

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.

58  
-84-

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.

59  
-85-

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

-3-

61

-87-

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

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*