

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Record of Proceedings

I.A.20/2009 in Petition No.128/2002

Subject : Approval of tariff for the period from 1.4.1998 to 31.3.2001 in respect of National Capital Thermal Power Station, Dadri-Interlocutory application to revise/correct/modify the order dated 31.12.2007.

I.A.21/2009 in Petition No.96/2002

Subject : Approval of tariff for the period from 1.4.2000 to 31.3.2001 in respect of Farakka Super Thermal Power Station-Interlocutory application to revise/correct/modify the order dated 2.1.2008.

Coram : Dr. Pramod Deo, Chairperson
Shri R.Krishnamoorthy, Member
Shri S. Jayaraman, Member
Shri V.S.Verma, Member

Date of Hearing : 28.7.2009

Petitioner : NTPC Limited

Respondents
In I.A.20/2009 : UPPCL, RRVPNL, HVPNL, DTL, PSEB, PDD Govt. of Jammu, HPSEB, UT of Chandigarh and UPCL.

Respondents
In I.A.21/2009 : WBSEB, BSEB, JSEB, GRIDCO, DVC, PDD Govt.of SIKKIM, ASEB, APTRANSCO, MPSEB, TNEB, KSEB, KPTCL, UPPCL, GUVNL, UT of Pondicherry, RRVPNL, HVPNL, UT of Chandigarh.

Parties present : 1. Shri M.G.Ramachandran, Advocate, NTPC
2. Shri V.K.Padha, NTPC
3. Shri D.Kar, NTPC
4. Shri Rajnesh, NTPC
5. Shri Manoj Saxena, NTPC
6. Shri S.D.Jha, NTPC
7. Shri S.K.Samui, NTPC
8. Shri.V.Kumar, NTPC
9. Shri Pradip Mishra, Advocate, UPPCL
10. Shri R.B.Sharma, Advocate, BSEB

These interlocutory applications have been filed by the petitioner, NTPC with prayer to revise/correct/modify the orders of the Commission dated 31.12.2007 and 2.1.2008 passed by the Commission in Petition Nos. 128/2002 and 96/2002.

2. Learned counsel for the petitioner submitted that it had filed the interlocutory applications pursuant to the orders of the Commission dated 31.3.2009 in the said petitions, in terms of Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, which invests the Commission with inherent powers to correct the mistakes or errors in the order. The learned counsel pointed out to various judgments of the Hon'ble Supreme Court and submitted that the Commission had ancillary and/or incidental powers to correct the mistakes in the order to do justice between the parties.

3. Learned counsel for respondent No.2, BSEB, in Petition No.96/2002, took preliminary objection on the maintainability of the interlocutory application filed by the petitioner and submitted that while the powers of the Commission under Regulation 111 was undisputed, the power of the petitioner to invoke the said power was in question. He submitted that the petitioner did not have the remedy. The learned counsel pointed out that the observations of the Commission in order dated 10.6.2008 in Review 46/2008 (in Petition No.149/2004) on the question of maintainability would squarely apply to the instant case and in terms of the said order the petitioner could file review petition, instead of making the interlocutory application. The learned counsel further submitted that the tariff for the generating station for the period 2000-01 was based on the notification of the Central Government and the petitioner by the interlocutory application had sought to re-open the whole gamut of issues relating to that period. Summing up, the learned counsel submitted that either the petitioner should file a review petition or the Commission should convert the interlocutory application as application for review and adopt the procedure involved for review proceedings.

4. Learned counsel for the respondent No.1 UPPCL, in Petition No.128/2002, endorsed the submissions made by the learned counsel for BSEB on the issue of maintainability of the interlocutory application and submitted that Regulation 111 could not be invoked by the petitioner. On merits, the learned counsel submitted that the Commission while implementing the directions contained in the judgment of the Appellate Tribunal dated 14.11.2006 in Appeal No.96/2005 (pertaining to Kawas Gas Power Station), had worked out the repayment of interest on loan for the period from 1.4.1998 to 31.3.2001 on normative basis, in Petition No.128/2002 by its order dated 31.12.2007 and no arithmetical/clerical error could be imputed. The learned counsel further submitted that the cumulative repayment of loan as on 1.4.1998 could not be reopened as it was based on the notification of Govt of India, which had been accepted by the petitioner. The learned counsel pointed out to the observations of the Hon'ble Supreme Court in its judgment dated 3.3.2009 in Civil Appeal No.1110/2007 (UPPCL-v-NTPC), and submitted that the claims of the petitioner could not be considered at this belated stage.

5. In response, the learned counsel for the petitioner submitted that it had only pointed out to the arithmetical mistakes/errors in the orders of the Commission and in terms of Section 152 of the Civil Procedure Code, which provides for correction of clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission, the Commission had the inherent power to rectify the mistake to meet the ends of justice. The learned counsel further reiterated that cumulative repayment of loan amount upto 31.3.1998 and loan outstanding as on 1.4.1998 should be re-worked on normative basis in terms of the judgment of the Appellate Tribunal. He submitted that the judgment dated 3.3.2009 of the Hon'ble Supreme Court in Civil Appeal No.1110/2007 would not be applicable to the instant case as the facts were different.

6. The Commission reserved orders on the applications.

Sd/-
(K.S.Dhingra)
Chief (Legal)