

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri R. Krishnamoorthy, Member**
- 3. Shri S.Jayaraman, Member**
- 4. Shri V.S.Verma, Member**

Petition No. 8/2005

In the matter of

Approval of revised fixed charges on account of additional capital expenditure incurred during 14.1.2000 to 31.3.2004 in respect of Tanda Thermal Power Station (440 MW).

And in the matter of

National Thermal Power Corporation Ltd. Petitioner

Vs

Uttar Pradesh Power Corporation Ltd., Lucknow ... Respondent

ORDER

This order issues pursuant to the judgment of the Appellate Tribunal for Electricity (the Appellate Tribunal) dated 26.3.2009 in Appeal No 103/2008.

Background of the Case

2. Tanda TPS (hereinafter referred to as “the generating station”) was transferred by UPSEB (predecessor of the petitioner) on 14.1.2000 under the UP Electricity Reforms (Transfer of Tanda Undertaking) Scheme, 2000 for a total consideration of

Rs.1000 crore. The petitioner and UPSEB also entered into a Power Purchase Agreement dated 7.1.2000 valid for a period of 25 years from the date of vesting (14.1.2000) of the generating station in the petitioner company according to which the power generated would be supplied exclusively to UPSEB.

3. The Commission approved the tariff for the generating station for the period up to 31.3.2004 vide order dated 28.6.2002 in Petition No. 77/2001 and order dated 9.4.2003 in Review Petition No. 2/2003 in Petition No. 77/2001. The tariff was based on the capital cost of Rs.607 crore as on 14.1.2000.

4. Subsequently, the Commission by its order dated 24.10.2005 allowed additional capital expenditure for R&M works amounting to Rs.177.47 crore for the period up to 31.3.2004 and revised the annual fixed charges for the said period.

5. The respondent filed Appeal No. 205/2005 before the Appellate Tribunal against the order dated 24.10.2005 and during the pendency of the appeal, it also filed Review Petition No. 99/2006 seeking review of the said order dated 24.10.2005 on the ground that the amount approved by the Commission was more than the actual amount shown in the balance sheet of the generating station. Since the respondent had already filed appeal before the Appellate Tribunal, the review petition was summarily dismissed vide Commission's order dated 26.10.2006. The respondent filed another appeal, Appeal No. 9/2007 against the order dated 26.10.2006 and the Appellate Tribunal by its common judgment dated 6.6.2007 in Appeal Nos. 205/2005 and 9/2007 allowed the appeals on certain aspects and remanded the matter to the Commission for a fresh

decision. The Appellate Tribunal in paragraphs 31 and 32 of the judgment dated 6.6.2007 observed as under:

“31. The Appellant submitted that the additional capital expenditure is to be approved based on the balance sheet and the respondent has been allowed expenditure of those items appearing in the balance sheet. In the instant case before us, the Petition was decided by the Central Commission when the audited balance sheet was available. Thus, the amount of capitalisation as reflected in the books of accounts of the respondent ought to have been taken into consideration.

32. We accept the plea of the Appellant on this count and direct the Central Commission to re-look into the matter and restrict the amount of capitalisation to the extent reflected in the balance sheet subject to its prudence check.”

6. The respondent also filed Civil Appeal Nos. 5361-5362 of 2007 before the Hon'ble Supreme Court of India under Section 125 of the Electricity Act, 2003 against the judgment dated 6.6.2007 and the matter is pending. Meanwhile, the petitioner also filed Civil Appeal No. 2875/2007 before the Hon'ble Supreme Court. The Commission sought to implement the judgment of the Appellate Tribunal dated 6.6.2007, subject to the final outcome of the appeals before the Hon'ble Supreme Court.

7. In terms of the observations of the Appellate Tribunal in the judgment dated 6.6.2007, the Commission by its order dated 9.4.2008 determined the additional capital expenditure of the generating station as Rs.173.83 crore for the period from 14.1.2000 to 31.3.2004. The Commission however, considered the capital cost of Rs 574.36 crore, as on 14.1.2000, based on the following considerations, namely-

“18. On re-verification of records, it was noticed that the gross block shown in the balance sheet was different from the capital cost on which revised fixed charges were determined in the said order dated 24.10.2005. The petitioner was directed to explain the difference between the gross block in the books of accounts and the capital cost on the basis of which revised fixed charges were claimed. The petitioner has explained that the generating station was transferred to it by the Government of Uttar Pradesh at the price of Rs. 1000 crore. At the time of transfer, gross block in the books of account was shown as Rs. 967.29 crore and the balance amount of Rs. 32.71 crore was kept in the inventories as spares. It has been further submitted that while approving the tariff for the period up to 31.03.2004 prior to additional capitulation, the Commission in its order dated 28.06.2002 in Petition No. 77/2001 considered the actual project

cost of Rs. 607 crore, on the date of commercial operation, as against the claim of the petitioner project cost of for Rs. 1000 crore. Consequently, the petitioner got the revaluation of assets done in accordance with certain observations of the Commission in the said order and adjusted an amount of Rs. 393 crore in the gross block during the year 2002-03.

19. Since an amount of Rs. 32.71 crore was kept in the inventories by the petitioner without reflecting the same in the balance sheet, the said amount has not been considered for capitalization in view of the observation of the Tribunal extracted above.”

8. The fixed charges approved by the Commission by order dated 9.4.2008 are as under:

(Rs in lakh)					
Particulars	1999-2000	2000-01	2001-02	2002-03	2003-04
Depreciation	4503	4503	2298	2490	2646
Interest on Loan	5538	5162	3454	3425	3102
Return on Equity	2757	2855	3064	3320	3528
Advance Against Depreciation	0	0	1290	1369	1564
Interest on Working Capital	1198	1065	1110	1307	1468
O & M Expenses	3381	3720	3944	4181	4431
Total	17377	17305	15161	16092	16739

9. The petitioner filed Appeal No.103/2008 before the Appellate Tribunal challenging the order dated 9.4.2008 and raised the following issues:

- (a) Reduction in the capital cost of the generating station from Rs 607 crore to Rs 574.36 crore, as on 14.1.2000;
- (b) Reduction in the interest rate on notional loan from 14.5% at which rate NTPC was paying to the Govt of India; and
- (c) Increase in the de-capitalised amount by including the cost of service rendered for establishing fixed assets.

10. By its judgment dated 26.3.2009, the Appellate Tribunal rejected the prayer of the petitioner as regards issues at (b) and (c) above. As regards issue at (a) above, the prayer of the petitioner was allowed and the observations of the Appellate Tribunal are as under:

“24. We observe that in the order dated 6.6.2007, this Tribunal while examining the issue at Paras 31,32 and 36 discussed the expenditure incurred on additional capitalization. These paragraphs if read with the grievance framed as indicated above would make it transparently clear that the Central Commission was directed to only relook the additional capitalization of Rs 177.47 crore and not the gross capital of Rs 607 crore as on 14.1.2000.

25. In view of the above, the impugned order of the Central Commission to that extent is liable to be set aside as it has reduced the gross capital assets of Rs 607 crore by the cost of spares of Rs 32.71 crore without any justification.”

11. Considering the capital cost of Rs. 60707 lakh for the generating station as on 14.1.2000 in terms of the judgment of the Appellate Tribunal dated 26.3.2009, and the additional capital expenditure allowed for the period up to 31.3.2004 the capital cost of the generating station for the purpose of tariff has been revised as under:

(Rs in lakh)					
Particulars	1999-00	2000-01	2001-02	2002-03	2003-04
Opening Gross Block	60707	60707	64788	69423	75447
De-capitalization	0	87	41	16	13
Additional Capitalisation	0	4188	4690	6134	2679
Additional Capital Expenditure amount not considered without corresponding de-capitalisation	0	21	13	94	23
Additional Capital Expenditure allowed for the purpose of tariff	0	4167	4677	6039	2656
Closing Gross Block	60707	64788	69423	75447	78090

12. Revision of capital cost as above has necessitated the revision of the elements of fixed charges which are discussed in the subsequent paragraphs.

Debt-Equity ratio

13. The debt-equity ratio of 70:30 has been adopted in the present order, as considered earlier.

Return on Equity

14. Return on equity has been worked out @ 16% on the normative equity worked out by applying the debt-equity ratio of 70:30. Return on equity has been worked out as under:

(Rs in lakh)					
Particulars	1999-00	2000-01	2001-02	2002-03	2003-04
Opening Balance	18212.10	18212.10	19436.33	20826.87	22633.95
Addition due to Additional capital expenditure after adjusting de-capitalisation	0.00	1224.23	1390.54	1807.08	792.92
Closing Balance	18212.10	19436.33	20826.87	22633.95	23426.88
Average	18212.10	18824.22	20131.60	21730.41	23030.42
Rate of Return on Equity	16.00%	16.00%	16.00%	16.00%	16.00%
Return on Equity	2914	3012	3221	3477	3685

Interest on Loan

15. The interest on loan has been re-calculated as per the methodology adopted in order dated 9.4.2008. The interest on loan has been re-calculated as under:

(Rs in lakh)					
Particulars	1999-00	2000-01	2001-02	2002-03	2003-04
Gross loan	42494.90	42494.90	45351.44	48596.04	52812.56
Cumulative repayments of loans upto previous year	0.00	4249	8499	12748	16998
Net loan-Opening	42494.90	38245.41	36852.46	35847.57	35814.60
Addition due to Additional Capital Expenditure	0.00	2856.54	3244.60	4216.52	1850.16
Total	42494.90	41101.95	40097.06	40064.09	37664.75
Repayment-Notional Loan component	4249	4249	4249	4249	4249
Repayment based on actual loan component	0	0	0	0	1627
Total repayment considered for the purpose of tariff	4249	4249	4249	4249	5876
Closing Balance	38245.41	36852.46	35847.57	35814.60	31788.73
Average Loan	40370.16	37548.93	36350.01	35831.08	33801.66
Rate of Interest	14.50%	14.50%	9.97%	9.97%	9.30%
Interest on Loan	5854	5445	3625	3574	3143

Depreciation

16. Since the gross block has been modified based on the judgment of the Appellate Tribunal, it necessitates corresponding re-calculation of depreciation admissible in tariff. The rates of depreciation have been retained at 7.84% for the period 1999-2000 and

2000-01 and 3.60% for the period 2001-02 to 2003-04 as adopted in the earlier orders.

The details of calculation of depreciation are as under:

(Rs. in lakh)					
Particulars	1999-2000	2000-01	2001-02	2002-03	2003-04
Opening Gross Block	60707	60707	64788	69423	75447
De-capitalization	0	87	41	16	13
Additional Capitalisation	0	4188	4690	6134	2679
Additional Capital Expenditure amount not considered without corresponding de-capitalisation	0	21	13	94	23
Additional Capital Expenditure allowed for the purpose of tariff	0	4167	4677	6039	2656
Closing Gross Block	60707	64788	69423	75447	78090
Rate of Depreciation	7.84%	7.84%	3.60%	3.60%	3.60%
Annual Depreciation	4759	4759	2416	2608	2764

Advance Against Depreciation

17. The petitioner is not entitled to Advance Against Depreciation (AAD) for the period up to 31.3.2001 since there was provision in that regard. Advance Against Depreciation for the subsequent years, that is, 2001-02, 2002-03 and 2003-04 has been worked out by taking 1/12th of the gross notional loan and repayment of loan as per the normative debt repayment methodology. The petitioner is entitled to following Advance Against Depreciation:

(Rs. in lakh)			
Particulars	2001-02	2002-03	2003-04
1/12th of Loan(s)	3779	4050	4401
Scheduled Repayment of the Loan(s)	4249	4249	5876
Minimum of Column	3779	4050	4401
Depreciation during the year	2416	2608	2764
Advance against Depreciation	1363	1442	1637

Interest on Working Capital

18. Revision of different components of tariff has resulted in revision of interest on working capital as they are components of “receivables” in the working capital. The operational parameters such as Target PLF/Availability, Specific fuel oil consumption, Auxiliary Power Consumption and Station Heat Rate considered in the present calculation are the same as considered in the earlier orders. Similarly, SBI PLR for the relevant year has been adopted as the rate of interest on working capital in the calculation. Accordingly, interest on working capital has been recalculated as under:

	(Rs in lakh)				
	1999-00	2000-01	2001-02	2002-03	2003-04
Fuel cost- 1 month	1505	1324	1510	1903	2233
Coal Stock- 30 days	1275	1125	1315	1732	2095
Oil stock -60 days	411	363	348	290	203
O & M expenses- 1 Month	282	310	329	348	369
Spares	607	607	607	607	607
Receivables	6030	5651	5635	6572	7322
Total Working Capital	10109	9380	9744	11452	12830
Rate of Interest	12.00%	11.50%	11.50%	11.50%	11.50%
Total Interest on Working capital	1213	1079	1121	1317	1475

19. The annual fixed charges revised on the basis of the above in respect of the generating station for the period 2000-04 are summarized as under:

	(Rs. in lakh)				
Particulars	1999-2000*	2000-01	2001-02	2002-03	2003-04
Depreciation	4759	4759	2416	2608	2764
Interest on Loan	5854	5445	3625	3574	3143
Return on Equity	2914	3012	3221	3477	3685
Advance Against Depreciation	0	0	1363	1442	1637
Interest on Working Capital	1213	1079	1121	1317	1475
O & M Expenses	3381	3720	3944	4181	4431
Total	18121	18015	15690	16598	17136

(* The amount pertains to full year and for part of the year *pro rata* payments shall be made)

20. With the above order, the judgment dated 26.3.2009 of the Appellate Tribunal in Appeal No.103/2008 stands implemented and is subject to the final outcome of the Civil Appeal Nos. 5361-5362/2007 and other appeals pertaining to the generating station pending before the Hon'ble Supreme Court of India.

21. The petitioner is already billing the respondent in accordance with the Commission's order dated 9.4.2008. The excess amount on account of the revised annual fixed charges approved above shall be recovered by the petitioner within a period of three months from the date of this order.

Sd/-
(V.S.VERMA)
MEMBER

Sd/-
(S.JAYARAMAN)
MEMBER

Sd/-
(R KRISHNAMOORTHY)
MEMBER

Sd/-
(DR.PRAMOD DEO)
CHAIRPERSON

New Delhi dated 1st July 2009