

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

1. Shri Ashok Basu, Chairman
2. Shri Bhanu Bhushan, Member
3. Shri A.H. Jung, Member

**Review Petition No.52/2006  
in  
Petition No.155/2004**

**In the matter of**

Review of order dated 9.5.2006 in Petition No. 155/2004, for approval of tariff in respect of Dadri Gas Power Station for the period 1.4.2004 to 31.3.2009.

**And in the matter of**

National Thermal Power Corporation Ltd.

**....Petitioner**

Vs

1. Uttar Pradesh Power Corporation Limited, Lucknow,
2. Ajmer Vidyut Vitaran Nigam Ltd, Ajmer
3. Jaipur Vidyut Vitran Nigam Ltd, Jaipur,
4. Jodhpur Vidyut Prasaran Vitaran Nigam Ltd, Jodhpur,
5. Delhi Transco Limited, New Delhi,
6. Punjab State Electricity Board, Patiala,
7. Haryana Vidyut Prasaran Nigam Limited, Panchkula,
8. Haryana Power Generation Company Limited,.
9. Himachal Pradesh State Electricity Board, Shimla
10. Power Development Department, Srinaga
11. Engineering Department, Chandigarh,
12. Uttaranchal Power Corporation Ltd, Dehradun,

**Respondents**

The following were present

1. Shri SN Goel, NTPC
2. Shri I.J Kapoor, NTPC

## ORDER

(Date of Hearing: 7.9.2006)

This application has been made for review of order dated 9.5.2006 in Petition No.155/2004, determining the tariff in respect of Dadri Gas Power Station (hereinafter called "the generating station") for the period 1.4.2004 to 31.3.2009.

2. The petitioner has contended that there are certain fundamental errors in the said order dated 9.5.2006 and accordingly has sought review. According to the petitioner the order needs to be reviewed on account of the error in computation of Interest on loan capital.

3. The petitioner has stated that in respect of the generating station, outstanding loan as on 1.4.2004 was Rs 22071 lakh, after taking into account the actual cumulative repayment prior to that date. The Commission has, however, considered outstanding loan as Rs.17275 lakh after accounting for the normative cumulative depreciation recorded. According to the petitioner, the difference of Rs. 4796 lakh in the cumulative repayment is on account of inequitable methodology adopted by the Commission in determining the loan repayment during the tariff period 2001-04 and has prayed that outstanding loan as on that date need to be taken as Rs.22071 lakh for computation of tariff.

4. The annual repayment amount for the tariff period 2001-04 worked out as per the methodology followed by the Commission in all cases for that tariff period, is given hereunder:

*Actual repayment during the year or repayment as worked out as per the following formula:*

*Actual repayment during the year X normative net loan at the beginning of the year/actual net loan at the beginning of the year, whichever is higher".*

5. The petitioner had sought review of the above methodology considered for computation of interest on loan during the tariff period 2001-04. The review was disallowed by the Commission. The petitioner subsequently filed appeals before the Appellate Tribunal for Electricity and these appeals are pending. Any reconsideration of the issue at this stage will amount to review of the methodology considered during 2001-04, which is not permissible under the facts and circumstances of the present case.

6. However, we consider it necessary to give the rationale behind the methodology adopted by the Commission. In our opinion, once the normative loan has been arrived at on the basis of normative debt :equity ratio, as is the case here, it is considered for all purposes, including calculation of re-payment of loan. The loan repayment on actual basis is considered if the normative repayment is less than the actual in order to provide comfort to the utilities, like the petitioner meeting its loan repayment obligations, by allowing Advance Against Depreciation. In this manner, the petitioner is, in fact, the beneficiary of the methodology considered.

7. Further, as per the provisions of Regulation 21(b) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, the loan outstanding as on 1.4.2004 is to worked out as the gross loan minus

cumulative repayment as admitted by the Commission up to 31.3.2004. Thereafter, the loan repayment for the period 2004-09 is required to be worked out on normative basis. The cumulative loan repayment of Rs.26712 lakh as on 31.3.2004, considered by the Commission in the instant case has been arrived at based on computation of tariff for the period 2001-04 is in accordance with the tariff regulations.

8. Accordingly, the prayer for review on this ground is not admissible.

9. The petitioner has next stated that it borrows money on the basis of consolidated corporate balance sheet which enables it to finalize favorable terms. According to the petitioner borrowing at the corporate level instead of at the specific project level enables the petitioner to reduce the cost of borrowing. In the absence of any specific stipulation to the contrary attached to a particular borrowing, the petitioner adopts the principle of First In First Out (FIFO) in regard to the repayment of the loans. This is particularly beneficial as the first draws are generally at higher rate of interest and later draws are at lower rate of interest in the current falling interest rate regime. The petitioner also has the flexibility of re-negotiating loans on reduced rate of interest for subsequent drawl with the same lender.

10. According to the petitioner, it has been adopting the FIFO method to allocate interest liability to its generating stations. The Commission has, however, not considered the FIFO method of repayment and has followed the average method of repayment of loan, irrespective of the terms and conditions of the loan agreements. According to the petitioner, adoption of FIFO method of loan

repayment would be more beneficial for the respondent beneficiaries of the generating station. The petitioner has accordingly sought review.

11. We are not satisfied with the submission.

12. With regard to FIFO method, the petitioner, had stated as follows in the tariff petition No.155/2004 that -

(a) As the loans are to be drawn over a period of years and at the time of first drawal it is not known whether the next drawal will be at same interest rate or reduced interest rate.

(b) Repayment in some of the loans have started even before the entire sanctioned loan has been fully drawn.

(b) In case the Loan agreement is silent on the method of repayment, the petitioner adopts the FIFO or Average method in order to ensure minimal interest liability for the petitioner as well as the individual generating stations. The repayment and interest on loan is, thereafter allocated to the projects on the method as adopted.

12. Although loan is drawn by the petitioner at corporate level, determination of tariff is always for individual generating stations, considering project specific/allocated loans. Also, it is seen that interest rate applicable to various drawals of particular loan contracted on FIFO repayment method is not the same and can increase or decrease depending on conditions prevalent at a point of time. Allocation of loan to a particular generating station is within the discretion of the petitioner. By allocating loans to projects and adopting FIFO method of repayment, the repayment schedule will turn uneven and will lead to irregular

repayment amount in different years; the difference at times is substantial. Repayment in some of the loans started even before the entire sanctioned loan was fully drawn. Therefore, FIFO method advocated by the petitioner is beset with a number of difficulties.

13. While fixing tariff for a particular generating station, adoption of FIFO method of repayment may lead to higher AAD for the existing generating stations and higher IDC for the ongoing projects artificially in view of the discretion available with the petitioner for allocation of loans to individual generating stations. Therefore, FIFO method does not take into consideration the principle of uniformity and consistency. By adopting average method of loan repayment at interest rate applicable to the drawal, the repayment schedule worked out is even and regular thereby eliminating the chance of higher AAD/IDC in tariff calculations. FIFO method of repayment also leads to a situation where loan drawl and allocation is after expiry of moratorium period. Further, the petitioner's contention that rate of interest will fall subsequently is not borne by facts as seen from the data available on record. It is also seen that by adopting FIFO method of repayment, loan repayment during the tariff period will be unevenly spread, which will result into the payment of AAD in the tariff where the loan repayment is more than depreciation and benefit of full depreciation where the loan is less than the depreciation.

15. In order to obviate the above-noted anomalies, a conscious view has been taken for averaging of the repayment during the tariff period calculated as "normative loan balance as per regulation divided by loan tenure as per loan

agreement “ and this method has been traditionally followed in all cases of tariff determination, including the cases pertaining to the periods prior to 1.4.2004. The same methodology considered for earlier periods has been accepted by the petitioner without demur.

16. It is also significant that the petitioner is not put to any loss in terms of interest payment if average payment method is used in place of FIFO method. Adoption of re-payment on average basis is more reasonable and review in this regard is not called for.

17. In our considered view, the change of methodology suggested by the petitioner does not fall within the scope of review under Section 114 read with Order XLVII of the Code of Civil Procedure.

18. In the light of above discussion, even a prima facie case for review of the order dated 9.5.2006 in Petition No. 155/2004 has not been made out. The review petition is accordingly dismissed at the admission stage.

Sd/-  
(A.H.JUNG)  
MEMBER

Sd/-  
(BHANU BHUSHAN)  
MEMBER

Sd/-  
(ASHOK BASU)  
CHAIRPERSON

New Delhi dated the 26<sup>th</sup> October,2006

