

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 282/2009**

- Subject : Approval of tariff of Kahalgaon Super Thermal Power Station, Stage-II (1500MV) of NTPC, for the period from 1.4.2009 to 31.3.2014.
- Date of hearing : 13.9.2011
- Coram : Dr. Pramod Deo, Chairperson  
Shri S. Jayaraman, Member  
Shri V.S. Verma, Member  
Shri M. Deena Dayalan, Member
- Petitioner : NTPC Ltd
- Respondents : West Bengal State Electricity Board, Kolkata & 23 others.
- Parties present : Shri V.K Padha, NTPC  
Shri D. Kar, NTPC  
Shri A. Basu Roy, NTPC  
Shri K.P.Satpathy, NTPC  
Mrs. Alka Saigal, NTPC  
Shri Ajay Dua, NTPC  
Dr. Meenu Mishra, NTPC  
Shri G. K. Dua, NTPC  
Shri Manish Garg, UPPCL  
Shri R.B. Sharma, Advocate, BSEB, JSEB and GRIDCO  
Shri Dushyant Manocha, Advocate, BYPL  
Shri V.P. Singh, BYPL  
Shri Haridas Maity, BYPL  
Shri Anurag Sharma, BYPL  
Shri Sunil Kakkar, BYPL  
Shri Abhishek Srivastava, BYPL

**Record of Proceedings**

This petition has been filed by NTPC (hereinafter referred to as 'the petitioner') for determination of tariff of Kahalgaon STPS Stage-II for the period from 1.4.2009 to 31.3.2014 in accordance with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (herein after referred to as "the 2009 Regulations").

2. The representative of the petitioner submitted as under:
  - (a) Units I and II of the generating station have been declared under commercial operation during the period 2004-09 and tariff for the same had been determined by the Commission. Unit-III of the generating station has been declared under commercial operation with effect from 20.3.2010.
  - (b) The projected additional expenditure to be incurred is within the cut-off date and has been claimed under Regulations 9(1) and 9(2) of the 2009 regulations.
  - (c) The audited expenditure as on the date of commercial operation has been submitted and the Commission may determine the tariff of the generating station as prayed for in the petition.
  - (d) Additional information as sought for by the Commission and rejoinder to the replies filed by the respondent has been filed and copies served on the respondents.
3. The representative of the respondent No. 9, UPPCL submitted as under:
  - (a) The tax rate considered by petitioner for grossing up of Base Return on Equity is 33.99% for the period 2009-14. This tax rate has undergone change in terms of surcharge and the effect of the same should only be considered by the Commission.
  - (b) The matter of un-discharged liabilities is sub-judice before the Hon'ble Supreme Court. Since, un-discharged liabilities are being considered by the Commission in compliance with the order of the Tribunal, the amount of ₹326 crore on this count should be considered as part of debt being a supplier funding and 'nil' rate of interest should be allowed.
4. The learned counsel for the respondent No. 20, BSES Yamuna Power Ltd (BYPL) submitted as under:
  - (a) The foreign exchange loan as set out in Form-8 at Page-28 of the petition show an exchange which is admittedly not the exchange rate prevailing at the time when payments have to be made. Hence, the exchange rate prevailing as on date of payment (i.e during 2013) is to be applied.
  - (b) In the revised form submitted by the petitioner (Form-5D) showing capital expenditure before the cut-off date, there is huge variation in the expenditure incurred in most of the items. The Commission should examine the reasons for cost over-run along with other factors (whether cost over-run attributable to NTPC, whether cost

have been effectively and prudently incurred factoring claims made by NTPC on its contactors, whether claims of contractor has been contested by NTPC, whether counter-claims made or set-off etc) before considering the claims of the petitioner.

- (c) Filing fees should be disallowed and the petitioner should be directed to share information with the respondents.

5. The learned counsel for the respondents, BSEB, JSEB AND GRIDCO submitted as under:

- (a) Rejoinder filed by petitioner in response to the reply filed by the respondent, GRIDCO has not been received.

- (b) The capital cost admitted by the Commission as shown in Form-5 is ₹314339.57 lakh. However, the amount of ₹16808 lakh disallowed by the Commission towards un-discharged liability for 2004-09 has been included in this petition. In terms of the last proviso to Regulation 7 of the 2009 regulations, capital cost admitted prior to 31.3.2009 shall form the basis for determination of tariff. Hence, there is no ground to consider the amount disallowed by the Commission.

- (c) The petitioner has not furnished the list of assets forming part of the project, but not in use. In terms of the proviso to Regulation 7(1)(c) of the 2009 regulations, the petitioner may be directed to give details of the assets not in use.

- (d) The projected additional expenditure during 2013-14 is beyond the cut-off date and hence falls under Regulation 9(2) of the 2009 regulations. Since the discretion to allow any expenditure under this regulation rests with the Commission, the petitioner has no legal right to claim the amounts. The risk of the expenditure on the assets is with the petitioner and the Commission could consider the same only if these assets are absolutely necessary. In view of this, the amount of ₹10 crore for 2013-14 should not be allowed under Regulation 9(2).

- (e) The capital expenditure incurred in respect of Unit-III of the generating station is to be duly certified by the statutory auditors in terms of Regulation 5(2) of the 2009 regulations. The certificate of statutory auditors in regard to Unit-III has not been given. Only the complete comprehensive cost of Stage-II (consisting of Units-I, II and III) has been given. The petitioner should be directed to file the certificate accordingly.

- (f) The approved capital cost of Stage-II or the apportioned cost of Unit-III of the generating station is not found in the petition

submitted by the petitioner. Hence, the time over-run or cost over-run details cannot be determined in this case. Stage-II of the generating station was cleared by CEA and the cost approved by CEA should not be appealable.

6. The learned counsel for respondent, BSEB shall continue his arguments during the next date of hearing.

7. Matter to be listed for further hearing on 1.11.2011

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