

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 77/2001

**Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.K.Singhal, Member
Shri A.S. Bakshi, Member
Dr. M. K. Iyer, Member**

Date of Order: 18.07.2017

IN THE MATTER OF

Revision of tariff of Tanda Thermal Power Station (4 x 110 MW) for the period from 15.01.2000 to 31.03.2019 in terms of the judgment of the Hon'ble Supreme Court of India dated 22.03.2017 in Civil Appeal No. 4817 of 2007.

AND

IN THE MATTER OF

NTPC Limited,
NTPC Bhawan,
Core-7, SCOPE Complex,
7, Institutional Area,
Lodhi Road, New Delhi-110003

...Petitioner

Vs

Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashok Marg
Lucknow- 226001

...Respondent

ORDER

This order issues pursuant to the judgment of the Hon'ble Supreme Court of India dated 22.03.2017 in Civil Appeal No 4817 of 2007.

Background of the Case

2. Tanda TPS (hereinafter referred to as "the generating station") was transferred by UPSEB (predecessor of the petitioner) on 14.1.2000 under the UP



Electricity Reforms (Transfer of Tanda Undertaking) Scheme, 2000 for a total consideration of Rs.1000 crore. The petitioner and UPSEB also entered into a Power Purchase Agreement dated 7.1.2000 valid for a period of 25 years from the date of vesting (14.1.2000) of the generating station in the petitioner company according to which the power generated would be supplied exclusively to UPSEB.

3. The Commission approved the tariff for the generating station for the period up to 31.3.2004 vide order dated 28.6.2002 in Petition No. 77/2001 and order dated 9.4.2003 in Review Petition No. 2/2003 in Petition No. 77/2001. The tariff was based on the capital cost of Rs.607 crore as on 14.1.2000. Though the Commission had accepted the capital cost of Rs.607 crore, depreciation amounting to Rs. 175.91 crore charged up to the date of transfer was considered for limiting the cumulative depreciation amount.

4. The petitioner had preferred an appeal number 102/2005 before the Appellate Tribunal for Electricity on number of grounds. The aforesaid issue of reduction of Rs. 175.91 Crore for the purpose of depreciation was also one of the grounds of appeal.

5. By judgment dated 06.06.2007 Appellate Tribunal for Electricity disposed of the appeal on the above issue as under:

26. In view of the above we find no fault with the Central Commission's view restricting cost of facility to the original capital cost of Rs. 607 crores. Once we agree that the capital costs of the facility is to be restricted to its original cost the logical course of action would be to account for the depreciation already recovered through tariff in the past. The accumulated depreciation of Rs. 175.91 crores has already been recovered from the consumers in the past through tariff. If such accumulated depreciation amount were again allowed to be recovered it would amount to recovering the same cost twice which is contrary to the intention of the applicable scheme for determination of tariff. The plea that by disallowing to recover the accumulated depreciation of Rs. 175.91 crores



from the capital cost of Rs. 607 crores, the Appellant would be put to alleged perceived loss but that could not be the sufficient reason to compensate the appellant by making recovery from consumers through increased tariff. We therefore, do not find any fault with the Central Commission in considering the accumulated depreciation of Rs. 175.91 crores for the purposes of restricting recovery of capital cost to the extent of 90% in the form of depreciation.

6. Aggrieved by the said order dated 06.06.2007 Civil Appeal Number 4817 of 2007 was filed by the petitioner before the Hon'ble Supreme Court of India.

7. During the pendency of above civil appeal, tariff for the Tanda TPS for different tariff periods was determined by the Commission as shown below:

a) Annual Fixed Charges for tariff period 1999-2004, as determined in order dated 01.07.2009 in petition no. 08/2005:

(₹ in lakh)

Particulars	1999-2000 (15.01.2000 to 31.03.2000)	2000-01	2001-02	2002-03	2003-04
Depreciation	4759.43	4759.43	2415.79	2607.65	2763.65
Interest on Loan	5853.67	5444.60	3625.48	3573.72	3143.35
Return on Equity	2913.94	3011.87	3221.06	3476.87	3684.87
AAD	0.00	0.00	1363.49	1442.02	1637.40
Interest on Working Capital	1213.05	1078.74	1120.60	1316.99	1475.42
O&M Expenses	3381.00	3720.00	3944.00	4181.00	4431.00
Total	18121.09	18014.64	15690.42	16598.25	17135.69

b) Annual Fixed Charges for tariff period 2004-2009, as determined in order dated 29.04.2011 in petition no. 186/2009:

(₹ in lakh)

Particulars	2004-05	2005-06	2006-07	2007-08	2008-09
Depreciation	2807.60	2890.71	2956.07	3011.93	3211.05
Interest on Loan	1941.87	1564.51	1673.18	1373.37	1008.53
Return on Equity	3327.37	3425.86	3503.33	3569.53	3805.50
AAD	0.00	0.00	0.00	0.00	0.00
Interest on Working Capital	1454.21	1466.79	1486.71	2022.81	2045.46
O&M Expenses	7325.00	7618.00	7922.00	8239.00	8569.00
Total	16856.07	16965.86	17541.29	18216.64	18639.54



c) Annual Fixed Charges for tariff period 2009-2014, as determined in order dated 23.08.2016 in petition no. 329/GT/2014:

(₹ in lakh)

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	4950.41	5241.04	5482.86	2594.39	2947.14
Interest on Loan	511.82	67.69	500.92	33.73	653.33
Return on Equity	6776.34	7080.09	7312.58	7616.21	8100.26
Interest on Working Capital	4227.90	4268.17	4335.56	4304.45	4378.63
O&M Expenses	11550.00	12210.00	12909.60	13648.80	14427.60
Cost of Secondary Fuel Oil	1694.99	1694.99	1699.64	1694.99	1694.99
Compensation Allowance	0.00	0.00	0.00	0.00	0.00
Special allowance	0.00	0.00	0.00	0.00	0.00
Total	29711.46	30561.98	32241.16	29892.57	32201.94

d) Annual Fixed Charges for tariff period 2014-2019, as determined in order dated 21.03.2017 in petition no. 336/GT/2014:

(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	3193.90	3430.45	3609.48	3856.58	3969.07
Interest on Loan	725.44	716.56	677.77	574.41	238.94
Return on Equity	6934.65	7117.47	7219.69	7343.84	7393.98
Interest on Working Capital	4289.09	4364.60	4431.55	4580.78	4650.91
O&M Expenses	16026.74	17021.14	18077.14	19199.14	20391.54
Compensation Allowance	0.00	0.00	0.00	0.00	0.00
Special allowance	0.00	0.00	0.00	0.00	0.00
Total	31169.82	32650.22	34015.63	35554.74	36644.44

8. Hon'ble Supreme Court of India by its judgment dated 22.03.2017 in Civil Appeal number 4817 of 2007 has allowed the appeal preferred by petitioner by setting aside the order so passed by the tribunal on the issue of reduction of Rs. 175.91 Crore for the purpose of depreciation. The relevant portion of the judgment is extracted as under:

"We have applied the principle of accountancy in the matter in the question and further taking into consideration the decisions which have been submitted by Mr. M.G.Ramachandran, learned counsel appearing for the appellant who had pointed out that what is relevant is the purchase consideration paid by the NTPC which is admittedly Rs 607 crore and not Rs 431.09 crore. The Appellate Tribunal, according to him, has



wrongly distinguished the decision of this Hon'ble Court relied upon by the appellant before the said Tribunal which is reported in AIR 1959 SC 1232 (Jogta Coal Company vs. Commission of Income tax) and another decision reported in (1972) 2 SCC 436 (Guzdar Khajura Coal Mines Ltd vs. Commissioner of Income tax) wherein it has been laid down that the purchase value should be the basis for computing the depreciation.

The Appellate Tribunal has merely stated that the treatment for depreciation under the Income Tax Act and for determination of tariff under the Electricity Act are different. However, such point which has been decided by the Tribunal, in our considered view, cannot come within the purview of accounting principle and, therefore, it has been noted that the judgments which have been relied upon before us substantially support the claim of the appellant- herein and accordingly, we set aside the order so passed by the Tribunal. As a consequence thereof, whatever consequential orders are necessary to be passed in the matter; the concerned authorities shall take necessary steps in the matter.

The appeal is allowed in the afore-stated terms.”

9. In compliance to the directions of the Hon'ble Supreme Court of India in the said judgment dated 22.03.2017 we have re-determined the tariff of the Tanda TPS applicable for different tariff periods. The tariff has been re-determined by considering Cumulative Depreciation on the date of take over as Nil as against earlier considered value of Rs. 175.91 crore in the original petition number 77/2001. All other facts, figures and principles of tariff as applicable during relevant tariff period have been kept unchanged.

10. In view of above, the revised tariff for the period from 15.01.2000 to 31.03.2019 is as shown below:



a) Revised Annual Fixed Charges for tariff period 1999-2004 – Since there is no change in the earlier allowed tariff, the table shown at 7 a) above remains the applicable tariff for the period depicted.

b) Revised Annual Fixed Charges for tariff period 2004-2009 undergoes change primarily because of change in advance against depreciation based on 2004-09 regulations.

(₹ in lakh)

Particulars	2004-05	2005-06	2006-07	2007-08	2008-09
Depreciation	2807.60	2890.71	2956.07	3011.93	3211.05
Interest on Loan	1941.87	1564.51	1673.18	1373.37	1008.53
Return on Equity	3327.37	3425.86	3503.33	3569.53	3805.50
AAD	2472.65	2567.32	2255.26	2713.53	2515.24
Interest on Working Capital	1497.19	1511.41	1525.90	2069.97	2089.17
O&M Expenses	7325.00	7618.00	7922.00	8239.00	8569.00
Total	19371.69	19577.80	19835.75	20977.33	21198.50

c) Revised Annual Fixed Charges for tariff period 2009-2014:

(₹ in lakh)

Particulars	2009-10	2010-11	2011-12	2012-13	2013-14
Depreciation	4950.41	5241.04	5482.86	2977.71	3331.87
Interest on Loan	511.82	67.69	500.92	33.20	623.66
Return on Equity	6776.34	7080.09	7312.58	7616.21	8100.26
Interest on Working Capital	4227.90	4268.17	4335.56	4312.42	4386.03
O&M Expenses	11550.00	12210.00	12909.60	13648.80	14427.60
Cost of Secondary Fuel Oil	1694.99	1694.99	1699.64	1694.99	1694.99
Compensation Allowance	0.00	0.00	0.00	0.00	0.00
Special allowance	0.00	0.00	0.00	0.00	0.00
Total	29711.46	30561.98	32241.16	30283.33	32564.41

d) Revised Annual Fixed Charges for tariff period 2014-2019:

(₹ in lakh)

Particulars	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	3578.68	3815.25	3994.30	4241.45	4353.94
Interest on Loan	665.85	621.86	529.26	359.37	97.06
Return on Equity	6934.65	7117.47	7219.69	7343.84	7393.98
Interest on Working Capital	4296.58	4371.28	4436.99	4584.69	4656.50
O&M Expenses	16026.74	17021.14	18077.14	19199.14	20391.54
Compensation Allowance	0.00	0.00	0.00	0.00	0.00
Special allowance	0.00	0.00	0.00	0.00	0.00
Total	31502.51	32947.00	34257.38	35728.48	36893.02



11. The tariff determined by this order shall be adjusted against the tariff recovered by the petitioner. The differential in tariff may be recovered in three equal instalments.

12. With this, the directions of the Hon'ble Supreme Court of India dated 22.03.2017 in Civil Appeal No 4817 of 2007 stands implemented.

sd/-
(Dr. M.K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A.K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

