

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

1. Shri Ashok Basu, Chairman
2. Shri K.N.Sinha, Member

**Petition No.62/2000**

**In the matter of**

Approval of tariff for Talcher Thermal Power Station for the period from 1.4.2000 to 31.3.2004

**And in the matter of**

National Thermal Power Corporation Ltd.

....**Petitioner**

Vs

Grid Corporation of Orissa Ltd.

..**Respondent**

**The following were present**

1. Shri Amit Kapur, Advocate, NTPC
2. Shri K.K. Garg, CM(Comml.), NTPC
3. Shri M.S. Chawla, AGM(Comml.), NTPC
4. Shri V.B. Jain, GM(Comml.), NTPC
5. Shri S.K. Sharma, Sr. Manager (C), NTPC
6. Shri Sandeep Mehta, NTPC
7. Shri Balaji Dubye, Sr. Law Officer, NTPC
8. Shri Visnu Sudharshan , Advocate, NTPC
9. Shri R. Mazumdar, NTPC
10. Ms. Ranjana Gupta, NTPC
11. Shri B. Arya, NTPC
12. Shri R.K. Mehta, Advocate, GRIDCO
13. Shri K.K. Panda, GRIDCO
14. Shri R. Mishra, GRIDCO
15. Shri Suman Kukret, GRIDCO
16. Shri S.K. Chowdhry, GRIDCO
17. Shri S.S. Nayak, GRIDCO

**ORDER**  
**(DATE OF HEARING : 9.9.2003)**

The Commission in its order dated 19.6.2002 had approved tariff for the period from 1.4.2000 to 31.3.2004 in respect of Talcher Thermal Power Station (TTPS). The details of fixed charges approved by the Commission are as under:

	(Rs. in lakh)			
	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>
Interest on loan	1796	1491	1191	889
Depreciation	3083	1943	1943	1943
Operational and Maintenance Expenses	5557	7969	8447	8953
Interest on working capital	554	601	623	646
Return on equity	3455	3455	3455	3455
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TOTAL	14445	15459	15659	15886
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2. The petitioner as well as the respondent had filed applications for review of the said order dated 19.6.2002. The Commission vide its order dated 1.4.2003 in review petitions No.92/2002 and 93/2002, had allowed review on the following counts:

- (a) Computation of interest on loan;
- (b) Computation of O&M charges - Consideration of water charges or any part thereof and its consequential impact on working capital;
- (c) Interest on working capital - Computation of receivables by adding variable charges and in the light of decision on computation of interest on loan and O&M charges;
- (d) Tax on Income - Scope and interpretation of "core" activity under para 2.12 of the notification dated 26.3.2001; and

(e) Auxiliary Energy Consumption - Inclusion or otherwise of colony consumption in the Auxiliary Energy Consumption.

3. In the present order, only the above-noted issues will be discussed as the discussion on any other issue would be a mere reiteration of the decisions already arrived at in the order dated 19.6.2002 for the reasons that either there was no controversy between the parties or review was not allowed vide order dated 1.4.2003.

4. We heard Shri Amit Kapur, Advocate, on behalf of the petitioner and Shri R.K. Mehta, Advocate, on behalf of the respondent.

#### **Interest on Loan**

5. In the petition, the petitioner had claimed interest on loan by adjusting the repayments in the year of repayment itself in the tariff for the period from 3.6.1995 to 31.3.2000, in view of the agreement between the parties arrived at in a meeting held on 23.9.1996. However, in its order dated 19.6.2002, the Commission had considered repayments in the following year. On re-consideration of the matter, we feel that in conformity with the methodology followed for computation of tariff for the period ending 31.3.2000 interest on loan should be allowed by computation of interest on loan by considering the repayments during the year of repayment of the notional loan. The repayments of installments towards additional capitalisation during different years is also to be considered in the same year, while computing the interest on loan in accordance with the above methodology. Accordingly, the entitlement of the petitioner

to interest on loan has been revised. The necessary calculations in support of interest on loan being allowed are given below:

(Rs. in crore)

Details	1995-96	1996-97	1997-98	1998-99	1999-2000	2000-01	2001-02	2002-03	2003-04	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Loan as on 3.6.1995										
Opening Balance	169.59	152.63	135.67	118.71	101.75	84.80	67.84	50.88	33.92	
Addition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Repayment	16.96	16.96	16.96	16.96	16.96	16.96	16.96	16.96	16.96	
Closing Balance	152.63	135.67	118.71	101.75	84.80	67.84	50.88	33.92	16.96	
Average Loan	161.11	144.15	127.19	110.23	93.27	76.32	59.36	42.4	25.44	
Rate of Interest	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	
Interest	22.56	20.18	17.81	15.43	13.06	10.68	8.31	5.94	3.56	
Loan due to Additional Capitalisation - 1995-96										
Opening Balance	0.00	0.45	0.40	0.35	0.30	0.25	0.20	0.15	0.10	
Addition	0.50	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Repayment	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	0.05	
Closing Balance	0.45	0.40	0.35	0.30	0.25	0.20	0.15	0.10	0.05	
Average Loan	0.23	0.43	0.38	0.33	0.28	0.23	0.18	0.13	0.08	
Rate of Interest	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	
Interest	0.03	0.06	0.05	0.05	0.04	0.03	0.03	0.02	0.01	
Loan due to Additional Capitalisation - 1996-97										
Opening Balance		0.00	13.14	11.68	10.22	8.76	7.30	5.84	4.38	
Addition		14.60	0.00	0.00	0.00	0.00	0.00	0.00	0.00	
Repayment		1.46	1.46	1.46	1.46	1.46	1.46	1.46	1.46	
Closing Balance		13.14	11.68	10.22	8.76	7.30	5.84	4.38	2.92	
Average Loan		6.57	12.41	10.95	9.49	8.03	6.57	5.11	3.65	
Rate of Interest		14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	
Interest		0.92	1.74	1.53	1.33	1.12	0.92	0.72	0.51	
Loan due to Additional Capitalisation - 1997-98										
Opening Balance			0.00	15.24	13.55	11.85	10.16	8.47	6.77	
Addition			16.94	0.00	0.00	0.00	0.00	0.00	0.00	
Repayment			1.69	1.69	1.69	1.69	1.69	1.69	1.69	
Closing Balance			15.24	13.55	11.85	10.16	8.47	6.77	5.08	
Average Loan			7.62	14.39	12.7	11.01	9.31	7.62	5.93	
Rate of Interest			14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	
Interest			1.07	2.01	1.78	1.54	1.3	1.07	0.83	
Loan due to Additional Capitalisation - 1998-99										
Opening Balance				0.00	10.11	8.99	7.86	6.74	5.62	
Addition				11.24	0.00	0.00	0.00	0.00	0.00	
Repayment				1.12	1.12	1.12	1.12	1.12	1.12	
Closing Balance				10.11	8.99	7.86	6.74	5.62	4.49	
Average Loan				5.06	9.55	8.43	7.3	6.18	5.06	
Rate of Interest				14.00%	14.00%	14.00%	14.00%	14.00%	14.00%	
Interest				0.71	1.34	1.18	1.02	0.87	0.71	

Loan due to Additional Capitalisation - 1999-2000									
Opening Balance					0.00	2.75	2.45	2.14	1.84
Addition					3.06	0.00	0.00	0.00	0.00
Repayment					0.31	0.31	0.31	0.31	0.31
Closing Balance					2.75	2.45	2.14	1.84	1.53
Average Loan					1.38	2.6	2.3	1.99	1.68
Rate of Interest					14.00%	14.00%	14.00%	14.00%	14.00%
Interest					0.19	0.36	0.32	0.28	0.24
Total Loan									
Opening Balance	169.59	153.08	149.21	145.98	135.93	117.40	95.81	74.22	52.62
Addition	0.50	14.60	16.94	11.24	3.06	0.00	0.00	0.00	0.00
Repayment	17.01	18.47	20.16	21.29	21.59	21.59	21.59	21.59	21.59
Closing Balance	153.08	149.21	145.98	135.93	117.40	95.81	74.22	52.62	31.03
Average Loan	161.34	151.15	147.60	140.96	126.67	106.62	85.02	63.43	41.84
Rate of Interest	14.00%	14.00%	14.00%	14.00%	14.00%	13.98%	14.00%	14.03%	14.01%
Interest	22.59	21.16	20.67	19.73	17.74	<b>14.91</b>	<b>11.90</b>	<b>8.90</b>	<b>5.86</b>
Interest Rates on Loans provided by the GOI as per office memorandum issued by GOI.									
	Ist June 1994-95	Ist June 1995-96	Ist June 1996-97	Ist June 1997-98	Ist June 1998-99	Ist June 1999- 2000	Ist June 2000-01		
Industrial & Commercial Undertakings in the Public Sector	16%	16%	16%	15%	14.50%	14.50%	14.50%		
Repayment Period(Years)	10	10	10	10	10	10	10		
Moratorium on Intt. Payments on Loans	Nil	Nil	Nil	Nil	Nil	Nil	Nil		

6. Accordingly, the petitioner shall be entitled to interest on loan as under, in supersession of interest allowed vide order dated 19.6.2002:

(Rs. in lakh)			
<b>2000-2001</b>	<b>2001-2002</b>	<b>2002-2003</b>	<b>2003-2004</b>
1491	1190	890	586

### **O&M Charges**

7. In its order dated 19.6.2002, the Commission had allowed O&M charges by excluding expenses on account of water. At the hearing, learned counsel for the respondent conceded that the expenses on account of water charges need to be included for the purpose of computation of O&M expenses. There is no dispute in

computation of O&M expenses already directed vide order dated 19.6.2002 on any other count. Accordingly, the fresh O&M charges being allowed after including water charges, are as under:

(Rs. in lakh)			
2000-2001	2001-2002	2002-2003	2003-2004
5556	8051	8534	9046

**Interest on Working Capital**

8. The basis for calculation of working capital for the purpose of interest is as under:

- (a) O&M expenses for one month
- (b) Fuel Cost for one month
- (c) Coal stock for 15 days
- (d) Oil stock for 60 days
- (e) Receivables equal to two months' average billing for sale of electricity, which should be on account of fixed charges as well as the variable charges.

9. In computation of working capital by order dated 19.6.2002, the variable charges were not considered as a part of "receivables" through an oversight. With this in view, the respondent obviously did not dispute inclusion of "receivables" in the tariff computation. We order accordingly. This, coupled with the fact of revision of O&M charges in accordance with our above decision, has necessitated revision of working capital and consequently the interest thereon.

10. The revised O&M expenses now being authorised in working capital are as under:

(Rs. in lakh)

<b>2000-2001</b>	<b>2001-2002</b>	<b>2002-2003</b>	<b>2003-2004</b>
463	671	711	754

11. Similarly, the receivables, for two months recalculated by including receivables on account of variable charges, work out as under:

(Rs. in lakh)

	<b>2000-2001</b>	<b>2001-2002</b>	<b>2002-2003</b>	<b>2003-2004</b>
Variable Charges -2 months	1838	1879	2024	2174
Fixed Charges - 2 months	2391	2576	2613	2655
Receivables for 2 months	4229	4455	4637	4829

12. The revised entitlement of the petitioner on interest on working capital and the necessary calculations in support thereof are appended below:

(Rs.in lakh)

	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>
Fuel Cost - 1 month	919	940	1012	1087
Fuel Stock - 1/2 month	415	423	455	489
Oil stock - 2 months	179	189	203	219
O & M expenses - 1 month	463	671	711	754
Spares	432	432	432	432
Receivables- 2 months	4229	4455	4637	4829
Total Working Capital	6637	7109	7450	7809
Weighted Average Interest Rate	11.50%	11.50%	11.50%	11.50%
Interest on Working Capital	763	818	857	898

### **Tax on Income**

13. The capital towards acquisition of TTPS has been invested by the petitioner from its internal resources. As agreed to between the parties, 50% of the capital cost is being considered as equity and the balance 50% as loan notionally. Tariff for the power supplied from TTPS is being paid in accordance with this financial package. The petitioner has been allowed interest @14% on the notional loan, which adds to the

income of the petitioner. As per the general norms, the petitioner is entitled to claim reimbursement from the respondent of the tax paid on its income. On behalf of the petitioner, reliance was placed on the Commission's notification dated 26.3.2001, on terms and conditions of tariff, according to which, tax on income of "core activity" of the petitioner is to be claimed from the respondent.

14. The respondent has submitted that the petitioner is not entitled to claim reimbursement of tax on income accruing on notional loan. It was argued on behalf of the respondent that the notional interest being claimed by the petitioner should be treated as income from other resources and liability of income tax on this account should not be passed on to the respondent.

15. The petitioner argued that as per the existing practice the respondent is liable to reimburse income tax paid by the petitioner on interest on notional loan as the interest was accruing on account of "core activity" of the petitioner, which is generation of power. It has been submitted on behalf of the petitioner that development of thermal & hydro power projects and power through non-conventional renewable energy sources is one of its main objects as per the Memorandum and Articles of Association. Further, as per the Memorandum and Articles of Association, the petitioner is authorised to borrow money or to receive money or deposits for the purpose of financing the business. Further, it is also authorised to accumulate funds or and to invest or otherwise employ money belonging to or with the company. On the basis of these provisions of Memorandum and Articles of Association of the company, it was urged that since the

petitioner is authorised to invest capital, the investment is its core activity and, therefore, it should be authorised to refund all taxes paid on income, including tax on income accruing by way of interest on loan considered notionally for the purpose of acquisition of TTPS.

16. We have given our anxious thought to the rival contentions. We find merit in the point raised on behalf of the respondent. The petitioner will be earning interest on notional loan component of the capital @ 14% per annum. In case the petitioner invested the amount of notional loan elsewhere and earned interest thereon, only the petitioner would have been liable for payment of income tax on the income arising out of such investment, without making it a "pass through" on any of the beneficiaries. We may now view the matter in the light of submission made on behalf of the respondent. Had the petitioner invested the amount being shown as "notional" loan by arranging loan from the open market, the interest paid by the respondent would also have been reflected on the expenditure side whereby the income arising on account of receipt of interest would have been neutralised by the expenditure. Therefore, the respondent would have no liability to pay income tax on the interest paid. The "main business" of the petitioner is generation of power. Other objectives referred to by the petitioner are incidental to its pursuing its main objective of generation. In fulfilment of its main objective, the petitioner is to employ capital by arranging loan from the financial institutions, etc. Similarly, the petitioner is permitted to invest its surplus funds by its Memorandum and Articles of Association. Nevertheless, authorisation of such an activity by the Memorandum and Articles of Association, does not make it the "core

activity" of the petitioner, which continues to be the generation of power. Thus, from whatever angle the matter is viewed, the respondent is not liable to refund to the petitioner income tax on interest earned by the petitioner on notional loan. We direct that the purposes of tariff, the interest accruing to the petitioner on notional loan shall be deemed to be expenditure.

### **Auxiliary Consumption**

17. Review on the auxiliary consumption component of variable charges was allowed on the basis of an averment by the respondent that the colony consumption was included in the data of auxiliary consumption submitted by the petitioner in the proceedings, which resulted in higher weightage on that account. Therefore, review was allowed on the issue limited to consideration whether or not colony consumption should form part of the auxiliary energy consumption. At the hearing, it was submitted on behalf of the petitioner that in the data for auxiliary consumption for the previous years already submitted to the Commission, the colony consumption was not included. On this, learned counsel for the respondent did not press issue further. Accordingly, no fresh findings need to be recorded on this count.

18. All other elements of tariff decided by the Commission in its order dated 19.6.2002 shall remain valid. The total fixed charges, to which the petitioner will be entitled in the light of the decisions in the preceding paragraphs, which are in supersession of the fixed charges approved by the Commission in its order dated 19.6.2002, are summarised below:

(Rs. in lakh)

<b>Particulars</b>	<b>2000-01</b>	<b>2001-02</b>	<b>2002-03</b>	<b>2003-04</b>
Depreciation	3083	1943	1943	1943
Interest on Loan	1491	1190	890	586
Return on Equity	3455	3455	3455	3455
Advance Against Depreciation	00	00	00	00
Interest on Working Capital	763	818	857	898
O & M Expenses	5556	8051	8534	9046
<b>Total</b>	<b>14349</b>	<b>15456</b>	<b>15678</b>	<b>15928</b>

19. The above (revised) fixed charges are approved, subject to other terms and conditions contained in the Commission's order dated 19.6.2002.

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

Sd/-  
**(ASHOK BASU)**  
**CHAIRMAN**

**New Delhi dated the 5<sup>th</sup> November, 2003**