

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 18/2012

in

Petition No. 332/2009

Coram:

Dr. Pramod Deo, Chairperson

Shri S. Jayaraman, Member

Shri V. S. Verma, Member

Date of Hearing: 20.9.2012

Date of Order: 8.2.2013

IN THE MATTER OF

Review of order dated 23.5.2012 in Petition No. 332/2009 regarding determination of generation tariff for Badarpur Thermal Power Station (705 MW) for the period from 1.4.2009 to 31.3.2014.

AND

IN THE MATTER OF

NTPC Ltd, New Delhi

...Petitioner

Vs

1. Tata Power Delhi Distribution Ltd., Delhi
2. BSES Rajdhani Power Ltd., New Delhi
3. BSES Yamuna Power Ltd., Delhi
4. New Delhi Municipal Council, New Delhi
5. Military Engineering Services, New Delhi.

...Respondents

Parties Present:

Shri A. Basu Roy, NTPC
Shri Rohit Chhabra, NTPC
Shri C. K. Mondol, NTPC
Shri Ajay Dua, NTPC
Shri Shankar Saran, NTPC
Shri G. K Dua, NTPC
Shri Sameer Aggarwal, NTPC
Shri Vivek Kumar, NTPC
Shri R. B. Sharma, Advocate, BRPL
Shri Paresh B. Lal, BYPL
Dr. Meena Mishra, BYPL
Shri R. Aggarwal, BYPL



ORDER

Petition No. 332/2009 was filed by the petitioner, NTPC for approval of generation tariff of Badarpur Thermal Power Station (705 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 23.5.2012 determined the annual fixed charges for the generating station based on the capital cost as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Opening Capital Cost	45074.86	45245.15	45897.74	50144.54	61786.90
Projected Additional Capital expenditure (allowed)	170.29	652.59	4246.80	11642.36	10211.71
Closing Capital Cost	45245.15	45897.74	50144.54	61786.90	71998.61
Average Capital Cost	45160.01	45571.45	48021.14	55965.72	66892.76

2. The annual fixed charges of the generating station for 2009-14 determined by order dated 23.5.2012 is as under:

(₹ in lakh)

	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	2354.64	2376.10	2503.82	2918.05	3487.79
Interest on Loan	5.07	0.00	30.53	363.16	867.60
Return on Equity	3761.56	3313.11	3260.98	3820.62	4590.35
Interest on Working Capital	5450.54	5477.24	5527.13	5580.87	5657.79
O&M Expenses	22101.75	22736.25	23384.85	24054.60	24738.45
Cost of secondary fuel oil	1906.79	1906.79	1912.02	1906.79	1906.79
Special allowance	0.00	0.00	0.00	0.00	0.00
Total	35580.35	35809.48	36619.34	38644.10	41248.77

2. Aggrieved by the said order, the petitioner filed this review petition seeking review of the order dated 23.5.2012 on the following issues, namely:

- (a) Disallowance of an expenditure of ₹1474 lakh in 2009-10, mainly on two CEA approved schemes falling under 'Main Plant Package' i.e. ₹519.90 lakh on replacement of condenser tubes and ₹951.50 lakh for procuring GT for Unit-4,

(b) Adjustment of Cumulative repayment on account of de-capitalization of assets considered as 90% in loan repayment instead of adjustment of 70% in loan repayment and 20% in equity repayment,

(c) Non-consideration of liabilities of ₹7.29 lakh in the capital cost as on 1.4.2009, and

(d) Disallowance of part expenditure capitalized on account of:

(i) Replacement of Goods lift (2 nos.)

(ii) Passenger lift No. 2 (TG Hall Unit-V)

(iii) Inter-connection of all underground tanks for drinking water supply from DJB mains;

(iv) UPS; and

(v) Lab instruments

3. By order dated 9.8.2012, the review petition was admitted on the above issues and notices were issued to the respondents. Reply to the petition has been filed by the Respondent Nos.2 and 3 namely, BRPL and BYPL. The petitioner has filed its rejoinder to the said replies.

4. During the hearing on 20.9.2012, the representative of the petitioner made his submissions on the issues raised in sub-clause (a) & (b) in paragraph 2 above and prayed that the order dated 23.5.2012 be reviewed for the reasons mentioned in the application. However, the issues raised in sub-clause (c) & (d) were not pressed for by the petitioner on the ground that the same were to be dealt with at the time of truing-up in terms of Regulation 6 of the 2009 Tariff Regulations.

5. The respondent, BRPL in its reply dated 13.9.2012 while objecting to the grounds raised by the petitioner in the review petition 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



further submitted 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 and the judgment of the Appellate Tribunal for Electricity dated 24.3.2009 in Review Petition No. 1/2009 in Appeal No. 64/2008. During the hearing, the learned counsel for the respondent, BRPL reiterated the above submissions made in the reply and prayed that the review petition is liable to be dismissed.

6. The respondent, BYPL in its reply dated 14.9.2012 while objecting to the grounds made by the petitioner for review of order dated 23.5.2012 has submitted that the petitioner has failed to demonstrate the existence of any circumstance necessitating intervention by way of review or otherwise. It has also submitted that the failure of the petitioner to demonstrate the existence of patent error/error apparent on the face of the order is a standalone ground for rejection of this petition. The respondent has further submitted that the petitioner cannot seek rehearing/re-consideration of the issues in dispute and the remedy for redressal of grievances lies in an appeal. During the hearing, the learned counsel for the respondent, BYPL reiterated the submissions made in its reply dated 14.9.2012 and prayed that the review petition may be rejected.

7. Rule 1 Order 47 of the Code of Civil Procedure (CPC), provides that 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.

8. Heard the parties and examined the documents on record. We now proceed to consider the issues raised by the petitioner, as discussed in subsequent paragraphs

(A) Disallowance of an expenditure of ₹1474 lakh (including ₹519.90 lakh on replacement of Condenser tubes and ₹951.50 lakh for procuring GT for Unit-IV) during 2009-10.

9. The claim of the petitioner for ₹1474 lakh in 2009-10, mainly on two CEA approved schemes falling under 'Main Plant Package' i.e. ₹519.90 lakh on replacement of condenser tubes & ₹951.50 lakh for procuring GT for Unit-4, was disallowed by the Commission in paragraph 28 and 29 of the order dated 23.5.2012, observing as under:

(i) Main plant package

"28. As stated in paragraph 6 above, the in-principle approval on expenditure on R&M scheme was allowed by the Commission by its order dated 12.5.2011 with the benefits of reduction of Heat Rate and increase in unit capacity to be passed on to the beneficiaries with effect from 1.4.2013, subject to the actual performance test conducted on the units by 30.9.2013. In the revised phasing of expenditure submitted by the petitioner, out of an expenditure of ₹42705 lakh (including taxes & duties) projected to be incurred for R&M of main plant package, an expenditure of ₹17081 lakh during 2013-14 and ₹24150 lakh during 2014-15 has been claimed. Thus, a major part of R&M expenditure is to be incurred during the end of the year 2014-15. During the hearing on 4.10.2011, the petitioner was directed to explain as to why the expenditure on R&M should be allowed during the period 2009-14 since, the benefits of R&M could only be passed on to the beneficiaries after completion of R&M schemes during the next tariff period, based on revised phasing of expenditure.

29. We are not convinced with the submissions of the petitioner. Since, the benefits of R&M would be passed on to the beneficiaries only after completion of

R&M of Main Plant package during the year 2014-15 of the next tariff period, the expenditure of ₹41231 lakh projected to be incurred for R&M of main plant package could only be considered in the next tariff period. Similarly, the actual expenditure of ₹1474 lakh pertaining to R&M of the main plant package incurred during 2009-10 has also not been allowed by this order, and the said expenditure would be considered during the next tariff period with the passing of the benefits of R&M to beneficiaries. In view of this, the corresponding de-capitalization has also been ignored.”

10. In justification of its claim for 2009-10, the petitioner has now submitted in the review petition that:

“₹1474 lakh (including ₹519.90 lakh on replacement of Condenser tubes and ₹951.50 lakh for procuring GT for Unit-IV) has already been incurred in the year 2009-10 and capitalized in the year 2009-10 and the assets have already been put to use and the benefits of which are already occurring to the beneficiaries since then. Since, this ‘Main Plant Package’ under R&M is an extensive work/scheme; the same has been split into some smaller and workable packages.

Further, the Hon’ble Commission has already allowed the capitalization of expenditure incurred on certain other similar CEA approved R&M packages like ‘Augmentation of ESPs & R&M of 220 KV switchyard’ etc. considering that benefit of such works are already available to beneficiaries. Accordingly, it is prayed that in the instant case of capitalization of ₹1474 lakh, where the benefits are similarly occurring to the beneficiaries since 2009-10 may please be allowed on the same principle.”

11. The respondent BRPL has submitted that the expenditure on R&M scheme was allowed by the Commission for the purpose of reduction of Heat Rate and increase in unit capacity to be passed on to the beneficiaries and the petitioner has not been able to justify its claim before the Commission for inclusion of expenditure on R&M during the period 2009-14. It has also submitted that the petitioner is rearguing his case for inclusion of expenditure during 2009-14 period without explaining as to how the said expenditure of ₹1474 lakh would benefit in reduction of Heat rate and increase in unit capacity during 2009-14. It has also submitted that the example of ESP quoted by the petitioner has no relevance as ESP is in no way connected with reduction of Heat Rate and increase in unit capacity. The respondent, BYPL has submitted that the

Commission after examining the records had come to a considered conclusion that major part of the R&M expenditure will be incurred by the petitioner during the end of the year 2014-15 and the petitioner is now seeking to substitute the view taken by the Commission in its order dated 23.5.2012, which is not permissible. It has also submitted that the expenditure incurred for augmentation of ESPs and R&M of 220 kV switchyard has been allowed as the same were completed and put to use in totality during the tariff period. However, the main plant package has not been completed in totality and not put to use in totality and hence the comparison drawn by the petitioner is misplaced. The respondents have prayed that the ground raised by the petitioner may therefore be rejected.

12. The matter has been examined. From the revised phasing of expenditure submitted by the petitioner it was noticed that major part of R&M expenditure was to be incurred during the end of the year 2014-15 and accordingly, the petitioner was directed to explain as to why the expenditure on R&M should be allowed during 2009-14, since the benefits of R&M could only be passed on to the beneficiaries after completion of R&M schemes during the next tariff period. The petitioner vide its affidavit dated 14.11.2011 had submitted that based on need and said approval, substantial R&M expenditure on these schemes had already been incurred and many of them shall be put to use during the tariff period. It was also submitted that as per prevailing practice, the schemes are always implemented progressively in a phased manner and put to use by inclusion in capital cost and serviced in tariff. As regards completion of main plant R&M schemes, the petitioner had submitted that the implementing agencies may be able to complete some of the schemes beyond 2014

only and accordingly prayed that the expenditure may be allowed to be capitalized and serviced by inclusion in capital cost beyond 2014 during the next tariff period. Considering the above submissions and since the benefits of R&M would be passed on to the beneficiaries after completion of R&M of main plant package during the year 2014-15 of the next tariff period, the capitalization of expenditure pertaining to R&M of main plant package was accordingly not allowed by order dated 23.5.2012 and has been directed to be considered during the next tariff period after passing of benefits of R&M to the beneficiaries. It is observed that the petitioner has sought to justify the capitalization of expenditure pertaining to R&M of main plant package based on the grounds which had already been raised in the original petition and rejected by the Commission on prudence check. In short, the petitioner has sought to reopen the case on merits, which had already been considered and disposed of by the Commission by order dated 23.5.2012. This is not permissible in review. The Commission by a conscious decision had disallowed the capitalization of the asset, on prudence check, based on the submissions of the petitioner. Moreover, the petitioner has not demonstrated the existence of any error apparent in the face of the order or the existence of any new or important matter which was not within the knowledge of the petitioner and which after due diligence could not be produced at the time of passing the order dated 23.5.2012. Hence, we are of the view that the grounds raised by the petitioner do not fall within the scope of review under Rule 1 Order 47 of the CPC. Therefore, the prayer of the petitioner is rejected and review on this ground fails.

(B) Adjustment of cumulative repayment on account of de-capitalization of assets considered as 90% in loan repayment instead of adjustment of 70% in loan repayment and 20% in equity repayment.

13. The petitioner in the review petition has submitted that the Commission while giving effect to the adjustment of de capitalization of assets in cumulative repayment, has considered full adjustment of 90% in loan repayment only instead of adjusting 70% in loan repayment and balance 20% in equity repayment since BTPS tariff is based on NFA methodology and not GFA one. The petitioner has therefore prayed that the Commission may adjust 70% in loan repayment and balance 20% in equity repayment while carrying out adjustment in repayment due to de capitalization of assets and revise the fixed charges accordingly. During the hearing, the representative of the petitioner has submitted that the generating station is old wherein most of the assets @ 90% depreciation has been recovered and the 90% depreciation recovered has been considered for both loan repayments as well as towards reduction in equity. Whenever there is de-capitalization of assets, in addition to the adjustment towards adjustment of loan repayment, the corresponding effect on equity repayment should be affected. The respondent BRPL and BYPL have submitted that the petitioner has sought for reconsideration of the methodology adopted by the Commission under NFA approach and the grounds for review are not tenable.

14. The matter has been examined and we are of the view that there is no error apparent on the face of the order. The tariff of the generating station is based on NFA method wherein adjustments on any account are considered through loan component and incase of any balance then the same is adjusted through equity. Hence, there is

no error apparent on the face of the order and the submissions of the petitioner are not acceptable. Thus, review on this ground fails.

15. Though the petitioner during the hearing on 20.9.2012 had not pressed for consideration of the issue of non-consideration of liabilities of ₹7.29 lakh in the capital cost as on 1.4.2009 on the ground that the same is to be considered during truing-up, we notice that the said amount has already been allowed vide our order dated 10.12.2012 in Review Petition No. 3/2011 (in Petition No.194/2009) during the pendency of this petition. Accordingly, we consider the said amount in this order.

16. The issue raised in sub-clause (d) in paragraph 2 above shall however be dealt with at the time of truing-up in terms of Regulation 6 of the 2009 Tariff Regulations, as prayed for by the petitioner. Thus, the issues raised by the petitioner in this application, is disposed of in terms of the above.

17. Due to revision of capital cost as on 31.3.2009 on account of order dated 10.12.2012 in Review Petition No. 3/2011, the opening capital cost as on 1.4.2009 would also undergo revision. Accordingly, the tariff of the generating station for 2009-14 is revised as under:

Capital Cost as on 1.4.2009

18. The capital cost as on 1.4.2009 is revised as under:

	<i>(₹ in lakh)</i>
Opening capital cost as on 1.4.2009 vide order dated 10.12.2012 in Review Petition No. 3/2011 in Petition No. 194/2009	45228.61
Un-discharged liabilities included	62.93
Opening capital cost (on cash basis) as on 1.4.2009 considered for the purpose of tariff	45165.68

19. Accordingly, due to revision of the liabilities discharged during 2010-11, the additional capital expenditure allowed in our order dated 23.5.2012 stands revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Amount allowed on CEA approved schemes (including IDC and FC)	29.57	95.75	1101.25	3676.16	397.31
Other than CEA approved schemes	99.36	538.03	3145.55	7966.20	9814.40
Total	128.93	633.78	4246.80	11642.36	10211.71
Discharges of liabilities	41.36	21.06	0.00	0.00	0.00
Additional capital expenditure allowed	170.29	654.84	4246.80	11642.36	10211.71

20. Based on the above, the capital cost considered during the period 2009-14 for the purpose of tariff is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Opening Capital cost	45165.68	45335.97	45990.82	50237.62	61879.98
Projected Additional Capital Expenditure	170.29	654.84	4246.80	11642.36	10211.71
Closing Capital cost	45335.97	45990.82	50237.62	61879.98	72091.69
Average Capital cost	45250.83	45663.40	48114.22	56058.80	66985.83

21. Return on Equity in our order dated 23.5.2012 is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Notional Equity- Opening	17106.66	15057.74	13333.95	14607.99	18100.70
Addition of Equity due to Additional Capital Expenditure	51.09	196.45	1274.04	3492.71	3063.51
Repayment of Equity	2100.01	1920.24	0.00	0.00	0.00
Normative Equity-Closing	15057.74	13333.95	14607.99	18100.70	21164.21
Average Normative Equity	16082.20	14195.84	13970.97	16354.34	19632.45
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)- (annualised)	3776.26	3333.33	3280.52	3840.16	4609.90

22. Interest on loan allowed vide order dated 23.5.2012 is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Gross opening loan	23297.07	23416.27	23874.67	26847.43	34997.08
Cumulative repayment of loan upto previous year	23138.96	23416.27	23874.67	26270.71	28670.98
Net Loan Opening	158.11	0.00	0.00	576.72	6326.10
Addition due to Additional capitalisation	119.20	458.39	2972.76	8149.65	7148.20
Repayment of loan during the year	259.37	460.65	2508.68	2922.91	3492.64
Less: Repayment adjustment on account of de-capitalization	8.56	15.75	112.64	522.63	193.77
Add: Repayment adjustment on account of discharges / reversals corresponding to un-discharged liabilities deducted as on 1.4.2009	26.50	13.50	0.00	0.00	0.00
Net Loan Closing	0.00	0.00	576.72	6326.10	10175.42
Average Loan	79.05	0.00	288.36	3451.41	8250.76
Weighted Average Rate of Interest on Loan	10.50%	10.50%	10.50%	10.50%	10.50%
Interest on Loan	8.30	0.00	30.28	362.40	866.33

23. Depreciation worked out in order dated 23.5.2012 is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Opening capital cost	45165.68	45335.97	45990.82	50237.62	61879.98
Closing capital cost	45335.97	45990.82	50237.62	61879.98	72091.69
Average capital cost	45250.83	45663.40	48114.22	56058.80	66985.83
Depreciable value @ 90%	40725.75	41097.06	43302.80	50452.92	60287.25
Balance depreciable value	12824.73	10818.72	10645.83	15399.91	22833.96
Depreciation (annualized)	2359.38	2380.89	2508.68	2922.91	3492.64
Cumulative depreciation at the end	30260.40	32659.23	35165.65	37975.92	40945.93
Less: Cumulative depreciation reduction due to de-capitalization	8.56	15.75	112.64	522.63	193.77
Less: Cumulative depreciation adjustment on account of discharges / reversal of liabilities out of liabilities deducted as on 01.04.2009	(-) 26.50	(-) 13.50	0.00	0.00	0.00
Net Cumulative depreciation (at the end of the period)	30278.34	32656.97	35053.01	37453.29	40752.16

24. Interest on working capital in order dated 23.5.2012 is also revised as under:



(a) Receivables: Rreceivables component of working capital is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Variable Charges -2 months	15992.09	15992.09	16035.91	15992.09	15992.09
Fixed Charges - 2 months	5933.92	5972.50	6107.33	6444.70	6878.73
Total	21926.01	21964.60	22143.24	22436.80	22870.82

(b) Based on the above, the computation for Interest on working capital is revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Cost of coal- 2 months	15992.09	15992.09	16035.91	15992.09	15992.09
Cost of secondary fuel oil- 2 months	317.80	317.80	318.67	317.80	317.80
O&M expenses – 1 month	1841.81	1894.69	1948.74	2004.55	2061.54
Maintenance Spares	4420.35	4547.25	4676.97	4810.92	4947.69
Receivables – 2 months	21926.01	21964.60	22143.24	22436.80	22870.82
Total working capital	44498.07	44716.43	45123.52	45562.16	46189.94
Rate of interest	12.2500%	12.2500%	12.2500%	12.2500%	12.2500%
Interest on working capital	5451.01	5477.76	5527.63	5581.36	5658.27

Annual Fixed Charges

25. Based on the above discussions, the annual fixed charges approved for the period 2009-14 by order dated 23.5.2012 in Petition No. 332/2009 stands revised as under:

	(₹ in lakh)				
	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	2359.38	2380.89	2508.68	2922.91	3492.64
Interest on Loan	8.30	0.00	30.28	362.40	866.33
Return on Equity	3776.26	3333.33	3280.52	3840.16	4609.90
Interest on Working Capital	5451.01	5477.76	5527.63	5581.36	5658.27
O&M Expenses	22101.75	22736.25	23384.85	24054.60	24738.45
Cost of secondary fuel oil	1906.79	1906.79	1912.02	1906.79	1906.79
Special Allowance	0.00	0.00	0.00	0.00	0.00
Total	35603.49	35835.02	36643.98	38668.22	41272.38

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.



26. The petitioner shall claim the difference in respect of the tariff determined by order dated 23.5.2012 and the tariff determined by this order from the beneficiaries in six equal monthly installments, in terms of the proviso to Regulation 5(3) of the 2009 Tariff Regulations.

27. Review Petition No. 18/2012 is disposed of as above.

Sd/-
[V. S. Verma]
Member

Sd/-
[S. Jayaraman]
Member

Sd/-
[Dr. Pramod Deo]
Chairperson

