

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

- 1. Ashok Basu, Chairman**
- 2. Shri K.N.Sinha, Member**
- 3. Shri Bhanu Bhushan, Member**

**Review Petition No.1/2004
In
Petition No.41/2001**

In the matter of

Review of order dated 24.10.2003 in Petition No.41/2001 for approval of tariff in respect of Feroze Gandhi Unchahar Thermal Power Station Stage I 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. Chief Engineer, Union Territory of Chandigarh, 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 17-6-2004)**

The application has been filed by the petitioner, Uttar Pradesh Power Corporation Ltd., for review of order dated 24.10.2003 in Petition No.41/2001 whereby the Commission had approved tariff in respect of Feroze Gandhi Unchahar Thermal

Power Station Stage I for the period from 1.4.2001 to 31.3.2004. The petition was listed for hearing on admission.

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

3. Petition No.41/2001 was filed by National Thermal Power Corporation Ltd (Respondent 1) for approval of tariff for Feroze Gandhi Unchahar Thermal Power Station Stage I for the period from 1.4.2001 to 31.3.2004. The said petition was disposed of by the Commission vide its order dated 24.10.2003 based on the terms and conditions of tariff contained in the Commission's notification dated 26.3.2001 (hereinafter referred to as "the notification dated 26.3.2001"). The petitioner feels aggrieved on account of capital base of Rs 909.71 crore considered for computation of tariff and certain other aspects of the order dated 24.10.2003. Hence, the petitioner seeks review of the said order dated 24.10.2003 on different aspects, which are discussed.

Capital Cost

4. Feroze Gandhi Unchahar Thermal Power Station was transferred on 13.2.1992 by the erstwhile Uttar Pradesh State Electricity Board, the predecessor of the present petitioner, to National Thermal Power Corporation at a cost of Rs 925 crore. The tariff for the generating station for the period 13.2.1992 to 31.3.1997 was determined by the Central Government in Ministry of Power vide notification dated 26.3.1994. While determining tariff, Ministry of Power had considered the project cost of Rs 909.71 crore. This included gross block of Rs 893.84 crore and initial spares of

Rs 15.87 crore.

5. The tariff for the period from 1.4.1997 to 31.3.2001 was determined by the Commission in its order dated 30.10.2002 in Petition No 33/2002. While approving tariff, the project cost of Rs 909.71 crore as on 13.2.1992, earlier considered by the Central Government was adopted by the Commission for the purpose of determination of tariff, which was adopted for the purpose of tariff in petition No.41/2001.

6. According to the petitioner, the capital base of Rs 643 crore, which was the book value of the generating station at the time of its take over by National Thermal Power Corporation Ltd from Uttar Pradesh State Electricity Board, ought to have been considered by the Commission. In support of its contention, Uttar Pradesh Power Corporation Ltd has relied upon the Commission's order dated 28.6.2002 in Petition No 77/2001, which relates to tariff for Tanda Thermal Power Station. Tanda Thermal Power Station was also transferred from the erstwhile Uttar Pradesh State Electricity Board to National Thermal Power Corporation Ltd, at a transfer cost of Rs 1000 crore. However, while approving tariff for Tanda Thermal Power Station, the Commission considered the book value of Rs 607 crore, which was the original cost of the generating station as on the date of commercial operation, as the base for calculation of tariff. Uttar Pradesh Power Corporation Ltd accordingly seeks review of the capital cost considered by the Commission for Feroze Gandhi Unchahar Thermal Power Station Stage I for tariff determination purpose.

7. While approving tariff for Feroze Gandhi Unchahar Thermal Power Station

Stage I in petition No.33/2002, the Commission in paragraph 5 of the order dated 30.10.2002, took note of the fact that in Petition No 77/2001 (Tariff for Tanda Thermal Power Station), the Commission had not allowed the entire transfer cost of Rs. 1000 crore as the capital base for computation of tariff, but had limited the capital base to the completion cost (Rs 607 crore) as on the date of commercial operation. The Commission proceeded to hold that since in the case of Feroze Gandhi Unchahar Thermal Power Station the transfer price of Rs. 909.71 crore was earlier considered by Ministry of Power for tariff calculations for the period ending 31.3.1997, this was taken into account without re-opening the settled issue. Thus, the opening gross block of Rs. 909.71 crore as on 13.2.1992 was adopted through a conscious and deliberate decision of the Commission after taking into account all the relevant facts. The review petition (No.89/203) filed by the petitioner in petition No.33/2002 was dismissed. The Commission held that the order was not susceptible to review as it was not a case of any error on the face of record. As we have noted above, the tariff for the period 1.4.2001 to 31.3.2004 was determined based on the capital cost considered in petition No.33/2002.

9. For Feroze Gandhi Unchahar Thermal Power Station tariff was initially determined by the Central Government from the date of its takeover (13.2.1992) and up to 31.3.1997. It was only after expiry of this period that the tariff has been decided by the Commission and while doing so, the Commission has adopted the capital base as earlier considered by the Central Government. The petitioner seems to have accepted the cost considered by the Central Government since it had been paying tariff without any protest. At this stage the petitioner cannot be allowed to impugn the capital cost considered a decade ago for tariff fixation. In our view the capital cost for

the purpose of tariff determination has acquired finality.

10. Accordingly, review of the order dated 24.10.2003 on this ground is not maintainable.

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

11. 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 Feroze Gandhi Unchahar Thermal Power Station, 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.

12. The tariff for the period from 13.2.1992 to 31.3.1997 was initially determined by Ministry of Power vide its notification dated 26.3.1994. The Commission had notified

the tariff for the period from 1.4.1997 to 31.3.2001 vide its order dated 30.10.2002 in Petition No.33/2002. Ministry of Power as well as the Commission in the order dated 30.10.2002 had considered the debt and equity in the ratio of 50:50 while notifying the tariff for the periods prior to 1.4.2001. Return on equity and interest on loan were determined on notional debt and equity arrived at in the above manner. Feroze Gandhi Unchahar Thermal Power Station Stage I was originally set up by the erstwhile Uttar Pradesh State Electricity Board, who has been succeeded by the petitioner. The techno-economic clearance for the generating station from CEA was obtained by UPSEB. Therefore, it was for the petitioner to place the techno-economic clearance and other evidence in support of the approved financial package before the Ministry of Power, if the petitioner wanted any other figure of project cost approved by them.

13. The Commission while approving tariff for the period from 1.4.2001 to 31.3.2004 vide the impugned order, 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.41/2001. 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. 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 on 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

14. The Commission in the order dated 24.10.2003 had considered the weighted average rate of depreciation applicable for the purpose of calculation of depreciation, at the opening gross block and had authorised depreciation. The petitioner has pointed out that the depreciation was computed by applying weighted average depreciation rate on gross block of Rs.94070.00 lakh, which is based on the transfer price of Rs.92500.00 lakh and to which has been added the additional capital expenditure. It is averred that for the purpose of computation of depreciation, the Commission ought to have taken into account the historical cost of the assets.

15. We have considered the submission. We have already dealt with the basis for considering the capital cost of Rs.94070.00 lakh as the capital base as on 1.4.2001. This was arrived at by considering the capital base of Rs.90971 lakh as on 13.2.1992. In view of this, there was no justification for computation of depreciation based on the historical cost of the generating station. Therefore, review on this ground is also disallowed.

O&M Charges

16. 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 Feroze Gandhi Uncahar Thermal Power Station, 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.

17. The Commission while deciding on O&M expenses under different heads had meticulously scrutinised the details of expenditure. 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. 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

18. 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.

19. 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 Feroze Gandhi Unchahar Thermal Power Station 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 review.

Energy Charges/Actual Vs Normative Parameters

20. The energy (variable) charges have been determined by considering the normative operational parameters as contained in Ministry of Power notification dated 26.3.1994 based on which tariff was determined for the period from 13.2.1992 to 31.3.1997 and later on from 1.4.1997 to 31.3.2001. 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.

21. 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. Feroze Gandhi Unchahar Thermal Power Station was the existing (generating) station as on 1.4.2001, the date from which the notification dated 26.3.2001 came 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 26.3.1994. 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 operational norms contained in the notification dated 26.3.1994 were followed. The notification dated 26.3.1994 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 Feroze Gandhi Unchahar Thermal Power Station. Therefore, we do not find merit in the contention that operational parameters should be considered based on "actuals or norms, whichever is lower".

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

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

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

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

New Delhi dated the 1st July 2004