

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 139/2010

in

Petition No.146/2008

**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 HEARING: 21.9.2010

DATE OF ORDER: 30.5.2011

IN THE MATTER OF

Review of order dated 05.01.2010 in Petition No.146/2008 relating to determination of tariff by considering the impact of additional capitalization during the period 2004-08 for Talcher STPS, Stage-II (2000 MW).

AND IN THE MATTER OF

Tamil Nadu Electricity Board

.... **Petitioner**

Vs

1. National Thermal Power Corporation Ltd, New Delhi

....**Respondent**

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

The following were present

- 1 Shri R.Krishnaswami, TNEB
- 2 Shri S.Balaguru, TNEB

ORDER

This application for review has been filed by TNEB, the review petitioner herein, against the order of the Commission dated 5.1.2010 in Petition No.146/2008 pertaining

to the revision of fixed charges considering the impact of additional capital expenditure incurred for the period 2004-08 in respect of Talcher STPS, Stage-II (2000 MW) (hereinafter referred to as 'the generating station'). The petitioner has made the following specific prayers:

- (a) To condone the delay of 59 days (as on 20.4.2010) in filing of the review petition.
- (b) To review the order dated 5.1.2010 in disposal of petition no. 146/2008 in respect of following issues:
 - (i) Considering the weighted average rate interest of 8.3433% which is detailed in the working sheet as against the rate of 8.3957% for the year 2007-08 considered in the impugned order;
 - (ii) Order the details of loan particulars drawn towards additional capitalization as the same would help in settling the bills /claim towards differential interest on the loan carrying floating rate of interest;
 - (iii) To reduce from the interest on the loan from the IDC amount allowed in para 13 of the impugned order dated 5.1.2010, viz. ₹1066.23 lakh as against the amount of ₹694 lakh interpolated from the working sheet and part hence, part with the IDC calculations arrived at by CERC;
 - (iv) To furnish the reconciliation statement between the amount claimed and awarded in respect of additional capitalization; and

(v) To order such other relief that may be deemed fit in the interest of justice.

2. The tariff of the generating station for the period 2004-09 was determined by the Commission by its order dated 31.1.2008 in Petition No.179/2004. Subsequently, the Commission vide its order dated 5.1.2010 in Petition No.146/2008 revised the tariff after accounting for additional capital expenditure incurred during the period 2004-08. The tariff of the generating station was further revised vide order dated 19.2.2010 in Petition No.138/2009 after considering the additional capital expenditure incurred during 2008-09.

3. The petitioner has filed the present petition for review of the order dated 5.1.2010 in Petition No.146/2008 on the grounds mentioned at para 1 above.

4. We have heard the representative of the petitioner, on admission.

5. The petitioner has prayed for condonation of delay in filing the review petition. The review petitioner has submitted that the Commission's order dated 5.1.2010 was received in the office of the petitioner on 11.1.2010 and that the period of 45 days for filing the review petition against the order of the Commission had expired on 24.2.2010. The review petitioner has also submitted that after inspection of files and obtaining calculation sheets from the Commission on 8.4.2010, the application could be filed only on 22.4.2010 and therefore a delay of 61 days has occurred in filing of the said application. The review petitioner has submitted that the delay was neither willful nor wanton and prayed that the same be condoned in terms of Regulation 111 read with Regulation 116 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999.

6. Regulation 103 and 116 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (hereinafter “Conduct of Business Regulations”), provides as under:

“Review of the decisions, directions and orders”

“103. (1) The Commission may at any time, on its own motion, or on an application of any of the persons or parties concerned, within 45 days of making such decision, directions or order, review such decision, directions or orders and pass such appropriate orders as the Commission deems fit:

Provided that power of review by the Commission on its own motion under this clause may be exercised only for correction of clerical or arithmetical mistakes arising from any accidental slip or omission

(2) An application for such review shall be filed in the same manner as a Petition under Chapter II of these Regulations.

Extension or abridgement of time prescribed

“116. Subject to the provisions of the Act, the time prescribed by these Regulations or by order of the Commission for doing any act may be extended (whether it has already expired or not) or abridged for sufficient reason by order of the Commission.”

8. As per Regulation 103 of Conduct of Business Regulations, the limitation period for making application for review is 45 days from the date of the order. This period can be extended or abridged by the Commission for “sufficient reason” under Regulation 116 *ibid*. In the present case, the review petitioner after noticing certain discrepancies in the order took steps to inspect the petition file in the Registry of the Commission and obtained certified copy of the calculation sheet on 8.4.2011. After obtaining the approval of the management, the review petitioner filed the review petition on 22.4.2011. The reasons explained by the review petitioner for delay in filing the review petition are sufficient to extend the time for filing the petition under Regulation 114 of Conduct of Business Regulations. In view of this, the delay in filing the review petition is condoned.

9. Next we proceed to examine issues raised by the petitioner, on merits.

10. Section 94(1)(f) of the Electricity Act, 2003 provides that the Commission shall have the same power as are vested in a civil court under the Code of Civil Procedure, 1908 (CPC) for reviewing its decisions, directions and orders. Order 47 Rule 1 of CPC provides that any person considering himself aggrieved by an order may apply for its review to the court which passed the order under the following circumstances;

- (a) *on discovery of new and important matter or evidence which after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or*
- (b) *on account of a mistake or error apparent on the face of the record, or*
- (c) *for any other sufficient reasons.*

11. Under Regulation 103 of Conduct of Business Regulations, the Commission has the power to review its order suo motu for correction of clerical or arithmetical mistakes arising from any accidental slip or omission.

12. The review petitioner's plea for review is to be considered in the light of above noted legal position. The petitioner has raised the following four issues in the review petition:

- (a) To furnish the reconciliation statement between the amount claimed and awarded in respect of additional capitalization
- (b) The Commission has considered a weighted average rate of interest on actual loans at 8.3957% as against the rate arrived at in the supporting working sheet obtained from the file of the Commission for the years 2007-08 viz. 8.3433%. This has resulted in an excess tariff of about ₹110 lakh and considering TNEB's share of of about 25%, the loss to TNEB works out to ₹28 lakh,.

(c) As per para 13 of the order dated 5.1.2010, IDC has been allowed for ₹ 1066.23 lakh with the following break-up:

- (i) 2005-2006 : ₹ 287.25 lakh
- (ii) 2006-07 : ₹ 665.79 lakh
- (iii) 2007-08 : ₹ 13.19 lakh

However, figures in the calculation sheet work out to 694 lakh (₹ 294 for 2005-06, ₹ 286 lakh for 2006-07 and ₹ 114 lakh for 2007-08) which has resulted in a short deduction of 372.23 lakh from interest on loan for tariff purposes.

(d) The loan particulars drawn for additional capitalization have not been furnished by the petitioner. The same is also not given in the order nor found as part of the working sheet forming part of calculation in the file of the Commission. As per the petitioner, the loan particulars are essential for discharging the interest difference in respect of loan carrying floating rate of interest.

13. As regards the first issue, it emerges from perusal of the order dated 5.1.2010 that in para 8 of the order, year-wise break-up of additional capitalization claimed by NTPC and in para 14, the year-wise break-up of additional capitalization allowed by the Commission have been given. The reasons for admitting the additional capitalization under different heads have been explained in paras 11 to 13 of the order dated 5.1.2010. In our view, no case for review has been made out on this ground.

14. As regards the second and third issues, it is noticed on scrutiny of records that certain inadvertent arithmetical errors had crept in the order dated 5.1.2010 in Petition No.146/2008 with regard to the weighted average rate of interest on loan and deduction of IDC from the interest on loan, though correct calculation is available in the

calculation sheet. This amounts to error apparent on the face of the record for which review is permissible. Accordingly, we allow the prayer of the petitioner and direct as under:

- (a) The weighted average rate of interest of 8.3433% shall be considered for calculation of interest on loan.
- (b) ₹ 1066.33 lakh on account of IDC shall be deducted from interest on loan instead of ₹ 694 lakh.

15. As regards the fourth issue, it is noticed that the respondent (NTPC) had filed additional information vide its affidavit dated 9.6.2009 containing the year wise and loan wise interest charges with details of interest charged to Capital Works in Progress (CWIP). These details alongwith additional clarification sought from the petitioner were used to calculate the interest on loan component of tariff. However, the loan particulars were not issued as part of the order.

16. The Appellate Tribunal for Electricity in its judgment dated 18.8.2010 in Appeal No. 66/2008 has set aside the order dated 31.1.2008 in Petition No.179/2004 pertaining to the original tariff order for the period 2004-09 of Talcher STPS, Stage-II (2000 MW) and remanded the matter for fresh determination in the light of the observations of the Tribunal. The Commission is in the process of revising the tariff of the generating station for implementing the said judgment. Our directions in para 12 above shall be taken into account while revising the tariff of the generating station. The loan particulars drawn for additional capitalization as mentioned in para 15 above, shall be included in the order while revising the tariff.

17. Review Petition No. 139/2010 stands disposed of at the admission stage, in terms of the above.

Sd/-
(M.DEENA DAYALAN)
MEMBER

sd/-
(V.S.VERMA)
MEMBER

sd/-
(S.JAYARAMAN)
MEMBER

sd/-
(Dr.PRAMOD DEO)
CHAIRPERSON