

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 11/2011**

Subject: Petition for review of Order dated 28/04/2011 passed by the commission in Petition No. 150/2009 for revision of fixed charges on account of additional capital expenditure incurred during the years 2006-07, 2007-08 and 2008-09 in respect of Farakka Super Thermal Power Station ( 1600 MW).

Date of hearing: 17.11.2011

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

Petitioner: NTPC

Respondents: West Bengal State Electricity Distribution Company Ltd and others

Parties Present: Shri S. Majumdar, NTPC  
Shri A. Basu Roy, NTPC  
Shri Manoj Dubey, Advocate, MPPTCL  
Shri Manish Garg, UPPCL  
Shri R.B.Sharma, Advocate, BSEB, JSEB & GRIDCO

**Record of Proceedings**

The representative of the petitioner submitted as under:

- (i) This petition has been filed seeking review of the order dated 28.4.2011 in Petition No. 150/2009 on the ground of disallowance of capitalization of expenditure on Enterprise Resource Planning (ERP).
- (ii) The expenditure claimed is used for development of IT infra structure and has been integrated and implemented in all generating stations of the petitioner.

- (iii) The Commission has allowed the said claim of the petitioner on this head in respect of all other generating stations like Simhadri, Kawas, etc. on the ground that this expenditure is necessary for efficient and successful operation of the generating station. The same may be considered for this generating station also.
- (iv) In the case of Kawas generating station of the petitioner, the claim of the petitioner as regards ERP was earlier disallowed and the same was subsequently allowed by the Commission on a review petition filed by the petitioner.
- (v) The instant case is similar to the case of Kawas generating station and hence, the expenditure on ERP amounting to ₹225.4 lakh may be allowed, as allowed in other stations.

2. The representative of the respondent No.9, UPRCL submitted as under:

- (i) There is no error apparent on the face of record in the order sought to be reviewed.
- (ii) The Commission had taken a conscious decision to disallow the said claim, with proper reasons. Even otherwise, there have been substantial gains made by the petitioner in terms of O&M expenses and fuel efficiency.
- (iii) The expected useful life of the generating station would be over during 2009-14 and the respondents would be deprived from enjoying the benefits of implementation of SAP-ERP system.
- (iv) The substantial gains in O&M expenses during 2009-14 would not be available to the respondents since the O&M expenses for 2009-14 are based on the O&M expenses actually incurred during the period 2004-07.
- (v) Even 1% reduction in the total expenditure towards O&M and interest on working capital of the petitioner [₹250.00 crore (approx)], would be sufficient to take care of the claim for ₹225.00 lakh with regard to ERP expenditure.
- (vi) If the claim of the petitioner is allowed, the respondents would be burdened to reimburse the expenditure for which no benefit has been derived by them.
- (vii) The review petition may be rejected on the grounds above.

3. The representative of respondent No. 12, MPPTCL submitted as under:

- (i) Referring to paragraph 44 of the order dated 28.4.2011, it was submitted that the issue of ERP has been duly considered by the Commission and disallowed on proper reasoning. The petitioner cannot raise the same issue on review.
- (ii) Referring to paragraph 12 of the Commission's order dated 21.10.2011 in Petition no. 44/2009, it was submitted that in the case of Kawas generating station, the Commission had allowed ERP expenditure on the ground that it was not considered while determining the tariff of the generating station. However, in this case, the Commission has already considered and disallowed the said expenditure by a reasoned decision. Hence, the prayer of the petitioner may be rejected.

4. The learned counsel appearing on behalf of BSEB, JSEB, GRIDCO and BSES (Rajdhani) Power Limited (respondent Nos.2, 3, 4 and 16) submitted as under:

- (i) Though separate replies have been filed on behalf of the said respondents, the reply filed on behalf of GRIDCO is adopted for other respondents.
- (ii) Referring to para 5 of the review petition, it was submitted that the Commission has given adequate reasons for disallowing the claim of the petitioner in respect of ERP.
- (iii) This respondent is not barred by the principle or *res judicata* since it was not a party to the proceedings in the review petition pertaining to Kawas generating station.
- (iv) The power of this Commission as envisaged under Section 94 of the Electricity Act, 2003 is akin to the powers as are vested in a Civil Court under Order 47 Rule 1 of the Code of Civil Procedure, 1908. Hence, the petitioner cannot reopen and reargue the case and seek review on the ground of 'error in judgment'.
- (v) Referring to the judgments of the Appellate Tribunal for Electricity as annexed to the reply and the judgment of Hon'ble Supreme Court in (1997) 8 SCC 715), it was submitted that a review petition cannot be an 'appeal in disguise' and the Commission may dismiss the same.

- (vi) Review of an order on the grounds of 'error in judgment' is not maintainable before the Commission and the alternate remedy for the petitioner is to file an appeal. The review petition is thus, not maintainable.

5. In response to the above, the representative of the petitioner clarified as under:

- (i) There is error apparent on the face of the record, since the Commission has not considered its various orders allowing the expenditure on ERP in respect of its other generating stations.
- (ii) As allowed by the Commission in respect of its other generating stations, the expenditure on ERP may be allowed for this generating station also.

6. The Commission reserved its orders in the review petition.

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