

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 6/RP/2013

in

Petition No. 184/2009

Coram:

Shri V.S Verma, Member

Shri M.Deena Dayalan, Member

Date of Hearing: 24.9.2013

Date of Order: 14.10.2013

In the matter of

Review of Order dated 3.9.2012 and Corrigendum order dated 2.4.2013 in Petition No.184 of 2009 in the matter of approval of revised fixed charges of Talcher Thermal Power Station (460 MW) for the period 2004-09 due to additional capital expenditure incurred during 2007-08 and 2008-09.

And in the matter of

NTPC Ltd., New Delhi

...**Petitioner**

Vs

GRIDCO Ltd.

...**Respondent**

Parties present:

1. Shri Shailendra Singh, NTPC
2. Shri A.Basu Roy, NTPC
3. Shri Shyam Kumar, NTPC
4. Shri Rohit Chhabra, NTPC
5. Shri R.B.Sharma, Advocate, GRIDCO

ORDER

Petition No. 184/2009 was filed by the petitioner for determination of tariff of Talcher Thermal Power Station (460 MW) (hereinafter referred to as the "generating station") for the period 2004-09 due to additional capital expenditure incurred during 2007-08 and 2008-09 and the Commission by its order dated 3.9.2012 determined the tariff of the generating station. Subsequently, by Corrigendum order dated 2.4.2013, the tariff of the generating station was revised on account of rectification of certain clerical errors.

2. The capital cost for the period 2004-09 approved by the Commission in order dated 3.9.2012 as revised in order dated 2.4.2013 is as under:

(₹ in lakh)

	2004-05	2005-06	2006-07	2007-08	2008-09
Opening Capital Cost	69601.00	74904.51	76151.68	77557.75	82347.74
Additional Capital Expenditure	5303.51	1247.17	1406.06	4789.99	4896.04
Closing Capital Cost	74904.51	76151.68	77557.75	82347.74	87243.78

3. The annual fixed charges allowed by the Commission in order dated 2.4.2013 is as under:

(₹ in lakh)

	2004-05	2005-06	2006-07	2007-08	2008-09
Interest on loan	1041.84	1169.72	986.91	1007.23	927.43
Interest on Working Capital	919.94	943.31	959.46	1055.48	1150.83
Depreciation	3251.37	3398.76	3458.46	3597.87	3815.81
Advance Against Depreciation	0.00	0.00	0.00	0.00	0.00
Return on Equity	4983.44	5121.01	5176.73	5306.84	5510.25
O & M Expenses	8700.00	9029.00	9372.00	9728.00	10098.00
Total	18896.59	19661.81	19953.56	20695.43	21502.32

4. Aggrieved by the said orders, the petitioner has filed this petition seeking review of the said orders on the following issues:

- (a) Disallowance of Notional IDC accrued on account of repayment made from internal resources prior to capitalization of R&M works;
- (b) Disallowance of initial capital spares in the historical capital cost for the purpose of IWC calculation;

5. By interim order dated 26.8.2013, the review petition was admitted after condoning the delay and notice was ordered on the respondent. The respondent has filed its reply to the petition on 20.9.2013.

6. During the hearing, the representative of the petitioner submitted that in terms of the judgement dated 27.7.2010 of the Appellate Tribunal for Electricity ('the Tribunal') in Appeal No. 82/2009, notional IDC on account of repayment of loan made from internal resources for expenditure incurred for additional capitalisation (R&M works) prior to its capitalization shall be admissible in tariff. He also submitted that non-inclusion of ₹1150 lakh on account of initial spares in historical capital cost of the generating station for calculating maintenance spares for computation of interest in working capital is an error apparent on the face of the order as the same has been allowed by the Commission in other tariff orders, in terms of the judgment of the

Tribunal. Accordingly, the representative of the petitioner prayed that the error in the order be rectified and tariff of the generating station for 2004-09 be revised.

7. In reply, the learned counsel for the respondent submitted as under:

(a) The review petition has been filed by the petitioner after the expiry of the limitation period. The reason for delay has been cited as the time taken for obtaining calculation sheets which cannot be considered as a ground for condonation of delay.

(b) The Commission in its order dated 3.9.2012 had declined to allow Interest During Construction (IDC) based on FIFO method and has recalculated the same by applying the average method. The average method of calculation has been upheld by the Tribunal.

(c) The claim of the petitioner for notional IDC for the period 2004-07 which was dealt with in Petition No. 31/2008 cannot be considered in this review petition which pertains to order dated 3.9.2012 in Petition No.184/2009 for the period 2007-09.

(d) In terms of the 2004 Tariff Regulations, initial spares can be capitalized only once during the life time of the generating station and that too prior to the cut-off date and hence there is no error in the order dated 3.9.2012, wherein, initial spares based on additional capital expenditure has been disallowed. Initial spares even if considered, cannot be included in the capital cost of the generating station.

(e) 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. Accordingly, review petition may be rejected.

8. In response, the representative of the petitioner has clarified that its claim of IDC is not based on FIFO method, but on average method. The petitioner is only seeking the implementation of the judgment of the Tribunal in Appeal No. 82/2009, wherein the Tribunal has specifically clarified that notional IDC arising out of repayments made from internal resources till capitalization

of the capital assets under R&M shall be admissible in tariff. The representative of the petitioner also submitted that the Commission in its various orders in respect of some of the generating stations of NTPC has considered initial spares in the historical capital cost while calculating the maintenance spares for computation of interest on working capital by way of implementation of the judgement of the Tribunal and the same should be adopted for this generating station. It was further submitted that the judgement of the Tribunal dated 27.7.2010 in Appeal No.82/2009 pertains to the additional capitalization for the period from 2004-07 (in Petition No 31/2008) and it should be implemented as the same was not considered by the Commission while revising the tariff of the generating station in order dated 3.9.2012 in Petition No. 184/2009.

9. We have heard the parties and examined the documents on record. The learned counsel for the respondent has taken an objection with regard to maintainability of the petition on account of delay in filing the same beyond the permissible period of filing of review petition. This issue has been settled while admitting the petition as the delay has been condoned. We now proceed to consider the issues raised by the petitioner on merits, as discussed in subsequent paragraphs.

10. By virtue of Section 94(1)(f) of the Electricity Act, 2003, the provisions relating to review of the orders under Civil Procedure Code (CPC) shall be applicable while reviewing the order, decision or direction of the Commission. In accordance with Rule 1 Order 47 of the CPC, a person aggrieved by an order may apply for review of the same 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 Notional IDC on account of repayment from internal resources prior to capitalization of R&M works

11. The Commission in the order dated 3.9.2012 in Petition No. 184/2009 had allowed IDC based on the average method of repayment observing as under:

"54. In the judgment dated 10.12.2008 in Appeal Nos.151 &152/2007 the Tribunal had concurred with the decision of the Commission for not following the FIFO method of repayment of loan. Para 24 of the said judgment is extracted as under:

"We, therefore, find that the Commission's decision not to follow the FIFO method does not call for any interference but that repayment assumed for generating station during the period prior to the date of commercial operation be deemed as loan from NTPC and interest during construction be allowed on such loans."

55. Also, the Tribunal in para 25 of the said judgment had directed to allow IDC as under:

".....We also direct that in case the Commission attributes any loan taken at the corporate level to a particular project under construction and considers any repayment out of it before the date of commercial operation the sum deployed for such repayment would earn interest as pas through in tariff."

56. The above said decision was followed by the Tribunal in its judgment dated 16.3.2009 in Appeal Nos.133, 135,136 and 148/2008. In the light of these judgments, the Tribunal allowed the capitalization of IDC based on average method of repayment for the generating station, in its judgment dated 27.7.2010 in Appeal No.82/2009.

57. The petitioner has claimed IDC in respect of the generating station for the additional capital expenditure for 2007-09 on FIFO method. Since average method of repayment followed by the Commission has been upheld by the Tribunal, the IDC claimed by the petitioner has been recalculated by applying the average method of repayment and amounts of ₹19.52 lakh and ₹48.07 lakh for the years 2007-08 and 2008-09 respectively has been disallowed."

12. The petitioner has submitted that though the Commission in the above order had disallowed notional IDC amounting to ₹9.35 lakh for 2004-07, ₹20.47 lakh for 2007-08 and ₹48.07 lakh for 2008-09 respectively, by calculating the IDC based on the average method of repayment, in terms of the judgment dated 10.12.2008 in Appeal No 151 & 152/2007, the Commission has omitted to consider the judgment which provides that the sum deployed for any repayment of loan before the date of commercial operation would earn interest as a pass through in tariff. The petitioner has further submitted that repayment of loans drawn in respect of additional capitalization (R&M) during the period 2004-07 and 2007-09 has been done through internal resources, the details of which were submitted in Petition No. 31/2008 and Petition No.184/2009 indicating clearly that the equity infusion was in excess of the normative 30% during 2004-09, which implied that part of repayment of loan was out of internal resources. The petitioner has submitted that the above facts have escaped the attention of the Commission in the impugned order and is thus an error apparent on the face of the order. In addition to the above, the petitioner has submitted that in the judgment of the Tribunal dated 27.7.2010 in Appeal No. 82/2009 (NTPC V CERC & anr), the issue of IDC in respect of this generating station for 2004-07 was decided in line with the judgment dated 10.12.2008 in Appeal Nos. 151&152/2007 which has also escaped the attention of the

Commission while passing the order dated 3.2.2009. It has been further submitted that the Tribunal in the said judgment dated 27.7.2010 while upholding the Commission's decision not to follow FIFO method, has clarified that the petitioner is entitled for IDC to the extent of repayment of loan from internal resources of NTPC or deemed loan. Accordingly, the petitioner has prayed that the notional IDC on account of repayment made from internal resources prior to capitalization of R&M for the period 2004-07 and 2007-09 in respect of the generating station may be implemented in terms of the said judgment dated 27.7.2010. The respondent has submitted that the judgment of the Tribunal dated 27.7.2010 pertains to the additional capitalization of this generating station for 2004-07 in Petition No.31/2008 and since the order dated 3.9.2012 in Petition No.184/2009 pertains to additional capitalization of this generating station for 2007-09, the prayer of the petitioner cannot be considered.

13. We have examined the matter. It is true that the judgment of the Tribunal dated 27.7.2010 relates to the order of the Commission dated 3.2.2009 in which the additional capitalization for 2004-07 was allowed. While implementing the judgment, the tariff for the period 2004-09 has to be revised, since the principle decided in the said judgment is also applicable to the additional capital expenditure for the period 2007-09. Thus, the objection of the respondent is overruled. It is observed that the Commission in its order dated 3.9.2012 while rejecting the FIFO method in terms of the judgment of the Tribunal dated 10.12.2008, had calculated IDC based on the average method of repayment. However, while considering the IDC on average method, the directions of the Tribunal for allowing IDC on the notional loan arising out of repayment made by the petitioner from its internal resources for the loans raised for R&M works has not been considered. In the present case, the petitioner has repaid loans in respect of additional capitalization (R&M) during the period 2004-07 and 2007-09 from its internal resources. However, the grant of notional IDC arising out of repayments made from internal resources till the capitalization of assets (R&M) has escaped the attention of the Commission while passing the order dated 3.9.2012. Non consideration of the findings of the Tribunal on this issue at the time of passing the order dated 3.9.2012 is, according to us, an error apparent on the face of the order which needs to be rectified in review. Accordingly, review on this count is allowed.

Disallowance of initial capital spares in the historical capital cost for the purpose of IWC calculation

14. The petitioner has submitted that the Commission in its earlier tariff orders dated 23.3.2007 and 3.2.2009 in Petition Nos. 91/2004 and 31/2008 respectively in respect of this generating station for the period 2004-07 had included the value of initial spares in historical capital cost while calculating maintenance spares in working capital for the purpose of computation of Interest on Working Capital (IWC). It has also submitted that the Commission based on the judgment of the Tribunal dated 13.6.2007 in Appeal Nos.139 to 142 of 2006 and connected matters, had considered initial spares in historical cost while calculating maintenance spares in working capital for the purpose of IWC while granting tariff for the period 2004-09 in respect of the other generating stations of the petitioner. Accordingly, the petitioner has submitted that the non-inclusion of initial spares of ₹1150 lakh in historical cost for calculating maintenance spares in working capital for 2007-09 is an error apparent on the face of the order and has prayed that the same may be corrected. The matter has been examined. It is observed that the Commission in its various orders while determining tariff of some of the other generating stations of the petitioner for 2004-09 had included initial spares in historical cost while working out the maintenance spares in IWC, subject to the final decision of the Hon'ble Supreme Court in the second appeals filed by the Commission against the judgment of the Tribunal dated 13.6.2007 on this issue, amongst others. However, in the present case, the said judgment of the Tribunal escaped the attention of the Commission at the time of passing the order dated 3.9.2012. This according to us is an error apparent on the face of the order which should be reviewed. Accordingly, review on this count is allowed and the error is rectified by this order. We order accordingly.

15. Based on the above, the tariff of the generating station for the period 2004-09 determined by orders dated 3.9.2012/2.4.2013 is revised as under:

Additional Capital Expenditure

16. The additional capital expenditure allowed for the period 2004-09 is revised as under:

(₹ in lakh)

	2004-05	2005-06	2006-07	2007-08	2008-09
Additional Capital Expenditure considered in order dated 2.4.2013	5303.51	1247.17	1406.06	4789.99	4896.04
Add: IDC earlier disallowed	4.44	1.45	3.46	20.47	48.07
Net additional capital expenditure now allowed for the purpose of tariff	5307.95	1248.62	1409.53	4810.46	4944.11

Capital cost

17. The capital cost allowed for the period 2004-09 is as under:

(₹ in lakh)

	2004-05	2005-06	2006-07	2007-08	2008-09
Opening Capital cost	69601.00	74908.95	76157.57	77567.10	82377.56
Additional Capital Expenditure now considered	5307.95	1248.62	1409.53	4810.46	4944.11
Closing Capital cost	74908.95	76157.57	77567.10	82377.56	87321.67
Average Capital cost	72254.98	75533.26	76862.33	79972.33	84849.61

Debt-Equity Ratio

18. The debt-equity ratio of 70:30 as considered in order dated 2.4.2013 has been retained for the purpose of revision of tariff. Accordingly, additional notional equity of the generating station on account of capitalization approved above is worked out as under:

(₹ in lakh)

	2004-05	2005-06	2006-07	2007-08	2008-09
Notional Equity	1592.39	374.59	422.86	1443.14	1483.23

Return on Equity

19. Return on equity is allowed @ 14% on the average normative equity, as under:

(₹ in lakh)

	2004-05	2005-06	2006-07	2007-08	2008-09
Equity-Opening considered vide order dated 3.2.2009	34800.50	36392.89	36767.47	37190.33	38633.47
Addition of Equity due to Additional Capital Expenditure	1592.39	374.59	422.86	1443.14	1483.23
Equity-Closing	36392.89	36767.47	37190.33	38633.47	40116.70
Average equity	35596.69	36580.18	36978.90	37911.90	39375.08
Return on Equity @ 14%	4983.54	5121.22	5177.05	5307.67	5512.51

Interest on loan

20. Interest on loan has been calculated based on the following:

(a) Gross opening loan on normative basis on 1.4.2004 as considered in order dated 3.2.2009 in Petition No. 31/2008 was ₹34800.50 lakh corresponding to capital cost of ₹69601.00 lakh. The same has been retained for the purpose of revision of tariff.

(b) Cumulative repayment of loan on 1.4.2004 as considered in order dated 3.2.2009 in Petition No. 31/2008 was ₹22360.30 lakh. Further, there was de-capitalization amounting to ₹3559.20 lakh during the period up to 31.3.2004. Accordingly, as stated above, cumulative repayment as on 1.4.2004 has been adjusted to 50% of the value of the assets de-capitalized up to 31.3.2004. As such, ₹20580.69 lakh has been considered as cumulative repayment as on 1.4.2004 for the purpose of tariff.

(c) Accordingly, the net opening loan on normative basis as on 1.4.2004 has been considered as ₹14219.81 lakh.

(d) There is addition of notional loan to the tune of ₹3715.57 lakh, ₹874.03 lakh, ₹986.67 lakh, ₹3367.32 lakh and ₹3460.88 lakh for the years 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09 respectively, on account of additional capital expenditure considered above.

(e) Weighted average rate of interest on loan has been worked out after accounting for the rate of interest considered in order dated 3.2.2009 along with addition of loan for the years 2007-08 and 2008-09 as stated above.

(f) Normative repayment of the normative loan has been calculated based on following formula:

$$\text{Normative repayment} = \frac{\text{Actual Repayment} \times \text{Normative Loan}}{\text{Actual Loan}}$$

(g) As stated above cumulative repayment during 2004-09, has been adjusted on account of de-capitalized assets in proportion to debt-equity ratio adopted for allowing additional capital expenditure during respective periods.

21. Interest on loan has been computed as under:

	(₹ in lakh)				
	2004-05	2005-06	2006-07	2007-08	2008-09
Gross Opening Loan – considered now	34800.50	38516.07	39390.10	40376.77	43744.09
Cumulative Repayment of Loan upto previous year	20580.69	22736.20	25197.81	27487.77	29362.62
Net Loan Opening	14219.81	15779.87	14192.29	12888.99	14381.47
Net Loan Opening-Notional component	3103.25	944.10	485.85	173.55	30.60
Net Loan Opening-Normative	11116.56	14835.77	13706.44	12715.44	14350.87
Addition of loan due to Additional Capital Expenditure	3715.57	874.03	986.67	3367.32	3460.88
Repayment of Notional loan in line with Commission's order dated 4.3.2008	2159.15	458.25	312.30	142.95	30.60
Repayment of Normative loan based on actual loan	1114.79	2118.00	2117.76	2005.77	2696.84
Repayment of Loan (Total)	3273.94	2576.25	2430.06	2148.72	2727.44
Less: Adjustment for de-cap during the period	1118.43	114.64	140.09	273.87	226.22
Repayment of loan during the year (net)	2155.51	2461.61	2289.97	1874.85	2501.22
Net Loan Closing	15779.87	14192.29	12888.99	14381.47	15341.12
Average Loan	14999.84	14986.08	13540.64	13635.23	14861.29
Weighted Average Rate of Interest on Loan	6.9236%	7.7994%	7.2730%	7.2833%	5.9621%
Interest on Loan	1038.53	1168.83	984.81	993.10	886.05

Depreciation

22. The balance depreciable value as on 1.4.2004 as considered vide order dated 3.2.2009 is ₹39569.43 lakh (i.e. 90% of ₹69601.00 lakh minus cumulative depreciation amounting to ₹23071.47 lakh). Thus the value of land considered for calculation is 'Nil'. However, from the petitioner's submission it appears that some land does form part of the capital base allowed to the generating station. This fact could be corroborated from the Petition No.304/2009 filed by the petitioner for approval of tariff of the generating station for the period 2009-14, wherein, the petitioner has indicated the value of freehold land in Form-11 as ₹2597.63 lakh as on 31.3.2009. As regards this, the petitioner vide its affidavit dated 27.4.2010 has clarified that the value of freehold land of ₹948.21 lakh was existing as on 1.4.2004. Further, there were addition of freehold land amounting to ₹68.79 lakh, ₹31.72 lakh, ₹24.74 lakh, ₹8.41 lakh and ₹1515.77 for the years 2004-05, 2005-06, 2006-07, 2007-08 and 2008-09, respectively. In the present case, the balance

depreciable value has been calculated considering the value of freehold land. Further, the weighted average rate of depreciation of 4.5% as mentioned in order dated 3.2.2009 has been considered to arrive at the depreciation allowed for the period 2004-09. Adjustment of cumulative depreciation on account of de-capitalization of assets has been considered in the calculations as carried out in the tariff orders for the period 2004-09 for other generating stations of the petitioner. The necessary calculations are as under:

	(₹ in lakh)				
	2004-05	2005-06	2006-07	2007-08	2008-09
Opening capital cost	69601.00	74908.95	76157.57	77567.10	82377.56
Closing capital cost	74908.95	76157.57	77567.10	82377.56	87321.67
Average capital cost	72254.98	75533.26	76862.33	79972.33	84849.61
Depreciable value @ 90%	64114.18	67036.09	68209.99	71001.42	74026.79
Balance depreciable value	41042.71	41685.23	39567.00	39039.40	38726.32
Depreciation	3251.47	3399.00	3458.81	3598.75	3818.23

O&M expenses

23. The O&M Expenses as considered in order dated 2.4.2013 has been considered.

Interest on Working capital

24. For the purpose of calculation of working capital, the operating parameters including the price of fuel components as considered in the order dated 2.4.2013 have been kept unchanged. The maintenance spares have been revised on account of changes in the opening capital cost and on account of maintenance spares corresponding to additional capital expenditure allowed for the purpose of tariff. The “receivables” component of the working capital has been revised on account of the revision of return on equity, interest on loan etc. The necessary details in support of calculation of interest on working capital are as under:

	2004-05	2005-06	2006-07	2007-08		2008-09
				1.4.2007 to 30.9.2007	1.10.2007 to 31.3.2008	
Coal Stock – 1.1/2 months	1479.42	1479.42	1479.42	741.74	1011.31	2017.10
Oil Stock-2 months	305.71	305.71	305.71	153.28	165.51	330.11
O & M expenses	725.00	752.42	781.00	405.33	405.33	841.50
Maintenance spares	1056.62	1130.91	1212.48	666.46	666.46	1460.89
Receivables	5427.51	5555.52	5604.00	2866.03	3237.69	6597.51
Total Working Capital	8994.26	9223.98	9382.62	4832.83	5486.30	11247.11
Rate of Interest	10.2500%	10.2500%	10.2500%	10.2500%	10.2500%	10.2500%
Total Interest on Working capital	921.91	945.46	961.72	495.36	562.35	1152.83

25. The annual fixed charges revised for the period from 1.4.2004 to 31.3.2009 is summarized as under:

	(₹ in lakh)				
	2004-05	2005-06	2006-07	2007-08	2008-09
Interest on loan	1038.53	1168.83	984.81	993.10	886.05
Interest on Working Capital	921.91	945.46	961.72	1057.71	1152.83
Depreciation	3251.47	3399.00	3458.81	3598.75	3818.23
Advance Against Depreciation	0.00	0.00	0.00	0.00	0.00
Return on Equity	4983.54	5121.22	5177.05	5307.67	5512.51
O & M Expenses	8700.00	9029.00	9372.00	9728.00	10098.00
Total	18895.46	19663.51	19954.38	20685.23	21467.62

26. The Target Availability and other parameters viz. specific fuel consumption, Auxiliary Power Consumption and Station Heat Rate etc., as considered in order dated 3.9.2012/2.4.2013 has been considered for the purpose of calculation of the revised fixed charges.

27. Except the above, all other terms and conditions in order dated 3.9.2012/2.4.2013 remain unchanged. The difference between the fixed charges approved vide order dated 2.4.2013 and this order shall be adjusted by the parties in three equal monthly installments.

28. Petition No. 6/RP/2013 is disposed of as above.

Sd/-
[M.Deena Dayalan]
Member

Sd/-
[V.S.Verma]
Member