

CENTRAL ELECTRICITY REGULATORY COMMISSION

RECORD OF PROCEEDINGS

Petition No. 253/2009

Subject: Petition under Section 62 of the Electricity Act, 2003.

Date of hearing: **12.1.2010**

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

Petitioner: TNEB

Respondents: NTPC and PGCIL

Parties present: (1) Shri P.H.Parekh, Sr. Advocate, TNEB
(2) Shri Ashish Vaid, Advocate, TNEB
(3) Shri.E.R.Kumar, Advocate, TNEB
(4) Shri Kumar Shashank, Advocate, TNEB
(5) Shri. R.Jamel Basha, TNEB
(6) Ms. Maheshwari Bai, TNEB

This petition has been made by the petitioner TNEB, under Section 62 of the Electricity Act, 2003 (the Act) seeking the following specific prayers:

- (a) Declare that NTPC and PGCIL are not entitled to recover grossed up tax, while claiming reimbursement of income-tax from TNEB;
- (b) Declare that NTPC and PGCL are entitled to recover tax only in accordance with the Regulations of the Hon'ble Commission as well as orders dated 21.12.2000 and 26.3.2004 passed in Petition No. 4/2000 and other connected matters and Petition No. 67/2003 respectively; and
- (c) Direct NTPC and PGCIL to refund the amounts of grossed up tax, if any, recovered from TNEB for the period from 1.4.2001 to 31.3.2009, by way of reimbursement of income-tax, along with interest thereon at 18% p.a.

2. Learned counsel for the petitioner submitted that it had filed the petition for a decision by the Commission on the issue as to whether the respondents are entitled to gross up the tax, while claiming reimbursement of income-tax. He also submitted that the issue of grossing up of tax had already been rejected the Commission in its earlier orders dated 21.12.2000 and 26.3.2004. Learned counsel referred to the K.P.Rao Committee report and submitted that the said committee had recommended that no grossing-up can be allowed on income-tax and the Govt. of India had accepted the

recommendations without any modifications with effect from 1.4.1991. The learned counsel referring to the Commission's order dated 21.12.2000, submitted that the Commission had clearly held that the practice of recovery of grossing up of tax was not to be followed by the central power generators/suppliers and had accordingly notified the CERC (Terms and Conditions of Tariff) Regulations, 2001 applicable for the period 2001-04. The learned counsel also submitted that the CERC (Terms and Conditions of Tariff) Regulations, 2004, applicable for the period 2004-09, was notified in terms of the Commission's order dated 26.3.2004 in Petition No. 67/2003, and the said regulations did not also provide for grossing up of income-tax.

3. During the hearing, the learned counsel for petitioner filed written submissions and submitted that the Commission had not considered its earlier orders dated 21.12.2000, 26.3.2004 and the report of the K.P.Rao Committee, in its order dated 7.1.2010 in Petition No. 163/2008, (NLC-v-TNEB) while deciding the issue of grossing up of tax. The learned counsel reiterated that the petitioner's right to claim reimbursement was based on the regulations notified by the Commission and prayed for a declaration that the respondents were not entitled to gross-up tax in its claim for reimbursement from the petitioner.

4. Admit. Issue notice. The Commission directed the petitioner to serve copy of the petition on the respondents who may file their replies by 27.1.2010. Rejoinder, if any, by 3.2.2010.

5. Petition to be re-notified for hearing on 9.2.2010.

Sd/-
(T.Rout)
Joint Chief (Legal)