

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

1. **Shri Ashok Basu, Chairperson**
2. **Shri Bhanu Bhushan, Member**
3. **Shri A.H. Jung, Member**

**Review Petition No.120/2006
in
Petition No.146/2004**

In the matter of

Review of order dated 21.8.2006 in Petition No. 146/2004, for approval of tariff in respect of Vindhyachal Super Thermal Power station Stage-II for the period 1.4.2004 to 31.3.2009.

And in the matter of

NTPC Ltd. , New delhi

....Petitioner

Vs

1. Madhya Pradesh Power Trading Company Limited, Jabalpur
2. Maharashtra State Electricity Distribution Co Ltd, Mumbai
3. Gujarat Urja Vikas Nigam Ltd, Vadodara
4. Chhatisgarh State Electricity Board, Raipur
5. Electricity Department, Govt of Goa, Panaji
6. Electricity Department, Govt of Daman and Diu, Daman
7. Electricity Department, Administration of Dadra & Nagar Haveli,
Sivassa.

.... Respondents

The following were present

1. Shri S.N.Goel, NTPC
2. Shri I.J.Kapoor, NTPC
3. Shri Lalji Agrawal, NTPC
4. Shri S.K.Sharma, NTPC
5. Shri A.S.Pandey, NTPC
6. Shri N.N.Sadasivan, NTPC

ORDER

(Date of Hearing: 28.11.2006)

This application has been made for review of order dated 21.8.2006 in Petition No.146/2004, determining the tariff in respect of Vindhyachal Super

Thermal Power Station Stage-II, (hereinafter called “the generating station”) for the period 1.4.2004 to 31.3.2009.

2. The petitioner has contended that there are certain fundamental errors in the said order dated 21.8.2006 and accordingly has sought review. According to the petitioner, the order needs to be reviewed on account of the following errors present therein :

- (a) Not considering First-In-First-Out (FIFO) method of loan repayment.
- (b) Impact of de-capitalization of assets on cumulative re-payment of loan.
- (c) De-capitalisation of liabilities-Impact adjustment for prior period.

First- In- First-Out (FIFO) method of loan repayment.

3. The petitioner has stated that it borrows money on the basis of consolidated corporate balance sheet which enables it to finalize loan on favourable terms. According to the petitioner, borrowing at the corporate level instead of at the specific project level enables it to reduce the cost of borrowing. In the absence of any specific stipulation to the contrary attached to a particular borrowing, the petitioner adopts FIFO method for repayment of loans. This is particularly beneficial to the respondents as the first drawals are generally at higher rates of interest and later drawls are at lower ones in the current interest rate regime. The petitioner also has the flexibility of re-negotiating loans on reduced rates of interest for subsequent drawal with the same lender.

4. According to the petitioner, it has been adopting FIFO method to allocate interest liability to its generating stations. The Commission has, however, not considered FIFO method of repayment and has followed the average method of repayment of loan, irrespective of the terms and conditions of the loan agreements. According to the petitioner, adoption of FIFO method of loan repayment would be more beneficial to the respondent beneficiaries of the generating station. The petitioner has accordingly sought review.

5. We are not satisfied with the submission.

6. With regard to FIFO method, the petitioner had stated in the tariff petition No. 146/2004 that -

(a) As the loans are to be drawn over a period of years and at the time of first drawal, it is not known whether the next drawal will be at same interest rate or reduced interest rate.

(b) Repayment of some of the loans started even before the entire sanctioned loan was fully drawn.

(c) In case the loan agreement is silent on the method of repayment, the petitioner adopts FIFO or average method in order to ensure minimal interest liability for the petitioner as well as the individual generating stations. The repayment and interest on loan is, thereafter allocated to the projects based on the method adopted.

7. Although loan is drawn by the petitioner at corporate level, determination of tariff is always for individual generating stations, considering project specific allocated loans. Also, it is seen that interest rate applicable to various drawals of

particular loan contracted on FIFO repayment method is not the same and can increase or decrease depending on conditions prevalent at a point of time. Allocation of loan to a particular generating station is within the discretion of the petitioner. By allocating loans to projects and adopting FIFO method of repayment, the repayment schedule will turn uneven and will lead to irregular repayment amount in different years; the difference at times may be substantial. Re-payment of some of the loans started even before the entire sanctioned loan was fully drawn. Therefore, FIFO method advocated by the petitioner is beset with a number of difficulties.

8. While fixing tariff for a particular generating station, adoption of FIFO method of repayment may lead to higher AAD for the existing generating stations and higher IDC for the ongoing projects artificially in view of the discretion available with the petitioner for allocation of loans to individual generating stations. Therefore, FIFO method does not take into consideration the principle of uniformity and consistency. By adopting average method of loan repayment at interest rates applicable to the drawal, the repayment schedule worked out is even and regular thereby eliminating the chance of higher AAD/IDC in tariff calculations. FIFO method of repayment also leads to a situation where loan drawal and allocation is after expiry of moratorium period. Further, the petitioner's contention that rate of interest will fall subsequently is not borne by facts as seen from the data available on record. It is also seen that by adopting FIFO method of repayment, loan repayment during the tariff period will be unevenly spread, which will result into the payment of AAD in the tariff where

the loan repayment is more than depreciation and benefit of full depreciation where the loan repayment is less than the depreciation.

9. In order to obviate the above-noted anomalies, a conscious view has been taken for averaging of the repayment during the tariff period calculated as “normative loan balance as per regulation divided by loan tenure as per loan agreement “ and this method has been traditionally followed in all cases of tariff determination, including the cases pertaining to the periods prior to 1.4.2004. The same methodology considered for earlier periods has been accepted by the petitioner without demur.

10. It is also significant that the petitioner is not put to any loss in terms of interest payment if average payment method is used in place of FIFO method. Adoption of re-payment on average basis is more reasonable.

11. In our considered view, the change of methodology suggested by the petitioner does not fall within the scope of review under Section 114 read with Order XLVII of the Code of Civil Procedure.

Impact of de-capitalization of assets on cumulative re-payment of loan.

12. The petitioner’s next grievance is that cumulative repayment of loan corresponding to the assets de-capitalised should also be adjusted to the extent of loan component of the de-capitalised assets to arrive at cumulative repayment, as on 1.4.2004, for the purpose of computation of tariff for the period 2004-05 to 2008-09. The petitioner’s case is that in the course of operation of the generating stations (which have a life of 25 years or more) it de-capitalizes

assets from time to time. On such de-capitalisation, the value of the capital assets is reduced in the balance sheet of the concerned generating station for accounting purposes. However, the Commission in its order dated 21.8.2006 has reduced the capital base to the extent of such de-capitalisation which has adversely affected its entitlement to tariff on the value of assets de-capitalised. The petitioner has stated that de-capitalisation of assets does not amount to taking back the capital employed in the assets except to the extent of the value recovered on sale of those assets, which generally is the scrap value. Further, according to the petitioner, de-capitalisation of assets does not reduce the loan capital and the obligation towards servicing of loan continues as scheduled. It has been urged that the revenue realized on the sale of the de-capitalised assets should be taken into account as a non-tariff income in the year in which such sale proceeds are realized. The petitioner has further submitted that if the de-capitalised assets are adjusted against the capital base, the cumulative depreciation recovered as well as the cumulative repayment of the loan proportionate to those assets de-capitalised should also be reduced. The Commission, in the order dated 21.8.2006 has made adjustment in cumulative depreciation on account of de-capitalisation without any adjustment of cumulative repayment of loan. The petitioner states that by such non-adjustment of cumulative repayment due to de-capitalisation, the petitioner will not be able to service the loan taken and employed for capital works, as the cumulative repayment has been allowed only to the extent of the reduced capital base.

13. We have considered the contention of the petitioner in this regard. There are generally two concepts associated with recovery of depreciation. According

to one concept, depreciation is charged for replacement of the assets, the other one relates depreciation to repayment of loan. In the present case, certain assets were de-capitalised and certain other assets capitalised for the period ending 31.3.2004 on their face value. For the assets de-capitalised, the petitioner was allowed recovery of depreciation of 90% of the value of the assets de-capitalised, which has been allowed to be retained by the petitioner, in addition to the scrap value of the assets de-capitalised. The entire value of the new assets replacing the old assets has been considered for the purpose of computation of tariff, without adjusting the depreciation recovered on the old replaced assets, discarding the first concept of recovery of depreciation. The petitioner is thus also entitled to recover interest on the entire loan amount considered for the new asset. By extending the second concept to the facts of the case on hand, funds for repayment of loan were available to the extent of depreciation recovered and have to be utilised accordingly. In case the contention of the petitioner for adjustment of loan component of the de-capitalised asset is accepted, it will amount to servicing the loans already recovered through depreciation recovered.

14. In the above circumstances, de-capitalisation of assets should not have any impact on cumulative repayment of loan recovered. Therefore, in our considered opinion, no case for review on this count has been made out.

De-capitalisation of liabilities-Impact adjustment for prior period

15. While determining tariff, the Commission in its the order dated 21.8.2006 has directed mutual settlement of impact of de-capitalisation of liabilities pertaining to the past periods.

16. The petitioner has submitted that it is maintaining accounts on accrual basis as per the requirement of the Companies Act,1956 and as laid down in Accounting Standards issued by the Institute of Chartered Accountants of India. The capital expenditure is entered in the books of accounts when the legal obligations to pay them arises, that is, all obligations of liabilities are to be recognized. Further, efforts are made to reduce the liabilities and/or otherwise to reduce the impact of the liabilities considering the interest of the beneficiaries. During implementation of a project, once actual liability is frozen, the liabilities in books of accounts on provisional basis are replaced with actual capital expenditure and this at times, results in reduced capital base. According to the petitioner, it has been decapitalizing the liabilities to the extent it had been able to effect reduction.

17. The petitioner has claimed that during the period 2001-04, it de-capitalized the liabilities to the extent of Rs. 6 lakh in regard to the generating station. The reduction in the liability during the above financial years is on account of its conscious efforts.

18. According to the petitioner, while the benefit of reduction in the liabilities by way of de-capitalisation has accrued to the respondent beneficiaries, retrospective reduction in the fixed charges will adversely affect the petitioner whose efforts have resulted in reduced liabilities. The petitioner has stated that retrospective implementation of the decision would lead to reopening of the tariff in respect of its generating stations since the date of commercial operation of various units. The petitioner has, therefore, submitted that the decision taken in

regard to de-capitalised liability should be applied prospectively and not retrospectively and accordingly seeks review of this particular direction.

19. We are aware that accounts are maintained the petitioner as per commercial accounting system by which revenue, costs, assets and liabilities are reflected in the accounts for the period in which they accrue. Under the system, all subsequent increases or decreases in capital expenditure are identified to relevant assets and the costs accounted for the earlier asset are charged accordingly.

20. The petitioner has de-capitalised the over-capitalised amounts under various heads (Balance Payments-10A) after many years. During all these years the over-capitalised amount was earning tariff to which the petitioner was not entitled, as the expenditure was not actually incurred. In the interest of justice and fair play, the excess amount recovered by the petitioner deserves to be adjusted. However, past period calculations towards impact on tariff have not been re-opened but these have been ordered to be mutually settled between petitioner and the beneficiaries. The decision does not involve any illegality or irregularity, much less an error apparent on the face of the record calling for review thereof.

21. The petitioner maintains accounts on accrual basis and claims tariff on the same principles. Almost all tariffs up to 31.3.2004 were based on the capital cost calculated on accrual basis. In other words, some liabilities included in the capital cost, did not materialise and were de-capitalised later on. While reducing the capital cost from the gross block, the cumulative depreciation already

recovered against the de-capitalised liabilities has also been adjusted to the extent of assets de-capitalized created out of the liabilities. In this way, the interest of the petitioner has been duly protected.

22. We consider it appropriate to point out that in a large number of cases, the benefit of increased tariff has been extended to the petitioner from retrospective dates. Therefore, it is not proper that the question of retrospective adjustment should be raised in a situation where excess tariff was recovered previously.

23. In the light of the above discussion, even a prima facie case for review of the order dated 21.8.2006 in Petition No.146/2004 has not been made out. The review petition is accordingly dismissed at the admission stage.

Sd/-

**(A.H.JUNG)
MEMBER**

Sd/-

**(BHANU BHUSHAN)
MEMBER**

Sd/-

**(ASHOK BASU)
CHAIRPERSON**

New Delhi dated the 1st December 2006