

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram

1. Shri D.P. Sinha, Member
2. Shri G.S. Rajamani, Member
3. Shri K.N.Sinha, Member

Petition No.72/2000
and
IA 88/2001
in
Petition No.72/2000

In the matter of

Approval of Revised Fixed Charges due to Additional Capital Expenditure Capitalisation and Foreign Exchange Rate Variation for Talcher STPS (1600 MW).

And in the matter of

National Thermal Power Corporation Ltd.

.... Petitioner

VS

1. Bihar State Electricity Board, Patna
2. Grid Corporation of Orissa Ltd., Bhubaneswar
3. Damodar Valley Corporation, Kolkata
4. Power Deptt., Govt. of Sikkim, Sikkim
5. Assam State Electricity Board, Guwahati
6. AP TRANSCO, Hyderabad
7. Madhya Pradesh State Electricity Board, Jabalpur
8. Tamil Nadu Electricity Board, Chennai
9. Kerala State Electricity Board, Trivandrum
10. Karnataka Power Transmission Corp. Limited, Bangalore
11. Uttar Pradesh Power Corp. Limited, Lucknow
12. Gujarat Electricity Board, Baroda
13. Union Territory of Pondicherry, Pondicherry

.... Respondents

The following were present:

1. Shri K.K. Garg, GM (Comml), NTPC
2. Shri M.S. Chawla, DGM (Comml.), NTPC
3. Shri S.K. Sharma, Sr. Mgr (Comml.), NTPC
4. Shri M. Sravan Kumar, SM (F), NTPC
5. Shri T.R. Sohal, NTPC
6. Shri R.Singhal, NTPC
7. Shri V.K. Padha, NTPC
8. Shri A.K. Juneja, NTPC
9. Shri S.K. Agnihotri, Advocate for MPSEB
10. Shri Rohit K. Singh, Advocate for MPSEB
11. Shri D.K. Srivastava, EE, MPSEB
12. Shri K. Khandelwal, SE, MPSEB
13. Shri M.H. Parviz, Controller, KPTCL

**ORDER
(DATE OF HEARING 20-12-2001)**

This petition was filed by the petitioner, NTPC, a generating company owned or controlled by the Central Government, seeking the Commission's approval to the Revised Fixed Charges due to additional capital expenditure and Foreign Exchange Rate Variation (FERV) for the year 1998-99 for Talcher Super Thermal Power Station. Subsequently, the petitioner filed IA (No.38/2001) praying for amendment to the petition so as to claim the Revised Fixed Charges due to above noted two components of tariff for the year 1999-2000, in addition to the year 1998-99 claimed in the original petition as also impleadment of additional respondents (Respondents No.6 to 13). The prayer was granted by the Commission vide its order dated 23-8-2001. The petitioner filed another IA No.88/2001 to further amend the petition so as to claim Revised Fixed Charges for the year 2000-01, as well and also implead Secretary, Electricity Deptt., Union Territory of Pondicherry. This IA was listed before us on 20-12-2001.

Through an oral order we had allowed the IA. The amended petition was directed to be taken on record. Thus in the present petition, as amended, the petitioner seeks Revised Fixed Charges due to additional capital expenditure capitalisation and FERV in respect of Talcher STPS for the years 1998-99 to 2000-01 as under:

Effective period	Fixed charges as per tariff notification (Rs.Cr./year)	Impact Additional capital Expenditure capitalisation (Rs. Cr./yr.)	Impact of FERV (Rs.Cr./yr)	Revised Fixed Charges (Rs.Cr./yr)
1998-99 (upto 31-10-98)	593.80	1.202	0.058	595.060
1998-99 (1-11-98 to 31-3-99)	644.99	1.372	0.066	646.428
1999-2000	644.99	6.634	0.163	651.787
2000-01	644.99	15.558	0.058	660.636

2. The relevant details/calculations in support of the Revised Fixed Charges claimed have been furnished.

3. The tariff for sale of power from Talcher STPS was determined on two part basis by Ministry of Power as notified on 5.5.1999 in exercise of powers under Section 43 A(2) of the Electricity (Supply) Act, 1948. This notification was valid from 1.7.1997 to 31.3.2002. The tariff notified by Ministry of Power is stated to be based on the audited accounts for the year 1997-1998.

4. Clause 2.0 of the notification dated 5.5.1999 *inter-alia* provided that the impact of additional capital expenditure capitalised in each financial year during the tariff period would be determined by the Central Government immediately on finalization of accounts. Clause 5 of the notification further provided that effect of FERV to be paid to/by the petitioner by/to the beneficiaries would be determined by the Central Government at the end of each financial year. Thus, under the notification issued by Ministry of Power, determination of impact of additional capital expenditure capitalised and FERV was to be determined by the Central Government in exercise of its powers under Section 43 A(2) of the Electricity (Supply) Act 1948 at the end of a financial year when the audited accounts for that year were available.

5. Section 43 A(2) of the Electricity (Supply) Act 1948 was omitted by the Central Government, Ministry of Power in exercise of powers under Section 51 of the Electricity Regulatory Commissions Act 1998 w.e.f. 15-5-1999 in terms of notification dated 22-3-1999 and from that date power to regulate tariff of the generating stations owned or controlled by the Central Government came to be vested in the Commission. By that date, the Central Government did not determine the impact of the above-noted two components of tariff for the years 1997-98 and onwards. Therefore, with the vesting of power of regulation of tariff in the Commission, the Central Government did not have the jurisdiction to determine the above-noted two components of tariff. The Commission is in *seisin* of the issue raised in the petition against the above backdrop.

6. With the vesting of the power to regulate tariff in respect of generating stations owned or controlled by the Central Government in the Commission, the Commission was to prescribe the terms and conditions of tariff by virtue of Section 28 of the Electricity Regulatory Commissions Act, 1998 before actual determination of tariff of individual generating stations. These terms and conditions were decided by the Commission under its order dated 21-12-2000 in petition No.4/2000 and other related petitions and were subsequently notified on 26-3-2001. These terms and conditions became applicable w.e.f. 1-4-2001. The Commission's Order dated 21-12-2000 *ibid* provides that in all cases where the tariff was determined earlier under the Government Notifications shall continue to apply till 31-3-2001. Beyond that date the terms and conditions notified by the Commission shall be applicable and tariff shall be determined based on these terms and conditions.

7. The respondents in their replies have raised a number of issues. We do not consider it necessary to examine those issues in detail since the petition can be disposed of on a brief point. We find from the petition that the gross block as on 31.3.1998 was Rs.2451.70 crores. The additional capitalisation for three years works out to Rs.48.11 crores. Thus the gross block as on 31.3.2001 would be Rs.2499.81 crores (Rs.2451.70 crores + Rs.48.11 crores) in case additional capitalisation is allowed. But Ministry of Power while notifying tariff on 5.5.1999, considered the project cost of Rs.2511.48 crores. Thus, the tariff notified by Ministry of Power is already with a higher capital cost. Therefore, we feel that there was no justification for allowing additional capitalisation of Rs.48.11 crores, since with the additional capitalisation of

Rs.48.11 crores, the capital cost would exceed the sanctioned capital cost of Rs.2543.03 crores, approved by Ministry of Power vide its letter dated 4.10.1996. The petitioner has clarified that the project cost of Rs.2511.48 crores includes initial spares of Rs.59.78 crores over the gross block of Rs.2451.70 crores as on 31.3.1998. However, the petitioner has not placed any evidence on record to substantiate its claim that the gross block of Rs.2451.70 crores did not already include any component of capitalised initial spares. We are, therefore, satisfied that the additional capitalisation as claimed by the petitioner cannot be allowed. In view of the differences in the base figure of capital cost, the component of base foreign exchange cannot be determined and, therefore, revised fixed charges on account of FERV cannot also be determined.

8. The petition is accordingly dismissed with no order as to cost.

Sd/-
(K.N. Sinha)
Member

Sd.-
(G.S. Rajamani)
Member

Sd/-
(D.P. Sinha)
Member

New Delhi dated the 24th June 2002