

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 11/RP/2012

Subject: Review of order dated 13.4.2012 in Petition No. 282/2009 regarding determination of generation tariff for Kahalgaon Super Thermal Power Station, Stage-II (3x500 MW) for the period from 1.4.2009 to 31.3.2014.

Date of Hearing: 18.9.2012

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

Petitioners: NTPC Ltd., New Delhi

Respondents: West Bengal State Electricity Distribution Company Ltd. and 23 others

Parties Present: Shri A K Bishoi, NTPC
Shri Rohit Chhabra, NTPC
Shri C. K. Mondol, NTPC
Shri Ajay Dua, NTPC
Shri R. B. Sharma, Advocate, BRPL, BSEB & JSEB
Shri Manoj Dubey, Advocate, MPPMCL

RECORD OF PROCEEDINGS

During the hearing the representative of the petitioner, NTPC submitted as under:

- a) The review petition has been admitted *vide* interim order dated 9.8.2012, on the issue of consideration rate for 'software' for the purpose of calculating weighted average depreciation rate and for some arithmetical/clerical error in calculation of the weighted average rate of interest on actual loan in Form-13.
- b) The depreciation rate of 'software' has been considered as 33.33% as in the books of account as per accounting policy, since no specific rate has been specified in the Appendix-III of the 2009 Tariff regulations.
- c) The depreciation rate specified under the 2009 tariff regulations for IT equipment is 15% and since 'software' is used in I.T equipments and the useful life of 'software' is much less than the associate I.T equipments. Therefore, the depreciation rate for 'software' cannot be less than the I.T equipment. Moreover the depreciation rate considered for 2004-09 period is 33.33% and the depreciation schedule under the 2004-09 and 2009-14 regulations are similar.

2. The learned counsel for the respondent, BRPL submitted as under:
 - a) 'Software' cannot be considered as an asset and even if 'software' is considered as an asset, the depreciation rate of this asset has to be considered under s no. 'q' of Appendix-III viz. "any other assets not covered above" for which the depreciation rate is 5.28%. Hence, there is no error in the order of the Commission.
 - b) It is well settled that there are definitive limits to the exercise of the power of review proceedings as confined by Order 47 Rule 1. '*A review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected*', as laid in the decision of the Hon'ble Supreme court in the case of Parison Devi and others Vs. Sumitra Devi and others (1997) 8 SCC 715. In view of this the reasoning given by the petitioner cannot be ground for exercising the power of review under Order 47 Rule 1 of the CPC.
3. The learned counsel for the respondent, MPPMCL submitted as under:
 - a) The Tariff policy notified by the Ministry of Power, Govt. of India provides that the Commission may notify the rates of depreciation in respect of generation and transmission assets. Accordingly, the depreciation rates notified would be applicable for the purpose of tariff as well as accounting. Hence, the submission of the petitioner for consideration of the depreciation rate of 'Software' as 33% in the books of accounts is not tenable. Moreover, the failure of the petitioner to provide the breakup of the assets cannot be a ground for review of the order.
4. In response to the above, the representative of the petitioner clarified as under:
 - a) There is error apparent in the order, since I.T equipment and 'Software' go hand in hand and the life of 'software' cannot go beyond the life of I.T equipments.
 - b) 'Software' is a capital item like many other services which go into working of an asset. Since 'software' is considered as a part of capital items, and as the same was allowed at the depreciation rate of 33.33%, during the previous tariff period of 2004-09. Hence the same has to be considered in this case also.
 - c) The breakup of the asset was clearly indicated in the petition. Since, the financial accounting provides for a depreciation rate of 33.33%, the same may be allowed in the present case also.
5. The Commission after hearing the parties, reserved orders in the petition.

By order of the Commission

Sd/-
(T. Rout)
Joint Chief (Law)