

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

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

**in**

**Petition No. 279/2009**

**Coram:**

**Dr. Pramod Deo, Chairperson**

**Shri S. Jayaraman, Member**

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

**Date of Hearing: 6.11.2012**

**Date of Order: 2.4.2013**

**IN THE MATTER OF**

Review of order dated 25.5.2012 in Petition No.279/2009 regarding approval of generation tariff for Feroze Gandhi Unchahar Thermal Power Station, Stage-III (210 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 Limited, Lucknow
2. Jaipur Vidyut Vitaran Nigam Ltd, Jaipur
3. Ajmer Vidyut Vitaran Nigam Ltd, Ajmer
4. Jodhpur Vidyut Vitaran Nigam Ltd, Jodhpur
5. North Delhi Power Ltd, Delhi
6. BSES-Rajdhani Power Ltd, New Delhi
7. BSES-Yamuna Power Ltd, Delhi
8. Haryana Power Purchase Centre, Panchkula
9. Punjab State Electricity Board, Patiala
10. Himachal Pradesh State Electricity Board, Shimla
11. Power Development Department, Government of J&K, Jammu
12. Power Department, Union Territory of Chandigarh, Chandigarh
13. Uttarakhand Power Corporation Ltd, Dehradun

**.....Respondents**

**Parties Present:**

Shri Ajay Dua, NTPC

Shri Rohit Chhabra, NTPC

Shri Shailendra Singh, 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

## ORDER

Petition No.279/2009 was filed by the petitioner, NTPC for approval of generation tariff in respect of Feroze Gandhi Unchahar Thermal Power Station, Stage-III (210 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 25.5.2012 approved the annual fixed charges for the generating station for the period 2009-14 as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	4475.12	4494.39	4504.47	4515.11	4521.56
Interest on Loan	3982.66	3630.29	3279.72	2920.08	2556.40
Return on Equity	6104.47	6130.75	6144.51	6159.02	6167.82
Interest on Working Capital	1582.84	1588.74	1597.84	1601.78	1609.06
O&M Expenses	3822.00	4040.40	4271.40	4517.10	4775.40
Cost of Secondary fuel oil	323.22	323.22	324.11	323.22	323.22
<b>Total</b>	<b>20290.32</b>	<b>20207.79</b>	<b>20122.05</b>	<b>20036.31</b>	<b>19953.46</b>

2. Aggrieved by the said order, the petitioner has filed this review petition seeking review of the order dated 25.5.2012 limited to the issue of "*not allowing capitalization of spares up to the allowed limit*".

3. The matter was heard on 25.9.2012 on 'admission' and the Commission by its order dated 3.10.2012 admitted the review petition and directed issuance of notice to

the respondents. Replies to the petition have been filed by UPPCL (respondent no.1) and BRPL (respondent no. 6) and the petitioner has filed its rejoinder to the said replies.

4. 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.

5. Heard the parties present and examined the documents on record. We now proceed to consider the issue raised in this petition as discussed in subsequent paragraphs.

#### **Disallowance of capital spares after cut-off-date**

6. The claim of the petitioner in the main petition for capitalization of an expenditure of ₹802.62 lakh during 2009-10 and ₹900.00 lakh during 2011-12 towards supply of Rotors of HP and IP Turbines were not allowed by the Commission in its order dated 25.5.2012 observing as under:

*"33. The date of commercial operation of the generating station is 1.1.2007 and the petitioner is aware that all works within the original scope of the project need to be completed within the cut-off date, in terms of the provisions of the 2004 Tariff Regulations. It is observed that the petitioner had placed orders for spare rotors only after the commercial operation of the generating station, and it had full knowledge of the frequent delays on the part of M/s BHEL to supply the power plant equipments, after the placement of the order. This, according to us, indicates that the petitioner has not taken appropriate monitoring and project management measures, to complete all the works of the generating station within the cut-off date. The claim for capitalisation on the ground that orders were placed prior the cut-off date, but could not be completed due to delays, is not acceptable, considering the fact that no steps were taken by the petitioner for completion of the said work within the cut-off date. In view of this, the claim for capitalisation of the said expenditure is not allowed"*

7. The petitioner in the review petition has submitted that in terms of Regulation 8 of the 2009 Tariff Regulations, capitalization of spares up to 2.5% of the capital cost is

allowable. It has also been submitted that the spares capitalized upto 31.3.2009 is ₹9.61 crore which amount to less than 1.19% of ₹ 805.52 crs and hence the spares capitalized up to 31.3.2009 are much below the ceiling norm of 2.5% of the capital cost as provided under Regulation 8. It has further been submitted that these spares are proprietary in nature and hence there is no other alternative but to order them on M/s BHEL and the spares were ordered before 31.3.2008 i.e. cut-off-date. The petitioner has also submitted that due to long supply period of 24 months, spares could not be received and capitalized within cut-off-date i.e. 31.3.2008 and despite persuasion with M/s BHEL, lead time could not be squeezed due to overloading of M/s BHEL with new project orders and supply of spares getting low priority. It has been further clarified that the failure of forging of IPT module also contributed in delay of IPT module and both HPT module & IPT module have since been received.

8. One more contention of the petitioner is that the Commission in its order dated 28.5.2012 in Petition No.260/2009 pertaining to the determination of tariff for Vindhyachal STPS-III for the period 2009-14 as quoted below, had allowed the capitalization of spares and hence the same may be allowed in respect of the instant generating station also.

*“39. The petitioner has claimed expenditure of ₹1799.00 lakh towards the capitalization of spares under Regulation 9(1)(iii) of the 2009 Tariff Regulations along with the de-capitalization of spares amounting to ₹249.00 lakh during 2009-10 under Regulation 9(1)(i) of the 2009 Tariff Regulations. The petitioner has submitted that these capital spares were ordered in the year 2007-09 i.e. before the cut-off date and since the order book position of power plant equipment was full and the delivery period was around 24 months in case of original equipments manufacturers, the delivery took place during 2009-10. It has also submitted that some of these are replacement against de-capitalization done during 2008-09. Moreover, the Commission has also granted liberty to the petitioner vide its order dated 10.2.2011 in Petition No.185/2009 to approach for capitalization of spares as and when replacements are done.”*

*“40. The submissions of the petitioner and the order dated 10.2.2011 has been examined. The value of initial spares capitalized up to 31.3.2009 is ₹8141.97 lakh. In*

*terms of Regulation 8 of the 2009 Tariff Regulations, initial spares permitted to be capitalized for coal based generating stations is 2.5% of the original project cost, which works out to ₹8952.15 lakh up to the cut-off date i.e. 31.3.2009. Thus, the balance initial spares permissible for capitalization is ₹810.18 lakh (8952.15-8141.97). Accordingly, the claim of the petitioner for capitalization of spares is restricted to ₹810.18 lakh (instead of ₹1550.00 lakh) and allowed.”*

9. Accordingly, the petitioner has prayed that the error in order dated 25.5.2012 may be rectified by the Commission on review.

10. The respondent, UPPCL in its reply dated 5.11.2012 has submitted that the capitalization of spares under consideration during the period 2009-14 is ₹17.02 crore and not capitalization of spares upto 31.3.2009 for ₹9.61 crore. It has also submitted that the Purchase Order was placed on 15.6.2007 by the petitioner on M/s BHEL much after the date of commercial operation i.e. 1.1.2007 and hence there was bound to be delay. The respondent has further submitted that the facts of the case in Vindhyachal STPS-III are different as the spares are for 'replacement against de-capitalization done during 2008-09. Thus, the respondent has submitted that the petitioner has not given any reason for error apparent on the face of the order and the review petition is liable to be dismissed.

11. The respondent, BRPL in its reply dated 1.11.2012 has submitted that for capitalization of spares, two cumulative conditions namely, (a) the capital expenditure within the original scope of work should not exceed 2.5% of the original project cost and (b) the procurement of spares (work) needs to be completed within the cut-off date, are required to be met. The respondent has pointed out that the petitioner is silent on the procurement of initial spares which could not be completed within the cut-off date and has also submitted that there is no error apparent on the face of the order. It has further submitted that the petitioner under the guise of review petition has requested for

reconsideration of the whole issue afresh which is not permissible under law. The respondent has also submitted that the benefit of the order dated 28.5.2012 in Vindhyachal STPS-III cannot be extended to this case since in respect of Vindhyachal STPS-III (a) the claim of capitalization was accompanied by de-capitalization (b) the Commission had granted liberty to the petitioner vide its order dated 10.2.2011 in Petition No.185/2009 to approach for capitalization of spares as and when replacements are done and (c) this respondent was not party to the proceedings in Petition No.185/2009. The respondent has further submitted that there are definitive limits to the exercise of power of review and the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule.1. It has also submitted that none of the grounds raised by the petitioner fall within Order 47 Rule 1. The respondent has reiterated that 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 respondent has relied upon the decision of the Hon'ble Supreme Court in Parsion Devi & ors-v-Sumitra Devi & ors (1997) 8 SCC 715.

12. In response to the above, the petitioner has submitted that capitalization of spares under Regulation 8 of the 2009 Tariff Regulations are allowed even after the cut-off date subject to ceiling norms. It has also submitted that there is no lack of efforts on behalf of the petitioner to expedite deliveries before the cut-off date.

13. The submissions have been considered. The concept of cut-off date was introduced by the Commission in the 2004 Tariff Regulations, applicable for the period 2004-09. The generating station was commissioned on 1.1.2007 and it was known to the petitioner that all the works included in the original project scope would have to be

completed within the cut-off date. The petitioner, despite having known that there are delays on the part of M/s BHEL to supply the power plant materials, had placed orders for spare rotors only after the commercial operation of the generating station i.e. on 15.6.2007. The totality of the above factors led us to the conclusion that the petitioner had not taken pre-emptive measures to prevent such delay and complete the said work before the cut-off date. Since no proper reason existed as to why the petitioner could not take appropriate measures for completion of the said work within the cut-off date, the claim for capitalisation of spares by the petitioner were accordingly rejected by order dated 25.5.2012. We, therefore, do not find any error apparent on the face of the order and review on this ground fails.

14. As regards the submission of the petitioner that the order of the Commission dated 28.5.2012 in Petition no. 260/2009 as regards capitalization of spares in the case of Vindhyachal STPS-III be applied to the instant case, we do not find any merit in the same. The facts in the present case are distinguishable to the case in respect of Vindhyachal –III. It is observed that the cut-off date in respect of Vindhyachal –III generating station was 31.3.2009 and the spares which were ordered during 2007-09 were delivered and capitalized during 2009-10 i.e. in the next financial year after the cut-off date of 31.3.2009. Moreover, the Commission had by its order dated 10.2.2011 in Petition No.185/2009 had granted liberty to the petitioner to approach the Commission for capitalization of spares as and when replacements were done. Considering the above factors, the capitalization of balance spares were permitted by order dated 28.5.2012. In the present case, the cut-off-date of the generating station in terms of the 2004 Tariff Regulations is 31.3.2008 and the petitioner had sought capitalization of spares for ₹802.62 lakh during 2009-10 i.e. after a period of two years

from the cut-off-date of 31.3.2008 and projected capitalization of spares amounting to ₹900.00 lakh during 2011-12 i.e after a period of four years from the cut-off-date of 31.3.2008, which were rejected by order dated 25.5.2012. In the above background, we are of the considered view that the order dated 28.5.2012 in respect of Vindhyachal –III generating station of the petitioner cannot be made applicable to the present case for allowing the benefit of capitalization of spares. In view of this, there is no error apparent on the face of the order and review on this ground fails.

15. Based on the above discussions, the prayer of the petitioner for review of order dated 25.5.2012 in Petition No. 279/2009 stands rejected.

16. Review petition No. 17/2012 is disposed of in terms of the above.

*Sd/-*  
**[V. S. Verma]**  
**Member**

*Sd/-*  
**[S. Jayaraman]**  
**Member**

*Sd/-*  
**[Dr. Pramod Deo]**  
**Chairperson**

