

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 124/2009

Coram:

**Shri S. Jayaraman, Member
Shri V S Verma, Member**

DATE OF HEARING: 09.02.2010

DATE OF ORDER: 31.8.2012

In the matter of:

Miscellaneous petition for directing NTPC to refund the excess tariff collected up to 31.3.2004 on inflated capital base in respect of Jhanor (Gandhar) Gas Based Power Station (657.39 MW) and other power stations of NTPC in Western Region and Eastern Region

And in the matter of:

Gujarat Urja Vikas Nigam Ltd, Vadodara

Petitioner

Vs

1. NTPC Limited.
 2. Madhya Pradesh State Electricity Board, Jabalpur
 3. Maharashtra State Electricity Distribution Co Ltd, Mumbai
 4. Chhattisgarh State Electricity Board, Raipur
 5. Electricity Department, Govt. of Goa, Panaji
 6. Electricity Department, Administration of Daman & Diu, Daman
 7. Electricity Deptt., Administration of Dadra and Nagar Haveli, Silvassa..
 8. Member Secretary, WRPC, Mumbai
- Respondents**

The following were present:

1. Shri P.J.Jani, GUVNL
2. Shri M G Ramachandran, Advocate, NTPC
3. Shri Anand K Ganesan, Advocate, NTPC
4. Ms Swapana Sheshadari, Advocate, NTPC
5. Shri V K Padha, NTPC
6. Shri Ajay Dua, NTPC
7. Shri Shyam Kumar, NTPC
8. Shri A K Juneja, NTPC
9. Shri S K Sharma, NTPC
10. Shri S.Dhuman, NTPC
11. Shri P.V.Sanjeev, CSPDCL



ORDER

The petitioner in this case has sought directions to the first respondent to submit details of decapitalisation of assets, determine the excess tariff charged by the respondent on the inflated capital and refund the excess amount recovered through tariff in respect of the following generating stations owned by NTPC Ltd (hereafter referred to as "the respondent") for the period shown against each -

(a) Gandhar Gas Based Power Station	2001- 04
(b) Vindhyachal Super Thermal Power Station Stage I	2001- 04
(c) Vindhyachal Super Thermal Power Station Stage II	2001- 04
(d) Kahalgaon Super Thermal Power Station	1997 - 04
(e) Farakka Super Thermal Power Station	2001- 04

2. The present petition has its foundation in the Commission's orders determining tariff for the period 2004-09 for the generating stations owned by the respondent. While examining the respondent's petitions for approval of additional capital expenditure and revision of fixed charges for the period 2001-04, it came to notice that the respondent had included the undischarged liabilities in the capital base since its accounts were maintained on accrual basis. However, some of the undischarged liabilities included in the gross block did not materialize. Therefore, this Commission to arrive at the capital base as on 31.3.2004 adjusted the amounts of such undischarged liabilities included in the capital base. It is pertinent to mention that while approving the additional capital expenditure for the period 2001-04, the tariff for that period was not revised, but the respondent was allowed to recover only two elements, namely, Return On Equity and Interest on Loan. The tariff for the period 2004-09 was determined by this Commission based on the revised reduced capital base as on 31.3.2004. As the tariff for the period prior to 1.4.2004 was



already recovered by the respondent on the inflated capital base, this Commission while approving the tariff for the period 2004-09 observed that the respondent should mutually settle the excess recovery of tariff with the beneficiaries in the tariff orders applicable for the period 2004-09. The order in respect of Gandhar Gas Based Power Station was in the following terms:

“12. The petitioner has de-capitalised certain assets during the period 2001-04. These de-capitalised assets were removed from the gross block to arrive at the admissible capital cost as on 31.3.2004 by order dated 9.5.2006 in Petition No. 109/2005. These assets broadly fall under two categories viz. items which were capitalised on the date of commercial operation and subsequently withdrawn due to non-materialisation and the physical assets not in use. It is observed that the petitioner is maintaining accounts on accrual basis. This resulted in inflated capital base in earlier tariff periods due to capitalization of liability provision. The expenditure for which provision was made did not materialise and it was de-capitalised by order dated 9.5.2006. But the petitioner had been charging tariff on the inflated capital base till 31.3.2004. In these cases, the past period calculations to assess impact on tariff have not been re-opened and are to be mutually settled between the petitioner and the beneficiaries. In case of a dispute, any of the parties may approach the Commission for appropriate relief. The amount decapitalised under this head for this generating station is Rs. 38.74 lakh. As regards the physical assets not in use, the petitioner has replaced assets, during the period 1.4.2001 to 31.3.2004, amounting to Rs. 0.48 lakh. In addition, a sum of Rs 0.74 lakh has been decapitalised on account of inter-unit transfer of assets. Reduction in cumulative depreciation of these assets has not been considered as the corresponding adjustment in cumulative depreciation of other generating stations of the petitioner where assets have been transferred, has not been carried out.”

3. The petitioner, the beneficiary of five generating stations in question has submitted that it made several efforts to persuade the respondent to settle the matter, but to no avail. The petitioner has stated that issue was raised at several meetings of the Western Regional Power Committee but no solution could be arrived since the respondent had been evading the issue.

4. The respondent in its reply has urged that this Commission itself did not revise the tariff for the previous period would show that no legally enforceable right was created in favour of the beneficiaries, particularly when this Commission did not object to inclusion of undischarged liabilities in the capital cost when tariff for the period 2001-04 was approved. The respondent has pointed out that the beneficiaries did not call in question the tariff for the period prior to 1.4.2004; thereby the tariff already recovered had become final and could not be reopened. The respondent has urged that there was no deliberate attempt on its part to inflate the capital base as the liabilities incurred had to be included in the capital cost. It was because of the efforts of the respondent that the expenditure was saved and ultimately decapitalised. On merits, the respondent has submitted that after issue of the tariff orders by this Commission it made bonafide and sincere efforts with the beneficiaries to impress upon them that the tariff for the past period could not be reopened as all its (the respondent's) actions were for their benefit. The respondent has claimed that it was agreeable and willing to consider by way of settlement of the impact of decapitalisation of the undischarged liabilities for the period prior to 1.4.2004 if the impact was considered in the year of decapitalisation only and not in the previous years, after the beneficiaries had provided the details of claims and the amount involved etc though they were not legally entitled to the relief. As the beneficiaries did not come forward with their formal proposals and therefore, the issue stood closed. The respondent has pointed out that the petitioner has not furnished the details of expense in respect of which the grievance has been made. In the light of the above averments, it has been argued that the petitioner is not entitled to the relief claimed.



5. The beneficiaries of Western Region have supported the petitioner in its endeavor to seek implementation of the orders of this Commission.

6. We heard the representatives of the petitioner and have perused the relevant records.

7. It is not necessary for us to go into the questions raised by the respondent in opposition to the petitioner's claim as the matter can otherwise be disposed of summarily. The petitioner has sought revision of tariff for the period 2001-04 in respect of the five generating stations after adjusting the capital cost of assets removed from the gross block and refund of the excess tariff recovered. It needs to be borne in mind that the additional capital cost for the period 2001-04 approved by this Commission for the generating stations was net of the balance payments which were being shown year after year against the works admitted, without being materialized. The details of adjustments made against the balance payments taken out from this Commission's orders for the respective generating station are extracted in the Table given hereunder.

Generating Station	Decapitalisation Amount (Rs in lakh)			
	2001-02	2002-03	2003-04	Total
Gandhar Gas Based Power Station	2375.737	0.799	0.00	2374.938
Vindhyachal Super Thermal Power Station Stage I	3.98	0.00	0.00	3.98
Vindhyachal Super Thermal Power Station Stage II	0.00	0.00	7.643	7.643
Kahalgaon Super Thermal Power Station	426.76	183.33	529.05	1139.14
Farakka Super Thermal Power Station	3829.32	0.00	0.00	3829.32



8. The Return on Equity and Interest on Loan for the period 2001-04 were allowed by this Commission on the net additional capital expenditure. Therefore, no further revision of tariff for the period 2001-04 is called for. Accordingly, the present petition is infructuous so far as it seeks revision of tariff for the period 2001-04. In respect of Kahalgaon Super Thermal Power Station, the petitioner has, in addition, sought revision of tariff for the period 1997 - 2001 also. However, considering the comparatively very small amount of Rs. 1139.14 lakh of decapitalization involved, as shown in the Table above, against the total cost of Rs 201497 lakh as on 31.3.2004, the impact of revision will be negligible and will not be commensurate with the effort involved in the whole exercise. Therefore, it is considered inexpedient to undertake the exercise.

9. Accordingly the petition stands disposed of.

sd/-
(V S Verma)
Member

sd/-
(S Jayaraman)
Member

