

CENTRAL ELECTRICITY REGULATORY COMMISSION

RECORD OF PROCEEDINGS

I.A.No. 51/2006 in Petition No. 164/2004

Revision of O&M expenses for Auraiya Gas Power Station (663.36 MW) for the period from 1.4.2004 to 31.3.2009.

I.A.No. 52/2006 in Petition No. 160/2004

Revision of O&M expenses for Anta Gas Power Station for the period from 1.4.2004 to 31.3.2009.

I.A.No. 53/2006 in Petition No. 155/2004

Revision of O&M expenses for Dadri Gas Power Station (829.78 MW) for the period from 1.4.2004 to 31.3.2009.

I.A.No. 24/2008 in Petition No. 79/2005

Revision of O&M expenses for Kawas Gas Power Station (656.20 MW) for the period from 1.4.2004 to 31.3.2009.

Coram: Shri Bhanu Bhushan, Member
Shri R.Krishnamoorthy, Member
Shri S.Jayaraman, Member

Petitioner: NTPC

Respondents: MPPTCL, UPPCL, MSEDCL, GUVNL, CSEB, JVVNL, JdVVNL, AVVNL, BSES-Rajdhani Ltd, BSES-Yamuna Ltd, HVPNL, PSEB, HPSEB, UPCL, Power Development Department, Govt of J&K, Power Development Department, Admn. Of Chandigarh, Electricity Department, Govt. of Goa, Electricity Department, Admn. of Daman & Diu, Electricity Department, Admn of Dadra & Nagar Haveli,

Date of hearing: **25.11.2008**

Parties present: (1) Shri. M.G.Ramachandran, Advocate, NTPC
(2) Shri. S.N.Goel, NTPC
(3) Shri. Ajay Dua, NTPC
(4) Shri. A.S.Pandey, NTPC
(5) Shri. S.Saran, NTPC
(6) Shri. R.B.Sharma, Advocate, BSEB
(7) Shri. Pradeep Misra, Advocate, UPPCL

- (8) Ms. Yogmaya Agnihotri, Advocate, CSEB
- (9) Shri. R.K.Mishra, CSEB
- (10) Shri. D.D.Khandelwal, MPPTCL
- (11) Shri. Deepak Srivastava, MPPTCL
- (12) Shri. P.J.Jani, GUVNL
- (13) Shri U.V. Jiwani, MSEDCL

The petitioner, NTPC Limited has made these applications for revision of O&M expenses for the gas-based generating stations (hereinafter referred to as “the generating stations”) for the period from 1.4.2004 to 31.3.2009.

2. In the petitions filed before the Commission for determination for tariff for the generating stations for the period 2004-09, the petitioner had claimed O&M expenses based on actuals since the normative O&M expenses specified in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, (hereinafter referred to as “the 2004 regulations”) were considered by the petitioner to be highly inadequate on account of:

- (i) *Higher repair and maintenance (R&M) expenses due to ageing, higher replacement cost of spares, equipment failure etc. and*
- (ii) *Inclusion of cost of spares consumed at actuals after the warranty period and inclusion of additional capitalization disallowed.*

3. The Commission vide order dated 16.2.2006 directed the petitioner to place on record the following information before a view on the revision of O&M expenses for the generating stations was taken:

- (a) *Details of actual O&M expenses from the date of commercial operation of 1st GT of each of the generating stations to 2004-05,*
- (b) *O&M expenses recovered in tariff from the date of commercial operation of 1st GT to 2004-05;*
- (c) *Whether or not the capital spares issued at zero cost already included in the capital cost for the purpose of tariff; and*
- (d) *Basis of estimation of embedded cost of spares in respect of each of the above named gas based generating stations.*

4. In compliance with the above directions, the petitioner has filed the information in respect of the generating stations, through the interlocutory applications which were heard.

5. The first and second respondents MPPTCL and UPPCL in their replies submitted to the Commission had raised the following preliminary issues:

- (a) Maintainability of the interlocutory applications after disposal of the main tariff petitions; and
- (b) Submission of expected revenues from tariff and charges by generating companies or licensees before determination of tariff under sub-section (5) of section 62 of the Electricity Act 2003 (the Act)

6. Learned counsel for the petitioner first dwelt upon the above preliminary issues and argued that the Commission, in its order dated 16.2.2006 had directed the petitioner to file certain information and pending submission of such information, O&M expenses were provisionally allowed while disposing of the tariff petitions. As liberty was granted to the petitioner to file the petitions, it could not be said that the Commission had become *functus officio* or that the matter could not be reopened. As regards submission of expected revenues and charges from tariff under sub-section (5) of section 62 of the Act, learned counsel contended that the plea of the respondents, UPPCL and MPPTCL for implementation of the said provisions of the Act had no basis whatsoever as the Commission in exercise of power under Section 61 of the Act had notified the 2004 regulations laying down the norms for determination of tariff for the generating stations. Learned counsel also contended that sub-section (5) of section 62 could not be read independently of section 61 of the Act and in no case it envisaged triuing-up mechanism. Learned counsel further submitted that there was no need for separate regulations as the generating companies or transmission licensees were filing the expected revenues from tariff in terms of the norms laid down in the 2004 regulations which could not be revisited. On merits, learned counsel referred to the table under sub-section (d) of clause (iv) of Regulation 21 of the 2004 regulations which provide for O&M expenses of gas turbine stations with warranty spares of 10 years and without warranty spares. He pointed out that as the generating stations had completed 10 years warranty period much prior to the commencement of the control period 2004-09, they may be considered for reimbursement of O&M expenses as per the norms specified in column 2 of the table, that is, for gas turbines/Combined Cycle generating stations without warranty spares.

7. Learned counsel for UPPCL, reiterated that the interlocutory applications were not maintainable as the matter once decided by the Commission could not be reopened, except for rectification of errors. Learned counsel also contended that in Para 8 of the order dated 13.6.2006 in I.A 24/2006 in Petition No. 142/2004, filed by UPPCL, the Commission had decided that “after disposal of the petition for determination of tariff, the Commission has become *functus officio* and could not revisit the tariff already determined” and the same principle should be applied in the interlocutory applications under consideration. Learned counsel submitted that the norms laid down in the 2004 regulations were ceiling norms

and hence appropriate regulations under sub-section (5) of section 62 of the Act needed to be framed by the Commission consistent with the Act to avoid excess recovery of tariff and charges by a generating company or the transmission licensee. Learned counsel also submitted that the proper course for the petitioner would be to seek amendment of the relevant provisions of the 2004 regulations instead of seeking modification of the orders of the Commission determining the final tariff of the generating stations. Learned counsel further added that the petitioner having failed to file the details at the relevant time when the tariff petitions were pending should not be allowed to plead inadequacy of O&M expenses after the final disposal of the tariff petitions.

8. The representative of MPPTCL, reiterated that the interlocutory applications for revision of O&M expenses were not maintainable as the Commission in its order dated 29.3.2004 in Petition No. 67/2003 (*suo motu*) had already rejected the prayer of the petitioner to revise O&M expenses norms specified for the generating stations with supply of warranty spares free of cost for 10 years. He further submitted that as per the judgment of the Appellate Tribunal dated 14.5.2007 in Appeal no. 94/2005, O&M expenses were admissible as per norms contained in the 2004 regulations and not on actual basis. He further submitted that as the generating stations had completed the warranty period for 10 years as on 2002, the petitioner, if aggrieved, should have sought revision of O&M norms. He also contended that Commission was required to frame regulations under sub-section (5) of section 62 of the Act in order to ensure that the petitioner recovered a reasonable return as tariff and charges as mandated under the Act.

9. The representative of GUVNL, endorsing the submissions made by MPPTCL and UPPCL submitted that the petitioner was not entitled to revision of O&M expenses as it would amount to deviation from the 2004 regulations. He further submitted that as the tariff had been determined on normative basis, the petitioner might have gained under some head and lost under any other. The petitioner was not entitled to revision of one element of tariff if the actual expenditure on the said element exceeds the normative ceiling.

10. Learned counsel for the petitioner in his rejoinder reiterated that the interlocutory applications were filed pursuant to the directions of the Commission and, therefore, were maintainable. He also submitted that the respondents should be refrained from raising issues which are extraneous to the issues raised in the present applications.

11. Learned counsel for Chattisgarh State Electricity Board, sought adjournment of the matter on the ground that copy of the interlocutory application

(I.A.No.24/2008) was not served upon the respondent. The representative of the petitioner however clarified that the copy of the I.A. had already been served on the respondent at the time of filing the application and also subsequently pursuant to the order of the Commission dated 18.9.2008. The Commission, however, directed the petitioner to provide one more copy of the I.A. to the fifth respondent and granted time to file its written submissions within two weeks.

12. Orders in the I.As were reserved.

Sd/-
(K.S.Dhingra)
Chief (Legal)