

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

1. **Shri D.P. Sinha, Member**
2. **Shri G.S. Rajamani, Member**
3. **Shri K.N.Sinha, Member**

Petition No.76/2000 and IA 100/2001 in Petition No.76/2000 In the matter of

Approval of Revised Fixed Charges due to Additional Capital Expenditure
Capitalisation and Foreign Exchange Rate Variation for the years 1997-98,
1998-99, 1999-2000 and 2000-01 of Kawas GPS

And in the matter of

National Thermal Power Corporation Ltd. Petitioner

VS

Madhya Pradesh Electricity Board & Others Respondents

The following were present:

1. Shri K.K. Garg, GM (Comml), NTPC
2. Shri M.S. Chawla, DGM (Comml.), NTPC
3. Shri S.K. Sharma, Sr. Mgr (Comml.), NTPC
4. Shri M. Sravan Kumar, SM (F), NTPC
5. Shri T.R. Sohal, NTPC
6. Shri R.Singhal, NTPC
7. Shri V.K. Padha, NTPC
8. Shri A.K. Juneja, NTPC
9. Shri Rohit K. Singh, Advocate for MPSEB
10. Shri D.K. Srivastava, EE, MPSEB
11. Shri K. Khandelwal, SE, MPSEB

**ORDER (DATE OF HEARING
20-12-2001)**

This petition was filed by the petitioner, NTPC, a generating company owned by the Central Government, seeking the Commission's approval to the Revised Fixed Charges due to additional capital expenditure and Foreign Exchange Rate Variation (FERV) for the years 1997-98 and 1998-99 for Kawas Gas Power Station (Kawas GPS). Subsequently, the petitioner filed IA (No.21/2001) praying for amendment of the petition so as to claim the Revised Fixed Charges due to above noted two components of tariff for the year 1999-2000, in addition to the years 1997-98 and 1998-99 claimed in the original petition. The prayer was granted by the Commission vide its order dated 14-8-2001. The petitioner filed another IA No. 100/2001 to further amend the petition so as to claim Revised Fixed Charges for the year 2000-01, as well and also to implead Chhatisgarh State Electricity Board. This IA was listed before us on 20-12-2001. Through an oral order we had allowed the IA. The amended petition was directed to be taken on record. Thus in the present petition, as amended, the petitioner seeks Revised Fixed Charges due to additional capital expenditure and FERV in respect of Kawas GPS for the years 1997-98 to 2000-01 as under:

Effective period	Fixed charges as per tariff notification (Rs.Cr./year)	Impact of Additional capital Expenditure capitalisation (Rs. Cr./yr.)	Impact of FERV (Rs.Cr./yr)	Revised Fixed Charges (Rs.Cr./yr)
1997-98	306.122	0.763	0.069	306.954
1998-99 (up to 31-10-98)	306.122	3.521	3.551	313.194
1998-99 (1-11-98 to 31-3-99)	335.477	3.952	4.126	343.555
1999-2000	335.447	6.800	14.431	356.708
2000-01	335.447	9.242	3.411	348.130

2. The relevant details/calculations in support of the Revised Fixed Charges claimed have been furnished with the petition and subsequently through an affidavit filed on 12-10-2001 under direction from the Commission

3. The tariff for sale of power from Kawas GPS was determined on two part basis by Ministry of Power as notified on 30-4-1994 in exercise of powers under Section 43 A(2) of the Electricity (Supply) Act, 1948. This notification was valid from 1-9-1993 to 31-3-1998. This notification was amended through subsequent notifications issued by Ministry of Power on 16-1-1997, 30-11-1998 and 14-5-1999. Through the notification dated 14-5-1999, Ministry of Power determined the Revised Fixed Charges up to the year 1996-97.

4. Clause 2.0 of the notification dated 30-4-1994, as amended, *inter-alia* provided that the impact of additional capital expenditure in each financial year during the tariff period would be determined by the Central Government immediately on finalization of accounts. Clause 5 of the notification further provided that effect of FERV to be paid to/by the petitioner by/to the beneficiaries would be determined by the Central Government at the end of each financial year. Thus, under the notification issued by Ministry of Power, determination of impact of additional capital expenditure and FERV was to be determined by the Central Government in exercise of its powers under Section 43 A(2) of the Electricity (Supply) Act, 1948 at the end of a financial year when the audited accounts for that year were available.

5. Section 43 A(2) of the Electricity (Supply) Act 1948 was omitted by the Central Government, Ministry of Power in exercise of powers under Section 51 of the Electricity Regulatory Commissions Act, 1998 w.e.f. 15-5-1999 in terms of notification dated 22-3-1999 and from that date power to regulate tariff of the generating stations owned or controlled by the Central Government came to be vested in the Commission. By that date, the Central Government did not determine the impact of the above-noted two components of tariff for the years 1997-98 and onwards. Therefore, with the vesting of power of regulation of tariff in the Commission, the Central Government did not have the jurisdiction to determine the above-noted two components of tariff. The Commission is in *seisin* of the issue raised in the petition against the above backdrop.

6. After the vesting of the power to regulate tariff in the Commission in respect of generating stations owned or controlled by the Central Government in the Commission, the Commission was to prescribe the terms and conditions of tariff by virtue of Section 28 read with Section 55 of the Electricity Regulatory Commissions Act, 1998 before actual determination of tariff of individual generating stations. These terms and conditions were decided by the Commission under its order dated 21-12-2000 in petition No.4/2000 and other related petitions and were subsequently notified on 26-3-2001. These terms and conditions have become applicable w.e.f. 1-4-2001. The Commission's Order dated 21-12-2000 *ibid* provides that in all cases where the tariff was determined earlier under the Government Notifications shall continue to apply till 31-3-2001. Beyond that date the terms and conditions notified by the Commission shall be applicable and tariff shall be determined based on these terms and conditions.

7. The replies to the petition have been filed on behalf of MPSEB (respondent No.1) and GEB (respondent No.3) who has endorsed the views of respondent No.1.

8. MPSEB in its written statement has raised a preliminary issue regarding the jurisdiction of Ministry of Power to issue notifications dated 30.11.1998 and 14.5.1999. According to MPSEB, Ministry of Power, by notification dated 11.9.2000 has sought to omit sub-section (2) of Section 43 A of the Electricity (Supply) Act 1948 w.e.f. 24-7-98 and, therefore, any notification issued by Ministry of Power after omission of Section 43 A(2) of the Electricity (Supply) Act 1948 on 24-7-98, is a nullity, without jurisdiction and void ab initio. When viewed in the context of the notification issued by Ministry of Power on 30-11-1998 and 14-5-1999, it had been the contention of MPSEB that the said notification cannot be given effect to since these have been issued when the Central Government was divested of power to prescribe terms and conditions of tariff.

9. Earlier, a notification was issued by Ministry of Power in exercise of its powers under Section 51 of the Electricity Regulatory Commissions Act on 22-3-99 providing that Section 43 A(2) of the Electricity (Supply) Act, 1948 would be omitted w.e.f. 15-5-99. The supplementary tariff notifications in respect of Kawas GPS were issued on 30-11-1998 and 14-5-1999 and , therefore, it was within the competence of Ministry of Power to issue such notifications. However, by a subsequent notification issued on 11-9-2000 in partial modification of the notification issued on 22-3-1999, the Central Government notified that Section 43 A(2) of the Electricity

(Supply) Act 1948 would be deemed to have been omitted w.e.f. 24-7-98. In other words, the notification dated 11-9-00 was given a retrospective effect.

10. A similar point was raised on behalf of Respondent No. 1 in Petition No. 77/2000. The said petition has been decided by us vide the order dated 10.4.2002. There we have decided not to take any cognizance of the notification dated 11.9.2000, in view of its retrospective operation. We reiterate the view taken by us earlier. We further find that the Revised Fixed Charges on account of additional capital expenditure and FERV are to be worked out based on the notification dated 30.4.1994. The notifications dated 30.11.1998 and 14.5.1998 have no direct relevance or bearing on calculation of the Revised Fixed Charges which are to be calculated in accordance with notification dated 30.4.1994. For this reason also, the preliminary objection taken on behalf of Respondent No. 1 does not survive.

11. Another preliminary issue that had been raised by respondent No.1 is that additional capital expenditure and FERV for the period beyond 31-3-1998 could not be determined by the Commission, unless it also determined the effect of other components of tariff, namely, ROE, depreciation, loan repayment, etc. It was submitted that repayment of loan and charging of depreciation, etc. during the period of validity of the tariff notification issued by Ministry of Power would have the effect of reducing tariff, when re-determined after expiry of the period of the notification. According to the petitioner, the tariff notified by Ministry of Power was continued by the Commission up to 31-3-2001 and .therefore, the question of redetermination of tariff by the Commission for the period prior to 31-3-2001 should not normally arise.

12. This issue was also raised by the respondents in petition No.42/2000 and other related petitions in which the order was issued on 2-1-2002. In those petitions we took a view that all the components of tariff were required to be re-determined from the date of expiry of validity of the notification issued by Ministry of Power. It was further held that the question of re-determination of only two components of tariff, namely, additional capital expenditure capitalisation and FERV could not be considered in isolation of other components of tariff, otherwise it would lead to distortion in tariff. In those petitions, the petitioner was directed to file fresh petitions for re-determination of entire tariff from the date of expiry of the notifications issued by Ministry of Power.

13. We are inclined to reiterate the view taken in our order dated 2-1-2002 *ibid*. As we have already noted the notification in respect of Kawas GPS was valid up to 31-3-1998. Therefore, the impact of additional capital expenditure capitalisation and FERV would be determined for the year 1997-98.

14. The amount of additional capital expenditure incurred by the petitioner during 1997-98 is as under:

(Rs. in lakhs)

New work	885.44
Balance payments	381.15
TOTAL	1266.59

15. The petitioner has furnished justification for new works involving the expenditure of Rs.883.22 lakhs during 1997-98 against the total claim of Rs.885.44 lakhs. On scrutiny, this expenditure has been found to be in order. Similarly, the petitioner's claim

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for additional capital expenditure on account of balance payments of Rs.381.15 lakhs has also been found to be in order. The details of the additional capital expenditure during 1997-98 as furnished by the petitioner are contained in the statement annexed at Annexure 'A' to this order. A total amount of Rs.1264.37 lakhs during 1997-98 on account of additional capital expenditure is approved.

16. The petitioner's claims in respect of new works and balance payments have been examined by adopting the following methodology:

- (i) Any work, which was within the scope of approved project cost but undertaken after the date of commercial operation has been allowed. Other works undertaken before the date of commercial operation for which balance payments has been claimed, it has been presumed that these works were also within the scope of approved project cost.
- (ii) Wherever the expenditure has been incurred for the replacement of existing equipment/facility due to technology becoming obsolete or the equipment has outlived its utility in the normal course of operation, the same has also been allowed for capitalisation.
- (iii) The expenditure on the works undertaken in purchasing of additional equipment/facility which is giving benefit to the petitioner only, without any apparent benefit to the beneficiaries has not been allowed, unless it is found that expenditure was necessary for the benefit of the employees for giving requisite facilities at the remote location of the power project.

17. Based on the above, the revised fixed charges on account of additional expenditure and FERV are calculated as given in Tables 1 & 2 below:

TABLE 1

Calculation of Annual Fixed Charges due to Additional Capital Expenditure
for the year 1997-98

Capital Cost	Rs. in Crores
Balance payments allowed during the year	3.8115
New Works allowed during the year	8.8322
Total ACE Addition during the year	12.6437
Cum. Capital Addition up to 31 st March 1998	12.6437
Effective Capital Addition	6.3219
Equity	3.1610
Loan	3.1610
Repayment	0.0000
Net Loan	3.1610
Rate of Depreciation	7.25%
Debt Equity Ratio	
Debt	50.00
Equity	50.00
Total	100.00
Rate of Return on Equity	12%
Rate of Interest on Loan	12.11%
Annual Fixed Charges	
Depreciation	0.000
Interest on loan	0.383
Return on Equity	0.379
TOTAL	0.762

TABLE 2**Calculation of Annual Fixed Charges due to FERV for the year 1997-98**

Capital Cost	
FERV allowed during the year	1.1420
Total FERV Addition during the year	1.1420
Cum. Capital Addition up to 31 st March 1998	1.1420
Effective Capital Addition	0.5710
Equity	0.2855
Loan	0.2855
Repayment	0.0000
Net Loan	0.2855
Rate of Depreciation	7.25%
Debt-Equity Ratio	
Debt	50.00
Equity	50.00
Total	100.00
Rate of Return on Equity	12%
Rate o Interest on Loan	12.11%
Annual Fixed Charges	
Depreciation	0.000
Interest on Loan	0.035
Return on Equity	0.034
Total	0.069

18. Based on the above discussion, the impact of additional capital expenditure and FERV during the year 1997-1998 on the fixed charges recoverable from the respondents shall be as under:-

(Rs. in crores)

Year	Fixed Charges as per tariff notification	Additional FC due to Additional Capital Expenditure	Additional FC due to FERV	Total additional Fixed Charges	Revised fixed charges
1997-98	306.1220.762		0.069	0.831	306.953

19. The revised fixed charges shall be recovered from the respondents in proportion to the energy drawn during the year.

20. In case the petitioner claims revised fixed charges for the year 1998-99 to 2000-01 it is required to file a fresh petition for re-determination of tariff for the period from 1-4-1998 to 31-3-2001 based on the terms and conditions of tariff as notified by Ministry of Power on 30-4-1994, as amended from time to time.. The petition, if filed shall contain all the details as required under performae prescribed by the Commission in its order of 14-9-01 in review petition No.29/2001.

21. With the above directions this petition stands disposed of.

(K.N. Sinha)
Member

(G.S. Rajamani)
Member


(D. S. Hafia)
Member

New Delhi dated: 19th April , 2002.