

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 12/RP/2012

**in
Petition No. 239/2009**

Coram:

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

Date of Hearing: 18.9.2012

Date of Order: 2.4.2013

IN THE MATTER OF

Review of order dated 20.4.2012 in Petition No. 239/2009 regarding determination of generation tariff for Anta Gas Power Station (419.33 MW) for the period from 1.4.2009 to 31.3.2014.

AND

IN THE MATTER OF

NTPC Ltd

...Petitioner

Vs

1. Uttar Pradesh Power Corporation Ltd., Lucknow
2. Ajmer Vidyut Vitran Nigam Ltd., Ajmer
3. Jaipur Vidyut Vitran Nigam Ltd., Jaipur
4. Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur
5. Tata Power Delhi Distribution Ltd., Delhi
6. BSES Rajdhani Power Ltd., New Delhi
7. BSES Yamuna Power Ltd., Delhi
8. Punjab State Power Corporation Ltd., Patiala
9. Haryana Power Purchase Centre, Haryana
10. Himachal Pradesh State Electricity Board, Shimla
11. Power Development Department (J&K), Jammu
12. Power Department, Union Territory of Chandigarh, Chandigarh
13. Uttrakhand Power Corporation Ltd., Dehradun

....Respondents

Parties Present

Shri A K Bishoi, NTPC
Shri Rohit Chhabra, NTPC
Shri C. K. Mondol, NTPC
Shri Ajay Dua, NTPC
Shri A. Basuroy, NTPC



Shri Shankar Saran, NTPC
 Shri R. B. Sharma, Advocate, BRPL
 Shri Manish Garg, UPPCL
 Shri Ashish Gupta, Advocate, BYPL
 Shri Paresh B. Lal, BYPL
 Shri Sameer Singh, TPDDL

ORDER

Petition No. 239/2009 was filed by the petitioner, NTPC for approval of generation tariff in respect of Anta Gas Power Station (419.33 MW) (hereinafter referred to as 'the generating station') for the period from 1.4.2009 to 31.3.2014, based on the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ('the 2009 Tariff Regulations'). The Commission by its order dated 20.4.2012 determined the capital cost for the generating station for the period 2009-14 as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Opening capital cost	70579.79	79758.16	80935.43	81683.26	81683.26
Projected Additional capital expenditure	9178.37	1177.27	747.82	0.00	0.00
Closing Capital cost	79758.16	80935.43	81683.26	81683.26	81683.26
Average Capital cost	75168.98	80346.80	81309.34	81683.26	81683.26

2. The annual fixed charges approved vide order dated 20.4.2012 is as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	2117.25	2675.44	2750.85	2799.39	2799.39
Interest on Loan	530.91	396.47	366.30	328.35	286.47
Return on Equity	7462.92	7827.67	7895.47	7921.81	7921.81
Interest on Working Capital	2438.21	2479.16	2512.12	2535.36	2563.33
O&M Expenses	6206.08	6562.51	6935.72	7334.08	7753.41
Total	18755.38	19941.26	20460.46	20918.99	21324.41

3. Aggrieved by the said order, the petitioner has filed this review petition seeking review of the order dated 20.4.2012 on the following issues, namely:

- (a) Adjustment of cumulative repayment of loan consequent to truing up of undischarged liability as on 31.3.2009,
- (b) Calculation of Average loan for KFW (D7) in Form-13, and
- (c) Disallowance of expenditure on account of GT#1 Compressor vanes in 2009-10.

4. The matter was heard on 12.7.2012 on 'admission' and the Commission vide its interim order dated 9.8.2012, admitted the review petition on the issue mentioned in sub-clause (c) of paragraph 3 above. While the issue raised in sub-clause (a) of paragraph 3 above was rejected by the Commission in the said order, the issue in sub-clause (b) was directed to be considered at the time of final disposal of this application after correction of arithmetical error in the calculation of interest on loan.

5. Replies to the application have been filed by UPPCL (respondent no. 1), BRPL (respondent no. 6), and BYPL (respondent no. 7). The petitioner has filed its rejoinder to the said replies.

6. During the hearing on 18.9.2012, the representative of the petitioner made his submissions on the above issues and prayed that the order dated 13.4.2012 be reviewed for the reasons mentioned in the application. The learned counsel for the respondent, BRPL has objected to the claim of the petitioner for review of the said order. Referring to the judgments of the Appellate Tribunal for Electricity in Review Petition No.1/2009 (in Appeal No. 64/2008), the learned counsel submitted that there are definitive limits to the exercise of the power of review under Order 47 Rule 1 of the CPC. He also submitted that as laid down by the Hon'ble Supreme court in the case of Parsion Devi and others V Sumitra Devi and others (1997) 8 SCC 715, a review is by no means an appeal in disguise whereby an erroneous decision is re-heard and corrected and prayed that the review petition be rejected. The learned counsel for the respondent, BYPL and the representative of the respondent, UPPCL

have also objected to the claim of the petitioner on the ground that there is no error apparent on the face of the order.

7. Heard the parties present and examined the documents on record. We now proceed to consider the issue of 'Disallowance of expenditure on account of GT#1 Compressor vanes in 2009-10' as discussed in subsequent paragraphs.

8. 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.

Disallowance of expenditure on account of GT#1 compressor vane in 2009-10

9. In paragraph 39 of the order dated 20.4.2012, the Commission while disallowing the claim of the petitioner for capitalization of expenditure of ₹438.84 lakh on account of reconditioning/replacement of compressor vanes had observed as follows:

“.....It is observed from the records and Commission’s order dated 21.1.2011, that no expenditure has been allowed for compressor vanes for GT#1 during 2008-09 and consequently, the estimated de-capitalization had not taken into account the gross value of compressor vanes for GT#1. In view of this, the expenditure on balance work amounting to ₹438.84 lakh is not allowed.”

10. In justification of its claim, the petitioner in this petition has submitted as under:

- (a) The reconditioning/replacement of compressor vanes is an integral part of R&M of gas turbine and it has been carried out in all GTs during 2008-10. In case of GT#1 where R&M was done in 2008-09 this work could not be done

during the initial phase of R&M in June 2008 since the set of compressor vanes was not received at site when the R&M was taken up as indicated by the petitioner in Petition No. 239/2009 (Form-9). Accordingly, the expenditure was not capitalized in 2008-09. However, this balance work of GT-1 R&M being of essential nature & integral to the GT R&M was carried out at the next available opportunity. This expenditure of ₹438.84 lakh for balance work of R&M of GT#1 has been claimed in 2009-10.

(b) As the corresponding de-capitalization of all components of GT R&M was done on notional basis as 41% of gross block in all 3 GTs, the corresponding de-capitalization for GT#1 has already been considered in 2008-09 at para 35 of the order dated 21.1.2011 in Petition No.127/2009. Further, this expenditure of reconditioning /replacement of GT compressor vanes has already been allowed for GT#2 and GT#3 by the Commission in para 39 respectively.

11. The respondent, BRPL in its reply dated 6.9.2012 has submitted that the claim of the petitioner given in the original petition was checked by the Commission and the same was found to be incorrect. It has also submitted that the petitioner has re-argued his case by holding that the re-conditioning /re-placement of compressor vanes is an integral part of R&M of GT and that has been done in all GTs during 2008-10 but silent on the issue of allowing expenditure for re-conditioning /re-placement of compressor vanes for GT-I during 2008-09. The respondent has further submitted that the reasoning given by the petitioner and the documents filed in support of the reasoning to detect the error which is otherwise not self-evident cannot be a ground for exercising power of review under Order 47 Rule 1 of CPC. The respondent, BYPL in its reply dated 14.9.2012 while making similar submissions as above has pointed out that no material and/or evidence has been produced on record to establish that the de-capitalization of all components of GT R&M comprised of de-capitalization of GT-I also. In the absence of the same, it has prayed that there is no error apparent on the face of the order which necessitates review. The respondent, UPPCL in its reply dated 23.8.2012 has submitted that the disallowance

of expenditure on GT-I compressor vanes during 2009-10 is not an error but a conscious decision taken by the Commission after careful deliberations and the reasons for disallowance has been recorded in the said order. Hence, the prayer of the petitioner shall not be entertained in this review petition. In response to the above, the petitioner has reiterated its submissions made in the petition and has submitted that the issue falls within the scope of review.

12. We have considered the submissions and examined the documents on record. It is observed that the petitioner in Petition No. 127/2009 while claiming additional capitalization in respect of GT-1 and GT-III had at Annexure-G (Sl.no A-1) of its additional submissions dated 13.3.2010 had indicated that the compressor vanes in respect of GT-I could not be supplied before start of R&M of GT-I and the same would be replaced during the next C-inspection done in June, 2010. This fact had also been mentioned by the petitioner in Annexure-I of its affidavit dated 1.6.2010 in Petition No.239/2009, while claiming the amount of ₹408.23 lakh in respect of compressor vanes for GT-I. While so, in response to a query by the Commission, the petitioner in its additional submissions filed vide affidavit dated 8.6.2011 in Petition No. 239/2009 had indicated that the 'balance amount' for ₹438.84 lakh being claimed during 2009-10. Based on this additional submission, the Commission rejected the capitalization of expenditure in respect of compressor vanes for GT-I for 2009-10 after considering the fact that there has been no claim for this component during 2008-09. Though the petitioner had indicated that the claim for expenditure towards compressor vanes for GT-I during 2008-09 could not be made due to the non supply of the said component before start of R&M of GT-I, the same had been overlooked

by the Commission at the time of passing of the order. Thus, the 'balance amount' referred to by the petitioner in its affidavit dated 8.6.2011 in Petition No. 239/2009 when considered with the remarks of the petitioner in the affidavit dated 13.3.2010 in Petition No. 127/2009 that the component could not be supplied during the start of R&M of GT-I during 2008-09, clearly lead us to the conclusion that the capitalization of the GT-I compressor vanes could not be done during 2008-09 due to non supply of compressor vanes by OEM and accordingly could only be capitalized during 2009-10 by the petitioner. Having overlooked the above facts on record, we are of the considered view that the rejection of the claim of the petitioner for capitalization of compressor vanes for GT-I during 2009-10 is an error apparent on the face of the order.

13. The petitioner has also submitted that as the corresponding de-capitalization of all the components of GT R&M was done on notional basis as 41% of gross block in all the three GTs, the corresponding de-capitalization for GT-I has already been considered in 2008-09 at para 35 of the order dated 21.1.2011 in Petition No. 127/2009. The matter has been examined. In paragraph 39 of our order dated 21.1.2011 in Petition No. 127/2009, the de-capitalization amount allowed for the purpose of tariff was as under:

“De-capitalization- in view of the fact that an amount of ₹23894.32 lakh has been allowed for capitalization against the claim of ₹25730.61 lakh, the corresponding de-capitalization value of ₹3328.06 lakh ($3583.82 \times 23894.32/25730.60$) has been allowed for the purpose of tariff.”

14. The submission of the petitioner that the corresponding de-capitalization on estimated basis of 41% of gross block of GTs also includes compressor vanes of

GT-I is incorrect. The percentage de-capitalization of 41.10% in order dated 21.1.2011 in Petition No.127/2009 was arrived at after considering the total gross block of GT-I and GT-3 and the same was considered on the amount allowed for capitalization for the purpose of arriving at the de-capitalization amount. Since the R&M of compressor of GT-I and the balance payment of compressor vanes of GT-3 were not incurred during 2008-09, the de-capitalization amount of ₹3328.06 lakh arrived at by applying the de-capitalization percentage of 41.10% did not include the de-capitalization of the balance amount of GT-I and GT-3.

15. It is observed that the expenditure of ₹438.84 lakh claimed for GT-1 compressor vanes includes an amount of ₹30.56 lakh as Tools. Being minor in nature, expenditures on tools have not been allowed. Accordingly, the additional capital expenditure of ₹408.28 lakh (438.84-30.56) in respect of reconditioning of compressor vanes of GT-I along with the corresponding de-capitalization @ 41.1% which works out to ₹167.80 lakh, has only been allowed. On net basis, the capital expenditure of ₹240.48 lakh (₹408.28-₹167.80) lakh has only been allowed to be capitalized in respect of GT-1 compressor vanes.

16. It is also noticed that in order dated 20.4.2012, the additional capital expenditure of ₹377.49 lakh for GT-3 compressor vanes has been allowed without taking into account the corresponding de-capitalization of 41.10%. This is rectified. After considering the de-capitalization amount of ₹155.15 lakh for GT-3 compressor vanes, the expenditure on net basis, which works out to ₹222.34 lakh (₹377.49 – ₹155.15) lakh has been allowed towards GT-3 compressor vanes.

17. In view of the above, the expenditure allowed towards GT-I and GT-3 compressor vanes after corresponding de-capitalization are as under:

	(₹ in lakh)	
	GT-1	GT-3
	2009-10	2010-11
Expenditure considered now	408.28	377.49
De- capitalization @41.1%	167.80	155.15
Net capital expenditure considered now	240.48	222.34

18. Accordingly, the additional capital expenditure during 2009-14 as allowed in paragraph 53 of the order dated 20.4.2012 stands revised as under:

	(₹ in lakh)				
	Actual/Projected capitalization				
	2009-10	2010-11	2011-12	2012-13	2013-14
Renovation of gas turbines	8232.79	222.34	0.00	0.00	0.00
Balance amount towards reconditioning of vanes for GT-3 (R&M) allowed by the Commission in Petition No. 127/2009	0.00	0.00	0.00	0.00	0.00
Installation of Online Compressor Cleaning System	0.00	0.00	0.00	0.00	0.00
Rotor of GT-3	4.27	0.00	94.00	0.00	0.00
Installation of additional CT pump	0.00	0.00	0.00	0.00	0.00
Installation of Online Gas Measurement	0.00	0.00	145.53	0.00	0.00
Up gradation of GT & ST control System (C&I)	208.27	162.00	0.00	0.00	0.00
Installation of fire protection & detection system for cable galleries	31.71	0.00	0.00	0.00	0.00
Replacement of Hot water Pipeline of cooling tower	0.00	0.00	129.06	0.00	0.00
Replacement of underground fire fighting pipeline	0.00	0.00	178.21	0.00	0.00
Phasing out of Halon fire fighting system	0.00	0.00	201.02	0.00	0.00
Augmentation of Raw water reservoir	369.78	82.00	0.00	0.00	0.00
Increase in WHRB stack height	0.00	159.76	0.00	0.00	0.00
New Works in 2009-10					
Welfare centre building	0.00	0.00	0.00	0.00	0.00
Total	8846.82	626.10	747.82	0.00	0.00
Total additional capital expenditure allowed	10220.74				

19. Based on the above discussions, the additional capital expenditure for 2009-14 allowed for the generating station in order dated 20.4.2012 is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Projected Additional capital expenditure	8846.82	626.10	747.82	0.00	0.00
Discharges of liabilities	572.03	396.02	0.00	0.00	0.00
Additional capital expenditure allowed	9418.85	1022.12	747.82	0.00	0.00

20. The capital cost considered for the period 2009-14 for purpose of tariff stands revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Opening capital cost	70579.79	79998.64	81020.76	81768.59	81768.59
Actual/projected additional capital expenditure allowed	9418.85	1022.12	747.82	0.00	0.00
Closing capital cost	79998.64	81020.76	81768.59	81768.59	81768.59
Average capital cost	75289.22	80509.70	81394.67	81768.59	81768.59

21. Return on equity is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Notional Equity –Opening	30406.07	33231.72	33538.36	33762.71	33762.71
Addition of Equity due additional capital expenditure	2825.65	306.64	224.35	0.00	0.00
Normative Equity-closing	33231.72	33538.36	33762.71	33762.71	33762.71
Average Normative equity	31818.90	33385.04	33650.53	33762.71	33762.71
Return on Equity (Base Rate)	15.500%	15.500%	15.500%	15.500%	15.500%
Tax rate for the year 2008-09	33.990%	33.990%	33.990%	33.990%	33.990%
Rate of return on Equity (Pre Tax)	23.481%	23.481%	23.481%	23.481%	23.481%
Return on Equity (Pre-Tax)- (annualized)	7471.39	7839.14	7901.48	7927.82	7927.82

22. After correction of the arithmetical errors in the calculation of average loan for KFW (D7) during 2009-10 and after considering the above changes, the interest on loan is computed as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Gross opening loan	40173.72	46766.92	47482.40	48005.88	48005.88
Cumulative repayment of loan upto previous year	19498.42	20073.69	22558.58	25264.54	28097.15
Net loan opening	20675.30	26693.23	24923.82	22741.34	19908.73
Addition due to additional capitalization	6593.19	715.49	523.48	0.00	0.00
Repayment of loan during the year	2126.27	2701.68	2784.06	2832.61	2832.61
Less: Repayment adjustment on account of de-capitalization	1534.27	205.20	78.11	0.00	0.00
Add: Repayment adjustment on account of discharges/reversals corresponding to un-discharged liabilities deducted as on 1.4.2009	(-) 16.74	(-) 11.59	0.00	0.00	0.00
Net repayment	575.27	2484.89	2705.96	2832.61	2832.61
Net loan closing	26693.23	24923.82	22741.34	19908.73	17076.11
Average loan	23684.26	25808.52	23832.58	21325.03	18492.42
Weighted average rate of interest on loan	2.1692%	1.5521%	1.5522%	1.5544%	1.5633%
Interest on loan	513.75	400.56	369.93	331.47	289.08

23. Depreciation allowed in order dated 20.4.2012 is revised as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Opening capital cost	70579.79	79998.64	81020.76	81768.59	81768.59
Closing capital cost	79998.64	81020.76	81768.59	81768.59	81768.59
Average capital cost	75289.22	80509.70	81394.67	81768.59	81768.59
Depreciable value @90%	67658.44	72356.88	73153.35	73489.87	73489.87
Remaining useful life at the beginning of the year	12.00	11.00	10.00	9.00	8.00
Balance depreciable value	25515.24	29718.48	27840.65	25493.53	22660.91
Depreciation (annualized)	2126.27	2701.68	2784.06	2832.61	2832.61
Cumulative depreciation at the end	44269.47	45340.07	48096.77	50828.96	53661.58
Less: Cumulative depreciation reduction due to de-capitalization	1972.63	263.83	100.42	0.00	0.00
Less: Cumulative depreciation adjustment on account of discharges/reversal of liabilities out of liabilities deducted as on 1.4.2009	(-) 341.56	(-) 236.47	0.00	0.00	0.00
Net cumulative depreciation (at the end of the period)	42638.39	45312.71	47996.35	50828.96	53661.58

24. The receivable component of working capital allowed in order dated 20.4.2012 is revised as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Variable charges- 2 months	8982.74	8982.74	9007.35	8982.74	8982.74
Fixed charges- 2 months	3125.95	3330.66	3417.37	3493.70	3561.19
Total	12108.70	12313.40	12424.72	12476.45	12543.93

25. Accordingly, the Interest on working capital allowed in order dated 20.4.2012 is revised as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Fuel stock (APM, RLNG & Naphtha) – 1 month	4491.37	4491.37	4503.68	4491.37	4491.37
Liquid fuel stock – ½ month	924.79	924.79	927.32	924.79	924.79
Maintenance spares	1861.83	1968.75	2080.72	2200.22	2326.02
O&M expenses – 1 month	517.17	546.88	577.98	611.17	646.12
Receivables – 2 months	12108.70	12313.40	12424.72	12476.45	12543.93
Total working capital	19903.85	20245.18	20514.41	20704.00	20932.23
Rate of interest	12.2500%	12.2500%	12.2500%	12.2500%	12.2500%
Interest on working capital	2438.22	2480.04	2513.02	2536.24	2564.20

26. Based on the above, the annual fixed charges for the period 2009-14 for the generating station is revised as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	2126.27	2701.68	2784.06	2832.61	2832.61
Interest on Loan	513.75	400.56	369.93	331.47	289.08
Return on Equity	7471.39	7839.14	7901.48	7927.82	7927.82
Interest on Working Capital	2438.22	2480.04	2513.02	2536.24	2564.20
O&M Expenses	6206.08	6562.51	6935.72	7334.08	7753.41
Total	18755.72	19983.94	20504.21	20962.22	21367.13

Notes: 1) All figures are on annualized basis.

2) All the figures under each head have been rounded. The figure in total column in each year is also rounded. Because of rounding of each figure the total may not be arithmetic sum of individual items in columns.

27. The difference in respect of the tariff determined by order dated 20.4.2012 and the tariff determined by this order shall be recovered from the beneficiaries in six equal monthly installments, in terms of the proviso to Regulation 5(3) of the 2009 Tariff Regulations.

28. Except the above, all other terms contained in the order dated 20.4.2012 remains unchanged.

29. Review Petition No. 12/2012 is disposed of as above.

Sd/-
[V. S. Verma]
Member

Sd/-
[S. Jayaraman]
Member

Sd/-
[Dr. Pramod Deo]
Chairperson

