CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Coram :
1. Shri. Ashok Basu, Chairperson
2. Shri Bhanu Bhushan, Member
3. Shri A.H. Jung, Member

Review Petition No. 58/2006
in Petition No. 157/2004

In the matter of

Review of order dated 9.5.2006 in Petition No. 157/2004 determining the tariff in respect of Singrauli Super Thermal Power Station for the period 1.4.2004 to 31.3.2009

And in the matter of

National Thermal Power Corporation Limited. **……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 Ltd, Panchkula
9. Uttaranchal Power Corporation Ltd, Dehradun
10. Himachal Pradesh State Electricity Board, Shimla
11. Chief Engineer & Secretary, Engineering Department, Chandigarh
12. Power Development Department,Govt of Jammu & Kashmir, Jammu

---Respondents

The following were present

1. Shri S.N.Goel, NTPC
2. Shri I.J.Kapoor, NTPC

ORDER
(DATE OF HEARING : 7.9.2006)

This application has been filed for review of order dated 9.5.2006 passed by the Commission in Petition No. 157/2004 determining the tariff in respect of Singrauli Super Thermal Power Station (hereinafter referred to as “the generating

station") for the period 1.4.2004 to 31.3.2009. The petitioner has submitted that there are certain fundamental errors in the said order dated 9.5.2006 and accordingly has sought review thereof. According to the petitioner, the order needs to be reviewed on account of errors under the following heads:

(a) Computation of interest on loan capital

(b) Decapitalisation of liabilities-impact adjustment for prior period.

(c) Impact of de-capitalization of assets on cumulative re-payment of loan

(d) Reimbursement of publication expenditure

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. 18652 lakh, after taking into account the actual cumulative repayment of Rs 38341 lakh prior to that date. The Commission has, however, considered outstanding loan as Rs. 10353 lakh. According to the petitioner, the difference of Rs.8298 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.18652 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, <u>whichever is higher</u>".

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 be 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.46639 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 and 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 it 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 loans. This is particularly beneficial as the first drawls are generally at higher rate of interest and later drawls 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 FIFO method to allocate interest liability to its generating stations. The Commission has, however, not considered 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 in the tariff petition No.157/2004 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 started even before the entire sanctioned loan has been fully drawn.

(c) In case the loan agreement is silent on the method of repayment, the petitioner adopts 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.

13. 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.

14. 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 repayment 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.

Decapitalisation of liabilities-Impact adjustment for prior period

18. The petitioner has submitted that it is maintaining accounts on accrual basis as per the requirement of the Companies Act,1956 and as laid down in Accounting Standards issued by Institute of Chartered Accountant of India. The capital expenditure is entered in the books of accounts when the legal obligations to pay them arises, that is, all obligations of liabilities are to be recognized. Further, efforts are made to reduce the liabilities and/or otherwise to reduce the impact of the liabilities considering the interest of the beneficiaries. During implementation of a project, once actual liability is frozen, the liabilities in books of accounts on provisional basis are replaced with actual capital expenditure and this at times, results in reduced capital base. According to the petitioner, it has been decapitalizing the liabilities to the extent it had been able to effect reduction.

19. The petitioner has claimed that during the period 2001-04 , it de-capitalized the liabilities to the extent of Rs. 23 lakh in regard to the generating station pursuant to the settlement with the third parties claiming the amount of arbitration award/settlement with concerned Government, Authorities etc. The reduction in the liability during the above financial years is on account of its conscious efforts.

20. According to the petitioner, while the benefit of reduction in the liabilities by way of de-capitalization has accrued to the respondent beneficiaries, retrospective reduction in the fixed charges will adversely affect to the petitioner whose efforts have resulted in reduced liabilities.

21. While determining tariff, the Commission in its the order dated 9.5.2006 has directed mutual settlement of impact of de-capitalization of liabilities pertaining to the past periods. According to the petitioner, retrospective implementation of the decision would lead to reopening of the tariff in respect of its generating stations since 1992. The petitioner has, therefore, submitted that the decision taken in regard to de-capitalised liability should be applied prospectively and not retrospectively.

22. We are aware that accounts are being maintained as per commercial accounting system by which revenue, costs, assets and liabilities are reflected in the accounts for the period in which they accrue. Under the system, all subsequent increases or decreases in capital expenditure are identified to

relevant assets and the costs accounted for the earlier asset are charged accordingly.

23. The petitioner has de-capitalized the over-capitalized amounts under various heads (Balance Payments-10A) after 5-6 years of capitalization. During all these years the over-capitalized amount was earning tariff to which the petitioner was not entitled, as the expenditure was not actually incurred. In the interest of justice and fair play, the excess amount recovered by the petitioner deserves to be adjusted. However, past period calculations towards impact on tariff have not been re-opened by the Commission but these have been ordered to be mutually settled between petitioner and the beneficiaries. The decision does not involve any illegality or irregularity, calling for review thereof.

24. The petitioner maintains accounts on accrual basis and claims tariff on the same principles. Almost all tariffs up to 31.3.2004 were based on the capital cost calculated on accrual basis. In other words, some liabilities included in the capital cost, did not materialise and were decapitalised later on. While reducing the capital cost from the gross block, the cumulative depreciation already recovered against the de-capitalised liabilities has also been adjusted to the extent of assets de-capitalized created out of the liabilities. In this way, the interest of the petitioner has been taken care of.

25. We consider it appropriate to point out that in a large number of cases, the benefit of increased tariff has been extended to the petitioner from retrospective dates. Therefore, it is not proper that the question of retrospective adjustment should be raised in a situation where excess tariff was recovered previously.

Impact of decapitalisation of assets on cumulative repayment of loan

26. The petitioner's next grievance is that cumulative repayment of loan corresponding to the assets de-capitalised should also be adjusted to the extent of loan component of the de-capitalised assets to arrive at cumulative repayment, as on 1.4.2004, for the purpose of computation of tariff for the period 2004-05 to 2008-09. The petitioner's case is that in the course of operation of the generating stations (which have a life of 15 years or more) it de-capitalizes assets from time to time. On such decapitalisation, the value of the capital assets is reduced in the balance sheet of the concerned generating station for accounting purposes. However, the Commission in its order dated 9.5.2006 has reduced the capital base to the extent of such de-capitalisation which has adversely affected its entitlement to tariff on the value of assets de-capitalised. The petitioner has stated that de-capitalisation of assets does not amount to taking back the capital employed in the assets except to the extent of the value recovered on sale of those assets, which generally is the scrap value. Further, according to the petitioner, de-capitalisation of assets does not reduce the loan capital and the obligation towards servicing of loan continues as scheduled. It has been urged that the revenue realized on the sale of the de-capitalised assets should be taken into account as a non-tariff income in the year in which such sale proceeds are realized. The petitioner has further submitted that if the de-capitalised assets are adjusted against the capital base, the cumulative depreciation recovered as well as the cumulative repayment of the loan proportionate to those assets de-capitalised should also be reduced. The Commission, in the order dated 9.5.2006 has made adjustment in cumulative

depreciation on account of decapitalisation without any adjustment of cumulative repayment of loan. The petitioner states that by such non-adjustment of cumulative repayment due to de-capitalisation, the petitioner will not be able to service the loan taken and employed for capital works, as the cumulative repayment has been allowed only to the extent of the reduced capital base.

27. We have considered the contentions of the petitioner. There are generally two concepts associated with recovery of depreciation. According to one concept, depreciation is charged for replacement of the assets, the other one relates depreciation to repayment of loan. In the present case, certain assets were de-capitalised and certain other assets capitalised for the period ending 31.3.2004 on face value. For the assets de-capitalised, the petitioner was allowed recovery of depreciation of 90% of the value of the assets de-capitalised, which has been allowed to be retained by the petitioner, in addition to the scrap value of the assets de-capitalised. The entire value of the new assets replacing the old assets has been considered for the purpose of computation of tariff, without adjusting the depreciation recovered on the old replaced assets, discarding the first concept. The petitioner is thus also entitled to recover interest on the entire loan amount considered for the new asset. By extending the second concept to the facts of this case, funds for repayment of loan were available to the extent of depreciation recovered and have to be utilised accordingly. In case the contention of the petitioner for adjustment of loan component of the de-capitalised asset is accepted, it will amount to servicing the loans already recovered through depreciation recovered.

28. In the above circumstances, decapitalisation of assets should not have any impact on cumulative repayment of loan recovered. Therefore, in our considered opinion, no case for review in this regard has been made out.

Reimbursement of publication expenditure

29. In the said order dated 9.5.2006 the petitioner was allowed reimbursement of expenditure amounting to Rs 3,14,12/- incurred on publication of notices in the newspapers from the respondents in one installment in the ratio applicable for sharing of fixed charges. The actual expenditure incurred by the petitioner as mentioned in the affidavit filed on 9.3.2006 is Rs 3,14,012/- and not Rs. 3,14,12/-. There apparently is a typographical error which requires to be corrected, without the elaborate process of review. In order to rectify the clerical error that has crept in the order dated 9.5.2006 it is directed that the petitioner shall claim reimbursement of Rs 3,14,012/- towards publication expenses from the respondents in one installment in the ratio applicable for sharing of fixed charges.

30. This disposes of Review Petition No. 58/2006 in Petition No. 157/2004.

Sd/- Sd/- Sd/-

(A.H.JUNG) (BHANU BHUSHAN) (ASHOK BASU)
MEMBER MEMBER CHAIRPERSON

New Delhi dated 26th October 2006