

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

Appeal Nos. 97, 160 & 222 of 2006

Dated 31st May, 2007

**Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A. A. Khan, Technical Member**

Under Section 111 (2) of Electricity Act, 2003

In the matter of :

Appeal No. 97 of 2006

U.P. Power Corporation Ltd. Appellant
Shakti Bhawan, 14, Ashok Marg,
Lucknow- 255 001.

Versus

1. N.T.P.C. Ltd, Scope Complex, 7 Industrial Area,
Lodhi Road, New Delhi-110 003.
2. Rajasthan Rajya Vidyut Prasaran Nigam Ltd,
Vidyut Bhawan, R.C. Dave Marg,
Jyoti Nagar, Jaipur-302 005.
3. Delhi Transco, Shakti Bhawan,
Kotla Marg, ITO, New Delhi.
4. Haryana Vidyut Prasaran Nigam Ltd,
Shakti Bhawan, Sector 6,
Panchkula- 134 109.
5. Himachal Pradesh State Elecyc Board,
Kumar Housing Complex Building-II,
Vidyut Bhawan, Shimla-171 004.
6. Power Development Department,
Govt. of J&K Secretariat, Srinagar.

7. Power Department, Chandigarh,
UT of Chandigarh,
Addl. Office Building, Sec. 9, Chandigarh.
8. Uttaranchal Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,
Dehradun-248 001.
9. Punjab State Elecy Board,
The Mall, Patiala- 147 001.
10. Central Electricity Regulatory Commission,
Core 3, 6th Floor, Scope Complex,
New Delhi- 110 003.

Appeal No. 160 of 2006

U.P. Power Corporation Ltd. Appellant
Shakti Bhawan, 14, Ashok Marg,
Lucknow- 255 001.

Versus

1. Central Electricity Regulatory Commission,
Core 3, 6th Floor, Scope Complex,
New Delhi- 110 003.
2. N.T.P.C. Ltd, Scope Complex, 7 Industrial Area,
Lodhi Road, New Delhi-110 003.
3. Jaipur Vidyut Vitran Nigam Ltd. (JVNN),
Vidyut Bhawan, Janpath,
Jaipur-302 005.
4. Ajmer Vidyut Vitran Nigam Ltd (AVVN),
Old Power House, Hathi Bhata,
Jaipur Road, Ajmer.
5. Jodhpur Vidyut Vitran Nigam Ltd. (JdVVN),
New Powr House, Industrial Area,
Jodhpur.
6. Delhi Transco, Shakti Bhawan,
Kotla Marg, ITO, New Delhi.

7. Haryana Vidyut Prasaran Nigam Ltd,
Shakti Bhawan, Sector 6,
Panchkula- 134 109.
8. Punjab State Elecy Board,
The Mall, Patiala- 147 001.
9. Himachal Pradesh State Elecy Board,
Kumar Housing Complex Building-II,
Vidyut Bhawan, Shimla-171 004.
10. Power Development Department,
Govt. of J&Km Secretariat, Srinagar.
11. Power Department, Chandigarh,
UT of Chandigarh,
Addl. Office Building, Sec. 9, Chandigarh.
12. Uttaranchal Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,
Dehradun-248 001.

Appeal No. 222 of 2006.

U.P. Power Corporation Ltd.
Shakti Bhawan, 14, Ashok Marg,
Lucknow- 255 001.

Appellant

Versus

1. Central Electricity Regulatory Commission,
Core 3, 6th Floor, Scope Complex,
New Delhi- 110 003.
2. N.T.P.C. Ltd, Scope Complex, 7 Industrial Area,
Lodhi Road, New Delhi-110 003.
3. Rajasthan Rajya Vidyut Prasaran Nigam Ltd.,
Vidyut Bhawan, Janpath,
Jaipur-302 005.
4. Himachal Pradesh State Elecy Board,

- Kumar Housing Complex Building-II,
Vidyut Bhawan, Shimla-171 004.
5. Punjab State Elecy Board,
The Mall, Patiala- 147 001.
 6. Haryana Vidyut Prasaran Nigam Ltd,
Shakti Bhawan, Sector 6,
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 7. Power Development Department,
Govt. of J&Km Secretariat, Srinagar.
 8. Delhi Transco, Shakti Bhawan,
Kotla Marg, ITO, New Delhi.
 9. Power Department, Chandigarh,
UT of Chandigarh,
Addl. Office Building, Sec. 9, Chandigarh.
 10. Uttaranchal Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,
Dehradun-248 001.

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JUDGEMENT

Per Hon'ble Mr. A.A. Khan, Technical Member

Uttar Pradesh Power Corporation Limited (hereinafter referred to as "UPPCL") has filed three appeals challenging the tariff orders passed by the Central Electricity Regulatory Commission (for brevity called as "the Central Commission" or 'CERC') on different dates for the period from 01.04.2001 to 31.03.2004 relating to different power stations owned by the National Thermal Power Corporation Ltd. (NTPC) and all of them raise identical issues. While appeal no. 97 of 2006 is directed against the orders dated 23.07.2003 and 08.04.2004 passed by the Central Commission respectively in original petition no. 39 of 2001 and Review Petition no. 61 of 2003 concerning Singrauli Thermal Power Station, the appeal nos. 160 of 2006 and 222 of 2006 are preferred against the order dated 01.06.2006 in petition no. 142 of 2004 for Unchahar Thermal

Power Station and order dated 02.06.2006 for Rihand Thermal Power Station passed by the Central Commission respectively.

2. In the above mentioned three appeals since the grounds of disputes are identical, we take up appeal no. 97 of 2006 for detailed analysis for adjudication and the decision arrived at shall also *mutatis-mutandis* apply to other two appeals.

FACTS OF THE CASE

3. **Background:** Singrauli TPS of NTPC with a capacity of 2000 MW comprises of 5 units of 200 MW each and 2 units of 500 MW each. Unit –I of the Singrauli TPS was commissioned on 01.06.1982 and Unit – VII was declared for commercial operations on 01.05.1988. The tariff of the Singrauli TPS was earlier determined and notified by the Ministry of Power vide notification dated 02.11.1992 with validity up to 31.03.1997. The validity of the aforesaid tariff notification was extended up to 31.03.2001 vide order passed by the Central Commission on 23.09.2002

4. Prior to the enactment of Electricity Regulatory Commission Act- 1998 (hereinafter to be referred as 'ERC Act') and establishment of the Central Commission, the Government of India, in exercise of its power vested under Section 43A (2) of the Electricity (Supply) Act, 1948 (for short 'ESA- 1948'), determined the terms and conditions for determination of tariff for the power

supplied to the beneficiaries from the various generating stations of the NTPC. Accordingly, the Government of India determined the tariff for Singrauli TPS for the period from 01.11.1992 up to 31.10.1997 vide notification no. 3/19(I)/92-US(CT) dated 02.11.1992. The validity of the aforesaid notification was extended till 31.03.2001 by virtue of Clause 6 of the said notification and Regulation 79 of Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999 read with Notification no. 8/1(i)/999 dated 12.05.1999 and the Central Commission's order dated 23.09.2002. The aforesaid tariff was subsequently revised vide notifications dated 15.12.1995, 30.11.1998 and 14.05.1999 to provide for change in increase in Return on Equity from 12% to 16%, modification in admissible rate of depreciation and authorization of additional capitalization based on audited accounts up to 1996-97.

5. Government of India, in exercise of power under Section 51 of the ERC-Act 1998 omitted Section 43A (2) of the Electricity (Supply) Act, 1948 in respect of generating companies referred to in Section 13(a) and 13 (b) of the ERC Act, and transferred the jurisdiction to determine the tariff of the generating companies owned and control by the Central Government to the 'Central Commission'.

6. The respondent, NTPC, filed petition no. 39 of 2001 before the Central Commission for determination of the tariff in respect of the Singrauli TPS for the period from 01.04.2001 to 31.03.2004 based on the terms and conditions in

Regulations, 2001. The Central Commission passed the tariff order on 23.07.2003. The Appellant, UPPCL, being aggrieved by the tariff order, filed before the Central Commission for review of order dated 23.07.2003 in review petition no. 61 of 2003 which was dismissed by order passed by the Central Commission at admission stage on 08.03.2004. The Appellant has thus filed this appeal against the Original tariff order dated 23.07.2003 and Review order dated 08.03.2004 before this Tribunal.

7. **Grievances:** The basic grievances of Appellant are as under:

(a) The approval of tariff based on normative values in stead of based on the formulation “normative values or actual values” of the operational parameters is against the statutory Regulations. It is claimed on the basis of the following:

(i) Regulation 82(b) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 provides that the tariff will be determined on the basis of actual cost of generation.

(ii) Regulation 89 mandates that generating as well as transmission utilities will submit periodically, every three month, data of actual expenses before the Central Commission to enable it

to change even the base for determination of tariff under Regulation 1992.

(iii) Section 13 of the Electricity Regulatory Commission Act, 1998 which provides that the tariff to be determined will be most economic and efficient and the dominant position of generating companies or transmission utilities will not be exercised.

(b) The Appellant has further attempted to justify the above claim on the basis of the Central Electricity (Terms & Conditions of Tariff) Regulations, 2001 (hereinafter refer to as 'Regulations, 2001') as described below:

(i) Clause 1.11 of the Regulations, 2001 specifies that the norms prescribed in the Regulations are ceiling norms.

(ii) Clause 2.3 starts with *non-obstante* clause. Therefore, nothing in this notification will apply in respect of the existing stations except the **Plant Load Factor** and **Target Availability** and other norms laid down by the Government of India under proviso of Section 43A(2) of Electricity Supply Act 1948 would be applicable in respect of existing stations. The Appellant canvasses that the norms specified by the Government of India gets substituted under

Clause III to VIII of clause 2.4 and the assertion that the “**explanation** adjunct to the said clause 2.4 shall also operate on clause 2.3, inter-alia, providing that for the purposes of calculating the tariff the operating parameters i.e. station heat rate, secondary fuel oil consumption and auxiliary consumption shall be determined on the basis of the “*actual or normative which ever is lower*”.

(c) Debt-Equity Ratio ought to have been determined in conformance with the clause 2.5 of Regulations, 2001 which, inter-alia, provides that the same to be approved by the Central Electricity Authority (CEA) in Techno Economic clearance of the project and not on normative basis of 50:50 ratio, as adopted by the Central Commission.

(d) Clause 2.7(a) and 2.7(c) provide for computation of interest on outstanding loan and Return on Equity respectively on the basis of actual outstanding loan capital and actual equity capital and not on the basis of normative debt-equity ration of 50:50.

(e) Clause 2.7(b) of Regulations, 2001 is interpreted such that claim of the depreciation is limited to the extent of re-payment of loan and if the amount of cumulative depreciation becomes equal to the total loan capital employed on the project, no further depreciation is to be allowed.

DISCUSSIONS AND ANALYSIS

8. In order to adjudicate the disputes it is expedient to harmoniously interpret the various provisions of Electricity (Supply) Act 1948, Electricity Regulatory Commission Act 1998, Electricity Act 2003 and Regulations notified by the Central Commission. To start with it is not in dispute that Singrauli TPS existed on 31.03.2001 and the tariff of the stations prior to the said date was being determined by the Government of India in exercise of the power vested in it under Section 43A(2) of the Electricity (Supply) Act 1948. The Government of India determined and notified the tariff for the station for the period from 01.11.1992 to 31.03.1997 and the validity of the tariff was extended till 31.03.2001 by the Central Commission. The supply of Power from Singrauli TPS to bulk power customers of Northern Region of which the Appellant is one of the constituents was being affected under the Bulk Power Supply Agreement (BPSA) dated 30.01.1994 signed between NTPC and the constituent beneficiaries of the Northern Region. Based on audited accounts up to 1996-97 the aforesaid tariff was further revised by notifications to provide change in Return of Equity from 12% to 16%, revision in rate of depreciation and admission of additional capitalization for the instant plant.

9. Post enactment of Electricity Regulatory Commission Act 1998, the jurisdiction to determine the tariff of Thermal Power Stations of NTPC was vested in the Central Commission.

10. Regulations, 2001 was notified on 26.03.2001 containing terms and conditions of the tariff applicable for the period from 01.04.2004 to 31.03.2004. Clause 2.3 of the Regulations, 2001 commences with non-obstante clause and is reproduced hereunder:

“2.3 Notwithstanding anything contained in this notification,

(a) The operational norms except those relating to “Target Availability” and “Plant Load Factor”, as contained in the existing tariff notifications for individual power stations issued by the Central Government under proviso to Section 43 A (2) of the Electricity (Supply) Act, 1948 in respect of the existing stations of NTPC shall continue to apply for those stations.

(b) The operational norms, except those relating to “Target Availability” and “Plant Load Factor” for the existing and the new stations of NTPC and NLC for which no tariff notification has been issued by the Central Government but Power Purchase Agreements (PPAs) / Bulk Power Supply Agreement (BPSAs) exist on the date of

issue of this notification, shall be governed by the respective PPAs/BPSAs signed by the Generating Company with the beneficiaries.

(c)

11. In accordance with clause 2.3(a) of the Regulations, 2001 operational norms except **Target Availability** and **Plant Load Factor** as contained in the existing tariff notifications for individual power stations issued by the Central Government under proviso to Section 43A(2) of the Electricity (Supply) Act 1948 in respect of existing stations of NTPC was continued to apply. Singrauli TPS, being the existing Thermal Power Station as on 01.04.2001, falls in the ambit of the clause 2.3(a). The tariff for the Singrauli TPS till 31.03.2001 was determined in accordance with the operational norms stipulated in the Ministry of Power notification dated 02.11.1992. Accordingly, in pursuance to clause 2.3(a), for determining the tariff for the period from 01.04.2001 to 31.03.2004, the operational norms (except the Target Availability and Plant Load Factor) contained in the Ministry of Power notification dated 02.11.1992 were to be followed. Had there been no central notification for the tariff of Singrauli TPS, even then the clause 2.3(b) provides that the supply to the Appellant shall be governed by the terms and conditions of the Bulk Power Supply Agreement

between the NTPC and the Appellant which for the instant station was signed on 30.01.94.

12. The respondent, NTPC, has submitted that since clause 2.3 starts with a *non obstante* clause, it has to be given full effect and as per settled principle of interpretation it be not given any restrictive meaning.

13. In **state of Bihar Vs. Bihar Rajya MSES K.K. Mahasangh (2005) 9 SCC 129**, the Hon'ble Supreme Court ruled thus:

“45. A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions of the Act mentioned in the non obstante clause, the provision following it will have its full operation of the provisions embraced in the non obstante clause will not be impediment of the operation of the enactment of the provision in which the non obstante clause occurs.”

14. We are of the view that the presence of the *non-obstante* clause gives sub clauses (a), (b) and (c) of clause 2.3 an overriding effect over the rest of the

provisions of the “notification” of Regulations, 2001. In other words in the instant case, clause 2.3 when given effect will render all other provisions including clause 2.4 alongwith its associated ‘Explanation’ and Regulation 1.11 specifying the prescribed norms to be ceiling norms, inoperative in the case of conflict.

15. It may be pointed out that neither the Ministry of Power notification dated 02.11.1992 nor the BPS Agreement contain any provision that operational norms were to be considered on the basis of “*actual or normative whichever is lower*”. From the forgoing it is abundantly clear that Clause 2.4 will be applicable for determination of tariff for generating stations which became operational on or after 01.04.2001. “Explanation” adjunct to Regulations 2.4 is reproduced below:

“Explanations:-

1. *For the purpose of calculating the tariff, the operating parameters, i.e. “Station Heat Rate”, “Secondary Fuel Oil Consumption” and “ Auxiliary Consumption” shall be determined on the basis of actuals or norms, whichever is lower”*

16. The Appellant has placed reliance on the “Explanation” appended to clause 2.4 at the expense of clause 2.3(a) and urged that the condition of “*actual or normative, whichever is lower*” on the operational parameters will be applicable to

Singrauli TPS. This interpretation advanced by the Appellant is not sustainable in law.

17. In view of the aforesaid we are of the opinion that the qualification deduced from “Explanation” part of clause 2.4 which stipulates “*actual or normative whichever is lower*” is not to be applied on the operational parameters ascertained by clause 2.3. Since the clause 2.4 by itself being not applicable to the instant case, the applicability of “Explanation” to the said clause 2.3 does not arise at all.

18. We, therefore, conclude that the Central Commission rightly acted in consonance with Clause 2.3 without considering Clause 2.4 or its “Explanation”

19. The Appellant has contended that the determination of tariff should be based on actual values of the operational parameters and not on normative values as adopted by the Central Commission. It is pertinent to note that Section 28 of the Electricity Regulatory Commission Act 1998 and Section 61 of the Electricity Act 2003 provide that the determination of tariff should be guided by factors which would encourage competition, efficiency, economic use of the resources, good performance, etc. The Appellant in support of its contention has referred to clause 82(b) of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 with the interpretation that it provides for determination of tariff on the basis of actual cost of generation whereas the said

clause only contemplates rationalization of tariff on the basis of the actual cost of generation. There is a substantial difference between the two concepts namely, the actual cost of generation for determination of tariff and rationalizing the tariff on the basis of actual cost. The relevant extracts of the said clause 82(b) is reproduced below:

“82(b). The need to rationalize the tariff on the basis of the actual costs of generation and transmission”

The Appellant has picked up the words of ‘actual cost of generation’ to support his arguments while conveniently ignoring the context of ‘rationalization’ in which they are used.

20. It may be pointed out that the entire exercise in compliance with Section 28 of Electricity Regulation Commission Act, 1998 and Section 61 of the Electricity Act 2003 undertaken by the Central Commission was performed through an extensive consultative process and the operational and financial norms were finalized and the orders passed in the year 2000 which finally culminated in the notification of Regulations, 2001. The Central Commission while finalizing the standard acceptable performance parameters or standard norms of the Thermal Power Stations had rationalized through normalizing values of the actual data obtained from various Thermal Power Stations, not only of NTPC but of other

generating companies also. This process adopted by the Central Commission appears to be in full compliance with the clause 82(b) of the Regulations, 1999.

21. While normalizing the different parameters based on actual data obtained from various Thermal Power Stations one could expect variation in each of the parameters depending upon the age of the plant, standard practices adopted in operation and maintenance, renovation, modernization, etc. The median of the performance values of each parameter is determined which became reflective of the standard acceptable performance criterion of the said parameter while taking into account the need to provide incentive for improvement in efficiency, economical use of resources, competition, etc. During the period the Regulations, 2001 was in operation the actual performance data of each plant was to be ideally referred to while reviewing the admissible variations in each operating parameters so that the norms for the tariff determination for the subsequent period could be finalized. Using the actual data for each parameter in tariff determination would lead to different tariffs for each plant and there will be no incentive for competition in improving the performance of the plant.

22. We are of the view that the Appellant's contention that the clause 82(b) of Regulations, 1999 provide for allowing the actual cost is simply not correct as it mandates the rationalization of tariff by means of normalizing the actual data of operation from various plant(s) to arrive at normative values for standard

acceptable performance making it amenable to award incentive for improved performance or to penalize the degradation in the performance. In view of the aforesaid, we are of the opinion that the contention made by the Appellant that the norms applied should be ceiling and actual values of the operational parameters should be considered subject to the ceiling norms, is inconsistent with the provisions of the Act, which mandates encouraging efficiency, competition, good performance, etc.

23. The Appellant has complained that since the Regulation 2.7(c) specifies that the Return on Equity (ROE) will be given on the subscribed and paid up capital and the details about subscribed and paid up capital has not been furnished by NTPC, the Central Commission has committed an error and violated the relevant Regulations by granting 16% return on the notional equity of the capital cost for the instant project. In this connection, it is relevant to point out that the Regulations, 2001, excepting the norms of Target Availability and Plant Load Factor are not applicable to Singrauli Thermal Power Station as per the clause 2.3(a) of the Regulations 2001. Thus the complaint of the Appellant that the Central Commission has not complied with the statutory regulations is not sustainable and is rejected.

24. For Thermal Power Stations which existed as on 01.04.2001, debt-equity was fixed on normative 50:50 by the Central Commission which, inter-alia meant

that for the purpose of determination of tariff the capital cost of the instant plant on the date of commercial operation was necessarily to be traced to the approval of the Central Electricity Authority (i.e. CEA) or Govt. of India. The compilation of approvals submitted by NTPC in respect of the instant station on 23.01.2007 provides the information about the approved capital cost being Rs. 1190.69 crores. The NTPC has claimed servicing of debt-equity capital at 50:50. In view of the aforesaid even if data in respect of subscribed and paid up capital for the instant plant were furnished the same was not much relevant as the basis of Debt-Equity Capital Ratio is to be taken on normative basis of 50:50. Approval of Return on Equity of 16% was also notified by Government of India for Singrauli Thermal Power Station. Therefore, we reject the claim of the Appellant that the fixation of Debt-Equity Ratio on the basis of normative 50:50 and allowing Return on Equity of 16% are not statutorily permissible.

25. The Appellant has averred that the interest in respect of loan is payable on outstanding loan as per the repayment schedule of financial package and since no such repayment schedule approved by the CEA or any other authority was submitted to the CERC, it has committed mistake in granting interest on outstanding loan. We also observe that the compilation submitted by NTPC does not contain the approved financial package for Singrauli TPS indicating the approved details of loans and loan repayment schedule. The respondent, NTPC has verbally submitted that the records containing the aforesaid details of

loans and loan repayment schedule are not available. The impugned order at para 14 states that normative loan amount has been worked out by considering Debt-Equity in the ratio of 50:50 and the annual repayment amount for calculation of interest on loan was worked out by the following formula:

$$\text{Annual Repayment Amount (ARA) =} \\ \text{(Annual Actual Repayment during the year) X } \frac{\text{(Normative Loan at the beginning of the year)}}{\text{(Actual Loan at the beginning of the year)}}$$

With a condition of normative or actual whichever is higher.

It may be mentioned that this Tribunal in its judgement dated 14th November, 2006 rendered in Appeal no. 96 of 2005 has negated the aforesaid condition of “*normative or actual whichever is higher*” and ordered that the Annual Repayment of loan shall be on normative basis as computed by the above mentioned formula and interest is to be worked out only on the aforesaid normative value of the loan.

26. Since the actual annual repayment during the year and actual loan at the beginning of the year have no traceability to the approval by the authority, the method adopted for calculation of interest on loan by applying weighted average interest rate appears to be best option in the absence of the approved financial package document as the method adopted by the CERC is the same as used by it in approving the tariff for the period from 01.11.1997 to 31.03.2001.

27. In view of the fact that financial package document as approved by the authority is not available, the data can only be reconstructed based on the tariff notification issued by Ministry of Power on 02.11.1992 and that of Central Commission's aforesaid order. The NTPC also in its additional written submissions dated 22.03.2007 filed before this Tribunal has maintained silence while commenting on the issue of non submission of approved financial package.

28. The Regulations, 2001 prescribed that for the purposes of tariff the depreciation shall be historical costs of the assets and shall be calculated annually as per said method at the rates of depreciation prescribed in the schedule thereto. The weighted average rate of depreciation works out to be 3.78% against 3.79% claimed by the NTPC. The Appellant has referred to the provisions of clause 2.7(b) of Regulations 2001 and states that the depreciation claim is towards the payment of loan which is clear from clause III and IV itself. Clause 2.7(b) (iii) of the Regulations, 2001 instead deals only with Advance Against Depreciation and in that context refers to loan repayment and depreciation. The said clause deals only with allowing Advance Against Depreciation to the extent where the depreciation amount is not sufficient to repay the installment of principal loan amount falling due. Regulations, 2001 only provides servicing of interest on the outstanding loan and does not provide for repayment of loan. Moreover, Regulations, 2001 do not provide that the computation of the outstanding loan should in any way be linked to depreciation allowed each year. The concept of the

depreciation is to provide replacement cost of the asset at the end of the declared life of the asset and not to service, in any way, the loan repayment taken on the asset. The depreciation inevitably is available to the utility whether any loan amount is outstanding or not. We, therefore, do not find it appropriate to link depreciation amount for repayment of loan to any extent except in the case of deciding on the admissibility of Advance Against Depreciation.

29. In view of the aforesaid observations on appeal no. 97 of 2006 we decline to interfere with the impugned order. Accordingly, the appeal is dismissed.

30. Since Appeal no. 160 of 2006 preferred by the Appellant relating to the Unchahar TPS and appeal no. 222 of 2006 for Rihand TPS have raised identical issues as discussed above, they must meet the fate of appeal No. 97 of 2006. Accordingly, those appeals are also dismissed.

31. Appeals dismissed but with no order as to costs.

A.A. Khan
(Technical Member)

Justice Anil Dev Singh
(Chairperson)

Dated: 31.05.2007