

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Record of Proceedings

Petition No.300/2009

Subject : Petition for approval of recovery of fixed charges on account of capital expenditure incurred at the various offices of NTPC between 1.4.2004 to 31.3.2009.

Coram : Dr. Pramod Deo, Chairperson
Shri. S.Jayaraman, Chairperson
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Date of Hearing : 29.7.2010

Petitioner : NTPC Ltd.

Respondent : UPPCL, AVVNL, JVVNL, JoVVNL, DTL, NDPL, BSES – Rajdhani Power Ltd., BSES – Yamuna Power Ltd., NDMC, MES, PSEB, HVPNL, HPPC, HPSEB, PDD, Jammu, ED, Daman & Diu, ED, Dadar & Nagar Haveli, APTRANSCO, APEPDCL, APSPDCL, APNPDCL, APCPDCL, TNEB, KPTCL, BESCO, MESCOM, CESC (Mysore), GESCOM, HESCO, KSEB, Electricity Dept., Puducherry and GRIDCO, DVC, BSEB, JSEB, WBSEDCL, Dept. of Power, Govt. of Sikkim.

Parties present : 1. Shri M.G.Ramachandran, Advocate, NTPC
2. Shri V.K.Padha, NTPC
3. Shri M.K.V.Rama Rao, NTPC
4. Shri Ajay Dua, NTPC
5. Shri G.K.Dua, NTPC
6. Shri Pradip Misra, Advocate, UPPCL
7. Shri Daleep Kr. Dhayani, Advocate, UPPCL
8. Shri Deepak Shrivastava, MPPTCL
9. Shri T.P.S.Bawa, HPPC
10. Shri Bharat Sharma, NDPL

The learned counsel for the petitioner submitted as under:

- (a) detailed submissions have been made by the parties in the matter, during the hearing on 10.6.2010.
- (b) the present petition for recovery of capital expenditure on corporate offices etc. for the period from 1.4.2004 to 31.3.2009 should be considered in the light of the judgment of the

Appellate Tribunal dated 23.11.2007 in Appeal No. 273/2006, wherein the Appellate Tribunal had held that DVC was entitled to the servicing of capital expenditure relating to corporate office etc, and the Commission had allowed the same in terms of the said judgment.

2. The learned counsel for the respondent, UPPCL referred to its reply and submitted as under:

- (a) Regulations 4 and 5 of the 2004 Tariff Regulations specified by the Commission only provide for determination of tariff unit-wise/station-wise. The petitioner could have placed the issue of corporate office expenses for generating company, before the Commission, while finalizing the 2009 Tariff Regulations.
- (b) The prayer of the petitioner for capitalization of expenses for corporate offices could not be considered, since the tariff for the period 2004-09 had been determined by the Commission and also it would be difficult for the beneficiaries to recover the amounts from its consumers. In this connection the judgment of the Hon'ble Supreme Court in C.A. 1110/2007 dated 3.3.2009 was relevant.
- (c) The petitioner cannot place reliance on the judgment of the Appellate Tribunal in DVC case (Appeal No. 273/2006) since, the facts of the case were different and the provisions of the DVC Act were applied. Moreover, the order of the Commission was to service the capital investment on corporate offices under O&M expenses, based on which the judgment was awarded.
- (d) The Central Electricity Regulatory Commission (Fees and charges of Regional Load Dispatch Centre and other related matters) Regulations, 2009, referred to by the petitioner, has no application since these regulations had no retrospective effect and operated prospectively from 18.9.2007.
- (e) Regulation 2 of the 2004 Tariff Regulations provides the scope and extent of regulations, and the petitioner has claimed ROE @ 14%. Since it has been stated that depreciation has been allowed in tariff, the prayer of the petitioner cannot be considered, as tariff cannot be claimed in parts and should include all components as per Regulation 15.
- (f) No consent of the beneficiaries has been obtained by the petitioner for the quantum of claim for capital expenditure on corporate offices and hence the petitioner cannot approach the Commission and seek capitalization of these expenses.

- (g) Since the corporate office expenses was allowed as part of the O&M expenses by the Govt. of India and the Commission during the period 2001-04 and 2004-09 respectively, the petition is not maintainable.
3. The representative of the respondent, MPPTCL submitted as under:
- (a) It adopted the above submissions made on behalf of UPPCL.
- (b) The petitioner could not place reliance of the judgment of Appellate Tribunal in DVC case, it was decided in the light of the provisions of the DVC Act, 1948.
4. The representative of HPPC submitted that the present petition could not be considered by the Commission since the Civil Appeal filed by the petitioner against the judgment dated 30.3.2007 of the Appellate Tribunal on the same issue, was pending before the Hon'ble Supreme Court and verdict in the appeal was awaited.
5. In response, the learned counsel for the petitioner submitted as under:
- (a) The petitioner was not claiming the amount of Rs 370.30 crore for the period 2001-04, as the matter was pending in the Hon'ble Supreme Court.
- (b) The judgment of the Appellate Tribunal in DVC case was based on the harmonious construction of the DVC Act, 1948 and the Regulations of the Commission on other heads, and not on the corporate office expenses.
- (c) The claim for corporate office expenses could not be raised earlier since the claim for additional capitalization could be filed after the tariff period in terms of the 2004 Tariff Regulations, for consideration of the Commission. Hence there was no delay and the judgment of the Supreme Court dated 3.3.2009 cited by the respondent UPPCL could was not applicable.
- (d) The provisions of Sections 61, 62, 64 and 79 (1) of the Electricity Act, 2003 specifically dealt with generating companies and not generating units. If the submissions of the respondents are considered, it would mean that the expenditure incurred on separate offices for each generating station was permissible, which would increase the cost, and not the expenses on common office which would economize the expenditure.
- (e) There was no need to obtain the consent of the respondents as the quantum of claim for capitalization of expenses is considered and allowed on prudence check by the Commission.

- (f) The prayer of the petitioner should be allowed in the light of implementation of the judgment of the Appellate Tribunal in the case of DVC.

6. After hearing the parties, the Commission reserved its orders in the petition.

Sd/-
(T.Rout)
Joint Chief (Law)