Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated: 3rd June, 2010

Present :HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER

APPEAL NO. 134 OF 2008

NTPC. Limited
NTPC Bhawan, Scope Complex,
Core-7, Institutional Area, Lodhi Road,
New Delhi - 110003

… Appellant(s)

Versus

1. Central Electricity Regulatory Commission
Core-3, Floor-6, Scope Complex-7
Lodhi Road, New Delhi - 110003C.E.R.C. & Ors.

2. (a) Transmission Corporation of Andhra Pradesh Ltd.
Vidyut Soudha
Khairatabad, Hyderabad – 500 082

(b) A.P. Eastern Power Distribution Company ltd,
P&T Colony, Seethammadhara,
Visakhapatnam-530013

(c) A.P. Southern Power Distribution Company Ltd.
H.No. 193-93 (M) Upstairs

Renigunta Road,
Tirupathi – 517501

(d) A.P. Northern Power Distribution Company Ltd.
H.No.1-1-504
Opp: NIT Petrol Pump
Chaiyanyapuri,
Warangal – 506004

(e) A.P. Central Power Distribution Company Ltd.
Singareni Bhavan
Red Hills
Hyderabad(AP) – 504004

3. Tamil Nadu Electricity Board
144, Anna Salai
Chennai – 600 002

4. (a) Karnataka Power Transmission Corporation ltd.
Kaveri Bhawan, K.G. Road,
Bangalore- 560 009

(b) Bangalore Electricity Supply Co. Ltd.
Krishna Rajendra Circle
Bangalore – 560 009

(c) Mangalore Electricity Supply Co. Ltd.
Paradigm Plaza, A.B. Shetty Circle
Mangalore- 575 001

(d) Chamundeshwari Electricity Supply Corp. Ltd.
Corporate Office
No. 927, L.J. Avenue, New Kantharaj Urs Road
Saraswathipuram
Mysore – 570 009

(e) Gulbarga Electricity Supply Company Ltd.
Main Road, Gulbarga,
Gulbarga – 585 102

(f) Hubli Electricity Supply Company Ltd.
Corporate Office
P.B. Road, Navanagar
Hubli-580 025

5. Kerala State Electricity Board
Vidyuthi Bhavanam, Pattom
Thiruvananthapuram – 695004

6. Electricity Department
Govt. of Puducherry
137, NSC Bose Salai
Puducherry – 605 001

7. Electricity Department
Government of Goa
Vidyut Bhavan, Panaji
Goa – 403 001

…Respondent(s)

Counsel for the Appellant(s): Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan &
Ms. Swapna Seshadri &
Ms. Sneha

Counsel for the Respondent (s): Mr. Aditya Madan for RRVPNL
Mr. Raghavendra S. Srivastava
for BESCOM
Mr. Biji Rajesh for R.4

APPEAL NO. 140 OF 2008
&
APPEAL NO. 152 OF 2008

NTPC Limited
NTPC Bhawan, Scope Complex,
Core-7, Institutional Area, Lodhi Road,
New Delhi - 110003

… Appellant(s)

Versus

1. **Madhya Pradesh State Electricity Board**
   (Through: Madhya Pradesh Power Trading Co. Ltd.)
   Shakti Bhawan, Vidyut Nagar, Jabalpur – 482008

2. **Maharashtra State Electricity Board**
   (Through: Maharashtra State Electricity Dis. Co. Ltd.
   Prakashgad, Bandra (East), Mumbai – 400051

3. **Gujarat Electricity Board**
   (Through: Gujarat Urja Vikas Nigam Limited)
   Vidyut Bhavan, Race Course, Vadodra – 390007

4. **Goa Electricity Department,**
   Vidyut Bhavan, 3rd Floor,
   Panaji – 403 001

5. **Electricity Department**
   Administration of Daman & Diu
   Daman – 396210

6. **Electricity Department,**
   Administration of Dadra and Nagar Haveli,

Silvassa Via Vapi – 396210

7. Chhattisgarh State Electricity Board,
P.O. Sunder Nagar, Danganiya,
Raipur – 492 013

8. Central Electricity Regulatory Commission
Core-3, Floor-6, Scope Complex-7
Lodhi Road, New Delhi - 110003C.E.R.C.
…Respondent(s)

Counsel for the Appellant(s): Mr. M.G. Ramachandran,
Mr. Anand K. Ganesan &
Ms. Swapna Seshadri &
Ms. Sneha

Counsel for the Respondent (s): Mr. Ravi Shankar &
Ms. Suniti Singh
for MPPTCL
Mr. Aditya Madan for RRVPNL

APPEAL NO. 141 OF 2008
APPEAL NO. 146 OF 2008
APPEAL NO. 147 OF 2008
APPEAL NO. 149 OF 2008
APPEAL NO. 150 OF 2008

NTPC. Limited
NTPC Bhawan, Scope Complex,
Core-7, Institutional Area, Lodhi Road,
New Delhi - 110003

… Appellant(s)

Versus

1. Central Electricity Regulatory Commission
Core-3, Floor-6, Scope Complex-7
Lodhi Road, New Delhi - 110003C.E.R.C. & Ors.

2. (a) Uttar Pradesh Power Corporation Limited
Shakti Bhawan, 14 Ashok Marg,
Lucknow-226001

And

(b) Uttarakhand Power Corporation Limited
Urja Bhawan, Kanwali Road,
Dehradun- 248001

3. (a) Rajasthan Rajya Vidyut Prasaran Nigam Ltd.
Vidyut Bhawan, R.C. Dave Marg,
Jaipur – 302005

(b) Jaipur Vidyut Vitran Nigam Ltd,
Vidyut Bhawan, Janpath,
Jaipur – 302005

(c) Jodhpur Vidyut Vitran Nigam Limited
New Power House, Industrial Area,
Jodhpur, Rajasthan – 342003

(d) Ajmer Vidyut Vitran Nigam Limited
Old Power House, Hathi Bhata,
Jaipur Road, Ajmer,
Rajasthan-305001

4. Delhi Transco Limited
Shakti Sadan, Kotla Road
New Delhi – 110002

5. Haryana Vidyut Prasaran Nigam Limited
Through
Haryana Power Purchase Centre
Shakti Bhawan, Sector VI, Panchkula,
Haryana – 134109

6. Punjab State Electricity Board
The Mall, Patiala 147001

7. Himachal Pradesh State Electricity Board,
Kumar Housing Complex Building – II
Vidyut Bhawan, Shimla – 171001

8. Power Development Department
Government of Jammu and Kashmir,
Secretariat, Srinagar – 190009

9. Electricity Department (Chandigarh)
Union Territory of Chandigarh,
Additional Office Building,
Sector-9D, Chandigarh -1600 ... Respondent(s)

Counsel for the Appellant(s): Mr. M.G. Ramachandran,
Ms. Swapna Seshadri &
Ms. Sneha

Counsel for the Respondent (s): Mr. Pradeep Misra &
Mr. Daleep Dhayani for U.P.P.C.L.
Mr. Aditya Madan for RRVPNL
Mr. M.K.Tomar (Rep.) for RRVPNL
Mr. Biji Rajesh for DPCL

JUDGMENT

AS PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM, CHAIRPERSON

1. NTPC Limited is the Appellant herein. As against 8 tariff orders passed by the Central Commission fixing the

tariff for the various generating stations belonging to the Appellant for the period 01.11.1997 to 31.03.2001 on different dates in the years 2002 and 2003, the Appellant herein has filed these 8 Appeals.

2. Earlier, in the year 2003 as against these orders passed by the Central Commission, the Appellant filed 8 Appeals before the High Court of Delhi under section 16 of the Electricity Regulatory Commission Act 1998 which was in force then in FAO No. 481 to 488 of 2003. When these Appeals were taken up by the Delhi High Court for final disposal in the year 2008, it was brought to the notice of the High Court by the parties that the Electricity Regulatory Commission Act 1998 had been repealed and by virtue of the new Electricity Act, 2003, the appeal powers have been vested with the Appellate Tribunal for Electricity, New Delhi. Hence, the High Court of Delhi transferred all these appeals to this Tribunal for disposal by the order dated 21.01.2008.

3. While passing the orders of transfer, the High Court of Delhi observed that the question of limitation raised by the Respondents, would be decided by the Tribunal itself. Accordingly, the records had been sent to this Tribunal. As per the procedure prescribed for filing of Appeals before the Tribunal under section 111 of the Electricity Act, these 8 appeals have been filed in proper format along with the Applications to condone the delay in filing all these Appeals. After hearing the parties in the Applications for condonation of delay, the Tribunal allowed the Applications and condoned the delay in filing these Appeals by the order dated 23.02.2009. Thereupon, these Appeals were admitted.

4. The details of these 8 Appeals have been given as below. Appeal No. 134 of 2008 has been filed as against the tariff order passed on 09.10.2002 and the order dated 7.5.2003 by the Central Commission in respect of Ramagundam Super Thermal Stage-I and Stage-II.

5. Appeal No. 140 has been filed by the Appellant as against the main order dated 10.10.2002 and the order dated 02.05.2003 passed in the Review Petition in respect of Korba Super Thermal Power Station.

6. The Appellant has filed Appeal No. 141 of 2008 as against the main order dated 23.09.2002 as well as the Review order of 07.05.2003 in respect of Singrauli Super Thermal Power Station.

7. The Appellant has filed Appeal No. 146 of 2008 as against the main tariff order dated 01.11.2002 and the order dated 06.05.2003 in the Review petition in respect of Anta Gas Power Station.

8. The Appellant has filed Appeal No. 147 of 2008 as against the main order dated 04.10.2002 and the order dated

07.05.2003 in the Review Petition in respect of Rihand Super Thermal Power Station.

9. The Appeal No. 149 of 2008 has been filed by the Appellant as against the main order dated 09.10.2002 and the Review order dated 07.05.2003 in respect of Feroze Gandhi Unchahar Thermal Power Station.

10. Appeal No. 150 of 2008 has been filed by the Appellant as against the main order dated 01.11.2002 as well as the Review order dated 06.05.2003 in respect of Auraiya Gas Power Station.

11. Appeal No. 152 of 2008 has been filed by the Appellant as against the main tariff order dated 24.10.2002 and the Review order dated 21.05.2003 in respect of Vindhyachal Super Thermal Power Station Stage-I.

12. As all these 8 appeals involve common issues, this common judgment is being rendered.

13. The Appellant filed different Tariff Petitions on behalf of various generating stations before the Central Commission of the Appellant, claiming various expenses. The Central Commission allowed some claims and disallowed the other claims. As against disallowance of those claims, these Appeals have been filed.

14. The following are the grounds which have been urged by the Learned Counsel for the Appellant in these Appeals:

(i) The impugned orders were passed by the Central Commission in violation of the principles of natural justice. In all these cases, the Central Commission disallowed the claims of the Appellant in respect of the additional capitalisation. Since the impugned orders did not contain the details of the reasons for

disallowance of some claims made by the Central Commission, the Appellant sought permission from the Central Commission for inspection of the records. Accordingly, the permission was granted. During inspection of records, the Appellant came to know that the Central Commission had proceeded to disallow these claims only on the basis of recommendations made in the staff report. Before accepting the said recommendations, no opportunity was given to the Appellant to submit the objections regarding the validity of the said recommendations. This is in violation of the Regulation 59 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations 1999. Hence the impugned orders are bad.

(ii) The Central Commission merely relied upon the staff report and disallowed the expenditure

incurred by the Appellant on Renovation and Modernization works conducted in the various generating stations on the ground that the expenses on Renovation and Modernization of the plants and machineries did not accrue to the benefit of the beneficiaries or purchasers. Actually, the expenses on Renovation and Modernization are covered by the methodology adopted by the Central Commission. All the expenditure incurred by the Appellant under the head "Renovation and Modernization" is to the benefit of the Respondent beneficiaries only. Therefore, the finding is wrong.

(iii) The Central Commission wrongly disallowed the claim of the Appellant towards the additional amount of water charges for the years from 1997-98 to 2000-01 on the ground that the water charges should be calculated on the basis of 1996-97 as the base year with escalation of 10%

for subsequent years. In fact, during the said period the water charges were fixed by the local authorities exorbitantly. Therefore, the Appellant disputed the exorbitant water charges claimed by the local authorities and the Appellant continued to fight for lesser charges and ultimately, the Appellant was able to settle the water charges at 40% of the charges fixed by the local authorities. That is how the Appellant could not finalise the quantum of the water charges to claim before the Central Commission in the year 1996-97. The Central Commission has ignored this special circumstance and merely proceeded to conclude that the water charges for the year 1996-97 shall be treated as the base year. In the meantime, the Appellant was paying water charges on ad-hoc basis to the local authorities and this fact had been ignored.

(iv) The Central Commission erred in not taking into account the price of fuel for the purpose of determination of working capital on the ground that the Appellant had stated as "Not Applicable" against the column in the tariff application related to details of calorific value of coal and as such the Central Commission could not ascertain the working capital method. As a matter of fact, neither the Central Commission nor any other respondent beneficiaries raised any issue of non-availability of calorific value of the coal at any time during the hearing. The Appellant was never called upon to clarify the position regarding the calorific value. On the other hand, the Appellant had furnished full details of the calorific value of the fuel and other related details in all the cases later through an affidavit dated 08.10.2002. Thus, the Central Commission wrongly dismissed the genuine

claim of the Appellant on this issue, on the ground that variable charges are not being revised.

15. In reply to the above grounds, the Learned Counsel for the Respondent pointed out that the opportunities were given to the Appellant by the Commission for giving the particulars but they had not availed of the same and in fact the Central Commission allowed several claims made by the Appellant and disallowed only these claims on the basis of the valid reasoning and therefore, the impugned orders do not warrant interference.

16. We have carefully considered the submissions made by learned counsel for both the parties and perused the records.

17. In the light of the rival contentions urged by the learned counsel for the parties, the following questions would arise for consideration.

(i) Whether the Central Commission could take its decision based on its staff report without communicating the report to the Appellant and without giving an opportunity of hearing on the said report in violation of Regulation 59 ?

(ii) Whether in the facts of the case, the Central Commission could hold that the expenses on Renovation and Modernization of the plant did not accrue to the benefit of the respondent beneficiaries ?

(iii) Whether the additional amount of water charges actually payable to the Appellant for the year 1997-98 i.e. for the years 1997-98 to 2000-01 could be disallowed on the basis that water charges should be calculated taking the year 1996-97 as the base year ?

(iv) Whether the State Commission can disallow the claim for working capital by ignoring he value of the fuel expenses and calorific value of the fuel on the sole ground that the Appellant had stated as "Not Applicable" as against the column related to details on calorific value of fuel in the tariff application, particularly when the Appellant had furnished full details of the calorific value later through the affidavit dated 08.10.2002 ?

18. Let us now discuss these issues one by one. In regard to the first issue regarding lack of opportunity of hearing and disallowance of additional capitalisation, it is submitted by the Appellant that the Central Commission had blindly accepted the recommendation made by the Central Commission staff on the admissibility of the claim of NTPC for additional capitalisation without giving any opportunity to Appellants to make submissions over the validity of the

said recommendations as provided under Regulation 59 of the Regulations 1999. This contention in our view is untenable. It is noticed from the records, that the tariff order had been passed on 24.10.2002. During the pendency of the matter before the Central Commission, the Central Commission in its order dated 08.04.2002 directed the Appellant to describe the reasons for the carry forward of the balance payment. The Appellant in his reply through the affidavit filed on 13.05.2005 has stated that no more justification is required for the balance payment. The relevant statement made by the Appellant in his affidavit dated 13.05.2002 is as follows:

> ***"The reasons for carry forward of the balance payments over a long period after the date of commercial operations is due to the fact that the balance payments pertains to facilities/items which do not have any direct bearing on generation and are placed for subsequent developments".***

19. Thus, it is clear that the Appellant himself quoted that no more justification is required for balance payments. The Central Commission in its final order dated 24.10.2002 stated as follows:

> ***"Against the above claim no specific justification has been furnished by the petitioner in support of the balance payments, though the petitioner has furnished justification for the expenditure under new works category in the respective years."***

20. In regard to the submission made by the learned counsel for Appellant that there is a violation of Regulation 59, it has to be stated that this cannot be accepted because, the Regulation 59 applies only when the Commission refers the issue to appropriate persons including officers and consultants whom the Commission considers them as qualified to give expert advice or expert opinion. In respect of the report prepared by the staff of the Commission as a

routine work for assisting the Central Commission in determining the tariff, this Regulation cannot be made applicable. It is pointed out by the learned counsel for the Respondents that the calculation for determination of tariff were never used to be supplied to the parties and only the methodology or the formulae for such a calculation was used to be given in the tariff order which had been done in this case. We find force in this submission.

21. In this context, one more thing is to be noticed. In these cases the Appellant had filed Review Petitions after the tariff order were passed. During the pendency of the Review Petition, the Appellant filed the applications seeking permission to inspect the records. Accordingly, permission was granted. The inspection was done on 03.04.2003 and the documents were applied for and they were made available to them on 10.04.2003. Admittedly, the hearing of the review petition was held on 16.04.2003, i.e. only after inspection of the records and only after getting the copies of the staff

report. During the hearing of the Review Petitions, nothing was pointed out to the Central Commission regarding the validity of the recommendation of the staff report. In addition to this, it was never complained to the Commission that no opportunity was given to object to this staff report. Ultimately, the Central Commission passed the final orders in the Review Petition on 21.05.2003. Thus, it is clear that though NTPC had sufficient time to make submissions with reference to the staff report from 10.4.2003 on which date the Appellant obtained the staff report copy, the Appellant did not chose to make any objection with regard to the issue when the Review Petition was taken up for final hearing on 16.04.2003. Therefore, it is not correct to plead that no opportunity was given to make objection in respect of the staff report.

22. It is also noticed from the records that the while hearing takes place on 14.03.2002, the Central Commission directed the Appellant to submit the documents/information,

duly supported by affidavit. The reply in this case was filed by the Appellant on 13.05.2002. The final order was issued by the Commission on 24.10.2002. As such, sufficient opportunity for filing details as required by the Central Commission was provided to the Appellant. It is not disputed that the details of staff report records were made available to the Appellant on 10.04.2003 itself. However, the Appellant have never questioned the decision of the Central Commission over the issue regarding disallowance of this claim, on the basis of the staff report at the time of hearing of the Review Petition on 16.04.2003 which was ultimately disposed of on 21.05.2003. Thus, it is evident that even though the Appellant was having sufficient time to raise this issue during the pendency of the Review Petition before the Central Commission during the period between 10.04.2003 and 21.05.2003, the opportunity was not availed of. Therefore, the contention of the Appellant in regard to violation of natural justice or Regulation 59 is misconceived.

24. Further, it is to be pointed out that disallowance of the claim on various aspects including balance of payment was not merely on the basis of staff report but also on other reasons. It is a rule that the Appellant has to give necessary information in the prescribed format and as such it is incumbent upon the Appellant to have furnished the details in the prescribed format as per the guidelines. Admittedly, the NTPC did not furnish the required information and documents in the format prescribed by the Central Commission. As correctly observed by the Central Commission that the interest cannot be calculated without relevant dates and the information. In the same way for capitalisation of any asset, the details about the dates are very much necessary. Without the relevant details being furnished by the Appellant, the Central Commission cannot effectively discharge its duty of scrutinising the expenses of the purchaser to find out as to whether that expense is coming within the regulated period or not. As a matter of fact, with regard to the balance of payments, the Central

Commission has given a clear finding with reference to the items to be allowed and also with reference to the items not to be allowed. The relevant finding is as follows:

"(a) Pertaining to works undertaken or order placed before the date of commercial operation which are presumed to be within the scope of approved project cost have been allowed.

(b) Pertaining to works undertaken or order placed after the date of commercial operation which might have been admitted by the Central Government in the previous tariff period have been allowed.

(c) Pertaining to works undertaken or order placed after the date of commercial operation which has been claimed as new works in the relevant years in the tariff period under consideration and allowed by the Commission, the balance payments in subsequent years pertaining to these new works have also been allowed..

(d) Other balance payment not falling in above categories have been disallowed."

Statement indicating claim of Appellant and allowed by CERC is given below

All figures in Rs. Lakhs'

	Claim of NTPC			Justification given			Allowed by CERC		
Year	**New Works**	**Balance Payment**	**Total**	**New Works**	**Balance Payment**	**Total**	**New Works**	**Balance Payment**	**Total**
97-98	**461.16**	**105.51**	**566.67**	**461.16**	**0.0**	**461.14**	**448.83**	**-6.79**	**441.64**
98-99	**1177.10**	**-119.31**	**1057.79**	**1177.08**	**0.0**	**1177.08**	**1177.08**	**-195.03**	**982.05**
99-00	**694.61**	**-190.95**	**503.66**	**694.61**	**0.0**	**694.61**	**419.26**	**-274.88**	**144.88**
2000-01	**583.97**	**515.09**	**1099.06**	**583.96**	**0.0**	**583.96**	**583.96**	**-106.62**	**477.34**
Total	**2916.8**	**310.34**	**3227.18**	**2916.81**	**0.0**	**2916.81**	**2628.73**	**-583.33**	**2045.40**

25. It is clear from the above that no justification was given for balance payment.

26. Thus, it may be observed that as against claim of additional capitalization of Rs. 29.16 crores, an amount of Rs. 26.28 crores was allowed by the Commission. As against the claim of balance payment of Rs. 3.10 crores, the Commission has allowed at a gap of minus 5.83 crores. This finding is perfectly justified.

27. In regard to the 2nd issue over the disallowance of Renovation and Modernisation (R&M) it is contended that the Central Commission relied on the staff report and disallowed the substantial expenditure incurred by the Appellant on R&M works conducted in its various generating stations holding that the said expenses did not accrue to the benefit of the respondent beneficiary purchasers. In the present case, the expenditure on all the works which was in the shape of approved project cost, undertaken after the date of commercial operation had been allowed. It is also noticed that the expenses incurred on replacement of existing equipment/facility due to technology becoming obsolete or the equipment having outlived its utility in the normal course of operation has also been allowed for capital expenditure. The expenditure on the work undertaken or on the purchase of additional equipment which is giving benefit exclusively to the

Appellant alone without any apparent benefit to the beneficiaries has not been allowed.

28. It is not established by the Appellant that the expenditure was necessary for the benefit of the employees as well as for the benefit of the beneficiaries. The Central Commission in the impugned order has specifically pointed out that the R&M expenses claimed by the Appellant cannot be allowed since there were no details furnished by the Appellant showing that the benefit would accrue to the beneficiaries. In this context it will be relevant to quote the observation made by the Central Commission on this issue.

"New Works

(a) The expenditure on any works, which was in the scope of approved project cost but undertaken after the date of commercial operation, has been allowed.

(b) The expenditure incurred for the replacement of existing equipment/facility due to technology becoming

obsolete or the equipment having outlived its utility in the normal course of operation, has also been allowed for capitalisation.

(c) The expenditure on the works undertaken/on purchase of additional equipment/facility which is giving benefit exclusively to the petitioner without any apparent benefit to the beneficiaries has not been allowed, unless it is found that expenditure was necessary for the benefit of the employees for giving necessary facilities at the remote location of the power project.

(d) Any mandatory expenditure arising out of statutory obligation due to change of law, etc., has been allowed.

<u>Balance Payments</u>

(a) Pertaining to works undertaken or order placed before the date of commercial operation which are presumed to be within the scope of approved project cost have been allowed.

(b) Pertaining to works undertaken or order placed after the date of commercial operation which might have been admitted by the Central Government in the previous tariff period have been allowed.

(c) Pertaining to works undertaken or order placed after the date of commercial operation which has been claimed as new works in the relevant years in the tariff period under consideration and allowed by the Commission, the balance payments in subsequent years pertaining to these new works have also been allowed.

(d) Other balance payments not falling in any of the above categories have been disallowed.

29. In the light of the above observations made by the Central Commission, it cannot be said that all expenditure incurred by NTPC under the Head "Renovation &

Maintenance" is to the benefit of the beneficiaries only. It is contended by the Appellant that neither the Central Commission nor the staff ever called upon NTPC to furnish such details, documents and information during the proceedings before it. This cannot be accepted because it is the duty of the Appellant to give all the particulars even when they filed the tariff application. It is not disputed that the papers attached to the said petition did not contain the relevant details/documents and information. Therefore, the finding on this issue cannot be said to be wrong.

30. Let us now come to the next issue of disallowance of water charges. As per the Government of India Notification prevalent in those years, the actual Operation & Maintenance expenses for the year preceding to the year when the said calculations are to be calculated is taken as a base and the same are escalated by 10% per annum for the future years. According to the Appellant the water charges payable to the local authorities were in dispute for many

years and, therefore, could not be finalized before 1997-98. According to the Ld. Counsel for the Respondent, the abnormal water charges claimed by the petitioner are not payable. As a matter of fact, the Central Commission has taken the actual O&M expenses of Rs. 106.87 lakhs including the water charges for the year 1996-97 and then escalated the same at the rate of 10% per annum to work out the O&M expenses for the years 1997-98 to 2000-01. It is not the case of the Appellant that during the tariff period it has suffered any loss or it has not earned the prescribed return on equity. Hence this item of abnormal water charges cannot be taken in isolation as the tariff as a complete package. Hence, the contention of the Appellant as this issue also fails.

31. As far as the issue of ignoring the value of the fuel expenses and calorific value of the fuel by the Commission is concerned, it is submitted that all the information had been furnished before the Central Commission which it has not

taken into consideration. According to the Appellant, the details regarding the calorific value of the fuel etc. were furnished through its affidavit dated 08.10.2002. The reading of the impugned orders would indicate that the same were considered and the finding had been given in respect of this issue by the Commission.

32. As per the law, on a capital employed by the generator they are entitled to return on the same in the shape of tariff and the said capital is recovered from the beneficiaries. If after the date of commercial operation any capital investment is made which gives direct benefit to the beneficiaries, subject to the approval by the appropriate authority, the said amount can be capitalised for the purpose of tariff.

33. As per the provisions of section 61(d) of the Electricity Act, 2003, while determining the tariff, the consumers interest should be safeguarded. Hence the tariff should be so

determined that it should be the cheapest at the consumers end. This is a basic object of the Electricity Act 2003. Every case of additional capitalization which will give rise to the tariff has to be seen in the light of the above-said objective. The Central Commission, keeping in view the said objective, has allowed the negative entries to be capitalized as it will reduce the capital cost and tariff will be cheaper at the consumer end. However, it has not allowed capitalization in respect of the amount that had been incurred by the generator by which no benefit would accrue to the beneficiaries.5

34. Further, it is to be pointed out that the tariff period between 01.11.1997 and 31.03.2001 is the subject matter of these Appeals. We are called upon to decide upon the tariff orders passed by the Central Commission in the year 2002 and since then nearly 8 years have elapsed. At this stage, we do not want to interfere in the orders impugned on the grounds urged by the Learned Counsel for the Appellant, since such interference would result in increase in tariff

which would be a burden to the present consumers who have to bear the burden for the past consumption.

Findings:-

i) The contention of the Appellant is that the Central Commission took decision based upon its staff report without communicating the report to the Appellant and without giving an opportunity of hearing over the report in violation of Regulation 59. This contention can not be accepted because the Regulation 59 applies only when the Commission refers the issue to the appropriate persons who are qualified to give expert advice or expert opinion and not otherwise. In the present case the Commission did not refer the matter to the experts for getting the expert opinion. On the other hand, staff of the Commission had been asked by the Commission to assist the Commission by calculating the figures as found in the records and place them before the Commission, to enable the Commission to determine the tariff. Therefore, this Regulation 59 cannot be made

applicable to the present case. Consequently the question of hearing the Appellant on the staff report does not arise. Further, there were number of opportunities to question the staff report and they were not availed of by the Appellant.

ii) In regard to the issue over the disallowance of the Renovation and Modernisation, it is submitted by the Appellant that the Central Commission merely relied upon the staff report to disallow the said expenditure holding that the said expenditure did not accrue any benefit to the beneficiaries and the purchasers. However, in the present case, the expenditure on all the works which was in the shape of approved project cost undertaken after the Date of Commercial Operation had been allowed. The expenditure incurred on replacement of existing equipments due to technology became obsolete had also been allowed for capital expenditure only. The expenditure on the work undertaken or on the purchase of additional equipment which is giving benefit exclusively to the Appellant alone without apparent benefit to the beneficiaries had not been allowed. Further,

the Appellant did not place any material to show that the said expenditure was necessary for the benefit of the employees as well as for the benefit of the beneficiaries. Therefore, disallowance on this issue is correct.

iii) The additional amount of water charges payable to the Appellant for the years 1997-98 to 2001-01 was disallowed on the basis that water charges should be calculated taking the year 1996-97 as the base year. According to the Appellant, the water charges payable to the local authorities were disputed for many years and therefore could not be finalised before 1997-98. As per the Government of India notification prevalent in those years the actual O&M expenses for the year preceding to the year when the said calculations are to be calculated is taken as a base and the same are escalated by 10% per annum for the future years. In the present case the Central Commission has taken the actual O&M expenditure of Rs. 106.87 lakhs, including the water charges for the year 1996-97 and then escalated the same @ 10% per annum to work out the O&M

expenses for the year 1997-98 to 2000-01. It is not the case of the Appellant that during the tariff period it has suffered any loss or it has not earned the prescribed return on equity. Hence, this claim of abnormal water charges can not be taken in the isolation as the tariff is a complete package.

iv) In respect of disallowance of claim for working capital ignoring the value of fuel expenses and calorific value of the fuel, it is stated by the Appellant that the details regarding the fuel expenses and the calorific value of the fuel work had been furnished through its affidavit dated 8.10.2002 and the same had not been taken into consideration. It is noticed from the tariff application that the Appellant had stated as "Not applicable" as against the column of details of calorific value etc. As regards the statement by the Appellant that its affidavit dated 8.10.2002 had not been considered, it is to be stated that reading of the impugned order shows that those particulars were considered and correct finding has been rendered in respect of this issue.

Conclusion:-

35. In view of the discussion made above and in the light of our findings referred to above, we do not find any reason to hold that the impugned orders passed by the Central Commission would suffer from any infirmity. Consequently, the Appeals are liable to be dismissed as devoid of merits. Accordingly same are dismissed. No order as to the costs.

(Rakesh Nath)
Technical Member

(Justice M. Karpaga Vinayagam)
Chairperson

Dated: 3rd June, 2010.

INDEX: REPORTABLE/NON-REPORTABLE.