

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 3/2011
in
Petition No. 194/2009

**Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member**

**Date of Hearing: 17.4.2012
Date of Order: 10.12.2012**

IN THE MATTER OF

Review of order dated 28.9.2010 in Petition No.194/2009 pertaining to determination of annual fixed charges due to additional capital expenditure incurred during 2006-07 (from 1.6.2006 to 31.3.2007) 2007-08 and 2008-09 in respect of Badarpur Thermal Power Station (705 MW).

AND

IN THE MATTER OF

NTPC Ltd, New Delhi

...Petitioner

Vs

1. Delhi Transco Ltd, New Delhi
2. North Delhi Power Ltd, Delhi
3. BSES Rajdhani Power Ltd, New Delhi
4. BSES Yamuna Power Ltd, Delhi
5. New Delhi Municipal Council, New Delhi

...Respondents

Parties Present:

1. Shri C.K.Mondol, NTPC Ltd.
2. Shri A.Basu Roy, NTPC Ltd.
3. Shri Rohit Chhabra, NTPC Ltd.
4. Shri R.B.Sharma, Advocate, BRPL

ORDER

The application for review has been filed by the petitioner, NTPC Ltd against the order of the Commission dated 28.9.2010 in Petition No.194/2009 pertaining to



determination of annual fixed charges due to additional capital expenditure incurred during 2006-07, 2007-08 and 2008-09, in respect of Badarpur Thermal Power Station (705 MW) (hereinafter called the "the generating station'). The annual fixed charges determined by the Commission's order dated 28.9.2010 is as under:

	(₹ in lakh)		
	2006-07	2007-08	2008-09
Depreciation	1577	1598	1646
Interest on Loan	-	-	5
Return on Equity	2515	2391	2342
Advance against Depreciation	-	-	-
Interest on Working Capital	2881	2891	2888
O & M Expenses (including annual lease rental for land)	14812	14859	14876
Total	21785	21739	21759

2. Aggrieved by the order dated 28.9.2010, the petitioner has filed this application for review of the said order on the following issues:

- (a) Digital control system closed loop control for ₹1590668;
- (b) Replacement of Condenser Tubes for a 210 MW unit for an amount of ₹83966279;
- (c) Renovation of 'A' Type quarters into ET Hostel for ₹4106931;
- (d) Replacement of Battery Bank (High Discharge Performance Type) for ₹5789977; and
- (e) Liabilities incurred but not discharged for ₹7.29 lakh.

3. The matter was heard on 31.3.2011 on 'admission' and the Commission by interim order dated 15.3.2012, while rejecting the prayer of the petitioner in para 2(a) above, admitted the review petition on the issues mentioned in sub-paras (b), (c) and (d) of paragraph 2 above. As regards the issue in para 2(e) above, the Commission directed the capitalization of liabilities amounting to ₹7.29 lakh in terms of the directions of the Appellate Tribunal in judgments dated 10.12.2008 and 16.3.2009 in Appeal Nos.151 & 152/2007 and Appeal Nos. 133, 135, 136 and 148/2008 respectively, at the time of final disposal of this application.



5. Reply to the application has been filed by the respondent No.3, BRPL vide its affidavit dated 4.4.2012.

6. During the hearing on 17.4.2012, The representative of the petitioner made elaborate arguments on the issues admitted by the Commission and prayed that the error apparent on the face of the order be corrected and tariff of the generating station be revised accordingly for the period 2004-09. The learned counsel for respondent, BRPL while pointing out that none of the grounds raised for review of the order has been justified by the petitioner, has submitted that a review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. In this regard, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Parsion Devi & ors-v-Sumitra Devi & ors (1997) 8 SCC 715 and judgments of the Appellate Tribunal for Electricity dated 24.3.2009 in Review Petition No. 1/2009 (in Appeal No. 64 of 2008), judgment dated 19.1.2011 in Review Petition No. 7/2009 (in Appeal No. 85 of 2007), judgment dated 12.8.2011 in Review Petition No. 2/2011 (in Appeal No. 26 of 2008) and judgment dated 26.8.2011 in Review Petition No. 1/2011 (in Appeal No. 24 of 2010). To sum up, the learned counsel prayed that the review application be dismissed as not maintainable as no case has been made out by the petitioner for review of the said order. In response, the representative of the petitioner pointed out that the issues raised by the respondent were considered by the Commission at the time of admission of the review petition. He also submitted that it has amply demonstrated the errors apparent in the said order and prayed that the review application be allowed.



7. The Commission while reserving its order in the application directed the petitioner to submit additional information on certain issues. In response to the said directions, the petitioner vide its affidavit dated 9.5.2012 has filed the relevant information and has submitted that the relief prayed for in the application may be granted.

8. Heard the parties and examined the documents on record. We now proceed to consider the issues raised by the petitioner, as discussed in subsequent paragraphs

9. In accordance with Rule 1 Order 47 of the Code of Civil Procedure (CPC), a person aggrieved by an order may apply for a review under the following circumstances:

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

(A) Replacement of Condenser tubes for 210 MW unit

10. In respect of the claim of the petitioner for capitalization of expenditure of `839.66 lakh for replacement of condenser tubes during 2007-08, the Commission in its order dated 28.9.2010 had disallowed the same observing as under:

"From the details regarding the consumption of capital repairs during the year 2006-07 submitted by the petitioner vide affidavit dated 11.1.2010, it is observed that the condenser tubes amounting to `534.32 lakh has been consumed during the year. As O&M norms specified by the Commission for the period 2004-09, provide for expenditure on this count, the said expenditure is covered under O&M expenses and has not been allowed."

11. The petitioner in its application has submitted that the replacement of condenser tubes for the 210 MW Unit No. V of Stage-II has been incurred in terms of the R&M schemes approved by the CEA vide its order dated 22.2.2008 under main plant package. Reiterating the submissions made in the original petition, the petitioner has



submitted that the cooling water for the generating station is supplied from the Yamuna canal and due to high biological oxygen demand (ranging upto 100 PPM) in the water entering the condenser, there is microbiological corrosion inside the condenser tubes. This, according to the petitioner, has led to thinning and tube punctures leading to cooling water ingress into steam condensate. The petitioner has submitted that it has replaced the condenser tubes in order to maintain high generation levels at the generating station. The petitioner has therefore prayed that the said expenditure be allowed or otherwise the disallowance would result in non-servicing of the capital expenditure despite the approval of CEA under this head.

12. The respondent, BRPL in its reply has submitted that the Commission has disallowed the said expenditure as the same is covered under O&M expenses. It has also submitted that the expenditure which is evidently revenue expenditure cannot be capitalized. It has further submitted that the petitioner has not discovered any new and important matter or evidence which after exercise of due diligence was not within the knowledge of the petitioner or could be produced by him at the time when the order dated 28.9.2010 was passed. It has also submitted that that the admissibility of additional capitalization is subject to prudence check of the Commission and the additional capitalization in this case has accordingly been disallowed.

13. The submissions of the parties have been examined. It is observed that the petitioner has sought to justify the capitalization of this asset based on the grounds which had already been raised in the original petition and rejected by the Commission on prudence check. In short, the petitioner has sought to reopen the case on merits, which had already been considered and disposed of by the Commission by order dated



28.9.2010. This is not permissible in review. The Commission by a conscious decision had disallowed the capitalization of the asset, on prudence check, based on the submissions of the petitioner. Moreover, the petitioner has not demonstrated the existence of any error apparent in the face of the order or the existence of any new or important matter which was not within the knowledge of the petitioner and which after due diligence could not produced by the petitioner at the time of passing the order dated 28.9.2010. Hence, we are of the view that the grounds raised by the petitioner do not fall within the scope of review under Rule 1 Order 47 of the CPC. Therefore, the prayer of the petitioner is rejected and review on this ground fails.

(B) Renovation of 'A' type quarter for ET Hostel

14. The Commission in its order dated 28.9.2010 had disallowed the expenditure of ₹41.06 lakh for 2008-09 towards the renovation of "A" type quarter for ET hostel on the ground that the same is in the nature of O&M expenses. The petitioner in its application has submitted that these quarters at the generating station were 40 years old and required significant repairs and the expenditure on such repair is not routine maintenance but a full fledged renovation done to bring these 40 year old structures back to use. It has also submitted that the expenditure is of capital nature as it would give enduring benefit and further in the nature of new construction for sustained use and therefore the expenditure cannot be categorized as routine O&M expenses. The respondent, BRPL has submitted that the petitioner in the guise of review application has requested for reconsideration of the whole issue afresh by making the same submissions made in the original petition which had been considered by the Commission. It has therefore prayed that the review on this ground be dismissed.



15. On the issue of renovation of "A" type quarters for Executive Trainees (ET), the Commission by letter dated 15.12.2011, directed the petitioner to submit additional information on the following:

- (a) Explain as to how the executive trainees were being accommodated at the station prior to renovation of abandoned type 'A' quarters.
- (b) Number of type 'A' quarter being renovated and number of executive trainees to be accommodated in these quarters.
- (c) Whether executive trainee housed in these quarters shall be posted at the Badarpur Station alone or would be posted in different NTPC station post training.
- (d) As to why the expenses on renovation of type 'A' quarters should not be booked to corporate expenses and apportioned to different stations of NTPC. Do the corporate expenses include the fixed charges of these quarters.

16. In response, the petitioner by affidavit dated 3.1.2012 has submitted additional information on the above issues as under:

(a) In reply to Sl.No.1, it is submitted that earlier training of Executive Trainees (ETs) was not taking place at BTPS as various facilities required such as hostel etc, were not available at BTPS. However, need was felt that some training should be conducted at BTPS. Accordingly, one batch of ET training took place at BTPS & they were accommodated in GM Bungalow & some vacant quarters of Township on temporary basis. Thereafter, renovation of "A" Quarters was done and a proper Hostel of ET training started functioning.

(b) In reply to Sl.No.2, it is submitted that 24 Nos. of "A" type Quarters were renovated to accommodate around 40 to 44 ETs at a given time.

(c) In reply to Sl.No.3, it is submitted that as per Company policy, administrative transfers of manpower are carried out in NTPC depending upon requirement and the same are done irrespective of the fact as to where they were trained initially. Thus, a person getting trained at some other station can be posted at BTPS and vice versa.

(d) In reply to Sl.No.4, it is submitted that providing facilities for training is the responsibility of individual Stations/ Projects. Since, creating facilities for training of employees is responsibility of Stations; therefore the assets created are part of the project. For these reasons, the expenses incurred for such facilities are booked under that respective Station/Project. The fixed charges of these quarters are not included / booked in the corporate expenses.

17. Pursuant to the hearing on 17.4.2012, the Commission while reserving its orders in the matter directed the petitioner to submit additional information on the following:



- (i) Dates from which these 'A' type quarters were lying vacant;
- (ii) The reasons for not maintaining these quarters properly from the O&M expenses allowed to the generating station during the period it was lying vacant;
- (iii) The details of work carried out to renovate these quarters with item-wise cost.

18. In response, the petitioner *vide* its affidavit dated 9.5.2012 has submitted as under:

(a) In reply to sl. no. (i), 24 nos. of "A" type quarters were vacated from 2004 onwards.

(b) In reply to sl. no. (ii), it is submitted that large no. of 'A' type quarters were vacated from 2004 onwards and few of them were occupied by employees and therefore, need based maintenance was carried out. However, it may be noted that these quarters are more than 30 years old and required total renovation.

Earlier, training of Executive Trainees (ETs) was not taking place at BTPS as various facilities required such as hostel etc. were not available at BTPS. However, due to higher intake of ETs in the last few years commensurate with expansion plans, a need was felt that some ETs need to be trained at BTPS. Accordingly, one batch of ET training took place at BTPS & they were accommodated in vacant quarters of Township on temporary basis. It was then decided to renovate these 30 years old "A" type quarters to convert it into a proper hostel for ETs. The expenditure incurred for conversion of these old quarters to ET Hostel was of capital nature and accordingly, the same was capitalized.

(c) In reply to sl. no. (iii), it is submitted that since, these 'A' type quarters were more than 30 years old and were lying vacant for many years and so to make them safe and habitable, following works were carried out for renovation of these "A" type quarters to accommodate around 40 to 44 ETs at a given time.

(d) New brick & steel work for structural strengthening, roof repairing, new piping work for water supply, electrical work, sanitary work, wooden work, misc. building related works etc.

(e) The total cost of above renovation works was ₹41.06 lakh as on 31.3.2009 for 24 no. of 'A' type quarters including issuance of free material of ₹2.19 lakh and liability of ₹2.25 lakh. This liability was subsequently discharged in 2010-11.

19. The matter has been examined. Regulation 18(2)(iv) of the 2004 Tariff Regulations provides as under:

"Any additional works / services which have become necessary for efficient and successful operation of the generating station, but not included in the original project cost"



20. It is observed from the submissions of the petitioner, that the expenditure is required for renovation of 30 years 'A' type quarters for conversion into hostel accommodation for Executive Trainees (ETs) who are required to be trained at the generating station. The petitioner has submitted that earlier training of ETs was not taking place at BTPS generating station as various facilities required including the accommodation was not available. After a need was felt for conducting training at BTPS generating station, the petitioner arranged training for one batch of ETs at BTPS generating station and the trainees were accommodated in the GM Bungalow and some vacant quarters. Thereafter, the petitioner renovated the "A" type quarters to convert them into hostel for ETs. As per the submissions of the petitioner, the training at BTPS generating station is going to be a regular feature for which dedicated accommodation is necessary. Since trained manpower contributes towards better management of the generating station, in our view, the expenditure incurred for renovation of old and dilapidated type "A" quarters into ET hostel is in furtherance of the efficient operation of the generating station. Since extensive renovation has been carried out to the type 'A' quarters, the expenditure is of capital nature and can be allowed as additional capitalization. Thus, the expenditure which was disallowed in the original order on the ground that the expenditure is in the nature of O&M expenses is an error apparent on the face of the record. In view of this, review of order on this ground is allowed.

(C) High Discharge Performance Type Battery Bank

21. The Commission in its order dated 28.9.2010 had disallowed the expenditure of ₹57.90 lakh for 2008-09 towards High Discharge Performance Type Battery Bank on the ground that the same is in the nature of O&M expenses.



22. The petitioner has submitted the expenditure on Battery Bank is of a capital nature and the same was purchased and installed by the petitioner during 1999-2000 and since then it has been replaced now after a life of 10 years. It has also submitted that replacement of battery bank is not a routine O&M expense but a heavy capital expenditure. It has further submitted that the old battery bank has outlived its utility and replacement of the said asset with a new one will have enduring benefit and an expected life of around 10 years and therefore there is full justification for allowing the same as capital asset expenditure. The petitioner has also submitted that the Commission in its order dated 23.9.2010 in Review petition No. 25/2010 (pertaining to Anta Gas Power Station) had allowed the expenditure on replacement of Battery Bank. The respondent, BRPL has submitted that the expenditure once categorized as to be in the nature of O&M expenses, the plea of adequacy or inadequacy of the O&M expenses does not arise as tariff determined under 2004 Tariff Regulations is a complete package. It has also submitted that the present case is different from Anta GPS in so far as O&M expenses were concerned and the petitioner cannot complain treating the expenditure of ₹57.90 lakh as a routine O&M expense for which huge O&M expenses have been permitted by the Commission. We have examined the matter. It is noticed that in the present case the old battery bank has outlived its utility and has been replaced after a life of 10 years. The replacement of the said asset with a new one would have enduring benefit and an expected life of around 10 years. It is also noticed that the Commission while rejecting the capitalization of the expenditure on this asset by order dated 28.9.2010 has not considered the order of the Commission dated 23.9.2010 in respect of Anta GPS (R.P. No. 25/2010) wherein, the capitalization of the said asset had been allowed. The non-consideration of the order dated 23.9.2010



pertaining to Anta GPS in the present case, according to us, is an error apparent on the face of the record and falls within the scope of Order 47 Rule 1 of CPC. In view of this, we allow the review of order dated 28.9.2010 on this ground. However, the expenditure of ₹57.90 lakh is allowed after considering the de-capitalization of 10% of the value of the new battery bank in line with the methodology followed in respect of other replaced assets for the generating station. Therefore, on net basis, an expenditure of ₹52.11 lakh (57.90–5.79) is allowed for the year 2008-09 towards replacement of battery bank.

Un-discharged liabilities

23. In terms of the judgment of the Tribunal dated 10.12.2008 and 16.3.2009 in Appeal Nos.151 & 152/2007 and Appeal Nos. 133, 135, 136 and 148/2008 respectively, the additional capital expenditure approved vide order dated 28.9.2010 is revised after including the un-discharged liabilities disallowed earlier and deducting the discharges of un-discharged liabilities considered earlier.

24. In addition to this, in terms of the directions of the Tribunal in its judgment dated 13.6.2007 in Appeal Nos.139 to 142 etc of 2006, 10, 11 and 23/2007 (NTPC-v-CERC & ors), the issues pertaining to this generating station has been considered in this order, subject to the final outcome of the Civil Appeals (C.A. Nos. 5434/2007 to 5452/2007, 5622/2007) and other connected civil appeals pending before the Hon'ble Supreme Court.

25. Based on the above discussions, the additional capital expenditure approved *vide* order dated 28.9.2010 is revised as under:



(₹ in lakh)

	2006-07	2007-08	2008-09
Additional capital expenditure approved vide order dated 28.9.2010	945.24	181.20	2388.82
Add: Un-discharged liabilities deducted from above	51.59	5.00	1.91
Less : Discharges of liabilities allowed earlier	0.00	40.86	10.35
Add: Additional capital expenditure allowed in this order	0.00	0.00	93.18
Net additional capital expenditure allowed for the purpose of tariff	996.83	145.34	2473.56

26. Accordingly, the components of annual fixed charges for the period 2006-09 in respect of the generating station is revised as stated in the subsequent paragraphs.

Return On Equity

27. Return on Equity in the table under paragraph 43 of the order dated 28.9.2010 is revised as under:

(₹ in lakh)

	2006-07 (1.6.2006 to 31.3.2007)	2007-08	2008-09
Equity-Opening	18136.45	17840.99	16387.46
Addition of Equity due to Additional expenditure	299.05	43.60	742.07
Repayment of Equity	(-) 594.50	(-) 1497.13	0.00
Equity-Closing	17840.99	16387.46	17129.53
Average equity	17988.72	17114.22	16758.49
Return on Equity @14 % p.a.	2097.53	2395.99	2346.19
Return on Equity (annualised)	2518.42	2395.99	2346.19

Interest on loan

28. Since, the annual fixed charges of the generating station for 1.6.2006 to 31.3.2009 is determined on the basis of NFA method, the repayments of loan corresponding to de-capitalisation of assets have been adjusted accordingly. As such, interest on loan computed in paragraph 45 of the order dated 28.9.2010 is revised as under:

(₹ in lakh)

	2006-07 (1.6.2006 to 31.3.2007)	2007-08	2008-09
Gross Opening Loan	20806.13	21503.91	21605.65
Cumulative Repayment of loan upto previous year	20806.13	21503.91	21605.65
Net Loan Opening	0.00	0.00	0.00
Addition of loan due to additional capital expenditure	697.78	101.74	1731.49
Less: Repayment of loan during the year (i.e. Depreciation after adjusting the accumulated depreciation of de-capitalized asset)	697.78	101.74	1572.19
Net Loan Closing	0.00	0.00	159.30
Average Loan	0.00	0.00	79.65
Weighted Average Rate of Interest on Loan	10.50%	10.50%	10.50%
Interest on Loan	0.00	0.00	8.36

Depreciation

29. Depreciation worked out in paragraph 49 of the order dated 28.9.2010 is revised as under:

(₹ in lakh)

	2006-07 (1.6.2006 to 31.3.2007)	2007-08	2008-09
Capital cost -Opening	41612.89	42609.72	42755.06
Additional capital expenditure	996.83	145.34	2473.56
Capital cost - closing	42609.72	42755.06	45228.61
Average capital cost	42111.30	42682.39	43991.84
Rate of Depreciation	3.7473%	3.7473%	3.7473%
90% Depreciable Value	37900.17	38414.15	39592.65
Depreciation	1314.31	1599.43	1648.50
Depreciation (annualized)	1578.03	1599.43	1648.50

Interest on Working Capital

30. For the purpose of calculation of working capital the operating parameters including the price of fuel components as considered in the order dated 28.9.2010 will remain unchanged. The additional capital expenditure allowed after inclusion of

liabilities as well as battery bank, has been considered while arriving at the maintenance spares for the purpose of calculating interest on working capital. The “receivables” component of the working capital has been revised for the reason of revision of return on equity, interest on loan, maintenance spares. The necessary details in support of calculation of interest on working capital are as under:

	(₹ in lakh)		
	2006-07 <i>(1.6.2006 to 31.3.2007)</i>	2007-08	2008-09
Coal stock – 2 months	10992.85	11022.96	10992.85
Oil stock – 2 months	363.04	364.04	363.04
O&M expenses – 1 month	1234.34	1238.23	1239.70
Maintenance Spares	1262.12	1339.00	1444.03
Receivables – 2 months	15000.21	15024.59	14998.54
Total Working Capital	28852.55	28998.83	29038.16
Rate of interest	10.25%	10.25%	10.25%
Interest on Working Capital	2957.39	2971.35	2976.41

Annual Fixed Charges

31. Accordingly, the annual fixed charges in respect of the generating station for the period from 1.6.2006 to 31.3.2009 stands revised as under:

	(₹ in lakh)		
	2006-07	2007-08	2008-09
Depreciation	1578.03	1599.43	1648.50
Interest on Loan	0.00	0.00	8.36
Return on Equity	2518.42	2395.99	2346.19
Advance against Depreciation	0.00	0.00	0.00
Interest on Working Capital	2957.39	2971.35	2976.41
O & M Expenses (including annual lease rental)	14812.07	14858.79	14876.45
Total	21865.91	21825.56	21855.91

* All figures are on annualized basis

32. The petitioner shall claim the difference in the tariff determined by order dated 28.9.2010 and the tariff determined by this order from the beneficiaries in three equal monthly installments.

33. Except the above, all other terms contained in the order dated 28.9.2010 remains unchanged.

34. Review Petition No. 3/2011 in Petition No. 194/2009 is disposed of as above.

Sd/-
(V. S. Verma)
Member

Sd/-
(S. Jayaraman)
Member

Sd/-
(Dr. Pramod Deo)
Chairperson

