

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram:**

1. Dr.Pramod Deo, Chairperson
2. Shri R.Krishnamoorthy, Member
3. Shri S.Jayaraman, Member
4. Shri V.S.Verma, Member

**Review Petition No. 67/2009  
in  
Petition No.31/2008**

**In the matter of**

Review of order dated 3.2.2009 in Petition No. 31/2008,

**And in the matter of**

Revision of fixed charges for the period 2004-09 after considering the impact of additional capital expenditure for the years 2004-05,2005-06 and 2006-07 for Talcher TPS (460 MW).

**And in the matter of**

NTPC Ltd, New Delhi

**Petitioner**

Vs

Grid Corporation of Orissa Ltd, Bhubanrswar

**Respondent**

**Following were present**

- 1 Shri. V.K.Padha, NTPC
- 2 Shri. B.Kar, NTPC
- 3 Shri V. Kumar, NTPC
- 4 Shri R.B.Sharma, Advocate, GRIDCO

**ORDER  
(Date of Hearing: 18.8.2009)**

The petitioner, NTPC Limited, has made this application seeking review of the order dated 3.2.2009 in Petition No.31/2008 under which the annual fixed charges for

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the period 2004-09 in respect of Talcher Thermal Power Station were revised after considering the impact of the additional capital expenditure incurred during 2004-05, 2005-06 and 2006-07.

2. The review has been sought on the ground that while computing IWC for the period 1.10.2007 to 31.3.2009, the Commission considered fuel prices for the months of January, February and March 2004 rather than the prices for the months of July, August and September 2007. The petitioner has contended that the fuel prices for the months of July, August and September 2007 ought to have been considered.

3. For proper appreciation of the petitioner's contention, it is necessary to take note of the facts. Talcher TPS was taken over by the petitioner from the erstwhile Orissa State Electricity Board, the predecessor of the respondent. Similarly, another generating station, namely, Tanda TPS was acquired by the petitioner from the erstwhile Uttar Pradesh State Electricity Board. When the terms and conditions for determination of tariff applicable for the period 2004-09 were being decided, these two generating stations were undergoing extensive R&M. Therefore, the Commission decided to review the operational norms in respect of the two generating stations after completion of R&M and accordingly directed the petitioner to approach the Commission. The operational norms for Tanda TPS were revised by the Commission with effect from 1.4.2007, consequent to improvement in the performance as a result of massive R&M. Similarly, in case of Talcher TPS the operational norms were revised from 1.10.2007.

4. Based on the revised operational norms, the Commission by its order dated 14.12.2007 in Petition No. 163/2004, revised the interest on working capital (IWC) component of the annual fixed charges for Tanda TPS, by considering the fuel prices applicable for the months of January, February and March 2007. However, the IWC component of the annual fixed charges in respect of Talcher TPS was not immediately revised consequent to revision of operational norms with effect from 1.10.2007.

5. The petitioner filed Petition No. 31/2008 for revision of the annual fixed charges for Talcher TPS for the period 2004-09 on completion of R&M for the generating station. The revised fixed charges were approved by the said order dated 3.2.2009. While revising the annual fixed charges, IWC component from 1.10.2007 to 31.3.2009 was determined considering the revised operational norms based on fuel prices for the months of January, February and March 2004.

6. The petitioner feels aggrieved by computation of IWC with effect from 1.10.2007 on the basis of fuel prices for the months of January, February and March 2004 and accordingly seeks review of the said order dated 3.2.2009.

7. The sole ground on which the petitioner seeks review is that in case of Tanda TPS, the Commission had considered the fuel prices applicable for the months of January, February and March 2007. On parity of reasoning in case of Talcher TPS, the fuel prices applicable for the months of July, August and September 2007 should have been considered while computing the IWC component, the petitioner has argued. The

petitioner has submitted that the details of the fuel prices for the months of July, August and September 2007 were sent to the Secretary of the Commission under its letter No. 01:CD:437 dated 20.1.2009.

8. The application was admitted after hearing the petitioner on 9.6.2009.

9. The respondent in its reply affidavit has taken a preliminary objection that the petitioner has filed an appeal before the Appellate Tribunal against the said order dated 3.2.2009 and the appeal is still pending. Therefore, respondent submitted that the application was not maintainable. This preliminary objection was not pressed by the respondent at the hearing in view of the law laid down by the Hon'ble Supreme Court in *Thungabhadra Industries Ltd. Vs. State of Andhra Pradesh* (AIR 1964 SC 1372) as the application was filed before the Commission on 27.3.2009 before filing of the appeal on 30.3.2009 before the Appellate Tribunal.

10. On merits, the respondent has stated in its reply that the petitioner did not take into account the fuel prices for the months of July, August and September 2007 while computing IWC in the main petition, that is, Petition No. 31/2008. It has been stated that the information relating to fuel prices for the month of July, August and September 2007 submitted by the petitioner under its letter dated 20.1.2009 *ibid* could not be considered, as the same was not brought to the notice of the Commission till conclusion of the hearing of Petition No.31/2008 on 30.9.2008. It has been further stated that the issue of fuel price, not the subject matter of the main petition could not be raised in the

present application, because the scope of review is very limited and could be considered based on the statutory provisions contained in Order 47, Rule 1 of the Code of Civil Procedure (the Code).

11. We heard Shri V K Padha, the representative of the petitioner and Shri R. B. Sharma, Advocate for the respondent, who reiterated their case as contained in the respective pleadings.

12. We have very carefully considered the rival submissions. In our view, the crucial question is whether the Commission could depart from the principle for computation of IWC followed in the case of Tanda TPS. There are close similarities between the two generating stations. Both the generating stations were taken over by the petitioner from the erstwhile State Electricity Boards. At the time of their take over, both were operating at very low PLF. Both the generating stations were initially granted tariff on relaxed norms. Both had to be injected high doses of capital to rejuvenate them and bring them at reasonable level of efficiency. For this purpose, they had to undergo intensive and extensive R&M. The improvements in their efficiency levels after completion of R&M undertaken by the petitioner were noticed. Therefore, the operational norms applicable to these generating stations were revised with effect from 1.4.2007 in one case and from 1.10.2007 in the other. Based on the revised operational norms, IWC component of the annual fixed charges was revised for Tanda TPS with effect from the date the revised norms became applicable, that is, 1.4.2007. While revising IWC for Tanda TPS, the Commission took into account the fuel prices applicable for three months

immediately preceding the month from which revision was to effected. In this regard the following observations of the Commission made in the order dated 14.12.2007 (pertaining to Tanda TPS) are relevant:

***“Fuel cost:*** *The cost of coal has been worked out for two months on the basis of operational parameters and weighted average price of Rs.1800.61/MT and GCV of 3696 kcal/kg for coal procured during January to March 2007. It is pointed out that the 2004 regulations do not contain any stipulation as regards the period for which price of fuels is to be considered for computing working capital. Therefore, it is logical to take the fuel price at the beginning or just prior to the period for which tariff is to be calculated. Therefore while revising interest on working capital component of tariff for the period 1.4.2007 to 31.3.2009 fuel price prior to 1.4.2007 has been considered.”*

13. The Commission is a quasi judicial body. The hallmark of the judicial process is that a quasi judicial body, in the interest of justice, equity and uniformity of decisions and to avoid inconsistency in approach, should follow its earlier decisions. It is always preferable that a quasi judicial authority decides the matters arising before it and raising the same or similar issues in the same or similar manner. Frequent changes in the opinion create uncertainty in the mind of public and erode confidence of public in the quasi judicial authority. With these observations in mind, we proceed to consider the application.

14. In case of Tanda TPS under similar circumstances the Commission very emphatically expressed a view that the fuel price at the beginning or just prior to the period for which tariff was revised, was to be taken for computing IWC and on that basis considered fuel price for the months of January, February and March 2007 for revision of IWC from 1.4.2007. In view of starking similarities between Tanda TPS and Talcher TPS and taken note of at para 12 above, it may not be appropriate to take a view different from

that taken in Tanda TPS for revision of IWC for Talcher TPS. The methodology stressed in the case of Tanda TPS was overlooked while approving the revised annual fixed charges of Talcher TPS by the said order dated 3.2.2009.

15. Under the Code, review is permissible on the grounds of discovery of new and important fact or evidence which was either not within the knowledge of the person seeking review or could not be produced by him despite exercise of due diligence, or on the ground of error or mistake apparent on the face of record, or for any other sufficient reason. In our view, the departure from the past precedent established in the case of Tanda TPS constitutes an error apparent on the face of record or “any other sufficient reason” to justify review.

16. The petitioner has also sought correction of certain ministerial errors, to which the respondent has no objection. Accordingly, the following clerical errors appearing in the said order dated 3.2.2009 shall stand corrected, namely,

- (a) The last sentence of para 30 of the said order dated 3.2.2009 shall be substituted as under, namely -

*“Accordingly IDC amounting to Rs. 4.44 lakh for 2004-05, Rs. 1.45 lakh for 2005-06 and Rs. 3.46 lakh for 2006-07 has not been allowed by applying FIFO method.”*

- (b) In the tables under paras 34 and 40 of the said order dated 3.2.2009, the opening capital cost, closing capital cost and average capital cost, wherever

figuring, for the years 2007-08 and 2008-09, shall be read as Rs. 77498.57 lakh in place of Rs. 76759.49 lakh.

17. In the light of above, discussion we allow the application for review as indicated above.

18. From records we find that the letter dated 20.1.2009 *ibid* was not endorsed to the respondents. We consider it appropriate to afford an opportunity to the respondents on the contents of the letter dated 20.1.2009 *ibid*. A copy of the letter has since been supplied to the respondents along with the present petition. The respondents may file their responses by 19.10.2009.

19. The main petition (Petition No. 31/2008) shall be set down for hearing on 22.10.2009 on the question of revision of IWC component of the annual fixed charges for the period 1.10.2007 to 31.3.2009 in the light of the above discussion.

Sd/-	Sd/-	Sd/-	Sd/-
(V. S. VERMA)	(S. JAYARAMAN)	(R. KRISHNAMOORTHY)	(DR. PRAMOD DEO)
MEMBER	MEMBER	MEMBER	CHAIRPERSON

New Delhi dated 29<sup>th</sup> September 2009