

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
(LEGAL DIVISION)**

**Record of Proceedings**

**PETITION No. 50/2008**

Coram: Dr. Pramod Deo, Chairperson  
Shri Bhanu Bhushan, Member  
Shri. R.Krishnamoorthy, Member  
Shri S Jayaraman, Member

Petitioner: TNEB

Respondent: NTPC Ltd.

Date of hearing: 16.12.2008

Subject: Refund of excess tariff collected on the capitalization of outstanding liabilities not materialized and consequent withdrawal of such excess capitalization in respect of Ramagundam Super Thermal Power Station, Stage I & II and other stations of NTPC during 2001-04.

Parties present: (1) Shri. AK Juneja, NTPC  
(2) Shri VK Padha, NTPC  
(3) Shri Sameer Aggarwal, NTPC  
(4) Shri PS Ganeshan, TNEB

The petitioner has filed this petition for direction to the respondent to refund the tariff consequent to withdrawal of excess capitalization made in respect of the Ramagundam Super Thermal Power Station Stage I & II (hereinafter referred to as the generating station) and to pass similar orders in respect of other generating stations of the respondent such as Farakka, Kahalgaon and Kayamkulam TPS.

2. The Commission had determined the tariff of the generating station for the period 2001-04 and 2004-09 vide its order dated 6.8.2006 in Petition No.34/2001 and order dated 30.6.2006 in Petition No.148/2004 respectively. Additional capital expenditure incurred during the period 1.4.2001 to 31.3.2004 was determined vide order dated 3.5.2005 in Petition No.173/2004. As the tariff regulations of 2001 provided that the additional capitalization constituting less than 20% of the capital cost would be claimed in the next tariff period, the

additional capitalization in respect of the generating station was awarded alongwith the tariff for the period 2004-09 vide order dated 30.6.2006. As the additional capitalization for the period 2001-04 included withdrawal of certain excess capitalization done prior to 31.3.2001, the Commission directed the respondent and the beneficiaries to mutually settle the matter in the following terms:

“12. Besides, the petitioner has also decapitalised certain assets during the period 2001-04. These decapitalised assets were removed from the gross block to arrive at admissible additional capitalization for the purpose of capital cost while dealing with Petition No. 173/2004. The petitioner is maintaining accounts on accrual basis. This resulted in inflated capital base in earlier tariff period due to capitalization of liability provision. The expenditure for which provision was made did not materialise and it was decapitalised subsequently. But the petitioner has been allowed tariff on the inflated capital base till 31.3.2004. However, as decided by the Commission in other cases, tariff for the pervious period has not been reopened, and may be mutually settled between the petitioner and the beneficiaries.”

3. As the matter was not mutually settled, the petitioner filed the present petition seeking directions to the respondent to refund the excess tariff recovered for capitalized liabilities which did not materialize and were subsequently decapitalised. The Commission in its order dated 25.6.2008 directed the respondent to arrange a meeting with the petitioner within one month to arrive at mutual settlement and file a report before the Commission. The respondent has filed the report vide affidavit dated 29.8.2008. The petitioner has also filed its rejoinder.

4. The Commission heard the representatives of the petitioner and the respondent.

5. The representative for the petitioner submitted that the respondent had agreed to refund/adjust only the tariff due to decapitalisation of liabilities from 1.4.2001 to 31.3.2004 and not from the date of capitalization. He urged that as the respondent was not entitled to such tariff, it should return the same from the date of capitalization.

6. The representative of the respondent relying on the judgement dated 10.12.2008 passed by Appellate Tribunal for Electricity in Appeals Nos.151 and 152 of 2007 submitted that as per the law decided by the Tribunal, the committed liabilities were to be capitalized and serviced in tariff and accordingly, the prayer of the petitioner should be decided in the light of the said judgement.

7. In response, the representative of the petitioner submitted that the issue considered in the appeal pertained to deferment of payment for works which were already executed whereas in the present case the liability never materialized. As the respondent had received tariff for which it had not paid for,

the Commission may issue necessary directions to the respondent to refund/adjust the excess tariff so recovered.

8. After hearing the parties, the Commission reserved its order in the matter.

Sd/-  
(KS Dhingra)  
Chief (Legal)