

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

RECORD OF PROCEEDINGS

Petition No.184/2009

Subject: Approval of revised fixed charges for the period 2004-09, due to additional capital expenditure incurred during 2007-08 and 2008-09 for Talcher STPS, (460 MW)

Date of hearing: 9.6.2011

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

Petitioner: NTPC Ltd

Respondents: Grid Corporation of Orissa Ltd.

Parties present: 1. Shri A.K.Ganesan, Advocate, NTPC
2. Shri V.K.Padha, NTPC
2. Shri M.K.V.Rama Rao, NTPC
3. Shri Ajay Dua, NTPC
4. Shri S.K.Samui, NTPC
5. Shri R.B.Sharma, Advocate, GRIDCO
6. Shri S.R.Sarangi, GRIDCO

This petition has been filed by the petitioner, NTPC, for approval of revised fixed charges for the period 2004-09, due to additional capital expenditure incurred during 2007-08 and 2008-09 for Talcher STPS, (460 MW), (hereinafter referred to as "the generating station") in terms of the Central Electricity Regulatory Commission (Terms and conditions of Tariff) Regulations, 2004 (hereinafter 'the 2004 regulations').

2. The Commission after hearing the matter on 7.9.2010 directed the petitioner to clarify the following and reserved its orders on the petition:

(i) Whether the sale of power from the generating station to the respondent constitute sale to a distribution company in terms of Section 62 of the Electricity Act, 2003.

(ii) Whether PPA with the OSEB has been assigned to one or more distribution companies of Orissa and if so, documentary evidence to be submitted.

3. The petitioner had submitted information on the above on 1.11.2010 with copy to the respondent. Since, the respondent, was not heard on the issue '*whether the sale of power from NTPC to GRIDCO constitute sale to a distribution licensee*' within the meaning of Section 62(1)(a) of the Electricity Act, 2003, the Commission directed listing of the matter, to hear the parties, including the Energy Department, Government of Orissa.

4. During the hearing, the learned counsel for the respondent submitted as under:

- (a) GRIDCO is not only an intra-State trader, but also bulk supplier of electricity to all the distribution companies in the State of Orissa. It is required to undertake all coordinating activities in technical and commercial aspects including all monetary transactions for supply of electricity by generating company to a distribution licensee.
- (b) Clause 1.3 of the Orissa Grid Code (OGC) specified by the Orissa State Regulatory Commission (OERC) identifies GRIDCO in the capacity of trader/bulk supplier who is required to comply with the provisions of the said Grid Code and also perform various statutory functions assigned to it under the Code/Regulations of the OERC.
- (c) GRIDCO undertakes trading transaction as well as bulk supply transaction. While for the sale of power by GRIDCO to any purchaser (trading), the State Commission do not have the power to fix tariff, the State Commission has the power to regulate the price for procurement of power by the distribution licensee under the bulk supply agreements with GRIDCO.
- (d) When the generating company is selling electricity to an intermediary trading company with a clear linkage of the sale by the trading company to an identified distribution licensee, there exists a nexus and the tariff could be determined by this Commission for the generating company.
- (e) In terms of the notification dated 17.8.2006 of the State Government of Orissa, GRIDCO is the State designated entity for execution of PPAs with the developers generating energy including thermal energy.
- (f) The issue raised in this petition is squarely covered by the decision of the Appellate Tribunal for Electricity in its judgment dated 15.12.2010 in Appeal No.121/2007 (UPPCL-v-NOPCL & anr) and hence the Commission has the jurisdiction to determine tariff of the generating station.
- (g) The matter is covered by the principle of *res judicata* since the tariff of the generating station has been determined by the Commission for the period 2001-04 and 2004-09 which also includes subsequent revisions allowed based on additional capital expenditure.
- (h) As submitted during the last hearing, the profit and loss account and the Return on Equity permitted by the Commission for the generating station would show that the petitioner is deriving huge profits during the three years in comparison to the profits allowed by the Commission. The taxes on income are recovered from the beneficiary and hence the entire profit after tax is the net profit of the generating company. Hence, allowing additional capital expenditure on R&M without sharing the benefits is not permissible.

5. On a specific query by the Commission as regards reference to the term 'bulk supply' in the Electricity Act, 2003 (the Act), the learned counsel submitted that though the term 'bulk supply' has not been defined in the Act, the OGC which is statutory in nature and framed under the Act provides that GRIDCO shall comply with the provisions of the Code as a bulk supplier. The learned counsel further submitted that GRIDCO does not have its own network and the power directly flows from the generator to the distribution licensees and only the supervisory activity for effecting the said transaction is undertaken by GRIDCO.
6. Despite notice, none appeared on behalf of the Energy department, State of Orissa. The representative of the petitioner submitted that it may be granted 10 (ten) days time to file its written submissions on the said issue.
7. The prayer of the petitioner was accepted. The petitioner is directed to file its written submissions on or before 27.6.2011.
8. Subject to the above, order in the petition was reserved.

Sd/-
T.Rout
Joint Chief (Law)