

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

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

**Review Petition No.77/2003  
In  
Petition No 34/2001**

**In the matter of**

Review of order dated 6.8.2003 in Petition No.34/2001 for approval of tariff in respect of Ramagundam Super Thermal Power Station for the period from 1.4.2001 to 31.3.2004.

**And in the matter of**

Tamil Nadu State Electricity Board, Chennai

.....**Petitioner**

**Vs**

1. National Thermal Power Corporation Ltd., New Delhi
  2. Transmission Corporation of Andhra Pradesh Ltd., Hyderabad
  3. Karnataka Power Transmission Corporation Ltd., Bangalore
  4. Kerala State Electricity Board, Trivandrum
  5. Electricity Department, Govt. of Pondicherry, Pondicherry
  6. Electricity Department, Govt of Goa, Panaji, Goa
- .....**Respondents**

**The following were present**

1. Shri S. Sowmyanarayanan, Consultant, TNEB

**ORDER  
(DATE OF HEARING 2-12-2003)**

On the petition filed by NTPC, respondent No.1 herein, for approval of tariff for the period from 1.4.2001 to 31.3.2004, the Commission had approved tariff vide its order dated 6.8.2003, based on the terms and conditions for determination of tariff as contained in the Commission's notification dated 26.3.2001. Through this application,

the petitioner seeks review of the Commission's decisions contained in the order dated 6.8.2003 in Petition No.34/2001, limited to the following aspects:

- (a) Deletion of the observation made in para 8 of the order dated 6.8.2003 that "as a precautionary measure, the petitioner may keep its purchasers informed that they can keep a provision for additional arrears on ad hoc basis in the ARR".
- (b) Reduction of equity progressively as and when notional loan is fully repaid, to the extent of further depreciation provided and determination of return on equity on the basis of reduced equity components from year to year as per the recommendations of the KP Rao Committee.
- (c) Set right the arithmetic error in award of depreciation for the year 2003-2004.
- (d) Withdrawal of the award of AAD of Rs.22.02 crore for the year 2003-2004 as normative loan was fully repaid during the year 2002-2003.
- (e) To re-work the fixed charges based on the above corrections in tariff.
- (f) Incorporation in the Fuel Price Adjustment Formula for calculation of energy charges given in the order to reflect computation based on actuals or normative operating parameters, whichever is lower.

2. The application was heard on admission.

3. We heard Shri S Sowmyanarayanan, Consultant, TNEB. We direct that the review of the issues at sub-para (c) & (d) of para 1 above be admitted for further hearing. We are not inclined to admit the remaining grounds urged by the petitioner in support of review, as we do not find that grounds urged fall within the statutory

framework contained in order XLVII, Rule 1 of the Code of Civil Procedure. We record give our reasons in this regard in the paras below.

#### **Additional Capitalisation**

4. In the petition Respondent No.1 had claimed fixed charges by including certain anticipated additional capital expenditure to be incurred during 2001-2002, 2002-2003 and 2003-2004, based on budgetary projections. The additional capitalisation claimed by Respondent No.1 was not allowed for tariff determination. However, it was observed that as a precautionary measure, Respondent No.1 might keep its purchasers informed that they could keep a provision for additional capitalisation arrears on ad hoc basis in their ARR. The present petitioner has objected to this observation and seeks its deletion. According to the petitioner, the Commission has already decided that any expenditure approved in the project cost but incurred during the tariff period should await revision of tariff till the next tariff had commenced, unless it constituted more than 20% of the approved cost. It has been argued that the observations made in the order dated 6.8.2003 do not reflect the accepted view and rather suggest that tariff could be revised taking into account the additional capitalisation each year and payment has to be made retrospectively. According to the petitioner, this is an apparent error, which qualifies for review of the observation and deletion.

5. The observation was made by the Commission as some of the State Electricity Boards at the hearing of the original petition had submitted that the retrospective revision of tariff should be avoided because it was not possible for them to recover the arrears from their consumers. In accordance with the observation the State Electricity

Boards could forecast their Annual Revenue Requirements (ARR) keeping in view the additional capitalisation if ultimately approved by the Commission. The observation was incorporated in the order for the benefit of the State Electricity Boards, including the petitioner herein and at their instance. In any case, the observation cannot be construed that the Commission has allowed revision of tariff based on additional capital expenditure. As and when an appropriate petition is filed by Respondent No.1 for revision of fixed charges based on additional capital expenditure incurred during the period from 1.4.2001 to 31.3.2004, the state utilities, including the present petitioner will have the opportunity to express their views. No prejudice has been caused to the petitioner or for that matter to any of the state utilities by virtue of observations, now sought to be deleted. Accordingly, the review of the order on this account is not warranted.

### **Reduction of Equity**

6. In accordance with the notification dated 26.3.2001, interest on loan capital and return on equity are to be computed keeping in view the financial package approved by CEA or an appropriate independent agency. The Commission, while approving tariff for the period from 1.4.2001 to 31.3.2004 had considered debt and equity in the ratio of 50:50 of the total capital cost since this ratio was allowed by the Central Government while approving tariff in respect of Ramagundam STPS vide tariff notification dated 2.11.1992. It has been urged on behalf of the petitioner that equity should be progressively reduced as and when the notional loan is fully repaid to the extent of further depreciation provided in the tariff and the return on equity should be determined on the reduced equity component from year to year, keeping in view the recommendations of K.P. Rao Committee. In the alternative, at the time of hearing,

relying on the provisions of the notification dated 26.3.2001. It was argued by the representative of the petitioner that the Commission should allow return on equity in accordance with the financial package approved by CEA or an appropriate independent agency.

7. We are not impressed by the arguments made on behalf of the petitioner on this issue. The recommendation of K.P. Rao Committee, reliance on which has been placed by the petitioner was not accepted by the Central Government while approving tariff vide notification dated 2.11.1992. The Commission's notification dated 26.3.2001, which is the basis for computation of tariff for the period from 1.4.2001 to 31.3.2004 also does not make any provision for reduction of equity to the extent of depreciation recovered, after repayment of loan. Therefore, the contention raised on behalf of the petitioner is without any basis.

8. Now we consider the alternative plea taken by the petitioner at the time of hearing though it has not been taken in the application. It was pointed out that CEA in its techno-economic clearance had not indicated the financial package. Therefore, the techno-economic clearance of CEA does not provide any guidance for the purpose. No independent agency has been notified to go into this issue. Further, Ramagundam STPS has been under commercial operation since 1.4.1991 and the provision in regard to approval of financial package by an independent agency to be notified by the Commission was incorporated in the notification dated 26.3.2001 for the first time. Therefore, this option is not available for the purpose of deciding the debt and equity. As we have noticed above, the tariff for the earlier periods was approved by Ministry of Power by taking debt and equity notionally in the ratio of 50:50. In the absence of

any other factor, we were guided by the financial package considered by Ministry of Power for approval of tariff in its earlier notifications. Accordingly, the argument advanced by the petitioner at the hearing is also without any force.

### **Fuel Price Adjustment Formula**

9. The Commission in its order dated 6.8.2003 had approved base energy charges, on the basis of data furnished by NTPC, Respondent No.1. In accordance with the notification dated 26.3.2001, energy charges approved are subject to adjustment on account of variation in fuel price and GCV of fuel. Accordingly, the Commission in para 72 of the order dated 6.8.2003 had given the fuel price adjustment formula. The petitioner has urged that the energy charges should be approved by considering the normative operating parameters or actuals, whichever is lower. In support of its submission, the petitioner has again relied upon the recommendations of K.P. Rao Committee. It is further urged that the energy charges are to be determined based on norms or actuals, whichever is lower, since it is a "deemed policy" of the Central Government.

10. At the cost of repetition, we may state that the recommendation made by the K.P. Rao Committee do not govern the determination of tariff for the period from 1.4.2001 to 31.3.2004 since for this period the Commission's notification dated 26.3.2001 holds the field. Therefore, the issue needs to be looked into in the light of the provisions of the notification dated 26.3.2001.

11. Clause 2.3 (a) of the notification dated 26.3.2001 lays down that 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 to Section 43 A (2) of the Electricity (Supply) Act, 1948 in respect of the existing stations of NTPC shall continue to apply for those stations. Thus, the energy charges in respect of Ramagundam STPS, which is in commercial operation since 1.4.1991, are to be determined in accordance with the notification issued by Ministry of Power. We have perused the notification issued by Ministry of Power and do not find any provision for determination of energy charges based on normative operational parameters or actuals, whichever is lower. In fact, the petitioner itself has stated in its application that such a stipulation was not contained in Ministry of Power notification, issued under proviso to Section 43 A (2) of the Electricity (Supply) Act, 1948 for Ramagundam STPS. The issue raised cannot be stated to be "the deemed policy" of the Central Government as that Government did not make any provision to the effect in the project-specific notifications issued under proviso to Section 43 A (2) of the Electricity (Supply) Act, 1948.

12. The petitioner has further urged that the explanation below Clause 2.4 of the notification dated 26.3.2001 supports its contention. The explanation lays down as under:

"For the purpose of calculating the tariff operating parameters, ie, station heat rate, secondary fuel oil consumption and auxiliary consumption shall be determined on the basis of actuals or norms, whichever is earlier."

13. Clause 2.4 does not apply to the stations which were under commercial operation prior to 1.4.2001. In respect of such stations a specific provision as contained in Clause 2.3 and referred to above, is made. Clause 2.4 and hence the explanation below that clause governs the generating stations which have been declared under commercial operation on or after 1.4.2001, the date of commencement

of the notification. Ramagundam STPS is an old station, and the operating parameters are to be considered in accordance with Clause 2.3 of the notification dated 26.3.2001. The Commission has consistently followed this view in all cases. The petitioner itself has, in its application, referred to the order of the Commission in Korba STPS, where similar view was taken. Therefore, we do not find any merit on this ground too.

14. For the reasons recorded above, we admit the application for review on the grounds listed at sub-paras (c) & (d) on para 1 above. No order needs to be passed on sub-para (e) of the grounds at para 1 above at his stage, since the relief is consequential to the reliefs, if any, granted on this issues admitted for hearing. We direct the petitioner to supply a copy of the petition, along with a copy of this order to the respondents latest by 20.12.2003. The respondents may file their replies, limited to the points admitted for review, latest by 20.1.2004 with advance copy to the petitioner who may file its rejoinder, if any, by 31.1.2004. A affidavit of service of the petition shall be filed by the petitioner by 26.12.2003.

15. List this petition on 19.2.2004.

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

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

**New Delhi dated the 12<sup>th</sup> December, 2003**