

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 17/RP/2012**

Subject: Review of order dated 25.5.2012 in Petition No. 279/2009 regarding determination of tariff for Feroze Gandhi Unchahar Thermal Power Station, Stage-III (210 MW) for the period from 1.4.2009 to 31.3.2014.

Date of Hearing: 6.11.2012

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

Petitioner: NTPC Ltd., New Delhi

Respondents: Uttar Pradesh Power Corporation Ltd. and 12 others

Parties Present: Shri Rohit Chhabra, NTPC  
Shri Shailendra Singh, NTPC  
Shri Ajay Dua, NTPC  
Shri Shankar Saran, NTPC  
Shri G. K Dua, NTPC  
Shri Sameer Aggarwal, NTPC  
Shri S.K.Jain, NTPC  
Shri A.K.Bishoi, NTPC  
Shri R. B. Sharma, Advocate, BRPL  
Shri Manish Garg, UPPCL

**RECORD OF PROCEEDINGS**

During the hearing the representative of the petitioner, NTPC pointed out that the review of order dated 25.5.2012 was admitted by the Commission on 3.10.2012 and submitted as under:

- (a) The capitalization of spares upto 2.5% of the capital cost is allowable as per the 2009 Tariff Regulations as spares capitalized upto 31.3.2009 in respect of the generating station was less than 1.19% of the capital cost of ₹805.52 crore.
- (b) The procurement of spares was taken up by the petitioner much before and spares were ordered during 2008. However, due to delay in supply by M/s BHEL, the spares could not be received and capitalized within the cut-off date. This was due to overloading of BHEL by new project orders and supply of spares getting low priority. The Commission in the past has in its orders

allowed the capitalization of spares, if the same had been placed before the cut-off date. Hence, may be considered in the instant case also.

- (c) The Commission in its order dated 28.5.2012 in Petition No. 260/2009 pertaining to tariff of Vindhyachal STPS generating station for 2009-14, has allowed the capitalization of spares which were ordered before the cut-off date and delivered during the year 2009-10. Similar treatment may be given by the Commission in the present case as regards capitalization of spares.

2. In reply, the representative of UPPCL submitted as under:

(a) Reply has been filed and copy has been served on the petitioner.

(b) The date of commercial operation of the generating station is 1.1.2007. Since, the purchase order has been placed after the date of commercial operation there was bound to be delay and hence the petitioner is not entitled for the relief prayed for.

(c) The order dated 25.5.2012 is a speaking order. There is no change in facts or law to justify the review of the said order dated 25.5.2012. Since no error apparent on the face of record has been pointed out by the petitioner, the review petition may be rejected.

(d) The facts of the case in Petition No. 260/2009 pertaining to tariff of Vindhyachal-III generating station of the petitioner for 2009-14 wherein the Commission by order dated 28.5.2012 had allowed the capitalization of spares stands on a different footing from the present case. While the present case involves capitalization of initial spares, the facts in Vindhyachal -III relate to the capitalization of spares as replacement against de-capitalization.

3. The learned counsel for the respondent, BRPL submitted as under:

(a) Reply has been filed and copy has been served on the petitioner.

(b) The additional capitalization for initial spares pertain to the period 2004-09 and all works within the original scope of project needs to be completed within the cut-off date of the generating station. Also, the Commission by its order dated 21.4.2011 in Petition No. 181/2009 had revised the tariff of the generating station considering the additional capital expenditure for 1.1.2007 to 31.3.2009. Since the petitioner has not filed any review or appeal against the order dated 21.4.2011 on this issue, the same had attained finality.

(c) Capitalization of spares upto 2.5% of the capital cost is allowable as per regulations and the Commission has allowed spares permissible within the said limit. The petitioner is silent on the procurement of initial spares which could not be completed within the cut-off date. Having known the provisions of

the regulations specified by the Commission in this regard, the petitioner should have completed the procurement of spares within the cut-off date.

- (d) In Petition No. 260/2009, the claim of the petitioner for capitalization of spares was under Regulation 9 (1) along with de-capitalization. Also, the Commission in order dated 10.2.2011 in Petition No. 185/2009 (additional capitalization for Vindhyachal-III for 2004-09) had allowed liberty to the petitioner to approach the Commission for capitalization of spares as and when replacements were done. Moreover, this respondent was not a party to the proceedings in Petition No.185/2009. Since the facts in respect of Vindhyachal-III are distinguishable from the facts in the present case, as above, the claim of the petitioner may be rejected.
- (e) The contention of the petitioner that the facts in respect of this generating station and Vindhyachal -III are similar, amounts to questioning the orders of the Commission in the respective petitions.
- (f) Review is by no means an appeal in disguise and the decision of the Commission cannot be re-heard and corrected except for any patent error. Hence, the prayer of the petitioner for review of order may be rejected.

4. In response to the above, the representative of the petitioner clarified that the petitioner in this review petition has sought parity in the application of the principle pertaining to capitalization of spares, based on the earlier orders of the Commission. He also submitted that Petition No.181/2009 pertain to additional capitalization for the period 2004-09 and Petition No. 260/2009 pertain to capitalization of spares in terms of the provisions of the 2009 Tariff regulations applicable for the period 2009-14 for which review has been filed. Hence, the question of finality of the matter pursuant to order Commission's dated 21.4.2011 does not arise. The prayer of the petitioner may thus be allowed.

5. The Commission after hearing the parties reserved the order in the petition.

By order of the Commission

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