

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 120/2009**

**Coram: 1. Dr. Pramod Deo, Chairperson  
2. Shri S. Jayaraman, Member  
3. Shri V.S.Verma, Member  
4. Shri M.Deena Dayalan, Member**

**DATE OF ORDER: 5.9.2011**

**IN THE MATTER OF**

Revision of tariff in the light of the judgment dated 13.6.2007 of the Appellate Tribunal for Electricity in Appeal No.151/2006 (against order dated 5.5.2006 in Petition No. 162/2004)

**AND**

**IN THE MATTER OF**

Revision of annual fixed charges due to additional capital expenditure incurred during 2006-07, 2007-08 and 2008-09 in respect of National Capital Thermal Power Station, Dadri, Stage-I (840 MW).

**AND**

**In the matter of**

NTPC Ltd, New Delhi  
Vs

**...Petitioner**

1. Uttar Pradesh Power Corporation Limited, Lucknow
2. Delhi Transco Ltd, New Delhi
3. BSES-Rajdhani Power Ltd, New Delhi
4. BSES-Yamuna Power Ltd, Delhi
5. North Delhi Power Ltd, Delhi

**....Respondents**

**ORDER**

The petitioner, NTPC has made this application for determination of revised fixed charges due to capital expenditure incurred during the years 2006-07, 2007-08 and 2008-09 for National Capital Thermal Power Station, Dadri, Stage-I (840 MW) (hereinafter referred to as “the generating station”) based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 (hereinafter referred to as “the 2004 regulations”). The tariff for the generating station



for the period 1.4.2004 to 31.3.2009 was approved by the Commission by its order dated 5.5.2006 in Petition No.162/2004. Appeal No.151/2006 was filed by the petitioner before the Appellate Tribunal for Electricity ('the Tribunal') challenging the order of the Commission dated 5.5.2006. Similar appeals (Appeal Nos.139 to 142 etc of 2006 and 10, 11 and 23 of 2007) were also filed by the petitioner before the Tribunal challenging the various orders of the Commission determining the tariff for other generating stations during the period 2004-09. Appeal No.151/2006 was clubbed along with the said appeals and the Tribunal by its common judgment dated 13.6.2007 allowed the prayers of the petitioner and remanded the matters for re-determination by the Commission. Against the judgment dated 13.6.2007, the Commission filed 20 Civil Appeals before the Hon'ble Supreme Court (C.A. Nos. 5434/2007 to 5452/2007 and 5622/2007) including Civil Appeal No. 5452/2007 pertaining to this generating station, on issues such as:

- (a) Consequences of refinancing of loan;
- (b) Treating of depreciation as deemed repayment of loan;
- (c) Cost of maintenance spares related to additional capitalization;
- (d) Depreciation availability up to 90% in the event of disincentive; and
- (e) Impact of de-capitalization of assets on cumulative repayment of loan

2. The Hon'ble Supreme Court on 26.11.2007 granted interim order of stay of the operation of the order of the Appellate Tribunal dated 13.6.2007. However, on 10.12.2007, the Hon'ble Supreme Court passed an interim order as under:

*"Learned Solicitor General appearing on behalf of the National Thermal Power Corporation stated that pursuant to the remand order, following five issues shall not be pressed for fresh determination:*

- (a) Consequences of refinancing of loan;
  - (b) Treating of depreciation as deemed repayment of loan;
  - (c) Cost of maintenance spares related to additional capitalization;
  - (d) Depreciation availability up to 90% in the event of disincentive; and
  - (e) Impact of de-capitalization of assets on cumulative repayment of loan
- The Commission may, however, proceed to determine other issues.*

*It is clarified that this order shall apply to other cases also.*

*In view of this, the interim order passed by the Court on 26th November, 2007, is vacated. The interlocutory applications are, accordingly, disposed of."*

3. Subsequently, the petitioner filed Petition No.34/2007 for revision of tariff for the generating station based on additional capital expenditure for the years 2004-05 and 2005-06 and the Commission by its order dated 24.11.2008 revised the tariff for the generating station after deducting un-discharged liabilities amounting to ₹2.31 lakh for 2004-05 and ₹111.09 lakh for 2005-06, based on the capital cost of ₹171622.00 lakh as on 1.4.2004. Aggrieved by order dated 24.11.2008 in Petition No.34/2007, the petitioner filed Appeal No.54/2009 before the Appellate Tribunal for Electricity (the Tribunal) raising the following issues:

*(a) Un-discharged liabilities*

*(b) Cost of maintenance spares corresponding to additional capital cost.*

*(c) Interest on loan considering the depreciation as normative loan repayment while computing interest on loan.*

4. The Tribunal by its judgment dated 21.8.2009 allowed the prayers of the petitioner with regard to the above issues in the light of its earlier judgments dated 10.12.2008 in Appeal Nos.151 & 152/2007 and 16.3.2009 in Appeal Nos.133,135 etc of 2008 and the judgment dated 13.6.2007 in Appeal Nos.139 to 142 etc of 2006 and 10, 11 and 23 of 2007 and remanded the matter to the Commission to implement the directions as contained therein.

5. Meanwhile, Petition No.120/2009 was filed by the petitioner for revision of annual fixed charges on account of additional capital expenditure incurred during the years 2006-07, 2007-08 and 2008-09. The petitioner also filed Interlocutory Application (I.A.No.43/2009) to the said petition for amendment of Annexure-I to the petition taking into account the revised calculations for fixed charges based on the principles laid down in the tariff orders of the Commission and the judgment dated 13.6.2007 of the Tribunal in Appeal Nos.139 to 142 etc of 2006 and 10, 11 and 23 of 2007 and the judgment dated 16.3.2009 in Appeal Nos.133,135 etc of 2008 (as

regards un-discharged liabilities) pertaining to the various tariff orders of the Commission for the period 2004-09 in respect of the generating stations of the petitioner. Against the judgments of the Tribunal dated 10.12.2008 and 16.3.2009 above, the Commission has filed Civil Appeal Nos. 4112-4113/2009 and Civil Appeal Nos. 6286 to 6288/2009 before the Hon'ble Supreme Court. These Civil Appeals are pending and there is no stay of the operation of the judgments of the Tribunal.

6. Keeping in view that the tariff for the period 2004-09 was a composite package which needs to be determined on the same principle and in compliance with the directions contained in the judgment of the Tribunal dated 21.8.2009 in Appeal No.54/2009, the Commission by its order dated 21.1.2011 revised the tariff of the generating station after considering the issues raised in the petition, subject to the final outcome of the said Civil Appeals pending before the Hon'ble Supreme Court.

7. However, it has come to our notice that while implementing the directions contained in the judgments of the Tribunal in our order dated 21.1.2011, certain inadvertent errors as a result of non-consideration of the following orders/aspects had occurred, which is sought to be rectified by this order.

- (a) Order dated 22.2.2007 in Petition No. 162/2004, wherein the tariff of the generating station for the period 1.4.2004 to 31.3.2009 was revised on account of adjustment of cumulative depreciation as on 1.4.2004 corresponding to gross value of assets de-capitalized amounting to ₹44.56 lakh during the period prior to 1.4.2004.
- (b) Order dated 25.1.2008 in Petition No.40/2001, wherein the tariff of the generating station for the period 1.4.2001 to 31.3.2004 was revised by applying normative debt repayment methodology, based on the judgment dated 14.11.2006 of the Tribunal.
- (c) Adjustment of cumulative repayment as on 1.4.2004 corresponding to assets de-capitalized upto 31.3.2004.
- (d) Calculation of maintenance spares based on accrual system of accounting in terms of the judgment of the Tribunal dated 13.6.2007.

8. Accordingly, the annual fixed charges in respect of the generating station for 2004-09 determined by order dated 21.1.2011 is revised after considering the above aspects as detailed under.

9. The capital cost approved by order dated 21.1.2011 remain unchanged.

### Interest on loan

10. Based on the above, clauses (b) and (c) of paragraph 52 of the order dated 21.1.2011 is substituted as under for working out the interest on loan:

(a) xxxxxx

(b) Cumulative repayment of loan on normative basis as on 1.4.2004 considered vide order dated 24.11.2008 was ₹57931.26 lakh. However, considering the cumulative repayment adjustment of ₹22.28 lakh as on 1.4.2004 corresponding to de-capitalization of assets for the period up to 31.3.2004, the cumulative repayment as on 1.4.2004 is revised to ₹57908.98 lakh.

(c) Thus, the revised net opening normative loan as on 1.4.2004 is ₹27882.63 lakh.

(d) xxxxx

11. Accordingly, the table under paragraph 54 pertaining to the computation of Interest on loan is revised as under:

	(₹ in lakh)				
	2004-05	2005-06	2006-07	2007-08	2008-09
Gross Opening Loan – considered	85791.61	85816.81	85988.15	86010.51	86368.45
Cumulative Repayment of loan upto previous year	57908.98	63985.99	70121.04	75920.79	80325.65
Net Loan Opening	27882.63	21830.83	15867.11	10089.72	6042.79
Addition of loan due to additional capital expenditure allowed for 2004-09	25.20	171.34	22.36	357.94	-46.85
Repayment of loan (Normal)	6123.49	6143.66	5824.10	4474.10	3403.08
Less: Adjustment for de-cap during the period	46.48	8.61	24.35	69.24	46.97
Repayment of loan during the year (net)	6077.01	6135.05	5799.75	4404.86	3356.11
Net Loan Closing	21830.83	15867.11	10089.72	6042.79	2639.84
Average Loan	24856.73	18848.97	12978.41	8066.26	4341.32
Weighted Average Rate of Interest on Loan	15.9395%	15.9202%	15.8689%	15.7341%	15.5301%
<b>Interest on Loan</b>	<b>3962.03</b>	<b>3000.79</b>	<b>2059.53</b>	<b>1269.15</b>	<b>674.21</b>

## Depreciation

12. Similarly, paragraphs 55, 56 and 57 of the order dated 21.1.2011 pertaining to depreciation is substituted as under:

“55. In order dated 5.5.2006, the balance depreciation recoverable as on 1.4.2004 was considered as ₹57385.02 lakh. This value was arrived at after considering gross depreciable value and cumulative depreciation & Advance Against Depreciation (AAD) recovered in tariff as on 31.3.2004 amounting to ₹91653.54 lakh (inclusive of depreciation recovered/ to be recovered by the petitioner amounting to ₹10.00 lakh corresponding to FERV allowed for the years 2001-04). However, taking into account the rectification to the cumulative depreciation vide order dated 22.2.2007 and 25.1.2008 the cumulative depreciation and AAD recovered in tariff as on 31.3.2004 works out to ₹90708.16 lakh. As such the balance depreciation recoverable as on 1.4.2004 is revised to ₹58330.40 lakh.

56. However, on account of additional FERV on normative basis amounting to (-) ₹38.77 lakh the balance depreciation recoverable has been reduced to ₹58297.05 lakh after adjustment of (-) ₹1.55 lakh in respect of depreciation recovered/to be recovered by the petitioner on account of additional FERV for the period 1.4.2001 to 31.3.2004. Thus, the cumulative depreciation as on 1.4.2004 is revised to ₹90706.62 lakh.

57. Weighted average rate of depreciation of 3.4484% as mentioned in order dated 24.11.2008 has been used to arrive at the depreciation allowed for the tariff period 2004-09. Adjustment of cumulative depreciation on account of de-capitalization of assets has been considered in the calculations as carried out in the tariff orders for the period 2004-09 for other generating stations of the petitioner. The necessary calculations are as under:

	(₹ in lakh)				
	2004-05	2005-06	2006-07	2007-08	2008-09
Opening capital cost	171583.23	171619.22	171863.99	171895.93	172407.27
Closing capital cost	171619.22	171863.99	171895.93	172407.27	172340.35
Average capital cost	171601.23	171741.61	171879.96	172151.60	172373.81
Depreciable value @ 90%	149019.86	149146.21	149284.08	149085.74	149285.57
Balance depreciable value	58313.25	52581.81	46806.89	40703.28	35055.61
Balance useful life	17.12	16.12	15.12	14.12	13.12
Depreciation	<b>5917.54</b>	<b>5922.39</b>	<b>5927.16</b>	<b>5936.52</b>	<b>5944.19</b>

## Interest on Working Capital

13. Also, the table under paragraph 60 of the order dated 21.1.2011 pertaining to the computation of interest on working capital is revised as under:

(₹ in lakh)

	2004-05	2005-06	2006-07	2007-08	2008-09
Coal Stock- 2 months	12703.36	12703.36	12703.36	12738.16	12703.36
Oil stock -2 months	267.06	267.06	267.06	267.79	267.06
O & M expenses	728.00	757.40	787.50	819.00	851.90
Maintenance Spares	2664.83	2827.16	2997.04	3181.96	3372.06
Receivables	18673.49	18575.47	18482.39	18456.52	18392.57
<b>Total Working Capital</b>	<b>35036.74</b>	<b>35130.45</b>	<b>35237.34</b>	<b>35463.43</b>	<b>35586.94</b>
Rate of Interest	10.2500%	10.2500%	10.2500%	10.2500%	10.2500%
<b>Total Interest on Working capital</b>	<b>3591.27</b>	<b>3600.87</b>	<b>3611.83</b>	<b>3635.00</b>	<b>3647.66</b>

14. Based on the above, the table under paragraph 61 pertaining to annual fixed charges for the period from 1.4.2004 to 31.3.2009 is revised as under:

(₹ in lakh)

	2004-05	2005-06	2006-07	2007-08	2008-09
Interest on loan	3962.03	3000.79	2059.53	1269.15	674.21
Interest on Working Capital	3591.27	3600.87	3611.83	3635.00	3647.66
Depreciation	5917.54	5922.39	5927.16	5936.52	5944.19
Advance Against Depreciation	0.00	0.00	0.00	0.00	0.00
Return on Equity	12011.58	12017.48	12023.29	12034.70	12044.03
O & M Expenses	8736.00	9088.80	9450.00	9828.00	10222.80
<b>Total</b>	<b>34218.43</b>	<b>33630.33</b>	<b>33071.80</b>	<b>32703.37</b>	<b>32532.89</b>

15. This order is however subject to the final outcome of the said Civil Appeals pending before the Hon'ble Supreme Court of India.

16. Except the above, all other terms contained in our order dated 21.1.2011 remains unchanged.

17. The difference in the amounts shall be recovered from the beneficiaries in three monthly installments.

Sd/-  
(M.DEENA DAYALAN)  
MEMBER

Sd/-  
(V.S.VERMA)  
MEMBER

Sd/-  
(S.JAYARAMAN)  
MEMBER

Sd/-  
(DR.PRAMOD DEO)  
CHAIRPERSON