3.2004. Therefore, tariff has been determined by order dated 13.6.2005 for two periods separately, from 1.8.2003 to 29.2.2004 and 1.3.2004 to 31.3.2004.

4. We discuss in detail the issues raised by the petitioner in support of review of the order dated 13.6.2005.

DEPRECIATION FOR LEASE OF LAND

5. The petitioner has stated that the Commission has not considered depreciation for the land held by it on lease from the State Government of Orissa while calculating weighted average depreciation rate. The petitioner has stated that under the terms and conditions for determination of tariff notified by the Commission and applicable upto 31.3.2004, useful life of land held under lease is

to be calculated for the period of lease or the period remaining unexpired on the assignment of lease. The petitioner has taken on lease certain land from the State Government of Orissa for a term of 99 years. According to the petitioner, the premium paid by the petitioner to the State Government of Orissa was not considered for computing the weighted average rate of depreciation. The petitioner has urged that the Commission ought to have considered the weighted average rate of depreciation by depreciating the premium paid over the life of the lease, that is, 99 years.

6. We find merit in the point raised by the petitioner. The Commission in its order dated 13.6.2005 had not considered the depreciation of leasehold land while computing weighted average rate of depreciation. The Commission had also not recorded any reasons for such non-consideration. Therefore, there seems to be an error apparent on the face of record, necessitating review of the order dated 13.6.2005 on this ground.

NON-CONSIDERATION OF FINANCIAL CHARGES

7. In the order dated 13.6.2005, it was stated as under:

“Financial charges in case of Bonds – XII and XVIII series have not been considered for working out the interest rate as the Bonds have been drawn prior to the expected date of commercial operation of the generating station as a whole which would fall after 31.3.2004. This is in line with clarification given by the petitioner in Petitions No. 1/2000 and 99/2002 wherein it had clarified that the financial charges for those loans which were drawn prior to date of commercial operation were capitalized.”

8. The petitioner in support of its claim for review under this head has stated that 0.03% of the loan amount is paid to the rating agency as surveillance charge

annually. Therefore, it is the petitioner's contention that the same should be considered, being part of the expense incurred by the petitioner perennially.

9. From the extracts of para 16 of the order placed above, it is obvious that the Commission had not considered financial charges in case of Bonds XII and XVIII on the ground that the Bonds have been drawn prior to the expected date of commercial operation of the generating station as a whole which falls after 31.3.2004, and will ultimately be capitalized in view of the clarification given by the petitioner in other proceedings. This in our opinion does not seem to be the sufficient reason for non-consideration of the financial charges *ibid*. The reasons given in para 16 of the order dated 13.6.2005 do not touch the core issue of consideration of the financial charges. Accordingly, in our opinion, on this ground also the case for review has been made out.

CALCULATION OF ADVANCE AGAINST DEPRECIATION

10. The petitioner had not claimed any Advance Against Depreciation. In the order dated 13.6.2005, no Advance Against Depreciation was allowed. The petitioner has submitted that there is an error apparent in calculation of Advance Against Depreciation as the actual repayment applicable for 7 months for the period 1.8.2003 to 29.2.2004 (for Unit I) and one month for the period 1.3.2004 to 31.3.2004 (for Units I and II) has not been considered but has been compared against annualized total depreciation for the whole year instead of depreciation for respective periods. According to the petitioner, it has resulted in under recovery of depreciation to the extent of Rs.9.70 crore. By taking the combined repayment of two periods, Advance Against Depreciation is not admissible and

the petitioner will be able to meet the repayment obligations from the depreciation recovered. Accordingly, the argument made does not call for any review on this ground.

INTEREST ON LOAN

11. In the order dated 13.6.2005, repayment of loan has been worked out as under:

Actual repayment during the year or repayment as worked out as per the following formula:

Actual repayment during the year x normative net loan at the beginning of the year/ actual net loan at the beginning of the year

whichever is higher.

12. The petitioner has submitted that the Commission should have implemented one formula for calculating repayment of loan for the purpose of calculating the interest on loan, that is, it should either be based on actual repayment on the basis of normative loan repayment and the Commission should not have applied principle of “whichever is higher”, as this principle is inequitable.

13. The petitioner in a large number of other cases earlier sought review of calculation of interest on loan on the ground similar to that urged in the present application for review. In all these cases, review was rejected since the methodology adopted was followed uniformly through the conscious decision of the Commission. Accordingly, for the reasons already given for rejection of similar applications for review, the case for review of the order dated 13.6.2005 on this account is not made out.

14. Having regard to the above discussion, we direct that the order dated 13.6.2005 is liable to be reviewed on two grounds, namely:

- (a) Consideration of leasehold land for the purpose of weighted average rate of depreciation; and
- (b) Consideration of financial charges for working out interest on loan.

15. We direct that the Petition No. 1/2003 be set down for hearing on the above noted two issues on 6th July 2006.

16. We may point out that computation of Advance Against Depreciation is a function of depreciation recovered and repayment of loan. In view of the fact that we have admitted review on computation of depreciation and interest on loan components of the fixed charges, it may require resetting of computation of Advance Against Depreciation also.

17. With the above decision, Review Petition No. 123/2005 stands disposed of.

Sd/-
(A.H. JUNG)
MEMBER

Sd/-
(BHANU BHUSHAN)
MEMBER

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(ASHOK BASU)
CHAIRPERSON

New Delhi dated the 9th May, 2006