

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

- 1. Shri K.N.Sinha, Member**
- 2. Shri Bhanu Bhushan, Member**

**Review Petition No.61/2003  
In  
Petition No 39/2001**

**In the matter of**

Review of order dated 23.7.2003 in Petition No.39/2001 for approval of tariff in respect of Singrauli Super Thermal Power Station for the period from 1.4.2001 to 31.3.2004.

**And in the matter of**

Uttar Pradesh Power Corporation Ltd.

**.... Petitioner**

Vs

1. National Thermal Power Corporation Ltd, New Delhi
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd., Jaipur
3. Delhi Vidyut Board, Delhi
4. Haryana Vidyut Prasaran Nigam Ltd., Panchkula, Haryana
5. Punjab State Electricity Board, Patiala
6. Himachal Pradesh State Electricity Board, Shimla
7. Power Development Department, Govt. of J&K, Srinagar
8. Chandigarh Administration, Chandigarh
9. Uttaranchal Power Corporation Ltd, Dehradun

**.... Respondents**

**The following were present:**

1. Shri D.D. Chopra, Advocate, UPPCL
2. Shri T.K. Shrivastava, EE, UPPCL

**ORDER  
(DATE OF HEARING 24-2-2004)**

The application has been filed by the petitioner, Uttar Pradesh Power Corporation Ltd., for review of order dated 23.7.2003 in Petition No.39/2001 whereby the Commission had approved tariff in respect of Singrauli Super Thermal Power Station (for short Singrauli STPS) for the period from 1.4.2001 to 31.3.2004. The petition is listed for hearing on admission.

2. We heard Shri D.D. Chopra, Advocate along with Shri T.K. Srivastava, EE for the petitioner.

3. Singrauli STPS has been under commercial operation since 1.5.1988. The tariff for the station for the period from 1.11.1992 to 31.10.1997 was notified by Ministry of Power vide its notification dated 2.11.1992 in exercise of powers under Section 43A (2) of the Electricity (Supply) Act, 1948. The tariff for the subsequent period, that is, from 1.11.1997 to 31.3.2001 was approved by the Commission vide its order dated 23.9.2002 in Petition No.31/2002. The tariff for the period from 1.4.2001 to 31.3.2004 was approved vide order dated 23.7.2003 in Petition No.39/2001, presently sought to be reviewed (hereinafter referred to as "the impugned order"), based on the terms and conditions contained in the Commission's notification dated 26.3.2001 (hereinafter referred to as "the notification dated 26.3.2001") applicable from 1.4.2001 to 31.3.2004. The grievances of the petitioner against the impugned order are discussed in the succeeding paragraphs.

**Debt-Equity Ratio, Return on Equity and Interest on Loan**

4. In accordance with the notification dated 26.3.2001, the capital expenditure of the project should be financed as per the approved financial package set out in the techno-economic clearance issued by CEA or as approved by the appropriate independent agency, as the case may be. The notification dated 26.3.2001 further provides that return on equity shall be computed on the paid up and subscribed capital and shall be 16% of such capital. Further, in accordance with the notification dated 26.3.2001, interest on loan is to be computed on the outstanding loans duly taking into account the schedule of repayment as per the financial package approved by the

Authority or an appropriate independent agency, as the case may be. According to the petitioner while approving tariff for Singrauli STPS by the impugned order, the Commission has not considered debt and equity as per the approved financial package set out in the techno-economic clearance, but has considered a pre-conceived debt-equity ratio of 50:50 and has proceeded to allow return on equity and interest on loan based on the amounts of debt and equity arrived at by considering debt-equity ratio of 50:50. According to the petitioner, these are the errors apparent on the face of record requiring review of the order.

5. As we have noted above, the tariff for the period from 1.11.1992 to 31.10.1997 was initially determined by Ministry of Power vide its notification dated 2.11.1992. The Commission had notified the tariff for the period from 1.11.1997 to 31.3.2001 vide its order dated 23.9.2002 in Petition No.31/2002. Ministry of Power as well as the Commission had considered the debt and equity in the ratio of 50:50 while notifying the tariff for the periods prior to 1.4.2001. The techno-economic clearance issued by CEA did not contain the details of financial package. Return on equity and interest on loan were determined on notional debt and equity arrived at in the above manner.

6. The Commission while approving tariff for the period from 1.4.2001 to 31.3.2004 vide the impugned order, in para 9 took note of the fact that while deciding tariff for earlier periods, normative debt-equity ratio of 50:50 was considered. Under these circumstances, the Commission decided to adopt debt-equity ratio of 50:50 for the purpose of determination of tariff in Petition No.31/2002. Return on equity and interest on loan were allowed based on the normative equity and loan. In order to avoid any regulatory uncertainty, it was not desirable to make any departure from the

factors considered for determining tariff for the prior period, particularly when the approved financial package is not available. In our opinion, in view of the above noted circumstances and the deliberate decision of the Commission to adopt normative debt and equity ratio of 50:50 and allowing return of equity and interest on loan by taking the amounts so arrived at, does not fall within the category of error apparent on the face of record.

### **Depreciation**

7. The Commission in the impugned order had maintained that the weighted average rate of depreciation of 3.78% was applicable for the purpose of calculation of depreciation, applicable to the opening gross block of Rs.108695.00 lakh. Accordingly, the Commission had authorised an amount of Rs.4113.00 lakh each year during the tariff period on account of depreciation. The petitioner has pointed out that the depreciation when computed by applying weighted average depreciation rate of 3.78% on gross block of Rs.108695.00 lakh works out to Rs.4108.63 lakh against Rs.4113.00 lakh allowed by the Commission. Thus there is an error of Rs.4.37 lakh.

8. We have considered the submission. The weighted average depreciation rate when actually computed for tariff calculations works out to 3.7842%, which was shown as 3.78% in the process of rounding off. However, the actual amount of depreciation is Rs.4113.26 lakh by considering the weighted average depreciation rate of 3.7842% against which Rs.4113.00 lakh was allowed in tariff. Therefore, there is no error calling for review of the impugned order.

## **O&M Charges**

9. In accordance with the notification dated 26.3.2001, O&M expenses for the stations in operation for five years or more in the base year 1999-2000 are derived on the basis of actual O&M expenses, excluding normal O&M expenses, if any, for the years 1995-1996 to 1999-2000, duly certified by the statutory auditors. The average of actual O&M expenses for the years 1995-1996 to 1999-2000 are considered as O&M expenses for the year 1997-1998, which are escalated twice at the rate 10% per annum to arrive at O&M expenses for the base year 1999-2000. Thereafter, the base O&M expenses for the year 1999-2000 are further escalated at the rate of 6% per annum to arrive at permissible O&M expenses for the relevant year. While approving tariff for Singrauli STPS, this methodology was strictly adhered to. O&M expenses on account of incentive and ex-gratia claimed by the first respondent under "employee cost" were disallowed. The petitioner has contended that in similar fashion, "welfare expenses" and "other costs" under the head "employee cost" should have been disallowed by the Commission. It is further contended that the amount claimed under the head "other expenses" in O&M charges should have been allowed or disallowed partially or fully. Similarly, it is contended that the charges allowed under the head "R&M charges", "communication expenses", "insurance" and "rent" should be examined closely by the Commission before allowing or disallowing them. Further, according to the petitioner, 6% escalation provided on water charges is unwarranted since the water charges are going to be constant for the entire tariff period. The petitioner has further urged that the Commission in the impugned order has not considered that all residential consumption in colonies should be measured by individual meters and that the rate at which power is charged at colony consumption is appropriately determined.

10. The Commission while deciding on O&M expenses under different heads had meticulously scrutinised the details. Wherever the Commission found any abnormality in the expenses or that the expenses were unjustified, those expenses were disallowed. Only those expenses which were within the normal limits in accordance with notification dated 26.3.2001 were allowed. Under the head "other expenses", it was noted that increases were within the permissible limit and, therefore, the amounts indicated were considered normal to arrive at O&M charges. The petitioner in the application for review has not pointed out any specific errors in allowing O&M expenses but has averred in general terms that the Commission ought to have examined the expenses in greater detail. The allegations made by the petitioner, in our considered view, do not qualify for review of the order when seen in the light of statutory provisions contained in Rule 1 Order 47 of the Code of Civil Procedure.

#### **Interest on Working Capital**

11. According to the petitioner, the Commission while computing working capital requirement has included receivables on receivables as a part of working capital, which is an error apparent on the face of record.

12. The averment of the petitioner has been considered. "Receivables" is one of the components of working capital and includes receivables for two months on account of fixed charges and variable charges as per the notification dated 26.3.2001. The Commission while allowing tariff for Singrauli STPS had calculated the receivables on the basis of two months of variable charges and two months of fixed

charges. The contention made by the petitioner is not borne out by records. Therefore, we reject this as a ground for reivew.

### **Working Capital Margin**

13. The Commission in the impugned order on the issue of working capital margin had observed as under:

"Working Capital Margin: The notification dated 26.3.2001 is silent on Working Capital Margin. The Commission had considered the Working Capital Margin while awarding tariff for the period 1.11.1997 to 31.3.2001 vide order dated 23.9.2002 in Petition No.31.2002. Accordingly, Working Capital Margin of Rs.1412 lakh has been considered in the working. 50% of the Working Capital Margin has been considered as equity and the remaining 50% as loan. Return on equity and interest on loan have been allowed on the respective portion of Working Capital Margin."

14. According to the petitioner, consideration of working capital margin in tariff is arbitrary and against the spirit of tariff determination. Therefore, according to the petitioner, this is an error apparent on the face of record since it is not governed by the notification dated 26.3.2001 on terms and conditions of tariff. Accordingly, the petitioner seeks review.

15. In our opinion, the contention of the petitioner is on merits, that is, whether or not working capital margin should be allowed to be considered while calculating interest on working capital. Since it is through the process of conscious decision making that 50% of the capital margin has been considered as equity and the remaining 50% as loan based on the fact that Working Capital Margin was so considered for the previous tariff settings, this does not constitute an error apparent on the face of record so as to necessitate review of the order on the issue.

## Energy Charges

16. The Commission in the impugned order had considered the following parameters for calculation of energy (variable) charges:

- (a) Weighted Average GCV of Coal = 3871.31 kcal/Kg
- (b) Weighted Average Price of Oil = 10776.73 Rs./KL
- (c) Weighted Average Price of Coal = 920.27 Rs./MT

17. Based on above, the Commission had allowed rate of energy charge from coal of 58.60 paise/kWh and base energy charge ex-bus per kWh energy sent out of 67.98 paise/kWh.

18. However, according to the petitioner, the parameters work out as under:

- (a) Weighted Average GCV of Coal = 3875.33 kcal/Kg
- (b) Weighted Average Price of Oil = 10770.80 Rs./KL
- (c) Weighted Average Price of Coal = 920.90 Rs./MT

19. According to the petitioner, the energy (variable) charges compute to the following:

- (a) Rate of energy charge from coal = 58.58 paise/kWh
- (b) Base energy charge ex-bus/kWh energy sent out = 67.95 paise/kWh

20. The petitioner has contended that the energy (variable) charges computed by the Commission are in excess by 0.03 paise/kWh, which is an error apparent on the face of record, to be set right through review.



21. The computation on weighted average price and GCV by the first respondent were not conforming to the monthly figures. Therefore, the Commission in the impugned order calculated the energy (variable) charges based on Price Store Ledger by taking weighted average figures of price and GCV of coal and secondary oil after due deliberations in the hearing on 23.9.2002. The insignificant difference of 0.03 pointed out by the petitioner is on that count. There is a well known legal maxim that "lex non curat de minimis" which means that the law does not care about trifles. In any case, slightly higher base figure ultimately evens out based on the Fuel Price Adjustment Formula given in the impugned order and in actual there should be no adverse effect on the actual energy charges payable by the beneficiaries on month to month basis. On these considerations, we do not find that the point raised by the petitioner necessitates review of the impugned order.

#### **Actual Vs Normative Parameters**

22. The energy (variable) charges have been determined by considering the normative operational parameters as contained in Ministry of Power notification dated 2.11.1992 based on which tariff was determined for the period from 1.11.1992 to 31.10.1997. It has been contended by the petitioner that while calculating energy (variable) charges, the principles of "actuals or norms, whichever is lower", should have been adopted by the Commission. In this context, the petitioner has placed reliance on the Explanation given below clause 2.4 of the notification dated 26.3.2001.

23. The submission made by the petitioner has been considered. In accordance with clause 2.3 (a) of the notification dated 26.3.2001, the operational norms, except those relating to Target Availability and Plant Load Factor as contained in the existing

tariff notifications for individual power stations issued by the Central Government under proviso of Section 43 A(2) of the Electricity (Supply) Act, 1948 in respect of existing stations of NTPC shall continue to apply. Singrauli STPS was the existing (generating) station as on 1.4.2001, the date from which the notification dated 26.3.2001 has come into effect. The tariff for the periods prior to 1.4.2001 was determined in accordance with the operational norms contained in Ministry of Power notification dated 2.11.1997. Accordingly, in keeping with clause 2.3 (a) of the notification dated 26.3.2001 while determining tariff for the period from 1.4.2001 to 31.3.2004 the operation norms contained in the notification dated 2.11.1992 were followed. The notification dated 2.11.1992 did not contain a provision that operating parameters were to be considered based on "actuals or normative, whichever is lower". The petitioner has relied upon the Explanation below clause 2.4. By reading clause 2.3(a) and clause 2.4 together, it follows that the clause 2.4 is applicable for determination of tariff for the generating stations which became operational on 1.4.2001 or thereafter. Accordingly, the Explanation below clause 2.4 cannot be invoked in the case of Singrauli STPS which is under commercial operation since 1.5.1988. Therefore, we do not find merit in the contention that operational parameters should be considered based on "actuals or norms, whichever is lower".

24. In the light of above discussion, the application for review is dismissed at admission stage.

**Sd/-  
(BHANU BHUSHAN)  
MEMBER**

**Sd/-  
(K.N. SINHA)  
MEMBER**

**New Delhi dated the 8<sup>th</sup> March 2004**