

**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

**IA No.30/2001 in  
Petition No.4/2000.**

**In the matter of**

Terms and Conditions and Tariff for power supplied from  
NTPC generating stations - effective from 1<sup>st</sup> April, 2001.

**And in the matter of**

National Thermal Power Corporation Ltd.

.... Petitioner

VS

1. Transmission Corporation of Andhra Pradesh,
2. Grid Corporation of Orissa,
3. Damodar Valley Corporation
4. Bihar State Electricity Board
5. West Bengal State Electricity Board
6. Rajasthan Rajya Vidyut Prasaran Nigam Limited
7. Delhi Vidyut Board
8. Uttar Pradesh Power Corporation Limited
9. Punjab State Electricity Board

10. Madhya Pradesh Electricity Board
11. Haryana Vidyut Prasaran Nigam Ltd.
12. Maharashtra State Electricity Board
13. Karnataka Power Transmission Corporation Limited
14. Tamil Nadu Electricity Board
15. Assam State Electricity Board
16. Gujarat State Electricity Board
17. Himachal Pradesh State Electricity Board
18. Power Development Department
19. The C.E cum Secretary, Engineering Deptt, Chandigarh Admn.
20. Kerala State Electricity Board
21. Government of Pondicherry
22. Government of Sikkim
23. Government of Goa
24. Administration of Daman & Diu
25. Administration of Dadra Nagar Haveli .... Respondents

The following were present:

1. Shri M.G. Ramachandran, Advocate, NTPC
2. Shri Shyam Wadhera, ED (Comm.), NTPC
3. Shri M.S. Chawla, DGM (Comm.), NTPC
4. Shri M. Ramakrishna Rao, Sr.Mgr. (Law), NTPC
5. Shri S.K. Samui, Sr.Mgr. (Comm.), NTPC
6. Shri K.K. Garg, GM (Comm.), NTPC

**ORDER**  
**(DATE OF HEARING 13-060-2001)**

In the IA National Thermal Power Corporation Ltd. (NTPC) has made prayers to the Commission to:-

- (a) Take note of the directions given by the Hon'ble High Court in the Order dated 7<sup>th</sup> March, 2001 passed in FAO Nos.159 of 2000, 88 of 2001 and 131 of 2001 (Annexure 'A' to the petition) in regard to norms to be applied for the tariff for the period 1<sup>st</sup> April, 2001 onwards in substitution of the norms directed by the Hon'ble Commission in its Orders dated 4<sup>th</sup> January 2000, 15<sup>th</sup> December 2000 and 21<sup>st</sup> December, 2000 in Petition Nos. 2 of 1999, 13 of 2000 and Petition Nos.4, 31, 32 and 88 of 2000;
- (b) take note of the fact that NTPC shall raise bills for power supplied for the period 1<sup>st</sup> April, 2001 onwards on the basis of pre-existing norms in the same manner as was done for the period up to 31<sup>st</sup> March, 2001 and as provided in Annexure 'B' to this petition till such time tariff notifications are issued under section 28 of the ERC Act;
- (c) Issue frame work for tariff petitions as envisaged in para 1.8.3 of the order dated 21<sup>st</sup> December, 2000 at the earliest; and

- (d) Pass any such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.

2. The Commission issued orders dated 4<sup>th</sup> January, 2000, 15<sup>th</sup> December, 2000 and 21<sup>st</sup> December, 2000 prescribing operational and financial norms for determination of tariff. The petitioner, being aggrieved of the norms laid down by these orders, filed appeals in the High Court of Delhi. On 07-03-2001, the High Court of Delhi has passed the following interim order:

" Having considered the concern shown by the parties, taking into consideration the need of producing electricity for rural electrification for industrialisation and to develop information technology further and over and above to ensure that the factories are not closed on account of non-availability of electricity, it appears desirable that all the directions issued by the Commission shall be observed in letter and spirit, except that the NTPC shall continue to charge tariff on the basis of the pre-existing norms subject to the following conditions:

(a) In case the Central Government still treats earlier Notifications as a policy decision as submitted by the learned Additional Solicitor General Mr. Mukul Rohtagi, the Central Government may issue a fresh Notification under Section 38 of the 1998 Act to clarify the policy decision of the Central Government as mentioned in earlier Notification continues;

(b) The Central Government shall not withdraw any fund from the NTPC by way of dividend etc. except ploughing back and utilising that very fund for the purpose of producing more electricity by installing thermal plants or hydro-electric plants in whatever manner the electricity could be produced;

(c) The NTPC shall continue to charge tariff on the basis of the pre-existing norms only so long arrears up to 31<sup>st</sup> March, 2001 due against different respondent are not adjusted. The moment the arrears of NTPC stand paid, the concerned State Electricity Board and all concerned respondents shall be entitled to move the Court for fresh consideration.

(d) It is expected that the Group for formulating the Tariff Policy shall be acting with the same speed with which the Central Government acted in Gujarat calamity - taking into consideration the large number of closure of factories leading to unemployment on large scale, fear of entrepreneur not to start new ventures due to lack of electric supply and the possibility of a break in the pace of development of information technology, for institutes training

youngmen cannot work with full speed on account of lack of timely electricity supply in different States.

This is just an interim order and after the Group for formulating the Tariff Policy takes a decision, this Court shall be informed about the decision taken by the Group for formulating the Tariff Policy and parties shall be entitled to be heard afresh."

3. In the light of above directions of the High Court, the learned counsel for the petitioner has argued that the petitioner is entitled to tariff on pre-existing norms and has prayed for revision of schedule attached to order dated 4<sup>th</sup> January, 2000 based on the proforma filed by it at Annexure 'B' to the I.A. In the Order of 7<sup>th</sup> March, 2001, one of the conditions prescribed by the High Court, keeping in view an argument made by the learned Additional Solicitor General of India, is that in case the Central Government treats the earlier notification as a policy decision the Central Government may issue a fresh notification under section 38 of the 1998 Act to clarify that policy decision of the Central Government in the earlier notification continues. Nothing has been brought to our notice that such a notification has been issued by the Central Government. According to the learned counsel, the tariff is payable based on the pre-existing norms even if none of the conditions is met, because according to him, the conditions specified are not the conditions precedent. It is only the High Court which can clarify its intention while passing the order. In fact, the matter is yet to be finally considered by the High Court. We do not consider it appropriate to give an interpretation on the lines suggested by the petitioner. As the matter is still pending in High Court of Delhi, we do not consider it necessary to amend the

Schedule to Commission's Order dated 4<sup>th</sup> January, 2000 as per Annexure-B to the Interlocutory Application.

It is for the petitioner to approach the High Court for clarification or any other appropriate directions.

The present IA is disposed of in the light of the above observation.

Sd/-  
**(K.N. Sinha)**  
**Member**

Sd/-  
**( G.S. Rajamani)**  
**Member**

Sd/-  
**( D.P. Sinha )**  
**Member**

New Delhi dated 13-6-2001.