

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

- 1. Shri D.P. Sinha, Member**
- 2. Shri G.S. Rajamani, Member**
- 3. Shri K.N. Sinha, Member**

Petition No. 42/2000

In the matter of

Revised fixed charges due to additional capital expenditure and FERV in respect of Singrauli STPS.

IA No. 97/2001 in Petition No. 79/2000 And in the matter of

Revised fixed charges due to additional capital expenditure and FERV in respect of Rihand STPS.

Petition No. 80/2000

And in the matter of

Revised fixed charges due to additional capital expenditure and FERV in respect of Feroz Gandhi Unchahar TPS-I.

Petition No. 82/2000

And in the matter of

Revised fixed charges due to additional capital expenditure and FERV in respect of Anta GPS.

Petition No. 83/2000

And in the matter of

Revised fixed charges due to additional capital expenditure and FERV in respect of Auriya GPS,

And in the matter of

National Thermal Power Corporation Ltd **Petitioner
Vs Uttar Pradesh Power Corporation Ltd & others
..... **Respondents****

IA No. 81/2001 in Petition No. 44/2000 And in the matter of

Revised fixed charges due to additional capital expenditure and FERV in respect of Southern Region.

And in the matter of

National Thermal Power Corporation Ltd. ... **Petitioner**

Vs

Transmission Corporation of Andhra Pradesh
& Others .. **Respondents**

Petition No. 75/2000

And in the matter of

Revised fixed charges due to additional capital expenditure and FERV in respect of Vindhyachal STPS.

IA No. 89/2001 in Petition No. 45/2000 And in the matter of

Revised fixed charges due to additional capital expenditure and FERV in respect of Korba STPS.

And in the matter of

National Thermal Power Corporation Ltd. **Petitioner**

Vs

Madhya Pradesh Electricity Board & others Respondents

The following were present:

1. Shri K.K. Garg. GM (Comml). NTPC
2. Shn MS. Chawla. DGM (Comml). NTPC
3. Shn S.K. Sharma. Sr Mgr (Comml). NTPC
4. Shn M. Sravan Kumar. SM (F). NTPC
5. Shn T.R. Sohal. NTPC
6. Shn R.Singhal. NTPC
7. Shri V.K. Padha. NTPC

8. Shr A.K. Juneja, NTPC S.C. Mehta, XEN
9. Shr (ISP), RVPNL J.S. Bhargava, AEN
10. Shr (ISP), RVPNL S.K. Agnihotri, Advocate
11. Shr for MPSEB Rohit K. Singh, Advocate
12. Shr for MPSEB D.K. Srivastava, EE,
13. Shr MPSEB K. Khandelwal, SE, MPSEB
14. Shr M.H. Parviz, Controller, KPTCL R.K.
15. Shr Arora, XEN (Tariff), HVPNL S.S. Sidhu,
16. Shr AEE(ISB), PSEB A.K. Gupta, AE, DVB
17. Shr Chauhan, SE(Comml), CSEB
18. Shr
19. S.N

**ORDER (DATE OF HEARING
20-12-2001)**

These petitions were originally filed by the petitioner, NTPC for the Commission's approval to revised fixed charges due to additional capital expenditure and Foreign Exchange Rate Variation (FERV) in respect of different stations for the years 1997-98 and 1998-99 based on the terms and conditions and tariff notified by the Ministry of Power in exercise of powers under Section 43 A(2) of the Electricity (Supply) Act 1948. The petitions (No. 42/2000, 75/2000, 80/2000, 82/2000 and 83/2000) were subsequently amended to seek approval to revised fixed charges on account of the above noted two elements of tariff for the years 1999-2000 and 2000-2001. In other cases, the petitions were amended to claim the additional benefit for the year 1999-2000. Interlocutor Applications (IA No. 97/2001 in Petition No. 792000. IA No. 81.2001 in Petition No. 44/2000

and IA No. 89/2001 in Petition No. 45/2000;
have been

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2001 as well. These IAs along with the main petitions are listed for hearing. As noted above, we have already allowed amendments of the petitions in other cases, to allow the petitioner to claim revised fixed charges for the year 2000-2001. In view of this, we allow the IAs for amendment of the main petition. The amended petitions already filed by the petitioner are directed to be taken on record. Interlocutory Applications stand disposed of accordingly. With these amendments, the petitioner seeks revised fixed charges due to additional capital expenditure and FERV in respect of the above noted stations for the years 1997-98 to 2000-2001.

2. The tariff notifications as issued by the Ministry of Power in respect of concerned power stations contain the details of tariff payable by the respondents on account of ROE, depreciation, interest on loan, etc. On the question of additional capital expenditure the notifications provide that the impact of additional capital expenditure, capitalised in each financial year during the tariff period shall be determined by the Central Government immediately or, finalisation of accounts. In regard to FERV, the notifications provide that the effect of Foreign Exchange Rate Variation to be paid to/by NTPC by/to beneficiaries would be determined by the Central Government at the end of each financial year. Thus under the notifications issued under Section 43 A(2) of the Electricity (Supply) Act, 1948 determination of impact of additional capital expenditure and Foreign Exchange Rate Variation to be determined by the Central Government. This section is omitted with

effect from 15.5.99. By that date the Central Government did not determine the impact of these two items for the years 1997-98 and onward. Therefore, with the vesting of power to regulate tariff in respect of generating stations owned or controlled by the Central Government in the Commission, these petitions have been filed before the Commission. The Commission is in se/s/n of the issues raised in these petitions against the above backdrop.

3. The tariff notifications issued by the Central Government in respect of the above mentioned stations were effective up to 31.3.1997 in Petitions No. 80/2000, 82/2000 and 83/2000 and up to 31.10.1997 in Petitions No.42/2000, 44/2000, 45/2000, 75/2000 and 79/2000. It was, however, provided in the tariff notifications that in case new tariff for the period beyond their validity was not finalised before those dates, the beneficiaries would continue to pay to NTPC for the power supplied from these stations beyond this date on ad hoc basis in the manner detailed in the notifications. It is an accepted fact that these notifications were not formally extended beyond 31.3.1997 or 31.10.1997, as this case may be, and were being continued beyond those dates on ad hoc basis and the beneficiaries were making payments of tariff accordingly.

4. The power to regulate tariff in respect of generating stations owned or controlled by the Central Government is vested in the Commission with effect from 15.5.1999. The Commission was to prescribe the terms and conditions of tariff by virtue of Section 28 of the Electricity Regulatory Commissions Act, 1998 before actual determination of tariff. These terms and conditions were determined as follows:

the Commission under its order dated 21.12.2000 in Petition No. 4/2000 and other related petitions and were subsequently notified on 26-3-2001. However, the Commission's order dated 21.12.2000 *ibid* provided that in all cases where the tariff was determined earlier under the Government notification, shall continue to apply till 31.3.2001 and beyond that date the terms and conditions notified by the Commission would be applicable. Thus, the tariff notifications issued by the Ministry of Power prior to vesting of power in the Commission were continued up to 31.3.2001. The Commission, however, made it clear that in case the above noted directions created any unfairness or hardship, the parties were at liberty to approach the Commission for redressal of their grievances.

5. At the hearing before us, many of the respondents have raised a preliminary issue that impact of additional capital expenditure and FERV cannot be determined by the Commission unless the Commission also determines the effect of other components of tariff namely, ROE, depreciation, loan repayment, etc. *v/ith* effect from 1.4.1997 or 1.11.1997, as the case may be, when the tariff earlier notified by the Ministry of Power lapsed but was continued beyond that date on ad hoc basis. It has been submitted that repayment of loan and charging of depreciation, etc. during the tariff period of validity of notifications would have the effect of reducing the tariff when re-determined after expiry of the original notifications. They argued that the tariff from 1.4.1997/1.11 1997 has been paid at old rates, thereby leading to excess payments. The respondents have also argued on merits questioning the admissibility of certain items sought to be

capitalised. It has been stated on behalf of the petitioner, NTPC that in view of the Commission's order dated 21.12.2000, the issue raised by the respondents does not merit any consideration. According to the petitioner, the Commission has already taken a view that the tariff determined by Ministry of Power during 1992 was continued up to 31.3.2001 and, therefore, the question of its redetermination should not arise. It is further argued on behalf of the petitioner that the respondents had raised the issue in their review petitions filed before the Commission against order dated 21.12.2000. But the Commission has declined to interfere with the finding already recorded on this issue. Shri Garg, appearing for the petitioner, however, conceded that re-determination of tariff from the date of expiry of the earlier notification may reduce the interest on loan component because of repayment of loan, but would increase O&M component of the tariff

6. We have given our anxious thought to the preliminary issue raised on behalf of some of the respondents and the reply of the petitioner. The terms and conditions of tariff for different stations initially notified by Ministry of Power were valid for a period 5 years but were continued up to 31.3.2001 on ad hoc basis since the Commission was in the process of finalising its own terms and conditions. The term "ad hoc" has been used in the tariff notifications to cover the situations till such time the tariff in respect of these stations was finally notified by the competent authority. In our opinion, the actual tariff to which the petitioner is entitled has to be redetermined from the date of expiry of the period of tariff fixed by the Ministry of Power for which, the terms and conditions as contains:

as notified that Government shall apply in view of the Commission's order on the subject. In fact, the opportunity to seek review of the directions contained in the Commission's order dated 21.12.2000 *ibid* was granted to the parties in case of hardship. The respondents have substantially established the hardship they are likely to suffer in case the tariff is not re-determined from the date of expiry of the notification issued by Ministry of Power. It is true that some of the respondents had filed review petitions. These review petitions were disposed of by the Commission in terms of its order dated 24.4.2001. While disposing of the review petitions, the Commission did not record any finding on the merits of the contention now raised by some of the respondents. In the review petitions, the issue now raised by the respondents was argued that by virtue of continuation of the tariff prescribed by Ministry of Power, they had already made an excess payment to NTPC. In that context, the Commission noted that in case of excess payment, if any, made by any of the parties, it may take appropriate steps for recovery *or* adjustment of excess amount paid in the normal course of billing, accounts, finalisation etc. Thus no conclusive finding on the question raised by the respondents in these petitions has been recorded by the Commission while disposing of the review petitions. We consider it just and equitable that all the components of tariff are re-determined with effect from the dates of expiry of the notifications issued by Ministry of Power. The question of determination of on\ two components, namely the additional capital expenditure and FERV cannot be

considered in isolation of other components of tariff, otherwise it shall lead to an anomalous situation.

7. Accordingly, we direct the petitioner to file fresh petitions in all cases where tariff earlier determined by the Ministry of Power which lapsed on 1.4.1997 or 1.11.1997 and up to 31-3-2001 when the terms and conditions notified by the Commission have come into force. The tariff petitions shall contain the details as per the Performa prescribed by the Commission in its order dated 14-9-2001 in Review Petition No. 29/2001, based on the terms and conditions of tariff notified by the Central Government for the respective station. These petitions shall be filed by the petitioner latest by 15-2-2001 with an advance copy to the respondents who may file their replies within two weeks thereafter. The fresh petitions be listed for hearing 14-3-2002.

8. We³ make it clear that the petitioner shall not be liable to pay court fee on account of the tariff petitions to be filed in compliance with this order. We further direct that the information called for from the petitioner from time to time in respect of these petitions shall also be filed by the petitioner while filing the revised petitions

9. With the above directions, these petitions stand disposed of. We have not recorded any findings on the merits of the claims of the respective parties, who are at liberty to raise their respective claims in the revised petitions to be filed in accordance with the directions contained in the earlier part of the order.

Sd/-
(K.N. SINHA)
MEMBER

Sd/-
(G.S. RAJAMANI)
MEMBER

Sd/-
(D.P. SINHA)
MEMBER

New Delhi dated the 2^{na} January, 2002.