

**CENTRAL ELECTRICITY REGULATORY COMMISSION
New Delhi**

Record of Proceedings

Petition No.195/2009

Sub: Revision of fixed charges for the period 2004-09 due to additional capital expenditure incurred for the period 2004-09 at Talcher Super Thermal Power Station, Stage-I (1000MW).

Date of hearing : 13.5.2010

Coram : Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Petitioner : NTPC Ltd, New Delhi

Respondents : WBSEDCL, BSEB, JSEB, GRIDCO, DVC, PD Sikkim, TNEB, UT Pondicherry, UPPCL, PDD J&K, PD, Chandigarh, MPSEB, GEB, ED Daman & Diu, ED Dadra & Nagar Haveli, DTL, MSEB.

Parties present : 1. Shri V.K.Padha, NTPC
2. Shri G.K.Dua, NTPC
3. Shri Ajay Dua, NTPC
4. Shri Shyam Kumar, NTPC
5. Shri S.K.Mandal, NTPC
6. Shri Vivake Kumar, NTPC
7. Shri R.B.Sharma, Advocate, BSEB & GRIDCO
8. Shri R.Krishnaswami, TNEB
9. Shri Balaguru, TNEB
10. Shri Deepak Shrivastava, MPPTCL

The learned counsel for the respondent for BSEB and GRIDCO continued with his submissions and reiterated the submissions made earlier. The learned counsel further submitted that the petitioner has made profits in excess of the return on equity (@ 25% of equity as against 14% permitted under the 2004 regulations). The learned counsel pointed to the interpretation of the word "liability incurred" in the judgment of the Appellate Tribunal dated 16.3.2009 pertaining to the inclusion of undischarged liabilities and submitted that the claim of the petitioner for inclusion of un-discharged liabilities in terms of Regulation 18(2) (i) could not be permitted, as these liabilities have been assumed during the construction stage of the generating station or much before the period 2004-09 and have been included in the capital base for the year in which they were assumed. The learned counsel further added that the petitioner's prayer for

inclusion of undischarged liabilities in the petition could not be permitted, as it would reopen all the previous orders of the Commission pertaining to the tariff petitions of the generating stations of the petitioner, which had attained finality. The learned counsel further added that the petitioner was bound by the undertaking given by it before the Hon'ble Supreme Court in C.A. 5434/2007 and no claim may be permitted by the Commission in view of the said undertaking. On merits, the learned counsel submitted that the additional capital expenditure on renovation of guest house and club in the year 2005-06, was not justifiable as the claim has not been accompanied by corresponding de- capitalization, which was required in terms of the Note-2 under Regulation 18. He further pointed out pages 14 and 16 of the petition as to the figures reconciled by the petitioner and submitted that the said figures claimed for additional capital expenditure as per books of accounts with that of the claim for the purpose of tariff could not be reconciled/matched, as certain un-discharged liabilities existed in the claim which could not be considered in the books of accounts and as such the claim would differ to the extent of un-discharged liabilities. The learned counsel also submitted that the claim of the petitioner for exclusion of negative entries due to de-capitalization of the assets should not be permitted as it would amount to adding back the de-capitalized assets in the capital base for the purpose of tariff. He also submitted that the additional expenditure for "black topping of roads" and "scaffolding" may not be allowed as the expenditure is in the nature of O&M expenses. The learned counsel pointed out that the petitioner's claim for FERV of Rs. 68 lakh for the period 2001-04 as added to the capital base as on 1.4.2004 to be corrected as Rs.81 lakh (on normative basis) could not be considered in the petition, as the order of the Commission relating to the tariff petition for the generating station for the period 2004-09 had attained finality. The learned counsel further submitted that in the absence of details on certain claims, the additional expenditure claimed cannot be considered for capitalization. He further submitted that capitalization of Rs 79.48 lakh towards implementation of OPC compliance DDCMS during 2008-09 for up-gradation of IT system for efficiency, was in the nature of R&M expenses and the efficiency gains need to be shared with the respondents. Summing up, the learned counsel for respondent BSEB reiterated that the petitioner has no legal right to claim the amount of un-discharged liabilities as the liabilities have been assumed long back, by the petitioner.

2. The representative of the respondent, UPPCL, adopted the submissions of the respondent BSEB as above, and pointed out that the weighted average rate of interest as claimed in the petition was 16% as against the 9.38% allowed by the Commission for the period 2004-09, and prayed that the said claim may not be allowed.

3. The representative of the respondent, TNEB, pointed out that the justification of the petitioner pertaining to the expenditure on implementation of ERP system at the generating station, stating that efficiency gains were much more than the investments made, could only be considered if such gains are shared with the respondents/beneficiaries.

4. The representative of the respondent, MPPTCL adopted the submissions of the respondents TNEB and BSEB as above, and submitted that the petitioner may be directed to submit the revenue requirement details for the generating station in accordance with the provisions of the "Procedures for calculating the expected revenue from tariffs and charges Regulations, 2010" notified by the Commission.

5. In response to the issues raised by the respondent BSEB, the representative of the petitioner clarified that the respondents have been paying tariff only from the year the liabilities were included in the capital base (prospectively) and not from the date of commercial operation of the generating station. As regards the excess profits stated to have been recovered, the representative of the petitioner clarified that the submissions of the respondent have no basis as the petitioner had preferred claims in terms of the regulations specified by the Commission and the Commission after prudent check had allowed tariff which was recovered from the respondents. As regards de-capitalization of the amount in respect of the renovation of guest house and club in the year 2005-06, the representative clarified that there was no replacement of asset and as such no de-capitalization of any old asset. As regards the reconciliation/mismatch of the additional capital expenditure as per books of accounts and those claimed for tariff, the representative clarified that the contentions raised by the respondent BSEB were contrary to its submissions made earlier. As regards the expenditure on 'black topping off roads' and 'scaffolding', the representative clarified that the expenditure was not of a regular nature and was not covered under the O&M expenses. With regard to the weighted average rate of interest of 16%, raised by the respondent UPPCL, the representative clarified that the said claim was as per the decision of the Appellate Tribunal. As regards the submission of TNEB regarding sharing the benefits of efficiency gains arising out of the implementation of ERP system, the representative clarified that the same may not be considered as the benefits of new technologies which resulted in improved performance, manifested only over a long period of time and are factored when new regulations are put in place. As regards the prayer by MPPTCL, for submission of the revenue requirement details for the generating station, the representative of the petitioner clarified that the same would be submitted in accordance with the provisions of the "Procedures for calculating the expected revenue from tariffs and charges Regulations, 2010."

6. The Commission reserved orders in the petition.

Sd/-
T.Rout
Joint Chief (Law)