

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 126/2010
in
Petition No.138 /2009 with I.A. 49/2009

Coram: 1. Dr.Pramod Deo, Chairperson
2. Shri S.Jayaraman, Member
3. Shri V.S.Verma, Member

DATE OF HEARING: 27.7.2010

DATE OF ORDER: 6.7.2011

IN THE MATTER OF

Review of order dated 19.2.2010 in Petition No.138/2009 relating to determination of impact of additional capitalization during the period 2008-09 in respect of Talcher STPS-Stage-II (2000 MW).

AND IN THE MATTER OF

NTPC Ltd, New Delhi

.....**Petitioner**

Vs

- (1) Transmission Corporation of Andhra Pradesh Ltd, Hyderabad
 - (2) A.P Eastern Power Distribution Co. Ltd, Visakhapatnam
 - (3) A.P Southern Power Distribution Co. Ltd, Tirupathi
 - (4) A.P Northern Power Distribution Co. Ltd, Warangal
 - (5) A.P Central Power Distribution Co. Ltd, Hyderabad
 - (6) Tamil Nadu Electricity Board, Chennai
 - (7) Karnataka Power Transmission Corporation Ltd, Bangalore
 - (8) Bangalore Electricity Supply Corporation Ltd, Bangalore
 - (9) Mangalore Electricity Supply Corporation Ltd, Mangalore
 - (10) Chamundeshwari Electricity Supply Corporation Ltd, Mysore
 - (11) Gulbarga Electricity Supply Co. Ltd, Gulbarga
 - (12) Hubli Electricity Supply Co. Ltd, Hubli
 - (13) Kerala State Electricity Board, Thiruvananthapuram
 - (14) Electricity Department, Govt. of Puducherry, Puducherry
- ...Respondents**

The following was present:

1. Shri S.K.Mondal, NTPC

ORDER

This application for review has been filed by NTPC, the petitioner herein, against the order of the Commission dated 19.2.2010 in Petition No.138/2009 relating to

determination of impact of additional capital expenditure during the period 2008-09 in respect of Talcher STPS, Stage-II (2000 MW) (hereinafter referred to as 'the generating station').

2. The Commission by its order dated 19.2.2010 in Petition No. 138/2009 revised the tariff of the generating station after considering the impact of additional capital expenditure incurred for the period 2008-09. The annual fixed charges determined by order dated 19.2.2010 was as under:

	<i>(₹ in lakh)</i>						
	2004-05	2004-05	2005-06	2005-06	2006-07	2007-08	2008-09
	1.4.2004 to 31.10.2004	1.11.2004 to 31.3.2005	1.4.2005 to 31.7.2005	1.8.2005 to 31.3.2006			
Depreciation	8289	12249	12427	16427	17265	17542	17783
Interest on Loan	13506	19401	18960	23682	21630	18156	14174
Return on Equity	9628	14254	14461	19166	20144	20467	20748
Advance against Depreciation	2328	13214	0	29577	15994	16345	16552
Interest on Working Capital	1922	3311	3057	4892	4638	4650	4639
O & M Expenses	9360	14040	14595	19460	20240	21040	21900
Total	45034	76469	63500	113204	99911	98199	95796

3. Aggrieved by the said order, this review petition has been filed by the petitioner raising the following issues:

(a) Disallowance of capitalization of liabilities discharged amounting to ₹58973809/- during 2007-08.

4. The petition was listed before us for admission. We heard the representative of the petitioner on the points raised in the application for review. After careful examination of the material on record and the oral submissions made on behalf of the petitioner, we propose to dispose of the application at the admission stage for the reasons recorded in succeeding paragraphs:

Disallowance of capitalization of liabilities discharged amounting to ₹58973809/- during 2007-08.

5. The Commission in its order dated 19.2.2010 while revising the annual fixed charges for the generating station after considering the impact of additional capital expenditure for 2008-09, had in paragraphs 17 and 18 of the said order observed as under:

" 17. The Appellate Tribunal in its judgment dated 10.12.2008 had directed that the capital cost incurred in respect of the generating station including the portion of such cost which has been retained or has not been paid for shall be recovered in tariff. In other words, un-discharged liability in respect of works which have been executed but payments deferred for future date has to be capitalized. As regards IDC, if the loan amount has been repaid out of the internal resources before the date of commercial operation, such repayments would earn interest. The Commission has been directed by the Appellate Tribunal to give effect to the directions contained in the judgment in the truing up exercise and subsequent tariff orders.

18. The directions of the Appellate Tribunal pertain to additional capitalization for the tariff period 2004-09 which had come to an end on 31.3.2009 and the exercise for implementation of the directions have been undertaken after the expiry of the said tariff period. Accordingly, tariff of the generating station is revised after considering the additional capital expenditure, capitalization of un-discharged liabilities and IDC after truing up of the expenditure as on 31.3.2009. While truing up, the liabilities discharged, liabilities reversed on account of de-capitalization of assets during the tariff period have been accounted for"

6. The net additional capital expenditure allowed by the Commission for 2008-09 in the order dated 19.2.2010 was as under:

Nature of capitalization	2008-09
Deferred Liabilities relating to works with in original scope of work [18(2)(i)]	6220.60
Additional works for efficient and successful operation of generating station but not included in original project cost [18(2)(iv)]	668.75
Deferred works relating to ash pond or ash handling system in original scope of work [18(2)(v)]	1471.58
Total before adjustments of exclusions (A)	8360.92
Exclusions not allowed (B)	(-) 95.32
Additional capital expenditure allowed (C=A+B)	8265.60
Less: Un-discharged liabilities included	1275.17
Net additional capital expenditure allowed for the purpose of tariff	6990.43

7. In its application for review, the petitioner has submitted that the Commission has not considered the principles laid down by the Appellate Tribunal for Electricity (the Tribunal) in its judgment dated 10.12.2008 in Appeal Nos.151 & 152/2007 by not

taking into account the un-discharged liabilities amounting to ₹1275.17 lakh in the capital base. The petitioner has also submitted that the Commission has also not considered the liabilities amounting to ₹5,89,73,809/- which has been discharged during 2008-09. The petitioner has thus prayed that the Commission may allow review of the order dated 19.2.2010 on the grounds as stated above.

6. On scrutiny of records, it is noticed that the information as regards the amount of liabilities of ₹58973809/- discharged during 2008-09 was neither submitted by the petitioner in its original petition nor in the interlocutory application (I.A.No.49/2009) filed in the said petition. The details regarding the discharge of liabilities have been submitted for the first time by the petitioner in the review application. It was for this reason that the said liabilities stated to have been discharged during 2008-09 could not be considered by the Commission in the order dated 19.2.2010. In view of this, we find no error apparent on the face of the record in our order dated 19.2.2010 and the review application is not maintainable.

7. Having concluded that the review application is not maintainable, we do take note of the fact that the judgment of the Tribunal dated 10.12.2008 in Appeal Nos.151 & 152/2007 has been implemented in respect of some of the generating stations of the petitioner, subject to the final outcome of the Civil Appeals No.4112-13/2009 filed by the Commission before the Hon'ble Supreme Court. It is also observed that in Appeal No.66/2008 filed by the petitioner before the Tribunal challenging the order of the Commission dated 31.1.2008 determining the tariff of the generating station for the period 2004-09 in Petition No.179/2004, the issue of exclusion of un-discharged liabilities was also raised by the petitioner and the Tribunal by its judgment dated 18.8.2010 has allowed the said prayer in the light of its earlier judgments dated

10.12.2008 (Appeal Nos.151 & 152/2007) and 16.3.2009 (Appeal Nos.133,135 etc of 2008). In compliance with the directions contained in the judgment dated 18.8.2010, we direct the adjustment of liabilities in the capital cost of the generating station for the purpose of tariff for the period 2004-09.

8. The question now arises as to whether the tariff of the generating station is to be revised in the present review petition after considering the adjustment of liabilities.

9. It is observed that the Tribunal in its judgment dated 18.8.2010 in Appeal No.66/2008 had allowed the prayer of the petitioner for relaxation of 'cut-off' for inclusion of additional capital expenditure and has remanded the matter to the Commission to consider the same by exercise of the 'Power to relax' under the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004. The matter has been heard and orders have been reserved by the Commission. In view of this, we are of the view that the adjustment of liabilities should be given effect to while disposing of the original petition (Petition No.179/2004) after considering the question of relaxation of the 'cut-off' date for the generating station for the purpose of additional capital expenditure. We direct accordingly.

10. Review Petition No. 126/2010 is disposed of in terms of the above.

Sd/-
(V.S.VERMA)
MEMBER

Sd/-
(S.JAYARAMAN)
MEMBER

Sd/-
(DR.PRAMOD DEO)
CHAIRPERSON