

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 31/2008

Coram

1. Shri R. Krishnamoorthy, Member
2. Shri S.Jayaraman, Member
3. Shri V.S.Verma, Member

DATE OF HEARING: 22.10.2009

DATE OF ORDER: 11.1.2010

In the matter of

Approval of revised fixed charges in respect of Talcher Thermal Power Station (460 MW) after accounting for the impact of additional capital expenditure incurred during 2004-05, 2005-06 and 2006-07.

And in the matter of

N TPC Ltd, New Delhi

..... Petitioner

Vs

Grid Corporation of Orissa Ltd, Bhubaneswar

..... Respondent

The following were present

1. Shri V.K.Padha, NTPC
2. Shri D. Kar, NTPC
3. Shri G.K.Dua, NTPC
4. Shri R.B. Sharma, Advocate, GRIDCO

ORDER

This application was made by the petitioner NTPC, for approval of revised fixed charges in respect of Talcher Thermal Power Station (460 MW) (hereinafter referred to as "the generating station") after accounting for the impact of additional capital expenditure incurred during 2004-05, 2005-06 and 2006-07, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004

(hereinafter referred to as "the 2004 regulations"). By order dated 3.2.2009, the Commission approved the revised fixed charges for the generating station as under:

Particulars	<i>(Rs. in lakh)</i>				
	2004-05	2005-06	2006-07	2007-08	2008-09
Interest on Loan	877	902	662	525	228
Interest on Working Capital	882	900	912	918	920
Depreciation	3248	3393	3454	3487	3487
Advance Against Depreciation	0	0	0	0	0
Return on Equity	4980	5115	5173	5204	5204
O & M Expenses	8700	9029	9372	9728	10098
TOTAL	18687	19338	19573	19863	19937

2. Aggrieved by the said order, the petitioner filed Review Application No. 67/2009 seeking review of the order dated 3.2.2009 in Petition No.31/2008, on the ground that the Commission while working out interest on Working Capital (IWC) for the period 1.10.2007 to 31.3.2009, had wrongly considered the fuel prices for the months of January, February and March 2004, instead of the fuel prices for the months of July, August and September 2007. Against the said order, the respondent has filed Appeal No. 81/2009 before the Appellate Tribunal for Electricity (the Appellate Tribunal). Subsequently, the petitioner also filed Appeal No. 82/2009 before the Appellate Tribunal challenging the order dated 3.2.2009 on various grounds including the computation of IWC as aforesaid. Both the appeals are pending before the Appellate Tribunal.

3. On the question of computation of IWC, the Commission by order dated 29.9.2009 allowed review of order dated 3.2.2009 and directed that the petition be set down for hearing. Accordingly, the petition has been reopened to consider the question of computation of IWC for the period 1.10.2007 to 31.3.2009.

4. Heard the parties present.

5. The petitioner has submitted that the Commission in its order dated 3.2.2009 had considered fuel prices for the months of January, February and March 2004 rather than the fuel prices for the months of July, August and September 2007 while computing IWC for the period 1.10.2007 to 31.3.2009. The petitioner has also prayed that the Commission having allowed revision of IWC component for the period 1.10.2007 to 31.3.2009 by its order dated 29.9.2009 in Review Petition 67/2009, the tariff determined by order dated 3.2.2009 be revised, after consideration of fuel prices for the months of July, August and September 2007 for the purpose of computation of IWC.

6. The learned counsel for respondent submitted that the claim of the petitioner for revision of IWC component of the annual fixed charges based on fuel prices for the months of July, August and September 2007 was not maintainable as it had raised the issue in Appeal No.82/2009, pending for consideration before the Appellate Tribunal. He also submitted that the petitioner had questioned the findings of the Commission in the said order dated 22.7.2008 which could only be considered in an appeal, and not on a review, as there existed definitive limits for exercise of the power of review. The learned counsel referred to para 3 of the judgment dated 24.3.2009 of the Appellate Tribunal in Review Petition No. 1/2009 in Appeal No.64/2008 (H.M.Steel Ltd & ors-v-HPERC & ors) and submitted that the claim of the petitioner should be rejected. He also submitted that the petitioner is not entitled to claim revised IWC as there exists no provision in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations,

2004 for revision of IWC. In response, the representative of the petitioner submitted that the question of maintainability of the claim, raised by the respondent would not arise as the issue had already been admitted by the Commission in its order dated 29.9.2009. We notice that the question of maintainability of the application was raised by the learned counsel for the respondent during the hearing of the review petition and the Commission by order dated 29.9.2009 allowed review of order dated 3.2.2009 thereby rejecting the submissions of the respondent as under:

"13. The Commission is a quasi judicial body. The hallmark of the judicial process is that a quasi judicial body, in the interest of justice, equity and uniformity of decisions and to avoid inconsistency in approach, should follow its earlier decisions. It is always preferable that a quasi judicial authority decides the matters arising before it and raising the same or similar issues in the same or similar manner. Frequent changes in the opinion create uncertainty in the mind of public and erode confidence of public in the quasi judicial authority. With these observations in mind, we proceed to consider the application.

14. In case of Tanda TPS under similar circumstances the Commission very emphatically expressed a view that the fuel price at the beginning or just prior to the period for which tariff was revised, was to be taken for computing IWC and on that basis considered fuel price for the months of January, February and March 2007 for revision of IWC from 1.4.2007. In view of starking similarities between Tanda TPS and Talcher TPS and taken note of at para 12 above, it may not be appropriate to take a view different from that taken in Tanda TPS for revision of IWC for Talcher TPS. The methodology stressed in the case of Tanda TPS was overlooked while approving the revised annual fixed charges of Talcher TPS by the said order dated 3.2.2009.

15. Under the Code, review is permissible on the grounds of discovery of new and important fact or evidence which was either not within the knowledge of the person seeking review or could not be produced by him despite exercise of due diligence, or on the ground of error or mistake apparent on the face of record, or for any other sufficient reason. In our view, the departure from the past precedent established in the case of Tanda TPS constitutes an error apparent on the face of record or "any other sufficient reason" to justify review."

7. The Commission has already allowed review of the order and as per established procedure for review, the petition has been set down for hearing on the point of computation of IWC. Therefore, the plea of maintainability which stands decided at the stage of review petition cannot be raised again at this stage.

8. On merits, the learned counsel submitted that the only similarity of the generating station with that of Tanda TPS (another generating station of the petitioner), was that these generating stations were handed over to the petitioner by the respective boards as they could not be operated due to financial constraints. The learned counsel also submitted that consequent upon the revision of operational norms of the generating station with effect from 1.10.2007, the respondent had been deprived of the benefits of efficiency improvement from 1.4.2004 to 30.9.2007. The learned counsel also submitted that the stock position of coal had never been for more than a week during the period of claim and the petitioner had derived huge financial benefits, contrary to the provisions of the 2004 regulations. In reply, the petitioner has submitted that it was within the jurisdiction of the Commission to decide the effective date of operation of norms for the generating station. On the issue of sharing of efficiency gains, the petitioner submitted that the respondent had availed the benefits of improved parameters of the generating station and hence the contention should be rejected.

9. The issue of similarity between the generating station and Tada TPS raised by the respondent has been settled by the Commission in its order dated 29.9.2009 which has necessitated the review of the order dated 3.2.2009. The Commission had revised the operational norms for both the generating stations after noticing improvements in the efficiency levels after completion of R&M works undertaken by the petitioner. Based on the revised norms (applicable from 1.4.2007) the Commission had revised the annual fixed charges in respect of Tanda TPS, considering the fuel price for the months of

January, February and March 2007 for revision of IWC from 1.4.2007. However, in respect of the generating station, even though revised norms were made applicable from 1.10.2007, the Commission while determining the revised fixed charges considered the fuel prices for the months of January, February and March 2004 for computation of IWC from 1.10.2007. Thus, to remove the anomaly and to maintain consistency and uniformity in the application of methodology in the computation of IWC, the order dated 3.2.2009 needs to be reviewed. Accordingly, we allow the claim of the petitioner to consider the fuel prices for the months of July, August and September 2007 for computation of IWC for the period from 1.10.2007 to 31.3.2009 and accordingly the annual fixed charges for the period 1.4.2007 to 31.3.2009 in respect of the generating station is revised as discussed in the subsequent paragraphs.

Interest on Working Capital

10. In accordance with clause (v) of Regulation 21 of the 2004 regulations, working capital in case of coal-based/lignite-fired generating stations shall cover

(i) Cost of coal or lignite for 1½ months for pit-head generating stations and two months for non-pit-head generating stations, corresponding to the target availability;

(ii) Cost of secondary fuel oil for two months corresponding to the target availability;

(iii) Operation and Maintenance expenses for one month;

(iv) Maintenance spares @ 1% of the historical cost escalated @ 6% per annum from the date of commercial operation; and

(v) Receivables equivalent to two months of fixed and variable charges for sale of electricity calculated on the target availability.

(b) Rate of interest on working capital shall be on normative basis and shall be equal to the short-term Prime Lending Rate of State Bank of India as on 1.4.2004 or on 1st April of the year in which the generating station or a unit thereof is declared under commercial operation, whichever is later. Interest on working capital shall be payable on normative

basis notwithstanding that the generating company has not taken working capital loan from any outside agency”

11. For the purpose of calculation of working capital, the operating norms as notified by the Commission with effect from 1.10.2007 has been considered. On account of this, there is increase in the variable charges. Also, the coal stock, oil stock and the amount of receivables, due to change in variable charges increases. The necessary details in support of calculation of interest on working capital are as under:

(Rs in lakh)

	2007-08	2007-08	2007-08	2008-09
	1.4.2007 to 30.9.2007	1.10.2007 to 31.3.2008		
	183	183		
Coal Stock-1.1/ 2 months	742	1011	877	2017
Oil stock -2 months	153	166	159	330.11
O & M expenses	811	811	811	842
Spares	835	835	835	885
Receivables	2818	3190	6008	6368
Total Working Capital	5359	6012	11371	10441
Rate of Interest	10.25%	10.25%	10.25%	10.25%
Total Interest on Working capital	549	616	1166	1070

12. The revised annual fixed charges for the period from 1.4.2007 to 31.3.2009 are summarized as under:

(Rs in lakh)

	2007-08	2008-09
Depreciation	3487	3487
Interest on Loan	525	228
Return on Equity	5204	5204
Advance against Depreciation	0	0
Interest on Working Capital	1166	1070
O & M Expenses	9728	10098
Total	20110	20088

13. The petitioner shall claim the difference in respect of the tariff determined by

order dated 3.2.2009 and the tariff determined by this order, from the beneficiaries in three equal monthly installments.

14. The tariff determined by this order is subject to the final outcome of Appeal Nos. 81/2009 and 82/2009 pending before the Appellate Tribunal.

15. Petition No.31/2008 stands disposed of in terms of the above.

Sd/-
(V.S. VERMA)
MEMBER

Sd/-
(S.JAYARAMAN)
MEMBER

Sd/-
(R.KRISHNAMOORTHY)
MEMBER