

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Record of Proceedings

Petition No.86/2007 with I.A.No. 26/2007

Subject : Review of order dated 23.11.2006 in Petition No.120/2005-Determining the tariff for Kahalgaon STPS for the period from 1.4.2004 to 31.3.2009 in terms of the order of the Appellate Tribunal dated 16.12.2008 in Appeal No.128/2008 along with I.A.No. 26/2007.

Coram: Dr. Pramod Deo, Chairperson
Shri R.Krishnamoorthy, Member
Shri S.Jayaraman, Member
Shri V.S.Verma, Member

Date of Hearing: 23.6.2009

Petitioner: M. P. Power Trading Company Limited (MPPTCL), Jabalpur

Respondents : NTPC, WBSEB, BSEB, JSEB, GRIDCO, DVC, PD, Govt of Sikkim, TNEB, KSEB, Electricity Deptt., UT Pondicherry, UPPCL, PDD, Govt. of J&K, DTL, UT Chandigarh, MSEDCL, GUVNL, Admn of Daman and Diu and Admn.of Dadra and Nagar Haveli

Parties present: Shri Pradip Mishra, Advocate for MPPTCL
Shri Daleep Kr. Dhayani, Advocate for MPPTCL
Shri D.D.Khandelwal, MPPTCL
Shri Dilip Singh, MPPTCL
Shri M.G.Ramachandran, Advocate for NTPC
Shri S.K.Samui, NTPC
Shri G.K.Dua, NTPC
Shri V.K.Padha, NTPC
Shri D.Kar, NTPC
Shri R.B Sharma, Advocate for BSEB
Ms. Rinchen Ongmu, Advocate for Govt. of Sikkim.
Shri N.B.Kansara, GUVNL

This application for review of order dated 23.11.2006 in Petition No.120/2005 pertaining to the determination of tariff for Kahalgaon STPS for the period from 1.4.2004 to 31.3.2009 and the interlocutory application No. 26/2007 for condonation of delay has been filed by the petitioner for consideration of the Commission in terms of the order of the Appellate Tribunal dated 16.12.2008 in Appeal No.128/2008.

2. Learned counsel for the petitioner placed his submissions on the facts leading to the filing of the review application. On the question of maintainability of the application, the learned counsel submitted that the matter involved interpretation of the regulations and after the provision of the regulations had been interpreted by a higher authority (the Appellate Tribunal in this case) the same should be applied to other similar cases. To substantiate, the learned counsel pointed out that the judgment of the Appellate Tribunal dated 14.11.2006 in Appeal Nos.94 and 96/2005 holding that the repayment of loan should be considered on normative basis had been implemented by the Commission through its orders in respect of all the generating stations of the respondent No. 1, NTPC and submitted that the same treatment should be given in this matter pertaining to the capitalization of FERV prior to 1.4.2004 for the projects of NTPC in terms of the judgment of the Appellate Tribunal dated 16.12.2008 in Appeal No.128/2008.

3. Learned counsel for respondent No.1, NTPC took preliminary objection to the application and submitted that the application was not maintainable on the ground that the matter had attained finality and the petitioner could not re-open the matter again on the ground that in some other matter filed at the behest of some other similarly situated persons a different view had been taken by a superior court. In this connection, the learned counsel placed before the Commission the judgment of the Appellate Tribunal dated 5.5.2009 in Appeal No.25/2009 and submitted that the observations of the Appellate Tribunal squarely applied to the present case.

4. Learned counsel for petitioner submitted that the judgment dated 5.5.2009 referred to by the counsel for respondent No.1 could not be applied to its case as the facts were different. He sought to distinguish the two cases on facts and law.

5. Learned counsel for respondent No.3, BSEB and the representative of respondent No. 16, GUVNL submitted that they had not received copy of the reply filed by respondent No.1 and prayed that the matter be adjourned for two weeks to enable them to study reply of respondent No.1, and file responses in the matter.

6. The Commission accepted the prayer of the above said respondents and adjourned the matter for two weeks. The representative of respondent No.1 served copy of its reply, in the Court. The respondents may file their responses by 16.7.2009.

7. The matter shall be re-notified for hearing on 30.7.2009.

Sd/-
(K.S.Dhingra)
Chief (Legal)