

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 9/RP/2014

in

Petition No. 204/GT/2011

Coram:

**Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K.Singhal, Member**

Date of Hearing: 08.05.2014

Date of Order: 17.12.2014

In the matter of

Review of the order dated 21.1.2014 in Petition No.204/GT/2011 regarding approval of generation tariff of Farakka Super Thermal Power Station, Stage-III (1 x 500 MW) for the period from the actual date of commercial operation i.e 4.4.2012 to 31.3.2014

And

In the matter of

NTPC Ltd,
NTPC Bhawan, Core-7, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003

...Petitioner

Vs

1. West Bengal State Electricity Distribution Co. Ltd.
Vidyut Bhawan, Block-DJ, Sector-II,
Salt Lake City, Kolkata-700091

2. Bihar State Electricity Board Vidyut Bhawan,
Bailey Road Patna-800001

3. Jharkhand State Electricity Board,
Engineering Bhawan, Heavy Engineering Corporation
Dhurwa, Ranchi-834004

4. GRIDCO Ltd. Vidyut Bhawan,
Janpath, Bhubaneswar-751007

5. Damodar Valley Corporation,
DVC Towers, VIP Road, Kolkata-700054

6. Power Department, Government of Sikkim,
Kazi Road, Gangtok, Sikkim-737101

...Respondents

Parties present:

For Petitioner: Shri M.G.Ramachandran, Advocate, NTPC
Ms. Swagathika Sahoo, Advocate, NTPC
Ms. Anushree Bardhan, Advocate, NTPC
Shri A. Basu Roy, NTPC
Shri Umesh Ambati, NTPC

For Respondents: Shri R.B. Sharma, Advocate, GRIDCO & JSEB

ORDER

This petition has been filed by the petitioner, NTPC, for review of the order dated 21.1.2014 in Petition No. 204/GT/2011 as regards approval of generation tariff of Farakka Super Thermal Power Station, Stage-III (1 x 500 MW) (hereinafter referred to as 'the generating station') for the period from the actual date of commercial operation i.e from 4.4.2012 to 31.3.2014.

2. Aggrieved by the said order, the petitioner has submitted that there is error apparent on the face of order and has sought review raising the following issues:

- (a) *The cost over run for the delay of 14 months have to be shared equally between NTPC and the beneficiaries on the ground that NTPC cannot be absolved of its responsibility even though the delay was for reasons not attributable to NTPC;*
- (b) *Not allowing the delay of 1 month on account of the Parliamentary Elections in 2009;*
- (c) *Non-consideration of the delay of 2 months due to the damaged sluice gate as a force majeure event;*
- (d) *Disallowance of ₹2132 lakh on pro rata basis as increase in the contract price due to escalation of cost for the period of delay of 14 months for the main plant turnkey package and the main plant civil work package;*
- (e) *Disallowance of ₹7920.52 lakh (50% of 15841.04 lakh to be shared equally between NTPC and the beneficiaries) as cost overrun towards Interest During Construction & Financing Charges;*
- (f) *Non-consideration of the start date for interest calculation in few Bond Series;*
- (g) *Calculation of the weighted average rate of coal as ₹3494.27 per MT instead of the recomputed ₹3544.99 per MT;*
- (h) *Non-consideration of the increase in Water charges;*
- (i) *Non consideration of relaxation of Target Availability to 80%;*
- (j) *Disallowance of ₹760.18 lakh (50% of ₹1520.36 to be shared equally between NTPC and the beneficiaries) as cost overrun due to time overrun for Incidental Expenditure During Construction.*

Other Issues

- (k) *Surveillance fee of 0.03% paid by the petitioner in all bond series to be considered in calculation of weighted average rate of interest*
- (l) *In case of PFC-V loan, D-22 repayment has not been considered in calculations at Form -13;*
- (m) *Values at depreciation computation table at para 61 is different from the AFC components considered in the instant order.*

3. The petition was heard on 8.5.2014 on 'admission' and the Commission after hearing the learned counsel for the petitioner admitted the petition on the issues raised above.

4. Reply to the petition has been filed by the respondent, GRIDCO and the petitioner has filed its rejoinder to the same. The petitioner has also filed its written submissions vide affidavit dated 29.5.2014.

5. Heard the parties and examined the documents available on record. The issues raised by the petitioner have been examined and dealt with in the subsequent paragraphs.

Impact of Time and Cost Overrun for the delay of 14 months

6. The Commission in order dated 21.1.2014 had examined the reasons for the delay in the commissioning of the project and had concluded that the impact of time and cost overrun of 14 months leading to the said delay should be borne equally in the ratio of 50:50 by the petitioner and the respondents. The relevant portion of the order is extracted as under:

"16..... Even though the petitioner cannot absolve itself of its responsibility for the delay due to non performance of the contractors, it is necessary to consider as to whether there was slackness on the part of the petitioner to coordinate with the contractor or to take prudent steps to prevent the delay in completion of the project. It is evident from the above submissions that the delay of 14 months (excluding 3 months due to rainfall) in the completion of the project is due to the non-mobilisation of resources on the part of M/s BHEL, delay due to technical flaws in Bottom Ash hopper, failure of the instrument air and service air compressor motors, etc., It is noticed that Boiler Erection activities came to a standstill after four months from start of work due to non mobilization of Heavy lift crawler crane by M/s BHEL and the petitioner had continuously followed up with M/s BHEL for mobilization of high capacity crawler crane. This issue was finally resolved in a meeting between the petitioner and BHEL on 2.9.2008 wherein it was decided that the petitioner would hire High Capacity Crane as per technical specifications of BHEL and provide the same to BHEL on rental basis as a unique and special initiative. The petitioner had placed LOI on 27.10.2008 on the agency for mobilisation of High capacity crane at site and with all efforts and initiative, the high capacity crane was made available to BHEL at the earliest possible time at site by 4.12.2008 after load test. Thus, with all efforts taken by the petitioner, and optimum use of resources, drum lifting could be completed during February, 2009 i.e with a delay of 12 months. Also, BHEL was finding it difficult to finalise qualified sub-vendor for boiler erection due to non-participation of qualified vendors in the bidding process and ultimately, one bidder qualified with its financial offer being too high. BHEL could not award the contract and on persistent follow up by the petitioner, short term contract, to start boiler erection was resorted to avoid further delay and M/s Golden Edge Engineering was engaged by BHEL as makeshift agency to complete the work upto drum lifting which took one and half months to mobilise its resources at site. Similarly, in the course of commissioning, bottom

ash handling system consistent operation could not be established due to major and critical technical flaws in the various associated components as mentioned earlier. It is observed that these problems were resolved only after several meetings between M/s Indure and NTPC on various dates i.e on 25.9.2011, 25.11.2011 and 30.12.2011 respectively. Pursuant to this, the operation of Bottom ash handling system could be established in January, 2012 after carrying out various modifications. It is evident from the above that there has been no imprudence on the part of the petitioner in the selection of M/s BHEL as the principal contractor or in the execution of contractual agreements or any delay in awarding of contracts or any slackness in project monitoring. However, there has been delay in the completion of project due to various reasons like the non participation of qualified vendors in bidding process, the non mobilisation of resources at site, technical flaws in bottom Ash system and Instrumentation Air system etc. It is observed that the petitioner was constantly monitoring and co-ordinating the activities of the principal contractor/sub-contractors and had initiated various steps to mitigate the delay in the completion of the project as narrated above. Despite reasonable efforts on the part of the petitioner, there has been delay in the completion of the project. This in our view cannot be fully attributable to the petitioner. Accordingly, we are of the considered view, that the principle to be applied in terms of the situation (i) and (ii) as laid down in the judgment of the Tribunal referred to in para 12 above, is not attracted in the instant case. However, the delay in the completion of the project had occurred due to the failure on the part of contractor/sub-contractors to carry out the works as per schedule, despite reasonable efforts taken by the petitioner. This, in our view, cannot fully absolve the petitioner and the respondents cannot also be asked to carry the entire burden on account of the said delay. Keeping in view that time is the essence of the contract in respect of the project work, and considering the fact that delay in the completion of the project is not fully attributable to the petitioner, we conclude that the principle laid down in situation (iii) of the judgment of the Tribunal as referred to in para 12 above is applicable in the instant case. Accordingly, we direct that the impact of time and cost overrun of 14 months should be borne equally in the ratio of 50:50 by the petitioner and the respondents. Moreover, the additional cost due to time overrun including the Liquidated damages and insurance proceeds, if any, received from the contractor should be shared between the generating company and the respondents/consumers."

7. The petitioner has submitted that even though the delay and the consequent cost overrun was for reasons beyond the control of NTPC, the Commission has held in the impugned order that the impact of time and cost overrun for the delay of 14 months has to be borne equally by NTPC and the respondent beneficiaries. The petitioner has also pointed out that the Commission has duly noted that NTPC took all reasonable efforts and initiatives to mitigate the delay in completion of the project and also after going through the justifications and submissions filed by NTPC had concluded that there had been no imprudence on the part of NTPC in the selection of contractor or in the execution of contractual agreements, nor there has been any delay in awarding of contracts or monitoring of projects. The petitioner has stated that despite the above, the Commission has held that NTPC cannot be fully absolved of its responsibility and shall have to bear 50% of the total costs due to time overrun. The petitioner has contended that the Commission having concluded that NTPC was not imprudent in selecting M/s BHEL to execute the project and that the delay is not attributable to NTPC ought not to have held NTPC to bear the consequences of the delay. In the circumstances, the petitioner has submitted that the matter would fall under category (ii) of the judgment of the Tribunal dated 27.4.2011 in Appeal No.72/2010 (MSPGCL-v-MERC & ors) which the Commission had applied in the case. NTPC has also submitted that the delay is clearly within the ambit of category (ii) which provides for delay in factors beyond the control of the generating company

such as Force Majeure like natural calamity or any other reasons which clearly establish beyond doubt, that there has been no imprudence on the part of the generating company in executing the project. NTPC has also contended that the decision that NTPC cannot be absolved of its full responsibility for the delay is contrary to the findings and conclusions on facts reached and is therefore an error apparent on the facts of the case and otherwise there are sufficient reasons for review of decision in the order on the above aspect.

8. The respondent, GRIDCO while objecting to the above submissions of the petitioner supported the decision of the Commission to make NTPC partially responsible for the delay in terms of the judgment of the Tribunal and allow 50% of IDC for the period. Accordingly, the respondent has submitted that there is no error apparent on the face of the record as a clear finding has been given by the Commission on this issue.

9. We have considered the submissions of the parties. Admittedly in the present case, there has been a delay of 14 months (excluding 3 months due to rainfall) in the completion of the project on account of Industrial unrest, non-mobilization of high capacity crane and delay in start of boiler erection by the make-shift agency. The Commission after considering the submissions of the petitioner came to the conclusion that the petitioner had made reasonable efforts to expedite the execution of the project through the contractor and therefore, delay could not fully attributable to the petitioner. However, considering the fact that there was delay due to failure on the part of the contractors/sub-contractors to carry out the works as per schedule and keeping in view that time is an essence of the contract, the Commission, by a conscious decision, concluded that the petitioner could not be fully absolved of its responsibility for the delay, and the impact of such delay could not be passed on to the respondents who had no role to play during the execution of the project. Accordingly, the Commission, in the facts and circumstances of the present case, applied the principle laid down in situation (iii) of the judgment dated 27.4.2011 of the Tribunal in Appeal No. 72/2010 and directed that the impact of time and cost overrun should be borne equally in the ratio of 50:50 by the petitioner and the respondents. The submission of the petitioner that the Commission having found that delay was not fully attributable to the petitioner should have applied the principle laid down in situation (ii)-(Force Majeure) of the judgment dated 27.4.2011 is not tenable as the petitioner is ultimately responsible for ensuring timely completion of the project. Even if no imprudence could be attributed to

the petitioner in the selection of M/s BHEL for execution of the works, the delay due to failure of the contractor / sub-contractors to carry out the works as per schedule, would not fully absolve the petitioner of its responsibility to ensure the completion of the said works, as time is the essence of contract. Considering the totality of the facts and circumstances of the case, the Commission had correctly applied the principle (ii) laid down in the said judgment of the Tribunal by directing the sharing of the cost and time overrun in the ratio of 50:50 by the parties. Accordingly, we find no error apparent on the face of record and review on this count is therefore rejected.

Delay on account of the State Assembly and Parliamentary elections

10. The Commission in its order while considering the claim of the petitioner for stoppage of work due to Parliamentary elections in May, 2009 had noticed that the said work of boiler erection could not start till April, 2009 (30.4.2009) due to industrial unrest, even though the agency was appointed in January, 2009. Since the work had not started, the claim of the petitioner for stoppage of work due to Parliamentary elections was not accepted. Accordingly, the delay in completion of the project on this ground was rejected.

11. The petitioner in this petition has submitted that the election process affected the entire work in the State. The petitioner has submitted that the Commission had failed to appreciate that M/s BHEL had sorted out all associated industrial related issues and was ready to undertake the said work in April, 2009, but was delayed on account of Parliamentary elections. The respondent, GRIDCO has submitted that the petitioner has concealed material facts and is trying to re-argue the original matter which is not permissible in the review petition.

12. The matter has been examined. The contention of the petitioner that the agency appointed by M/s BHEL namely, M/s Powermech was ready to undertake work but could not do so due to Parliamentary Elections is not acceptable since the petitioner had not furnished any documentary evidence substantiating that the main boiler erection agency had started work from 1.5.2009 and could not continue the said work due to Parliamentary elections. The Commission after taking into consideration the available records, had arrived at a conclusion in its order dated 21.1.2014 that the delay cannot be condoned. The petitioner, in review, has sought to reopen the issue on merits which in our view, is not permissible. In view of the above, the prayer of the petitioner for review on this ground is rejected.

Non-consideration of the delay of 2 months due to the damaged sluice gate as a force majeure event

13. The Commission in order dated 21.1.2014 rejected the prayer of the petitioner for condonation of the delay of 2 months due to non-availability of cooling water due to damaged sluice gates maintained by the Farakka Barrage Authority. The petitioner has contended in the review petition that the delay resulting on account of damaged sluice gates prevented the supply of cooling water from Farakka Barrage to the generating station which affected the commencement of the operation of the generating station. The petitioner has submitted that it was a force majeure event affecting the declaration of commercial operation of the generating station as no person can proceed to declare the commercial operation of the without the supply of cooling water. The petitioner has further submitted that it could proceed to declare commercial operation of the generating station only after repair of sluice gates by Farakka Barrage Authority over which it has no control. The petitioner has also added that the Commission has not considered the delay caused due to non performance of ash handling system and compressed air system and the petitioner has borne the consequent time and cost overrun costs on these counts. The respondent has submitted that that the findings of the Commission are clear and there is no error apparent on the face of the record and review on this issue is not maintainable.

14. We have examined the submissions of the parties. We notice that the Commission in its order dated 21.1.2014 had rejected the contentions of the petitioner as above, considering the fact that the work of bottom ash handling system and instrument air system, if completed in time, could have been faced the problem of cooling water supply from Farakka Barrage at that point of time, as the sluice gates were not in damaged condition at that time. Having considered the submissions of the petitioner justifying the delay on account of force majeure and the same having been rejected by the Commission by a conscious decision by applying the principle [(situation (iii))] as laid down in the judgment of the Tribunal dated 27.4.2011, we find no reason to re-consider the prayer of the petitioner for review of order dated 21.1.2014. In our view, the petitioner has sought to reopen the case of merits and the same is not permissible on review. Accordingly, the prayer of the petitioner for review of order is rejected.

Disallowance of ₹2132 lakh as increase in Contract price

15. The petitioner has submitted that the Commission in its order dated 21.1.2014 has disallowed an expenditure of ₹2132 lakh towards increase in the Main Plant turnkey package and the Main plant civil work package on *pro rata* basis relating to increase in the contract price, due to escalation of cost for the delay of 14 months. The petitioner has also submitted that the Commission has compared the awarded value with the capitalization amount on cash basis (cash expenditure), as on the actual date of commercial operation and had disallowed the difference in excess, on account of the escalation in contract price due to time overrun. The petitioner has further submitted that in Form-5D at page -19 of the petition amended vide affidavit dated 7.9.2012, it had submitted that "*in civil packages actual capital expenditure includes owner issued materials wherever applicable*"

16. The petitioner has stated that the awarded price of the Main Plant Civil Package was ₹9200 lakh, excluding the materials (steel and cement) supplied by NTPC to the contractor free of cost and such free supply of steel and cement by NTPC is outside the scope of the contract. It has also been submitted that the capital expenditure (as on commercial operation date) of ₹18756.36 lakh is however inclusive of these materials. The details of the cash expenditure in Main Plant Civil Package are as follows:

Main Plant Civil Package		
A	Award Value	₹ 9200 lakh
B	Expenditure as on COD 4.4.2012	₹ 18756.36 lakh
C	Less: Free Issue (steel & Cement) up to COD	₹ 12169.19 lakh
D	Works Cost (including Taxes & Duties) (B-C)	₹ 6584.17 lakh (D<A)

17. Accordingly, the petitioner has pointed out that the cash expenditure as on the date of commercial operation of the unit is well within the awarded cost when the cost of the materials supplied free of cost to the contractor is excluded. The petitioner has further submitted that in the Main Plant Package, against an award value of ₹114386 lakh, the actual expenditure of ₹ 124311.45 lakh shown in Form-5D (Serial No.3) includes the pre commissioning expenses amounting to ₹13471.35 crore. The petitioner has further stated that the Commission had allowed the capitalization of the pre-commissioning expenses in order dated 21.1.2014 and the details regarding the pre-commissioning expenses incurred were filed by NTPC in its petition amended vide

affidavits dated 7.9.2012 and 2.8.2013 respectively, wherein NTPC had submitted Auditor Certificate showing the pre-commissioning expenses capitalized on the date of Commercial Operation of the generating station. The petitioner has further contended that the pre-commissioning expenses were capitalized/ booked to the Main Plant SG and TG package as per accounting guidelines and these expenses do not form part of the contract award value. The details of the expenditure of the Main Plant Package, as on the date of commercial operation submitted by the petitioner are as under:

Main Plant Package		
A	Award value	₹ 114386 lakh
B	Expenditure as on COD 04.04.2012	₹.124311.45 lakh
C	Less: Pre-commissioning expenses capitalized on COD	₹.13471.35 lakh
D	Works Cost (including Taxes & Duties) (B-C)	₹.110840.10 lakh (D<A)

18. Based on the above, the petitioner has contended that if the pre-commissioning expenses were to be removed from the expenditure, as on the date of commercial operation, the erection and supply cost is well within the awarded value. The petitioner, without prejudice to above submissions, has further submitted that NTPC enters into contract agreements with the contractor wherein the price variation clause clearly specifies that the contract price shall be subject to price adjustment during the performance of the contract to reflect the changes in the cost of labour and material components etc. The petitioner has stated that the price variation clause envisages price escalation payable by NTPC to the contractor, up to the contract date (scheduled date) or the actual date, whichever is earlier. The petitioner has further contended that the contract entered into between NTPC and BHEL clearly indicates that NTPC is liable only for the escalation up to the scheduled date and the additional escalation for the delay on the part of the contractor is to be borne by the contractor itself. Accordingly, the petitioner has submitted that there is error apparent on the facts of the case or otherwise sufficient justification for review of the decision.

19. The respondent in his reply submitted that the contents of the relevant paragraphs in the order dated 21.1.2014 would show that NTPC failed to provide proper clarification in respect of the information sought by the Commission. The respondent has also submitted that the details indicating recoveries made against the contractors who were responsible for delay were not submitted by the petitioner and the petitioner has concealed

the material information from the Commission as well as from the beneficiary-respondents. The respondent has contended that under these circumstances, the Commission has no option but to adopt the *pro rata* increase in the contract price.

20. We have examined the matter. Based on the data submitted by the petitioner in the tables under paras 16 and 17 above, the petitioner has contended that if the "free issue material cost" and "pre-commissioning expenses" were removed from the expenditure, as on the date of commercial operation, the cash expenditure on the Main Plant and Main Plant Civil Works are within the awarded value and hence there is no cost overrun due to time overrun. However the above submissions of the petitioner do not find mention in the Form-5D submitted by the petitioner vide affidavit dated 7.9.2012, except for the statement that *in civil packages, actual capital expenditure includes owner issued materials wherever applicable*". It is also noticed that the petitioner has not indicated as to how much cost of free issue materials have been included in the actual expenditure on Civil Packages and the fact that the Main Plant Turnkey Package cost as on COD includes pre-commissioning expenses. In addition to this, though the petitioner was directed by letter dated 28.5.2012 to provide the information as to the escalation paid during the period from the schedule COD to the actual COD in the different contract packages, no proper clarification was submitted by the petitioner in respect of the said information sought for by the Commission. Hence, based on the available information, the matter was examined and the Commission on prudence check, had rejected the claim of the petitioner in order dated 21.1.2014. The petitioner, having not submitted the relevant clarification/information as called for by the Commission on this issue, cannot argue that the Commission has not considered the submissions filed by it and had disallowed the same. In our view, there is no apparent on the face of the order and review on this ground is rejected.

Disallowance of ₹7920.52 lakh as Cost over run towards Interest During Construction & Financing Charges and disallowance of ₹760.18 lakh as cost overrun due to time overrun for Incidental Expenditure During Construction.

21. As the issues involved are the same, both the prayers have been clubbed together and examined. As regards the disallowance of ₹7920.52 lakh, the petitioner has submitted that the Commission should not have directed the sharing of the amount of ₹15841.04 lakh towards IDC and FC as cost overrun, as the case of NTPC

squarely falls under category-II as decided by the Tribunal in its judgment dated 27.4.2011, considering the fact that delay is not attributable to NTPC and the entire time and cost overrun resulting in delay ought to have been allowed. The petitioner has also contended that the Commission had disallowed ₹760.18 lakh (50% of ₹1520.36 lakh to be shared equally between NTPC and the beneficiaries) as cost overrun due to time over run for Incidental Expenditure during Construction. The petitioner while pointing out that there is mistake in the methodology applied for the computation of time and cost overrun has submitted that it is evident from the details of various loans drawn during the period from 5.2.2011 to 4.4.2012 furnished in Form-8 and Form-14 of the petition amended vide affidavit dated 7.9.2012 that around 27% of the debt is deployed during the said period which form part of the admitted capital cost. Accordingly, the petitioner has submitted that disallowance of IDC (including notional IDC) for the debt deployed during time overrun is leading to a situation wherein debt deployed is allowed but corresponding IDC and FC are disallowed which is against the objectives of the regulations of the Commission, which mandates appropriate servicing of the actual capital cost deployed by the generator. The petitioner has also stated that it was clearly brought out in affidavit dated 7.9.2012 that the deployment of loan gets deferred on account of delay during execution of the project for the reasons beyond the control of NTPC and accordingly, the Commission ought to have adopted a correct mathematical computation of disallowance of IDC and FC against time overrun, considering the deployment of loans after 5.2.2011 and not merely disallowing them after a particular date without going into the details of actual debt deployment position. Relying upon the principle laid down by the Tribunal in the said judgment dated 27.4.2011 on the issue of IDC, the petitioner has submitted that the IDC (including notional IDC) of ₹4344.33 lakh should have been disallowed by the Commission instead of ₹7920.52 lakh. The respondent, GRIDCO while referring to the examples quoted by the petitioner, has submitted that since there are two opinions on this issue it cannot be said to be an error apparent on the face of the record. The respondent has also submitted that since the partial responsibility of the petitioner has been determined by the Commission as 50% in line with the judgment of the Tribunal, the review may be rejected. The petitioner while reiterating the above contentions has in its written submissions contended that the Commission in its order dated 19.5.2014 in Petition No. 112/TT/2012 had considered the time and cost overrun on a proportionate basis and the same has been consistently applied by the Commission. Accordingly, the petitioner has prayed that the

Commission should have appropriately considered the deployment of loan which got deferred on account of delay in this present case.

22. We have considered the submissions of the parties. As stated, the Commission in its order has rejected the prayer of the petitioner for condonation of delay of 14 months in the execution of the project considering the same as 'Force Majeure' and had directed that the impact of time and cost overrun shall be shared in the ratio of 50:50 by the petitioner and the respondents by applying the principle [(situation (iii)] laid down in the judgment of the Tribunal dated 27.4.2011.

23. In terms of Form-14 of the 2009 Tariff Regulations, details of IDC computation is sought for from the petitioner in case of new projects. Accordingly, the details of each loan drawn, the date of drawal of individual loans, the moratorium period applicable, the repayment frequency, first repayment date, the applicable interest rate loan-wise, reset date of interest as applicable and IDC accrued on the said loan based on the applicable loan terms are furnished by the petitioner. The total IDC is the summation of IDC of all individual loans based on the capitalization ratio between the Gross block/CWIP/Chargeable to revenue on case to case basis. Though the method of calculation of the IDC claimed has not been indicated by the petitioner in this petition nor in any other petition till date, it is ascertained that the petitioner has made IDC computation in this case (as well as all cases till date) on the basis of the fundamental formula, as shown below, by considering the applicable terms of loans including the applicable interest rate, repayments made during the period and number of days for which the debt is outstanding.

[Outstanding Principal x applicable Rate of Interest per annum x Number of days the principal is outstanding]/ Number of days in the year i.e Interest= $P \times R \times T/365$

24. The IDC disallowed in order dated 21.1.2014 is the accrued and payable IDC computed on the formula stated above for the period between the scheduled COD and the actual COD of the generating station. The IDC (as the name implies) i.e only interest component is disallowed and is not considered in the allowed capitalized gross block for the purpose of tariff since time (t) being disallowed is treated as zero. Since T only is considered as zero, the drawls subsequent (P) is considered as drawn, but is allowed zero interest in the disallowed time

period as it has been held that the petitioner cannot be fully absolved for the period of delay, and the interest cost for such period, if any, is to be borne by the party responsible for the delay and not by any other party. After the actual COD, the cost (interest) gets serviced in tariff as interest on loan appropriately as the debt component as already stated above is recognized as part of admitted capital cost and only Interest component (IDC) during the period of disallowance is not part of the admitted capital cost, as servicing of such cost is not contemplated. The petitioner cannot in our view, chose two different methods for IDC, i.e one for the computation as per the fundamental formula above and the other, in case of penalty for the purpose of deduction, the method proposed by the petitioner, as the same will lead to erroneous results. In other words, the petitioner should follow a consistent methodology for IDC. In the above background, we find no infirmity in the computation of IDC and IEDC worked out and disallowed by Commission in order dated 21.1.2014. Accordingly, there is no error apparent on the face of the order dated 21.1.2014 and review on this ground fails.

25. The submission of the petitioner that the Commission in order dated 19.5.2014 in Petition No. 112/TT/2012 had considered the time and cost overrun on a proportionate basis and the same may be considered in the present case cannot be accepted as the decision taken by the Commission in order dated 19.5.2014 in Petition No.112/TT/2012 is based on the facts and circumstances prevalent in that case and cannot be extended to the instant case of the petitioner. It is clarified that the method adopted in the present case for IDC computation has been consistently followed by the Commission in the various tariff orders of the generating stations of the petitioner and accordingly the decision taken in Petition No.112/TT/2012 cannot be a ground for review of the decision in the impugned order.

Non-consideration of the start date for interest calculation in few Bond Series

26. The petitioner has submitted that the Commission had not considered the difference in the date of receipt of money and the deemed date of allotment for Bond series while restricting the interest. The petitioner has also submitted that the Commission has not considered the explanation provided by the petitioner with regard to the criteria for applying the start date in affidavit dated 6.2.2013, wherein it is evident that the interest starts accruing from the date of receipt of the bond money before the deemed date of allotment of bonds. Accordingly, the petitioner has prayed that there is error apparent on the face of record for review of the decision.

27. The matter has been examined. It is noticed that the interest calculations have been made considering the submissions made by the petitioner in Form-8 of the petition and accordingly, the submissions of the petitioner in this petition are not clear. However, the error, if any, pointed out by the petitioner as above shall be rectified at the time of truing-up of tariff of the generating station, based on the clarifications to be submitted by the petitioner in this regard.

Calculation of the weighted average rate of coal as ₹3494.27 per MT instead of the recomputed ₹3544.99 per MT;

28. The Commission in order dated 21.1.2014 had considered the weighted average price of coal as ₹3494.27/MT for working out the Energy charge. The petitioner in this petition has submitted that the petitioner vide affidavit dated 26.9.2013 had revised Form-15 segregating the domestic coal received through MGR and the railways separately while considering the transit loss of 0.2% for the domestic coal received through MGR and 0.8% for domestic coal received through railways. Accordingly, the petitioner has prayed that there is error apparent on the face of the record for review of the decision in the order. The respondent has submitted that the generating station is a pit head station and accordingly a normative transit handling loss of 0.2% is permissible.

29. We have examined the matter. Admittedly, the petitioner vide affidavit dated 26.9.2013 had submitted revised Form-15 in the present case. On scrutiny, the following observations were noticed in the 'Foot Note' of the Form-15 as under:

"The weighted average rate of imported coal for the month of March, 2012 is Rs. 5024/MT. The deviation w.r.t. the weighted average rate in Jan., 2012 (Rs. 9423.88/MT) and Feb., 2012 (Rs. 9245.15/MT) is on account of contractual adjustments."

30. Considering the above, the petitioner was directed to clarify as to the nature of contractual adjustments made in March, 2012 regarding imported coal. The petitioner, after taking into account the contractual adjustments of imported coal in March, 2012 had furnished the weighted average price of coal as ₹3494.27/MT instead of ₹3544.99/MT. This was considered by the Commission while working out the Energy charges for the generating station in order dated 21.1.2014. Since the clarification furnished by the petitioner has only been

considered for working out the Energy charges in the Working Capital for the generating station, we find no reason to agree with the contentions of the petitioner. Hence, review of order on this ground is rejected.

Non-consideration of the increase in Water charges

31. While rejecting the prayer of the petitioner for consideration of the increase in water charges, the Commission in its order dated 21.1.2014 had observed as under:

"87. We have considered the submissions of the parties. The generating station is located in the State of West Bengal. It is noticed from the submissions of the petitioner that no such notification for any increase in the water charges has been issued by the State of West Bengal. In view of this, the issue raised by the petitioner is premature and there exists no reason for us to consider the claim of the petitioner on the presumption that there would be increase in water charges future. Hence, the prayer of the petitioner is rejected. "

32. The petitioner in this petition has submitted that the Farakka generating station, Stage-III as well as the existing generating station (Farakka STPS, Stages-I & II) fulfils the water requirements from the Farakka Barrage which is under the purview of the Central Water Commission, Ministry of Water Resources under the Govt. of India and not under the State of West Bengal. The petitioner has also submitted that the Commission has not considered the details provided by the petitioner in affidavit dated 6.3.2012 pertaining to Notification in Petition No. 121/MP/2011 pending before the Commission, which indicates an approximately 3000% increase in water charges from Farakka Barrage. The petitioner has further pointed out that the Commission in its order dated 14.6.2012 in Petition No. 222/2009 (tariff of Farakka STPS, Stage-I & II) while addressing the issue of water charges has held that the decision taken in the said petition (i.e *Petition No. 121/MP/2011*) would be applicable to the said generating station. Accordingly, the petitioner has submitted that there is error apparent on the face of record for review of the decision and allow any decision taken in the said petition (*Petition No. 121/MP/2011*) to be made applicable to the instant generating station also. The respondent, GRIDCO has submitted that any relief claimed in the plaint, which is not expressly granted in the order is deemed to have been refused by the Commission.

33. We have examined the matter. It is observed from the submissions of the petitioner in the original petition that the petitioner had neither mentioned that the Govt. of West Bengal had increased the rate of Water charges as a result of which Farakka STPS, Stage-III has also been affected nor had given any reference of the Petition

No. 121/MP/2011 pending before the Commission, with a prayer for application of the decision in the said petition to this generating station. Accordingly, the Commission in its order dated 21.1.2014 had rejected the prayer of the petitioner on the ground that the prayer of the petitioner was premature. Hence, there is no error apparent on the face of record. However, considering the prayer of the petitioner in this petition, we hold that decision taken in Petition No. 121/MP/2011 pending before the Commission pertaining to increase in water charges for some of the generating stations of the petitioner, would be made applicable to this generating station of the petitioner.

Non consideration of relaxation of Target Availability to 80%

34. The Commission in order dated 21.1.2014 had approved the Target Availability of 85% in terms of the provisions of the 2009 Tariff Regulations. The petitioner has submitted that the Commission in its order dated 21.1.2014 has not considered the relaxation of the Target Plant Availability factor from 85% to 80% under Regulation 44 of the 2009 Tariff Regulations, on account of the shortfall in coal while determining the operational parameters for the generating station. The petitioner has also submitted that the Commission has not taken into consideration the fact that the generating station was developed based on a coal linkage from the Brahmani coal block which was subsequently augmented by the linkage from Chichro Patsimal coal block. However, the mining from these coal mines has not commenced. The petitioner has further submitted that it had prayed for relaxation of target availability to 80% under Regulation 44 and had given justifications for the same vide its affidavit dated 26.8.2011 which had not been considered by the Commission in order dated 21.1.2014. Accordingly, the petitioner has submitted that there is error apparent on the facts of the case or otherwise sufficient reasons for review of the decision taken in the said order on the above aspect. The respondent, GRIDCO has submitted that the non-consideration of the said prayer by the Commission cannot be a subject matter of review in the proceedings under Section 114 read with Order XL VII of the Civil Procedure Code (Code). Drawing reference to Explanation V given below Section 11 of the Civil Procedure Code, the respondent has submitted that any relief claimed in the plaint, which has not been expressly granted by the decree, shall, for the purpose of this Section, be deemed to have been refused. Extending this principle to the proceedings before the Commission, the respondent has contended that the relief which has not been expressly granted by order dated 21.1.2014 should be deemed to have been refused. The respondent has also pointed out that the said principle has been followed

by the Commission in its order dated 27.8.2007 in Review Petition No. 70 of 2007. Accordingly, the respondent has argued that the re-consideration of this issue afresh by the Commission is not permissible in review.

35. The matter has been examined. It is noticed from Form-3 of the tariff filing forms furnished vide affidavit dated 7.9.2012 (amended petition), the petitioner had considered the normative Target Availability of 85% and had claimed tariff accordingly, despite the prayer for relaxation of Target Availability to 80% in the original petition. No submission was made by the petitioner in affidavit dated 7.9.2012 indicating that a prayer for relaxation of Normative Target Availability had been made in the original petition. Accordingly, the Commission, taking into consideration the submissions made in affidavit dated 7.9.2012 had approved the Target Availability of 85% for the generating station in order dated 21.1.2014. The petitioner having not insisted upon relaxation of Target Availability to 80% in its affidavit dated 7.9.2012, cannot now seek review of order on the ground of error apparent on the face of the order. In view of this, there is no error apparent on the face of the order and review on this ground fails. However, the petitioner, if so advised, is at liberty to approach the Commission for the said relief by way of an appropriate application for consideration in accordance with law.

Other Issues

36. As regards the prayers of the petitioner under this head for correction of calculation errors in respect of Surveillance fee of 0.03% paid in all bond series and considered in the calculation of weighted average rate of interest, the non-consideration of D-22 repayment in calculations at Form-13 in case of PFC Loan and consideration of different values of depreciation computation in para 61 of the order, the ministerial error noticed in the order dated 21.1.2014 shall be corrected at the time of truing-up of tariff of the generating station for 2009-14. Accordingly, the reliefs sought for on these grounds are disposed of.

37. Review Petition No. 9/RP/2014 is disposed of in terms of the above.

Sd/-
[A.K.Singhal]
Member

Sd/-
[M. Deena Dayalan]
Member

Sd/-
[Gireesh B.Pradhan]
Chairperson