

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Record of Proceedings

Petition No.300/2009

- Subject : Petition for approval of recovery of fixed charges on account of capital expenditure incurred at the various offices of NTPC between 1.4.2004 to 31.3.2009.
- Coram : Dr. Pramod Deo, Chairperson
Shri V.S.Verma, Member
- Date of Hearing : 10.6.2010
- Petitioner : NTPC Ltd.
- Respondents : UPPCL, AVVNL, JVVNL, JoVVNL, DTL, NDPL, BSES – Rajdhani Power Ltd., BSES – Yamuna Power Ltd., NDMC, MES, PSEB, HVPNL, HPPC, HPSEB, PDD, Jammu, ED, Daman & Diu, ED, Dadar & Nagar Haveli, APTRANSCO, APEPDCL, APSPDCL, APNPDCL, APCPDCL, TNEB, KPTCL, BESCO, MESCOM, CESC (Mysore), GESCOM, HESCO, KSEB, Electricity Dept., Puducherry and GRIDCO, DVC, BSEB, JSEB, WBSEDCL, Dept. of Power, Govt of Sikkim.
- Parties present : 1. Shri M.G.Ramachandran, Advocate, NTPC
2. Shri Anand K.Ganesan, Advocate, NTPC
3. Ms. Sneha Venkataramani, Advocate, NTPC
4. Shri S.K.Samui, NTPC
5. Shri C.K.Mondal, NTPC
6. Shri Ajay Dua, NTPC
7. Shri G.K.Dua, NTPC
8. Shri D.K.Srivastava, Advocate, MPPTCL
9. Shri Manoj Dubey, MPPTCL
10. Shri T.P.S.Bawa, Consultant, HPPC
11. Shri R.Krishnaswami, TNEB

This application has been filed by the petitioner NTPC, for approval of recovery of fixed charges on account of capital expenditure incurred at the various offices of NTPC between 1.4.2004 to 31.3.2009.

2. The learned counsel for the petitioner referred to the written submissions filed by it vide affidavit dated 21.4.2010 and submitted that the order of the Commission dated 26.4.2006 in Petition No. 3/2006 rejecting the claim for capital expenditure incurred on corporate office etc, amounting to Rs 370.30 crore, upto

31.3.2004, was confirmed by the Appellate Tribunal against which the petitioner had filed Civil Appeal before the Hon'ble Supreme Court, which was pending. He also submitted that the present petition for recovery of capital expenditure on corporate offices etc. for the period from 1.4.2004 to 31.3.2009 should be considered based on the judgment of the Appellate Tribunal dated 23.11.2007 in Appeal No. 273/2006, wherein the Appellate Tribunal had held that DVC was entitled to the servicing of capital expenditure relating to corporate office etc, and the Commission had allowed the same in terms of the said judgment. The learned counsel also pointed out to the notification of the Central Electricity Regulatory Commission (Fees and charges of Regional Load Dispatch Centre and other related matters) Regulations, 2009, by the Commission and submitted that the capital expenditure on assets at the corporate office of the utilities as a cost element should be considered. As regards the submission of the respondent, UPPCL in its reply dated 20.2.2010, that Regulations 4 and 5 of the 2004 Tariff Regulations specified by the Commission only provide for determination of tariff station-wise, the learned counsel pointed to the provisions of Sections 61, 62 and 64 of the Electricity Act, 2003 and submitted that these provisions specifically dealt with generating companies and not generating units. He also added that the Commission for the sake of convenience had specified regulations for determination of tariff of generating stations, unit-wise and stage-wise and the tariff determined as such was aggregated. The learned counsel further submitted that the submission of UPPCL bears no logic as it would mean that the expenditure incurred on separate offices for each generating station was permitted, which would increase the cost, and not the expenses on common office which would economize the expenditure. The learned counsel for the petitioner submitted that the contention of the respondent, UPPCL that tariff could not be revisited, in terms of the judgment dated 3.3.2009 of the Hon'ble Supreme Court in C.A.1110/2007, has no merit, since the claim for additional capitalization could be filed after the tariff period in terms of the 2004 Tariff Regulations, for consideration of the Commission.

3. The learned counsel for the respondent, MPPTCL pointed out that it had filed its reply to the petition and submitted that the judgment of the Appellate Tribunal in Appeal No. 273/2006, filed by DVC, could not be relied upon by the petitioner since the said judgment had been passed keeping in view the specific provisions of the DVC Act, 1948, which is not applicable to other licensees, including the petitioner. He also submitted that the Appellate tribunal in its judgment dated 30.3.2007 while disallowing the claim of the petitioner for Rs 370.30 crore, had not condoned the delay in respect of the claim for the period from 1.4.2004 and prayed that the Commission should consider the question of limitation in the present petition. The learned counsel further submitted that the Central Electricity Regulatory Commission (Fees and charges of Regional Load Dispatch Centre and other related matters) Regulations, 2009, referred to by the petitioner, has no application since these regulations had no retrospective effect and operated prospectively from 18.9.2007.

4. The representative of the respondent, TNEB submitted that the petition was incomplete as the petitioner had not annexed the documents relied upon

by it. The representative also submitted that it may be permitted to file a detailed reply in the matter, after the question of maintainability was decided by the Commission. The representative further submitted that the petitioner, through this petition has sought to amend the 2004 Tariff Regulations, after expiry of the tariff period, which could not be permitted, in terms of the judgment dated 15.3.2010 of the Hon'ble Supreme Court in C.A.3902/2006 (PTC -v- CERC & ors). He further submitted that the Commission should consider the question of limitation, as the petition had been filed long after a period of 2 years from the date of judgment (30.3.2007) of the Appellate Tribunal. The representative added that the petition filed pursuant to the judgment in DVC case (Appeal No.273/2006) was an afterthought and the said judgment could not be applied to the petitioner. The representative further added that the Commission in its order dated 26.4.2006 in Petition No. 3/2006 had clearly observed that servicing of capital expenditure incurred at offices other than those located at the projects/stations was not allowed by the Gol notification and the 2001 and 2004 Tariff Regulations notified by the Commission. He submitted that in terms of the judgment dated 3.3.2009 of the Hon'ble Supreme Court in C.A.1110/2007, revisiting tariff would burden the new consumers and hence the petitioner was not entitled to the reliefs claimed in the petition

5. The representative of HPPC prayed that the present petition could not be considered by the Commission since the Civil Appeal filed by the petitioner against the judgment dated 30.3.2007 of the Appellate Tribunal on the same issue, was pending before the Hon'ble Supreme Court and verdict in the appeal was awaited.

6. In response to the above, the learned counsel for the petitioner clarified that Part IV of the DVC Act, 1948 do not relate to corporate office expenditure and the order of the Commission dated 3.10.2006 and the judgment of the Appellate Tribunal dated 23.11.2007 on this issue, was based on the interpretation of the 2004 Tariff Regulations of the Commission and not the DVC Act. He further clarified that while Civil Appeal claiming Rs. 370.30 crore for the period upto 31.3.2004, towards the corporate office expenditure, was pending for consideration before the Hon'ble Supreme Court, the present petition has been filed with a prayer for servicing the capital expenditure incurred on corporate offices etc, from 1.4.2004 in terms of the Regulation 18 of the 2004 Tariff Regulations specified by the Commission. The learned counsel reiterated that the relief prayed for was based on the interpretation of the Regulations and not a challenge of the Regulations specified by the Commission.

7. Matter to be listed on 20.7.2010 for further hearing.

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