

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

**Appeal Nos.139,140,141,142,144,151,152,153,154,155,156,
207,216, 217,218,239 & 240 of 2006 and 10, 11 & 23 of 2007**

Dated the June 13, 2007

Present: - Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. H.L. Bajaj, Technical Member

Appeal No. 139 of 2006

N.T.P.C. Ltd.

(Anta Gas Power Station of NTPC)

NTPC Bhawan,SCOPE Complex, 7,Institutional Area,
Lodhi Road New Delhi

.....Appellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi
2. Uttar Pradesh Power Corporation Ltd , Shakti Bhawan, Lucknow
3. Ajmer Vidyut Vitran Nigam Ltd , Jaipur Road, Ajmer,Rajasthan
4. Jaipur Vidyut Vitran Nigam Ltd, Janpath, Jaipur,Rajasthan
5. Jodhpur Vidyut Vitran Nigam Ltd, Kindustrial Aream Jodhpur,Rajasthan
6. Delhi Transco Ltd., Kotla Road, New Delhi
7. Punjab State Electricity Board, The Mall, Patiala
8. Haryana Vidyut Prasaran Nigam Ltd.,Sector VI, Panchkula, Haryana
9. Haryana Power Generation Company Ltd., Sector VI , Panchkula, Haryana
10. Himachal Pradesh State Electricity Board, Vidyut Bhawan, Simla
11. Power Development Deptt. Govt. of Jammu & Kashmir, Mini Secretariat, Jammu
12. The Chief Engineer-cum-Secretary
Engineering Deptt. Chandigarh Administration, Sector-9, Chandigarh.

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13. Uttaranchal Power Corporation Ltd.
Urja Bhawan, DehradunRespondents

Appeal No. 140 of 2006

N.T.P.C. Ltd. (Faridabad Gas Power Station of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New DelhiAppellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi
2. Haryana Vidyut Prasaran Nigam Ltd.,Sector VI
Panchkula, Haryana
3. Haryana Power Generation Company Ltd.
Sector VI , Panchkula, HaryanaRespondents

Appeal 141 of 2006

N.T.P.C. Ltd (Singrauli Super Thermal Power Station of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New Delhi ...Appellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi
2. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Marg, Lucknow
3. Ajmer Vidyut Vitran Nigam Ltd. ,Jaipur Road, Ajmer,Rajasthan
4. Jaipur Vidyut Vitran Nigam Ltd., Janpath, Jaipur,Rajasthan
5. Jodhpur Vidyut Vitran Nigam Ltd.
Kindustrial Aream Jodhpur,Rajasthan
6. Delhi Transco Ltd., Kotla Road, New Delhi
7. Punjab State Electricity Board, The Mall, Patiala
8. Haryana Vidyut Prasaran Nigam Ltd.,Sector VI, Panchkula, Haryana
9. Haryana Power Generation Company Ltd, Sector VI , Panchkula, Haryana

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10. Himachal Pradesh State Electricity Board, Vidyut Bhawan, Simla
11. Power Development Deptt. Govt. of Jammu & Kashmir
Mini Secretariat, Jammu
12. The Chief Engineer-cum-Secretary
Engineering Deptt. Chandigarh Administration, Sector-9, Chandigarh.
13. Uttaranchal Power Corporation Ltd.
Urja Bhawan, DehradunRespondents

Appeal No. 142 of 2006

N.T.P.C. Ltd. (Feroze Gandhi Unchahar Thermal Power Station of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road. New DelhiAppellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi
2. Uttar Pradesh Power Corporation Ltd., Shakti Bhawan, Lucknow
3. Ajmer Vidyut Vitran Nigam Ltd., Jaipur Road, Ajmer,Rajasthan
4. Jaipur Vidyut Vitran Nigam Ltd., Janpath, Jaipur,Rajasthan
5. Jodhpur Vidyut Vitran Nigam Ltd., Kindustrial Aream Jodhpur,Rajasthan
6. Delhi Transco Ltd., Kotla Road,New Delhi
7. Punjab State Electricity Board, The Mall, Patiala
8. Haryana Vidyut Prasaran Nigam Ltd.,Sector VI, Panchkula, Haryana
9. Haryana Power Generation Company Ltd., Sector VI , Panchkula, Haryana
10. Himachal Pradesh State Electricity Board, Vidyut Bhawan, Simla
11. Power Development Deptt. Govt. of Jammu & Kashmir
Mini Secretariat, Jammu
12. The Chief Engineer-cum-Secretary
Engineering Deptt. Chandigarh Administration, Sector-9, Chandigarh.

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13. Uttaranchal Power Corporation Ltd.
Urja Bhawan, DehradunRespondents

Appeal No. 144 of 2006

N.T.P.C. Ltd (Kayamkulam Combined Cycle Power Project of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New DelhiAppellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi
2. Kerala State Electricity Board, Vaidyuthi Bhawan
Thiruvananthapuram-695004
3. Tamil Nadu Electricity Board, 800 Anna Salai
Chennai-600002 ...Respondents

Appeal No. 151 of 2006

N.T.P.C. Ltd (NCTPS Dadri of NTPC)
NTPC Bhawan,SCOPE Complex7,
Institutional Area, Lodhi Road, New Delhi ...Appellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi
2. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Marg, Lucknow
3. Delhi Transco Ltd., Kotla Road,New Delhi-110001 ...Respondents

Appeal No. 152 of 2006

N.T.P.C. Ltd. (Feroze Gandhi Unchahar Thermal Power Station of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New Delhi ...Appellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi

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2. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Marg, Lucknow
3. Ajmer Vidyut Vitran Nigam Ltd.Old Power House, Hathi Bhata
Jaipur Road, Ajmer,Rajasthan
4. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan,Janpath, Jaipur-302005, Rajasthan
5. Jodhpur Vidyut Vitran Nigam Ltd.New Power House
Industrial Area, Jodhpur,Rajasthan
6. Delhi Transco Ltd., Kotla Road,New Delhi
7. Punjab State Electricity Board, The Mall, Patiala
8. Haryana Vidyut Prasaran Nigam Ltd.,Shjakti Bhawan
Sector VI , Panchkula, Haryana
9. Haryana Power Generation Company Ltd.Shakti Bhawan
Sector VI , Panchkula, Haryana
10. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Simla-171004
11. Power Development Deptt. Govt. of Jammu & Kashmir
Mini Secretariat, Jammu
12. The Chief Engineer-cum-Secretary
Engineering Deptt. Chandigarh Administration
Sector-9, Chandigarh.
13. Uttaranchal Power Corporation Ltd.
Urja Bhawan, DehradunRespondents

Appeal No. 153 of 2006

N.T.P.C. Ltd. (Auraiya Gas Power Station of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New DelhiAppellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi

GB

2. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Marg, Lucknow
3. Ajmer Vidyut Vitran Nigam Ltd.Old Power House, Hathi Bhata
Jaipur Road, Ajmer,Rajasthan
4. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan,Janpath, Jaipur-302005, Rajasthan
5. Jodhpur Vidyut Vitran Nigam Ltd.New Power House
Industrial Area, Jodhpur,Rajasthan
6. Delhi Transco Ltd., Kotla Road,New Delhi
7. Punjab State Electricity Board, The Mall, Patiala
8. Haryana Vidyut Prasaran Nigam Ltd.,Shjakti Bhawan
Sector VI , Panchkula, Haryana
9. Haryana Power Generation Company Ltd.Shakti Bhawan
Sector VI , Panchkula, Haryana
10. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Simla-171004
11. Power Development Deptt. Govt. of Jammu & Kashmir
Mini Secretariat, Jammu
12. The Chief Engineer-cum-Secretary
Engineering Deptt. Chandigarh Administration
Sector-9, Chandigarh.
13. Uttaranchal Power Corporation Ltd.
Urja Bhawan, DehradunRespondents

Appeal No. 154 of 2006

N.T.P.C. Ltd. (Dadri Gas Power Station of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New DelhiAppellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary , Scope Complex, New Delhi

GB

2. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Marg, Lucknow
 3. Ajmer Vidyut Vitran Nigam Ltd.Old Power House, Hathi Bhata
Jaipur Road, Ajmer,Rajasthan
 4. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan,Janpath, Jaipur-302005, Rajasthan
 5. Jodhpur Vidyut Vitran Nigam Ltd.New Power House
Industrial Area, Jodhpur,Rajasthan
 6. Delhi Transco Ltd., Kotla Road,New Delhi
 7. Punjab State Electricity Board, The Mall, Patiala
 8. Haryana Vidyut Prasaran Nigam Ltd.,Shjakti Bhawan
Sector VI , Panchkula, Haryana
 9. Haryana Power Generation Company Ltd.Shakti Bhawan
Sector VI , Panchkula, Haryana
 10. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Simla-171004
 11. Power Development Deptt. Govt. of Jammu & Kashmir
Mini Secretariat, Jammu
 12. The Chief Engineer-cum-Secretary
Engineering Deptt. Chandigarh Administration
Sector-9, Chandigarh.
 13. Uttaranchal Power Corporation Ltd.
Urja Bhawan, Dehradun
-Respondents

Appeal No. 155 of 2006

N.T.P.C. Ltd. (Farakka Super Thermal Power Station of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New Delhi

....Appellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary

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Scope Complex, New Delhi

2. West Bengal State Electricity Board
Vidhyut Bhawan, Sector 11, Salt Lake City, Kolkata
 3. Bihar State Electricity Board, Bailey Road
Patna-800021
 4. Jharkhand State Electricity Board, HEC Dhurwa, Ranchi
 5. Grid Corporation of Orissa Ltd. Janpath
Bhubaneswar-751007
 6. Damodar Valley Corporation, DVC Tower, VIP Road, Kolkata
 7. Government of Sikkim, Through its Commissioner & Secretary
Deptt. of Power, Gangtok
 8. Tamil Nadu Electricity Board, 800, Anna Salai, Chennai
 9. Government of Pondicherry, Through its Superintendent Engineer,
Pondicherry-605001
 10. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Marg, Lucknow
 11. Power Development Deptt. Govt. of Jammu & Kashmir, Mini Sectt. Jammu
 12. The Chief Engineer-cum-Secretary
Engineering Deptt. Chandigarh Administration, Sector-9, Chandigarh.
 13. Madhya Pradesh Power Trading Corpn. Ltd.
Shakti Bhawan, Vidyut Nagar, Jabalpur-482008
 14. Gujarat Urja Vikas Nigam Ltd., Race Course, Vadodara-390007
 15. Electricity Deptt., administration of Daman & Diu, Daman-396210
 16. Electricity Deptt. Administration of Dadra & Nagar Haveli, Silvassa
 17. Delhi Transco Ltd. Kotla Road, New Delhi
 18. Maharashtra State Electricity Distribution Co.Ltd.
Prakashgad, Bandra(East) Mumbai
-Respondents

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Appeal No. 156 of 2006

N.T.P.C. Ltd (Talcher Super Thermal Power Station of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New Delhi

...Appellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi
2. West Bengal State Electricity Board
Vidhyut Bhawan,Sector 11, Salt Lake City, Kolkata
3. Bihar State Electricity Board, Bailey Road, Patna-800021
4. Jharkhand State Electricity Board, HEC Dhurwa, Ranchi
5. Grid Corporation of Orissa Ltd. Janpat, Bhubaneswar-751007
6. Damodar Valley Corporation, DVC Tower, VIP Road, Kolkata
7. Government of Sikkim, Through its Commissioner & Secretary
Deptt. of Power, Gangtok
8. Tamil Nadu Electricity Board, 800, Anna Salai, Chennai
9. Government of Pondicherry, Through its Superintendent Engineer,
Pondicherry-605001
10. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Marg, Lucknow
11. Power Development Deptt. Govt. of Jammu & Kashmir
Mini Sectt. Jammu
12. The Chief Engineer-cum-Secretary
Engineering Deptt. Chandigarh Administration
Sector-9, Chandigarh.
13. Madhya Pradesh Power Trading Corpn. Ltd.
Shakti Bhawan, Vidyut Nagar, Jabalpur-482008
14. Gujarat Urja Vikas Nigam Ltd.
Race Course, Vadodara-390007

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15. Electricity Deptt., administration of Daman & Diu, Daman-396210
16. Electricity Deptt. Administration of Dadra & Nagar Haveli, Silvassa
17. Delhi Transco Ltd. Kotla Road, New Delhi
18. Maharashtra State Electricity Distribution Co.Ltd.
Prakashgad, Bandra(East) MumbaiRespondents

Appeal No. 207 of 2006

N.T.P.C. Ltd (Rehand Super Thermal Power Station State-I of NTPC)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New DelhiAppellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary
Scope Complex, New Delhi
2. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Marg, Lucknow
3. Ajmer Vidyut Vitran Nigam Ltd.Old Power House, Hathi Bhata
Jaipur Road, Ajmer,Rajasthan
4. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan,Janpath, Jaipur-302005, Rajasthan
5. Jodhpur Vidyut Vitran Nigam Ltd.New Power House
Industrial Area, Jodhpur,Rajasthan
6. Delhi Transco Ltd., Kotla Road,New Delhi
7. Punjab State Electricity Board, The Mall, Patiala
8. Haryana Vidyut Prasaran Nigam Ltd.,Shjakti Bhawan
Sector VI , Panchkula, Haryana
9. Haryana Power Generation Company Ltd.Shakti Bhawan
Sector VI , Panchkula, Haryana
10. Himachal Pradesh State Electricity Board
Vidyut Bhawan, Simla-171004

11. Power Development Deptt. Govt. of Jammu & Kashmir
Mini Secretariat, Jammu
12. The Chief Engineer-cum-Secretary
Engineering Deptt. Chandigarh Administration
Sector-9, Chandigarh.
13. Uttaranchal Power Corporation Ltd.
Urja Bhawan, DehradunRespondents

Appeal No. 216 of 2006

N.T.P.C. Ltd (Ramagundam STPS, State I %& II)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New Delhiappellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary
Scope Complex, New Delhi
2. Transport Corporation of Andhra Pradesh(APTRANSCO)
Vidyut Soudha, Khairatabad, Hyderabad
3. AP Eastern Power Distribution Company Ltd., Sai Shakthi Bhawan
30-14-09 Near Saraswathi Park, Visakhapatnam
4. AP Southern Power Distribution Company Ltd
H.No. 193-93(M) Upstairs, Renigunta Road, Tirupathi
5. AP Northern Power Distribution Co. Ltd.
Opp NIT Petrol Pump, Chaitanyapuri, Warangal
6. AP Central Power Distribution Company Ltd. Singareni Bhawan,
Red Hills, Hyderabad
7. Tamil Nadu Electricity Board, 800 Anna Salai, Chennai
8. Karnataka Power Transmission Corporation Ltd. Kaveri Bhawan, K.G.Road
Bangalore
9. Bangalore Electricity Supply Co. Ltd. Krishna Rejendra Circle, Bangalore
10. Mangalore Electricity Supply Co. Ltd. Paradigm Plaza AB
Shetty Circle, Mangalore

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11. Chamundeshwari Electricity Supply Corp. Ltd. New Kantharajours Road
Saraaswathi Puram, Mysore
12. Gulbarga Electricity Supply Co. Ltd. Main Road, Gulbarga, Karnataka
13. Hubli Electricity Supply Co. Ltd. II flor, Eureka Junction, TB Road Bubl
14. Kerala State Electricity Board, Vaidyuthi Bhawanam, Pattom,
Thiruvananthapuram.
15. Electricity Department (POND CHERRY) nsc Bose Salai, Pondicharry.
16. Electricity Department ,Govt. of Goa, Vidyut Bhawan,
Panaji, GoaRespondents

Appeal No. 217 of 2006

N.T.P.C. Ltd (Vindhyachal STPS-I)
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New DelhiAppellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary
Scope Complex, New Delhi
- 2, Madhya Pradesh Power Trading Corpn. Ltd.
Shakti Bhawan, Vidyut Nagar, Jabalpur-482008
3. Gujatratt Urja Vikas Nigam Ltd., Race Course, Vadodara-390007
4. Electricity Deptt., administration of Daman & Diu, Daman-396210
5. Electricity Deptt. Administration of Dadra & Nagar Haveli, Silvassa
6. Maharashtra State Electricity Distribution Co.Ltd.
Prakashgad, Bandra(East) Mumbai
7. Chhattisgrh State Electricity Board,P.O.Sundar Nagar
Danganiya, Raipur
8. Govt. of Goa, Electricity Deptt. Vidyut Bhawan,Panaji,GoaRespondents

Appeal No. 218 of 2006

N.T.P.C. Ltd.

NTPC Bhawan,SCOPE Complex

7, Institutional Area, Lodhi Road, New Delhi

...Appellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi
2. Madhya Pradesh Power Trading Corpn. Ltd.
Shakti Bhawan, Vidyut Nagar, Jabalpur-482008
3. Gujarat Urja Vikas Nigam Ltd., Race Course, Vadodara-390007
4. Electricity Deptt., administration of Daman & Diu, Daman-396210
5. Electricity Deptt. Administration of Dadra & Nagar Haveli, Silvassa
6. Maharashtra State Electricity Distribution Co.Ltd.
Prakashgad, Bandra(East) Mumbai
7. Chhattisgrh State Electricity Board,P.O.Sundar Nagar
Danganiya, Raipur
8. Govt. of Goa, Electricity Deptt. Vidyut Bhawan,Panaji,GoaRespondents

Appeal No. 239 of 2006.

N.T.P.C. Ltd.

NTPC Bhawan,SCOPE Complex

7, Institutional Area, Lodhi Road, New Delhi

...Appellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary
Scope Complex, New Delhi
2. Madhya Pradesh Power Trading Corpn. Ltd.
Shakti Bhawan, Vidyut Nagar, Jabalpur-482008
3. Maharashtra State Electricity Distribution Co. Ltd., Bandra(East), Mumbai

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4. Gujatratt Urja Vikas Nigam Ltd., Race Course, Vadodara-390007
5. Chhattisgarh State Electricity Board, Danganiya, Raipur
6. Govt. of Goa, Vidyut Bhawan, Panaji
7. Electricity Department
Admn. Of Daman & Diu, Daman
8. Electricity Department
Administration of Dadra & Nagar Haveli, SilvassaRespondents

Appeal No. 240 of 2006

N.T.P.C. Ltd.
Simhadri Thermal Power Station of NTPC
NTPC Bhawan,SCOPE Complex
7, Institutional Area, Lodhi Road, New DelhiAppellant

Versus

1. Central Electricity Regulatory Commission
Through its Secretary, Scope Complex, New Delhi
2. Transmission Corporation of Andhra Pradesh,
Vidyut Soudha, Khairatabad,, Hyderabad.
3. AP Eastern Power Distribution Company Ltd. (APEPDCL)
Sai Shakti Bhavan,
30-14-09, Near Saraswathi Park, Visakhapatnam.
4. AP Southern Power Distribution Co. Ltd. (APSPDCL),
H.No. 193-93(M) Upstairs,
Renigunta Road, Tirupathui.
5. AP Northern Power Distribution Co. Ltd. (APNPDCL),
Opp. NIT Petrol Pump, Chaitanyapuri, Warangal.
6. AP Central Power Distribution Co. Ltd. (APCPDCL),
Singareni Bhavan,, Red Hills, Hyderabad.Respondents

Appeal No. 10 of 2007

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road, New DelhiAppellant

GB

Versus

1. Central Electricity Regulatory Commission,
Through its Secretary,,SCOPE Complex, Lodhi Road,
New Delhi.
2. West Bengal State Electricity Board,
Vidyut Bhawan, Block 'DJ', Sector-11, Salt Lake City,
Calcutta.
3. Bihar State Electricity Board,
Vidyut Bhawan, Bailey Road,, Patna.
4. Jharkhand State Electricity Board,
Engineering Bhawan, HEC,, Dhurwa, Ranchi.
5. Grid Corporation of Orissa Ltd.
Vidyut Bhawan, Janpath,, Bhubaneshwar.
6. Damodar Valley Corporation,, DVC Towers, VIP Road, Calcutta.
7. Power Department,
Government of Sikkim, Kazi Road, Gangtok, Sikkim.
8. Tamil Nadu Electricity Board,
NPKRP Maaligali,800, Anna Salai,, Chennai.
9. Kerala State Electricity Board,
Vaidyuthi Bhawan, Pattam, Trivandrum.
10. Government of Puducherry,
Through its Superintendent Engineer,
Electricity Department, Puducherry.
11. Uttar Pradesh Power Corporation Ltd., 14, Ashoka Marg, Lucknow
12. Power Development Deptt., Through its Commissioner
Govt. of J&K, Jammu
13. Delhi Transco Ltd., Kotla Road, Delhi
14. Chief Engineer-cum-Secretary, Engg. Deptt.
Chandigarh Admn. Sector -9, Chandigarh
15. Madhya Pradesh Power Trading Corporation Ltd.
Shakti Bhawan, Vidyut Nagar, Jabalpur

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16. Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Bandra(East), Mumbai
17. Gujarat Urja Vikas Nigam Ltd. Race Course, Vodadara.
18. Electricity Deptt. Admn. Of Daman & Diu, Daman
19. Electricity Deptt. Admn. Of Dadra & Nagar HaveliRespondents
Silvasa,k Via VAPI

Appeal No.11 of 2007

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road, New DelhiAppellant

Versus

1. Central Electricity Regulatory Commission,
Through its Secretary,,SCOPE Complex, Lodhi Road,
New Delhi.
2. Madhya Pradesh Power Trading Corporation Ltd.
Shakti Bhawan, Vidyut Nagar, Jabalpur
3. Maharashtra State Electricity Distribution Co. Ltd.
Prakashgad, Bandra(East), Mumbai
4. Gujarat Urja Vikas Nigam Ltd. Race Course, Vodadara.
5. Chhattisgarh State Electricity Board, Danganiya, Raipur
6. Government of Goa, Electricity Deptt. Vidyut Bhawan, Goa
7. Electricity Deptt., Admn. Of Daman & Diu, Daman.
8. Electricity Deptt., Admn. Of Dadra & Nagar Haveli,
SilvasaRespondents

Appeal No. 23 of 2007

NTPC Limited,
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road, New Delhi

.....Appellant

Versus

1. Central Electricity Regulatory Commission,
Through its Secretary,,SCOPE Complex, Lodhi Road,
New Delhi.
2. Uttar Pradesh Power Corporation Ltd., Shakti Bhawan
14, Ashoka Marg, Lucknow.

....Respondents

For the Appellants : Mr. M.G.Ramachandran with
Mr. Anand K.Ganesan, Advocates
Ms Taruna Singh Bhaghel,Advocate

For the Respondents : Mr. T.Harish Kumar & Mr. P.Prasanth for TNEB
Mr. Pradeep Misra with Mr. T. Mahipal
for UPPCL and DTL
Mr. Ramji Srinivasan with Ms Mandakini Singh for
KPTCL(in appeal No. 216 of 2006)
Mr. R.B. Sharma for BSEB (In appeal Nos. 155
&156 of 2006)
Mr. Ajit S. Bhasme & Mr. Varun Thakur for MSEB
Mr. G. Umapathy for MPPTC (In appeal No. 218 of 06)
Ms Anisha Singh for DTL
Mr. Sanjay Sen with Ms Manju Madhvan
(in appeal No. 240 of 2006)
Mr. T.P.S. Bawa & Mr. V.K.Gupta for PSEB
Mr. A.K.Garg & Mr. Deepak Shrivastava
For MPPTC(MPSEB)
Mr. R.B.Sharma for BSEB (in appeal 155 & 156 of 06)
Mr. Varun Thakur for Mr.Ajit S. Bhasme for BSEB
Mr. M.T. George for KSEB in A.No. 144 of 2006
Mr. P.J.Jani, Dy.Engr. GUVNL, Vadodara
Mr. Harish Chander, Consultant ,MPPTC
Mr. Nilesh Sharma for Resp.6(in appeal No. 152,
153 and 154 of 2006)
Ms Mandakini Singh for KPTCL
(in appeal No. 216 of 2006)

Mr. D. Khandelwal for MPPTCL
Mr. Vishal Anand for Resp.2 to 6 in
Appeal No. 240 of 2006
Mr. Sanjeev Kumar for Resp.2 in A.240 of 06
Mr. Kesav Mohan for HVPNL
Ms Ruchi Narula
Ms Avinash Singh for DTL

Judgment

The Nineteen (19) appeals before us have been filed by NTPC Ltd. against various tariff orders issued by the Central Electricity Regulatory Commission (CERC or the Commission in short) in which the Commission has determined tariff for various stations of NTPC. In all the 19 appeals there are common issues and, therefore, these appeals have been heard together. The issues pertain to the following:

- (1) Computation of outstanding loan as on April 1, 2004
- (2) Consequences of refinancing of loan
- (3) Treating depreciation available as deemed repayment of loan
- (4) Admissibility of depreciation up to 90% of the value of the assets
- (5) Cost of maintenance spares
- (6) Impact of de-capitalisation of the assets on cumulative repayment of loan
- (7) Inclusion of liquid fuel stock in the determination of working capital
- (8) Normative transit loss for coal transported through railways
- (9) Foreign exchange rate variation (FERV)
- (10) First in First out (FIFO) method of loan repayment
- (11) Inadequate O&M expenses (confined to Kawas Appeal No. 11 of 2007)
- (12) Computation of interest on loan (confined of Singrauli Appeal No. 141 of 2006)

During the course of hearing the appellant has opted not to pursue the following issues:

- (a) Inclusion of Liquid Fuel Stock in the determination of working capital mentioned in point No. 7 above.
- (b) First in First Out (FIFO) method of loan repayment mentioned in Point 10 above.

As regards inadequate O&M expenses provided for Kawas Gas Power Station (challenged in Appeal No. 11 of 2007- Point No. 11), NTPC submitted that it had raised the issue of inadequacy of O&M expenses for various Gas Power Stations generally which include Kawas Gas Power Station in a separate proceeding before the Commission. Accordingly, NTPC did not press this issue in the present appeal.

NTPC sought leave of this Tribunal to raise the issue as and when the same is decided in the pending proceedings before the Commission.

Liberty is granted to the appellant to raise the issue of inadequate O&M expenses when it is decided by the Commission.

Mr. Pradeep Misra appearing for the respondent UPPCL contended that the NTPC has filed Review Petition and also the abovementioned appeals. Review Petitions have been disposed by the CERC. It was the responsibility of NTPC to place the orders passed by CERC in those review petitions on the files of the instant appeals. However, the same was not done. At least in one of the orders i.e. order dated October 27, 2006 passed in Review Petition No. 59 of 2006 in respect of Farakka STPS (appeal No. 155 of

2006) before this Tribunal the CERC has modified its order. However, no appeal has been filed against the review order. Since the original order has merged in the review order, hence according to the decision of Hon'ble Supreme Court in Sushil Kumar Sain Vs State of Bihar, 1975 (3) SCR page 942, the appeal filed by NTPC is not maintainable. Learned counsel urged that NTPC be directed to place all the orders passed by CERC in the review petitions filed by it as all the review petitions have been disposed. Hence the orders impugned in the appeals have merged in the review order and the present appeals are not maintainable.

Per contra Mr. M.G. Ramachandran, appearing for the appellant, pleaded that the contention of the respondent that in view of the subsequent review orders, the appeal filed against the main order is not maintainable, is without any merit. He contended that the appeal against the main order was filed before the disposal of the Review Petition. In terms of the decision of the Hon'ble Supreme Court in Tungabhadra Industries Ltd. V/s The Government of Andhra Pradesh AIR 1964 SC 1372 the appeal can be filed after the filing of the Review Petition, and it is legal and valid to maintain both the appeal and review petition. The order passed rejecting the review is not appealable under order 47 Rule 7 of the CPC. If the appeal is filed before the disposal of the review petition, the appeal does not cease to be maintainable when the review petition is decided subsequently even if the order passed in the review petition modifies, confirms and changes the main order. To the extent the review order gives reliefs, the appellant may give up the issue in appeal.

Learned counsel further submitted that if the appeal is not filed before the disposal of the review petition, and if the review petition modifies, confirms and changes the main order, then the appeal would lie only against the review order. This has been held so in the decisions of the Hon'ble Supreme Court in Sushil Kumar Sen V/s State of Bihar (1975) 1 SCC 744 and Rekha Mukherjee V/s Ashis Kumar Das and Others (2005) 3 SCC 427. These decisions of the Hon'ble Supreme Court will apply only if the appeal is filed or sought to be filed against the main order after the decision of the review petition and not so in case where the appeal had already been filed and is pending at the time when the Review Petition is decided. This is clear from para 3 of the judgment in Sushil Kumar Sen's case (supra) which stated "The respondent did not file any appeal....." And in Rekha Mukherjee's case the Hon'ble Supreme Court proceeded on the basis that appeal during the pendency of the review petition is not maintainable

Learned counsel for the appellant contended that in any event in the present case the issue raised is academic as the review petition was dismissed. It is not case of review order either allowing the review or modifying the main order.

We do not consider it necessary to delve deeper into question of maintainability as the Review Petition had been dismissed by the Commission while appeal to this Tribunal had already been filed and, therefore, the appeal is anyway maintainable.

We now proceed to discuss each issue, one by one.

1. Computation of outstanding loan as at the beginning of the tariff period i.e. April 1, 2004

Learned counsel for the appellant contended that the outstanding loan to be considered for the tariff period 2004-09 will be the loan outstanding from the previous year i.e. as at the end of March 31, 2004. In support, he set out clause 21(1) (b) of the Tariff Regulations, 2004 which reads as under:-

“The loan outstanding as on April 1, 2004 shall be worked out as the gross loan as per regulation 20 minus cumulative repayment as admitted by the Commission up to March 31, 2004. The repayment for the period 2004-09 shall be worked out on a normative basis”

He stated that whereas there is no dispute as to the application of the above regulation in regard to the computation of loan outstanding for the period, in issue, namely 2004-09, the limited issue is what should be the quantum of outstanding loan as on March 31, 2004 taken for the application of the above Regulation.

In the earlier periods i.e. for the period from 1997 till March 31, 2004 the Commission had decided the tariff adopting the methodology of computation of loan based on loan repayment of actual or normative, whichever is higher. This methodology adopted by the Commission for the earlier period has been set aside by the Tribunal vide order dated November 14, 2006 passed in Appeal Nos. 96 and 94 of 2005 and order dated January 24, 2007 passed in appeal Nos. 81 to 87, 89 to 93 of 2005.

Mr. Ramachandran pleaded that as a consequence of the above decision of the Tribunal, outstanding loan computation as on March 31, 2004 will change and for the

tariff period 2004-09 the revised outstanding loan should be taken instead of the outstanding loan taken by the Commission as determined by application of the wrong methodology for the previous period. Appellant urged that the Commission's tariff orders for different generating stations determining the outstanding loan as on March 31, 2004 are required to be set aside.

Analysis and Decision

The question before us is as to how the loan outstanding at the end of March 31, 2004 should be computed i.e. on the basis of normative or; actual or whichever is higher. In view of the order of this Tribunal dated November 14, 2006 passed in Appeal Nos. 94 and 96 of 2005 and order dated January 24, 2007 passed in appeal Nos. 81 to 87, 89 to 93 of 2005, computation of loan based on loan repayment on normative basis is to be taken. This decision of the Tribunal squarely applies in this case. In this view of the matter, the Commission is required to recalculate the loan outstanding as on March 31, 2004, based on loan repayment on normative basis.

II. Consequence of Refinance of Loan

Learned counsel for the appellant drew our attention to the para on interest on loan capital of the CERC tariff Regulations, 2004 as under:

“Interest on Loan Capital

(a) Interest on loan capital shall be computed loan wise on the loans arrived at in the manner indicated in Regulation 20.

(b) The loan outstanding as on April 1, 2004 shall be worked out as the gross loan as per Regulation 20 minus cumulative repayment as admitted by the Commission or any other authority having power to do so up to March 31, 2004. The repayment for the period 2004-09 shall be worked out on a normative basis.

- (c) *The generating company shall make every effort to swap the loan as long as it results in net benefit to the beneficiaries. The costs associated with such refinancing shall be borne by the beneficiaries.*
- (d) *The changes to the loan terms and conditions shall be reflected from the date of such refinancing and benefit passed on to the beneficiaries.*
- (e) *In case of any dispute, any of the parties may approach the Commission with proper application. However, the beneficiaries shall not withhold any payment ordered by the Commission to the generating company during pendency of any dispute relating to refinancing of loan.*
- (f) *In case any moratorium period is availed of by the generating company, depreciation provided for in the tariff during the years of moratorium shall be treated as repayment during those years and interest on loan capital shall be calculated accordingly.*
- (g) *The generating company shall not make any profit on account of swapping of loan and interest on loan.*
- (h) *The generating company may, at its discretion, swap loans having floating rate of interest with loans having fixed rate of interest, or vice-versa, at its own cost and gains or losses as a result of such swapping shall accrue to the generating company.*

Provided that the beneficiaries shall be liable to pay interest for the loans initially contracted, whether on floating or fixed rate of interest”.

Learned counsel submitted that in the previous tariff Regulations, 2001 namely for the year 2001-04 it was provided at para 2.7(a) that interest on loan capital shall be computed on the outstanding loans, duly taking into account the schedule of repayment, as per the financial package approved by the authority or an appropriate independent agency, as the case may be. Para 2.10 of December 21, 2000 order of the Commission stated that contracted rate of interest for the original loan shall be considered for the purpose of tariff and further at para 3.5.7 stated that any benefit/loss on account of any subsequent financing shall be to the account of the utility. Thus the concept as per the

earlier tariff Regulations, 2001 was different and rather opposite to what has been stated in the tariff Regulations, 2004.

Learned counsel submitted that NTPC had refinanced Government of India loans in April, 2002 and August, 2002 with bonds. The refinanced bonds though had lower rate of interest but had a longer repayment period, as a result of which total interest liability in the case of refinanced loan was higher than the originally contracted loans. This refinancing was effected for managing NTPC financial resources for a number of generating stations keeping in view that the original contracted loan along with its interest rate will be considered for the purpose of tariff. This aspect was also accepted by the Commission in the tariff order issued for Gandhar GPS for the period 2001-04 wherein detailed analysis of the originally contracted Government of India loan and refinanced loan was made and Commission had allowed originally contracted Government of India loan on its applicable interest for calculating interest on loan.

Learned counsel contended that the tariff Regulations, 2004 dealing with Refinancing of loan and the implications thereof on its terms will apply prospectively namely for refinancing undertaken post the coming into force of the tariff Regulations, 2004 and not the refinancing done earlier to the Tariff Regulations, 2004. Thus loan already refinanced in the earlier period ought not to be affected even in respect of the interest and other costs related falling due to in subsequent period of 2004-09. Any new refinancing done on or after the coming into force of the Tariff Regulations, 2004 will be subject to the above quoted provisions, however, without prejudice to the rights of NTPC to challenge the Tariff Regulations.

Learned counsel further contended that the Commission erred in giving effect to the provisions of the Tariff Regulations, 2004 while dealing with refinancing of loan even in respect of the loan refinanced already prior to the coming into force of the Tariff Regulations, 2004. The Commission erred in not considering the loan as per the previous tariff orders of the respective stations.

Gravamen of the argument of the learned counsel was that the respondent beneficiaries cannot be allowed to take advantage of the refinancing without taking all the related and consequential obligations attached to such refinancing.

Learned counsel stated that for the refinancing of the very same loan, Commission has adopted different reasoning in tariff blocks of 2001-04 and 2004-09 by ignoring the refinancing in the tariff period 2001-04 as the same was not beneficial to the respondents. However, in the tariff order for the period 2004-09 Commission has considered the reduced rate of interest as per refinanced loan without considering repayment terms, thereby giving advantage to the respondent beneficiaries selectively in both the tariff blocks at the cost of NTPC. The Commission has sought to deviate from its order dated December 21, 2000 wherein it was specifically provided that the benefit or loss of such refinancing, swapping etc. will be to NTPC (i.e the generating utility).

Learned counsel for MPPTC represented that as per the Regulations 21 (g) of the amended CERC Regulations the generating company shall not make any profit on account of refinancing of loan and interest on loan. Benefit of refinancing is required to be passed to the beneficiaries and generating company shall not make any profit on account of refinancing of loan.

Analysis and decision

Concedingly as per CERC order dated December 21, 2000 it was specifically provided that the benefit of loan refinancing or swapping of loans will be to the account of NTPC. Accordingly NTPC had refinanced Government of India loans in April, 2002 and August, 2002 with Bonds. The refinanced Bonds, though had lower rate of interest, but had a longer repayment period, as a result of which total interest liability in the case of refinancing of loan was higher than the original contracted loans. It will be pertinent to refer to CERC Regulations 21(I)(c) (f) and (g) given above. The difference between the 2004 Regulations and the previous Regulations regarding refinancing of loans is that as per the new Regulations refinancing is permitted at the cost of beneficiaries as long as it benefits them, whereas as per the previous Regulations (prior to 2004) refinancing of loan was permitted at the cost of the generator and the resulting benefit or loss was to their account. In the tariff order for the period 2004-09 the Commission has considered the reduced rate of interest as per refinanced loan but without considering repayment terms.

The refinancing of loan has been effected by the appellant before the Tariff Regulations, 2004 came into effect. Therefore, that is to be governed by the previous Regulations. The Tariff Regulations, 2004 have to be applied to the refinancing done after these regulations came into force and cannot be applied to the prior period when the refinancing had already been done by the appellant and costs associated with refinancing have been borne by the appellant. Regulation in question will apply where loans have been swapped and costs associated with refinancing have been borne by the

beneficiaries. It will not be fair to the appellant if the respondent beneficiaries take advantage of the refinancing without taking all associated obligations allowed to such refinancing. In this view of the matter the CERC will need to consider this aspect afresh in accordance with the aforesaid observations.

III. Treating depreciation available as deemed repayment of loan

Learned counsel for the appellant stated that the Commission proceeded on the basis that depreciation allowed is for repayment of the loan and, therefore, to the extent of the depreciation available there will be deemed repayment of loan.

Learned counsel contended that in view of the orders dated November 14, 2006 and January 24, 2007 passed by the Tribunal in regard to computation of outstanding loan, namely, it should be on normative basis only (instead of normative or actual whichever is higher), the issue of adjusting the depreciation amount as deemed repayment of the loan will not arise. The computation of outstanding loan for all intent and purposes should be on normative basis only. Even otherwise the principle adopted by the Commission that depreciation allowed is for repayment of loan is wrong. The depreciation is admissible notwithstanding any loan is taken or not.

Learned counsel stated that the concept of depreciation is not to enable the utilities to repay the loan obligations. The depreciation is available to utility whether any loan amount exists or not or whether there is any refinancing, swapping or rearrangement of any nature. The depreciation amount, unlike Advance against Depreciation, is to be allowed notwithstanding the consideration whether there is any

liability to pay loan or not. He cited commentaries in the Financial Accounting on 'depreciation' as under:

“Financial Accounting – Foundation Course Study Material- The Institute of Company Secretaries of India

It is a common experience that whenever an asset is used in business its value is getting reduced and sooner or later the asset will become useless. Thus depreciation is a permanent, continuing and gradual shrinkage in the book value of a fixed asset. As the asset is used for business purpose, the annual loss in the value of the asset is like any other expense hence the cost of asset should be treated as a loss spreading over its life. Thus, depreciation is a process of allocating the cost of a fixed asset over its estimated useful life in a rational and systematic manner.

The Institute of Chartered Accountants of India in Accounting Standards AS6 has defined it as “as measure of the wearing out, consumption or other loss of value of a depreciable asset arising from use, effluxion of time or obsolescence through technology and market changes. Depreciation is allocated so as to charge a fair proportion of depreciable amount in each accounting period during the expected useful life of the asset. Depreciation includes amortization of assets whose useful life is predetermined”

Learned counsel submitted that the Commission itself spreads the balance recovery of depreciation over balance useful life after repayment of entire loan, i.e. depreciation is recognized as an element of capacity/fixed charges even after full repayment of loan. The advance against depreciation is, however, given to enable sufficient cash availability with the utility for repayment of the loan and is entirely different than the normal depreciation admissible and to be allowed.

Per contra, Mr. Misra appearing for the respondent UPPCL contended that though definition of depreciation given in other statute or in accounting principles may be different but for the purpose of tariff, depreciation is linked with repayment of loan which is clear from Regulation 21(ii) of CERC (Terms and conditions of Tariff) Regulations, 2004. The Commission in its order has given detailed reasons for treating the depreciation available as deemed repayment of loan. The K.P. Rao Committee also treated the depreciation claim as repayment. The combined reading of Regulation 21(i)(a) and 21(ii)(b) make it clear beyond doubt that depreciation is linked with deemed repayment of loan. In case it is held that depreciation is not deemed repayment of loan capital, then there is no component under the tariff by which loan could be repaid. The judgment of Hon'ble Supreme Court in Mysore Mills Ltd. Vs CIT Karnataka (1999) 7 SCC 106 is not applicable in the facts and circumstances of the present case because the said case was under the Income Tax Act and was not related to the tariff. Similarly the decision in Delhi Electricity Regulatory Commission V/s BSES Yamuna Power (2007) 3 Scale 289 is not applicable in the present case.

Mr. Harish Chander, Consultant, MPPTC contended that depreciation is a process of repayment of capital in installments and therefore capital consists of Debt and Equity both, logical interpretation would be that depreciation is a process of repayment of not only Debt but also payment of equity in installments. He tried to rely upon the concept of depreciation propounded by K.P.Rao Committee (which was accepted by the Government but not by the Commission) that once the loan is fully paid, excess depreciation shall be adjusted against the equity. He submitted that provisos to

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Clause 21(b) of CERC (T&C of Tariff) Regulations, 2004 states that advance against depreciation is permitted only if cumulative repayment up to a particular year exceeds the cumulative depreciation to that year: and provided further that advance against the depreciation in a year shall be restricted to the extent of difference between cumulative repayment and cumulative depreciation up to that year. Gravamen of his arguments was that when this principle has been provided in the form a mathematical hypothesis its converse also be true i.e. when cumulative depreciation exceeds the cumulative repayment, excess amount should go to reduce at least the loan if not equity. He contended that there is no foundation in the arguments of the appellant that there is no relation between depreciation and loan repayment.

Analysis and Decision

In the orders of this Tribunal dated November 14, 2006 and January 24, 2007 it has been laid down that the computation of outstanding loan will be on normative basis only (instead of normative or actual whichever is higher). In view of this there is no question of any adjustment of the depreciation amount as deemed repayment of loan.

It is to be understood that the depreciation is an expense and not an item allowed for repayment of loan. If a corporation does not borrow, it would not mean that the corporation will not be allowed any depreciation. Depreciation is an expense it represents a decline in the value of asset because of use, wear or obsolescence. The Accounting Principles Board of USA defines depreciation as under:-

“The cost of a productive facility is one of the costs of the service it renders during its useful economic life. Generally accepted accounting principles require that this cost be spread over the expected useful life of the facility in such a way as to

allocate it as equitably as possible to the periods during which services are obtained from the use of the facility. This procedure is known as depreciation accounting, a system of accounting which aims to distribute the cost or other basic value of tangible capital assets, less salvage (if any), over the estimated useful life of the unit (which may be a group of assets) in a systematic and rational manner. It is a process of allocation, not of valuation”

It is well established that the depreciation is an expense and therefore, it cannot be deployed for deemed repayment of loan. In this view of the matter the CERC shall need to make a fresh computation of outstanding loan in the light of the aforesaid observations.

IV. Admissibility of Depreciation up to 90%

Learned counsel for the appellant stated that when the power station does not achieve the targeted performance level and there is reduction in the payment of fixed charges in any tariff year (fixed charges being calculated on annual basis) the depreciation amount, as an element of the fixed cost, is not admitted for tariff in that year. The issue which arises for consideration is whether the depreciation which is not admitted in the particular year on account of the disincentive in payment of fixed charges gets exhausted and cannot be considered at all, in future as has been held by the Commission

Learned counsel pleaded that NTPC is entitled to claim depreciation on the assets employed in its business for generation and sale of electricity. The depreciation is allowed to the extent of 90% of the capital cost. Terms & conditions of the Tariff Notification issued by Government of India were applicable for the period up to March 31, 2001. These notifications provided that fixed charges recovery during a year shall be adjusted for performance below normative generation level.

Learned counsel further submitted that the Clause 2.8 of the CERC Tariff Regulations, 2001 provides that recovery of capacity/fixed charges below the level of target availability shall be on pro-rata basis. This is being repeated in the Tariff Regulations, 2004 also in note to Regulation 16. Fixed charges determined for the stations also include depreciation. Since there is a lower recovery of fixed charges for performance lower than normative performance level, the depreciation is also recovered through tariff on proportionate basis. The balance amount of depreciation needs to be allowed in the subsequent years limiting to 90% of the capital cost.

Learned counsel argued that the very fact, that proportionate fixed charges not recoverable on account of under performance establishes, that the beneficiaries will pay for the capacity available in a particular year this does not amount to penalty because the under performance at power stations cannot always be attributable to inefficiency of the operator. The nature of power station operation depends on many factors, which are not entirely within the control of the generator, like availability of fuel and major break down in the mechanical equipment etc.

Learned counsel stated that the Tariff Regulations provide for recovery of fixed cost on the performance of the generating unit up to the specified target performance level. The depreciation amount allowed does not get increased by use of the assets for performance beyond the specified level.

Mr. Ramachandran stated that the depreciation is allowed up to 90% of the total value of the assets installed and commissioned. In other words, the concept of

depreciation is that up to 90% of the value of the assets, the utility can claim depreciation as expense on account of the usage of the assets. This would not, however, mean that after being allowed depreciation up to 90%, the assets cannot be used or have to be discarded. The assets can be continued to be used even after 90% of the asset value has been recovered through depreciation.

Learned counsel stated that the cumulative effect of the above would mean that so long the assets are available to the utility for use, they can claim depreciation. In the event depreciation is not taken in any particular year, either fully or partly, to that extent it will not exhaust the 90% cap level prescribed for the total depreciation. So long as 90%cap level is not exhausted, the utility can continue to claim unclaimed portion of depreciation in the later years provided the assets continue to be in use.

Learned counsel submitted that the above concept is also well recognized in the electricity laws and applied for the past many years. The Sixth Schedule to the Electricity (Supply) Act, 1948 dealt with the financial principles and their application in regard to the distribution licensees. The Sixth Schedule specifically provides for accumulation of depreciation (Reference Part VI (b) of the Sixth Schedule. The Fifth Schedule to The Electricity (Supply) Act, 1948 dealing with the charges for generating companies also incorporate the provision relating to accumulation of depreciation referred to in the Sixth Schedule. Further more, the Electricity Regulatory Commissions Act, 1998 provided in Section 28, that the Sixth Schedule shall be a guideline for the purpose of determination of tariff in the case of a generating company by the

Commission. The Income Tax Act also recognizes the concept of accumulation of depreciation.

Mr. Ramachandran stated that in view of the above, while proportionate depreciation, corresponding to underperformance may not be allowed in the relevant year when the performance of the generating station is not up to the target availability specified in full fixed cost recovery, the effect would not be that the unadjusted depreciation in the concerned year will get exhausted and not recoverable at all by the generating company. The generating company can always recover the underadjusted depreciation by accumulation to the subsequent years. He contended that in the case of the performance of the generating stations at a level below the target availability, the proportionate depreciation cannot be treated as a penalty on the generating company.

Learned counsel argued that the generation and sale of electricity (though regulated by the Commission) is basically a contractual agreement between the parties. The Regulatory Commission is to regulate the contractual arrangement in the manner consistent with all the applicable laws. In a contractual arrangement there cannot be any penalty for non performance or under-performance. The consequence of non-performance or under-performance shall be limited to compensating the other party. Accordingly, not allowing depreciation to be recovered in the concerned year to the extent of non-performance is a sufficient compensation to the respondent beneficiaries and there is no reason whatsoever as to why the generating company should not be allowed to recover the unadjusted depreciation in the later year when the assets are used to perform and deliver electricity to the respondent beneficiaries.

Per contra Mr. Pradeep Misra, learned counsel, appearing for UPPCL submitted that according to Regulation 16(i) of CERC (Terms and Condition of Tariff) Regulations, 2004 the full fixed charges are payable to NTPC on achieving 80% PLF. In case any particular station failed to achieve the target availability the fixed charges are proportionally reduced. If fixed charges are reduced for non-performance, the depreciation which is a part of fixed charges is also reduced. NTPC cannot claim that part of depreciation which was reduced as a commercial penalty for not performing up to the level of target. However, the regulation itself provides under Regulation 21(ii)(a)(iii) that after repayment of entire loan the remaining depreciable value will be spread over the balance useful life of the asset. Hence the contention of NTPC is without any basis and depreciation only up to maximum 90% is available to it.

Analysis and Decision

We note that as per the CERC Regulations appellant can recover, in full, capacity (fixed) charges on reaching the target availability. If the appellant exceeds the targeted Plant Load Factor for incentives he is entitled to an incentive at flat rate of 25 paise per kWh for ex-bus schedule energy corresponding to schedule generation in excess of ex-bus energy corresponding to target Plan Load Factor. Capacity (fixed) charges inter-alia include depreciation. Therefore, the appellant is able to recover the annual depreciation amount only if it achieves the target availability. In case of shortfall fixed charges and thereby the depreciation amount is pro-rata reduced according to the shortfall in achieving the target availability. However, if the appellant exceeds the Plant Load Factor beyond a certain value he is entitled to only a flat rate incentive of 25 paise.

Whereas the depreciation amount is reduced due to underperformance, the same does not increase due to over performance.

In a regulatory cost plus regime all costs have to be reimbursed. Depreciation amount up to 90% being a cost has to be allowed over the life of the plant. If due to underperformance in a particular year the appellant is not able to recover full depreciation allowed in that year and if this denial is forever, it will tantamount to a penalty. In a contract between the appellant and the beneficiaries, only levy of liquidated damages can be permitted. It will, therefore, be enough deterrent for the appellant if the depreciation is not allowed during the year of underperformance. However, the same cannot be denied forever and, therefore, it will be only fair to allow the unpaid portion of the depreciation after the plant has lived its designated useful life. In this view of the matter the CERC needs to examine this aspect as per the aforesaid observations.

V. Cost of Maintenance Spares

Learned counsel for the appellant stated that the Tariff Regulations, 2004 in clause 21(v)(a)(iv) provide for cost of maintenance spares to be allowed on a normative basis calculated at one percent of the historical capital cost on the date of commercial operation and then escalated by 6% every year. However, the Commission has permitted the cost of spares as per the capital cost frozen on the date of commercial operation and without considering the additional capitalization undertaken from the date of the commercial operation.

Learned counsel submitted that all generating stations incur substantial additional capitalization after the date of commercial operation on two areas namely:

- (a) Substantial part of the capital works related to the project as envisaged initially are undertaken after the commercial operation. These include construction of Ash handling disposal system etc. The above work can be undertaken after commercial operation and it is not necessary to delay the commercial operation pending the completion of the said works. It is not in the interest of the beneficiaries and also the larger public interest to defer the commercial operation and generation of electricity till the completion of all capital works. Such a course besides postponing the availability of much needed generating capacity would increase Interest During Construction (IDC) and thereby be disadvantageous to the respondent beneficiaries.
- (b) Ongoing additional capital work to be undertaken from time to time over the period of the life of the generating station (25 years and more) for any reason whatsoever like change in law meeting environment standards etc. to maintain the generating stations and operate the same to the desired capacity and efficiency.

Learned counsel stated that the above additional capital works undertaken also require spares and it is, therefore, rational, just and appropriate that the cost of the additional capital works be included in the historical capital cost from the date when such capital works are undertaken and the spares are allowed at the normative 1% on

additional capital works with escalation at 6% in the same manner as in the case of capital works on the date of commercial operation.

Mr. Misra stated that Regulation 21(v)(a) iv) provides for cost of maintenance spares which is to be calculated on 1% of the historical capital cost on the date of commercial operation. However, the amount so calculated is to be escalated by 6% every year. Hence the contention of NTPC that additional capitalization has not been considered is without any merit. 6% escalation every year has taken into account the capitalization. Besides this without challenging the regulations the amount as claimed by NTPC cannot be granted.

Analysis and Decision

We are not inclined to agree with the contention of the respondents that escalation of 6% will take care of the additional capitalization. Escalation is meant to factor inflation and is allowed as per CERC Regulations whether or not additional capitalization takes place. Question before us is that: can the historical cost be frozen with the Commissioning of the station. It is quite normal and prudent to ensure earliest operation of the plant without necessarily 100% completion of plants and works, of course not at the cost of safety of the plant. Adding some of the plants and works after the commercial operation will reduce interest during construction. If technically it is possible to delay some of the plants or works, it is only prudent to do so. For example it is common to build redundancies in the plant at a little later stage. CERC's own regulations rightly recognized additional capitalization. It is pertinent to set out excerpts

pertaining to additional capitalization from CERC (Terms & Conditions of Tariff) Regulation, 2004 Clause 18 as below:-

“ Additional capitalization (1) The following capital expenditure within the original scope of work actually incurred after the date of commercial operation and up to the cut off date may be admitted by the Commission, subject to prudence check:

- (i) Deferred liabilities
- (ii) Works deferred for execution
- (iii) Procurement of initial capital spares in the original scope of work, subject to ceiling specified in regulation 17.
- (iv) Liabilities to meet award of arbitration or for compliance of the order or decree of a court; and
- (v) On account of change in law.

Provided that original scope of work along with estimates of expenditure shall be submitted along with the application for provisional tariff.

Provided further that a list of the deferred liabilities and works deferred for execution shall be submitted along with the application for final tariff after the date of commercial operation of the generating station.

It is clear from the abovementioned Clause 18 of the CERC Regulations that additional capitalization after the date of commercial operation is recognized as part of the capital expenditure Historical cost does not literally mean that the cost on the date of the commercial operation. The term historical cost is used so as to distinguish it from 'book value' or 'the replacement cost'. The cost of maintenance spares limited to 1% of the historical cost corresponds to the plant and equipment and installations which are required to be maintained. If the cost of additional equipment is not included in the historical cost, how spares for the additional equipment be procured for maintenance of

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the additional equipment. In this view of the matter, the CERC needs to examine afresh in the light of the aforesaid observations.

VI. Impact of De-capitalisation of the assets on cumulative repayment of Loan

Learned counsel for the appellant stated that NTPC in the course of operation of the generating stations (which has a life of 25 years or more) de-capitalised assets from time to time based on the accepted accounting practice. On such de-capitalisation of assets the value of the capital assets is reduced in the balance sheet of the NTPC for accounting purpose. The Commission in its order has provided that the capital base for the purpose of tariff shall also be proportionately reduced and NTPC will not earn tariff on the de-capitalized value of the assets. As the de-capitalized assets are taken to reduce the capital base/capital cost, the cumulative repayment of the loan proportionate to those assets de-capitalized should also be reduced.

Per contra learned Consultant representing MPPTC contended that since the gross block is reduced, cumulative depreciation is also required to be reduced by an amount of depreciation pertaining to the asset taken out. In this regard he relied upon para 2.30 of Commercial Accounting System for SEB prescribed by Ministry of Power which provide as under:

2.30 "Replacements can be defined as 'Substitution of one fixed asset by another, particularly of an old asset by a new asset, or of an old part by a new part'. Expenditure on minor replacements shall be charged to revenue as Repairs and Maintenance Expenditure. Major replacement expenditure shall be capitalized. However, the cost and accumulated depreciation of the old replaced

asset shall be withdrawn when the expenditure on the new replacing asset is capitalized. A broad criterion of distinguishing minor and major shall be that replacement of any asset or part of the asset for which a separate fixed asset record is required shall be considered major replacement”.

Learned Consultant contended that the gain or loss due to sale of decapitalised asset is required to be treated as revenue item and is required to be credited/debited to revenue account of the year in which the asset is sold.

Analysis and Decision

When asset is not in use it is only logical that the capital base for the purpose of tariff is also proportionately reduced. It follows therefore that the appellant will not earn any depreciation, return on equity and O&M charges. However, despite the decapitalisation, the appellant is required to pay interest on the loan. Whereas 10% salvage value of the decapitalised asset should be non-tariff revenue, the interest on loan has to be borne by the beneficiary. If the salvage value is more than 10%, amount realized above 10% should be counted as additional revenue. If salvage value is less than 10%, it will be counted as loss in the revenue.

Therefore, in this view of the matter, the cumulative repayment of the loan proportionate to those assets decapitalized required to be reduced. The CERC shall act accordingly.

VII Non-consideration of normative transit loss for coal import.

Learned counsel for the appellant stated that the Tariff Regulations, 2004 provide that the transit loss of 0.8% shall be allowed for coal procured in the case of Non-pit Head stations transported over Indian Railway and 0.3% in the case of Pit-Head Station. In the case of Farakka Station (Appeal No. 155 of 2006) and Kahalgaon Station (Appeal No. 10 of 2007) NTPC had to arrange coal partly from the coal mines though Railway

system even though the station had linked mines with MGR facility. This was due to non-availability of coal in the linked mines to the required extent. In the circumstances NTPC claimed a transit loss on the normative of 0.8% applicable for coal arranged through Railway system. The Commission, however, has allowed the transit loss of only for 0.3% even for coal arranged through Railway system on the ground that the respondent beneficiaries have already been subjected to paying tariff for the Merry Go Round (MGR) system installation. He submitted that the arrangement of coal through Railway system was not on account of any act of omission or commission on the part of NTPC but was beyond the reasonable control of NTPC. In the circumstances the transit loss at the normative level of 0.8% ought to have been considered on coal receipt through Railway system.

Learned counsel for the respondents submitted that the Regulations provide for only 0.3% transit loss in respect of pit head stations. In respect of pit head stations coal mines were dedicated to the station. Considering its full capacity till the entire life of the plant, MGR system was constructed at the cost of beneficiaries. Hence the beneficiaries, there being no provision in the Regulation 2004, cannot be penalized for this additional transit loss.

Analysis and Decision

During the oral arguments, Mr. Ramachandran, on instructions from NTPC mentioned that Farakka and Kahalgaon Power Stations of the appellant were approved as pit head stations with coal linkages from the nearby linked mines corresponding to 62.8% Plant Load Factor operation. Both the stations also have Merry Go Round

System (MGR) for haulage of coal. Subsequently, the Commission has raised the bar for recovery of full fixed capacity charges corresponding to target availability of 80%. In case Plant Load Factor exceeds 80%, the appellant is entitled to an incentive of 25 paise per kWh. As per the CERC Regulations, transit loss in coal of 0.3% is allowed for pit head stations, for other stations transit loss allowed is 0.8%.

Whereas the benchmark for recovery of full fixed capacity charges has been raised to 80%, the designated coal mines, over which appellant has no control, are not able to provide additional coal to produce power corresponding to 80% Plant Load Factor and beyond. In order to operate these two stations at maximum Plant Load Factor, the appellant is arranging coal from sources other than the linked mines and transporting coal via the Indian Railway system.

The rationale for giving higher coal transit losses of 0.8% for the non Pit Head Stations is that the power stations operators have no control over curtailing pilferage of coal during its haulage by the Indian Railways. The rationale for specifying 0.8% transit losses in the Regulations is that when coal is transported by the Indian Railways, the generator has no supervision and control during the haulage of coal by Indian Railways system. When coal is actually being transported by the Indian Railways system and not by MGR it logically follows that transit loss applicable, for the portion of coal being hauled by the Indian Railway system has to be allowed 0.8% transit loss and not 0.3% which is applicable only if the coal is being transported by generator's own MGR system, where he has full supervision and control during the movement of coal.

The Commission has not admitted the claim of the appellant for higher transit losses on the plea that these two stations namely: Farakka and Kahalgaon are the pit head stations and have their own MGRs. It is a fact that if appellant does not arrange coal from sources other than the linked mines, the power stations will operate at much below their capacity which will further accentuate the excruciating power shortages prevailing in the country. It is in nobody's interest to underutilize the available capacity in the country.

We find logic and rationale in the plea of the appellant and, therefore, direct as under:-

- (j) For operation of the plant up to 62.8%, even if the appellant has to import coal from mines other than the linked mines, transit loss of only 0.3% be allowed.
- (ii) Transit loss of 0.8% be allowed on the requirement of coal between 62.8% and up to 80% Plant Load Factor.
- (iii) Coal required for operation of the plant beyond 80% Plant Load Factor where the appellant is entitled for an incentive of 25 paise per kWh, the additional transit losses of 0.5% should be absorbed by the appellant himself.

The CERC shall act in consonance with the aforesaid directions while considering afresh the transit losses for coal imported from coal mines other than the dedicated ones for the respective stations.

VIII. Foreign Exchange rate variation (FERV)

Learned counsel for the appellant stated that in the Tariff Petitions for 2004-09 NTPC claimed that the FERV should be allowed based on actual foreign exchange rate

variation incurred. The admissibility of FERV will be on the amount of loan outstanding at the beginning of each year. This issue is also dependent on the method of computation of loan repayment as decided by the Tribunal by orders dated November 14, 2006 and January 24, 2007. If the computation of loan repayment and loan outstanding is on normative basis and not on actual basis, the impact of actual FERV is to be considered on loan outstanding as determined on normative basis.

Learned counsel stated that if the normative principle is to be accepted it should apply to all consequential things. Accordingly, the admissibility of FERV for the tariff period 2004-09 is to be decided by determining the loan outstanding as on March 31, 2004 by applying normative repayment basis.

We agree with the appellant in this view of the matter. At the same time we clarify that in case there is no actual FERV liability, there shall not be any question of allowing or making adjustments on account of FERV. In Appeal nos. 135 to 140 of 2005-Tamilnadu Electricity Board vs. Central Electricity Regulatory Commission & Ors....etc. decided on October 4, 2006, we have held that the provision of FERV as a pass through has been kept to ensure that any liability or gain, if any, arising on account of any variation in foreign exchange rates is passed on to the beneficiary and in case there is no FERV liability or gain, as the case may be, there will not be any FERV adjustment.

The CERC while re-computing the FERV shall act as per the above observations.

IX Computation of interest on loan in Singrauli Station

Learned counsel for the appellant stated that in the impugned order dealing with Singrauli Station, the Commission has allowed interest on loan on normative basis calculated based on weighted average rate of interest for the periods 2004-05 to 2006-07. The net loan which will remain outstanding as at the end 2006-07 is arrived at as Rs. 1183 lakhs in the table forming part of para 27 of the impugned order. The Commission has, however, not taken the above net loan closing as the net loan opening in the subsequent financial year 2007-08 but treated it as zero. Accordingly, no interest on loan has been taken into account for the financial year 2007-08 and also the subsequent financial year 2008-09. The Commission has not given any reason for exclusion of the above.

Net loan closing at the end of a year is reflected as net loan opening on the first day of the next year. The CERC shall re-compute the interest in the light of our above observations.

The impugned orders of the CERC are set aside to the extent indicated above. The matters are remitted to the CERC for fresh determination in consonance with our observations and directions.

(H.L. Bajaj)
Technical Member

(Anil Dev Singh)
Chairperson

Dated the June 13, 2007