

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

**Execution Petition No. 1 of 2007**

**Dated: January 8, 2008**

**Present: Hon'ble Mr. A.A. Khan, Technical Member  
Hon'ble Mrs. Justice Manju Goel, Judicial Member**

<b>U.P. Power Corporation Ltd.</b>	<b>-Execution Petitioner(s)</b>
<b>V/s.</b>	
<b>CERC &amp; Ors</b>	<b>-Respondent(s)</b>

Counsel for the Execution Petitioner (s) : Mr. D.D. Chopra

Counsel for the Respondent(s) : Mr. M.G. Ramachandran with  
Mr. Anand K. Ganeshan and  
Ms. Swapna Seshadri for NTPC  
Mr. T. Rout, Jt. Chief (Legal),  
CERC

**ORDER**

This execution Petition seeks implementation of this Tribunal's order dated 7.7.2006 in appeal no. 36 of 2006. The respondent Commission, purporting to implement the order dated 7.7.2006 has passed the order dated 16.1.2007 which the applicant now wants to be quashed.

So far as the quashing of the order dated 16.1.2007 is concerned, the prayer is in the nature of an appeal. However, it is contended by the applicant that the prayer here is not in the nature of appeal but in the nature of execution in as much as the order dated 16.1.2007 has been passed on mistaken understanding of the order dated 7.7.06. It is contended that the order dated 7.7.2006 has deleted para 37 of the

impugned order of respondent Commission dated 31.3.2005 but what the respondent Commission has now done vide the order dated 16.1.2007 was in accordance with the same para 37.

Having read the order of the Commission dated 31.3.2005 and the order of this Tribunal dated 7.7.2006 we do feel that a clarification is called for. Our task, however, has become easier as a clarification of the order dated 7.7.2006 has already been issued in our judgment in appeal nos. 159,162 and 167 of 2005.

In appeal nos. 159,162 and 167 of 2005 disposed of by the Appellate Tribunal vide order dated 31.10.2007, the judgment in appeal no. 36 of 2006, now under execution has been clarified in the following terms,

*“35. We observe that the Commission in its order has allowed the capital cost of Rs. 242.24 crores which is not being now contested by the appellant. It is the additional capitalization during the period April 1, 2001 to March 31, 2004 that the appellant has prayed for. This Tribunal vide its order dated July 7, 2006 in Appeal No. 36 of 2006, UP Power Corporation Ltd. V/s NTPC and Ors has decided as under:*

*“ While placing heavy reliance on the said regulations Mr. Pradeep Misra pointed out that, there could be no revision of tariff during the tariff period whatever be the reason if the capital expenditure incurred is less than 20% of the approved project. We find there is force in this*

*submission. The Regulation, which is a statutory in nature provides so and during the tariff period if the additional capitalization is less than 20% of approved cost there could be no increase in tariff whatsoever. Mr. M.G. Ramachandran appearing for first respondent sought to explain the contents of para 37 of the order appealed against and pointed out that it will be included in the next tariff period, which is being settled by CERC.*

*When the regulation bars revision of tariff during the tariff period ending with 31.03.2004 it follows that there could be no revision of the tariff during the tariff period whatever may be the reason or justification when the additional expenditure is less than 20% of the approved project cost. There is no controversy in this respect. In the circumstances, the direction issued by CERC as set out in para 37 calls for modification. In fixing the tariff for the tariff period commencing 01.04.2004 the element of interest and investment of return on equity requires to be examined by CERC and included for the purpose of determining the tariff as rightly highlighted by Mr. Ramachandran on behalf of the appellant but there is no warrant to issue such a direction now. In the circumstances, we order deletion of para 37 of the order appealed against, while making it clear that it is well open to CERC to consider the element, namely additional capitalization return on equity, interest on borrowing, while determining the tariff for the next tariff period. The appeal is dismissed but with the above modification.”*

36. *To facilitate reference para 37 of the Commission’s order dated March 31, 2005 in Petition No. 139 of 2004 is given below:*

*“ As there is nothing in the notification dated 26.3.2001 to deny the petitioner the reasonable return to service the capital expenditure incurred by the petitioner and found to be justified by us, we direct that the petitioner shall earn return on equity @ 16% on the equity portion of the*

*additional capitalization approved by us. Similarly, the petitioner shall also be entitled to the interest on loan as applicable during the relevant period. Return on equity and interest shall be worked out on the additional capitalization of Rs. 4.521 crores approved by us from 1st April of the financial year following the financial year to which additional capital expenditure relates up to 31.3.2004. The lump sum of the amount of return on equity and interest on loan so arrived at shall be payable by the respondents along with the tariff for the period 2004-09 to be approved by the Commission. The exact entitlement of the petitioner on this account shall be considered by the Commission while approving tariff for the period 2004-09.”*

37. *In the abovementioned judgment of this Tribunal we have held that since the regulations bar revision of tariff during the tariff period when the additional expenditure is less than 20% of the approved project cost, the same cannot be revised. However, the impact of additional capitalization in terms of allowing return on equity and interest on borrowings for the previous tariff period has to be given effect during the next tariff period. Accordingly, we decide in this appeal that the additional capitalization has to be considered during the next tariff period along with the elements of interests and the return on equity accrued for the period 2001-04.”*

The above stated Tribunal's order clearly holds that since the regulation bars revision in tariff during the tariff period, if additional expenditure is less than 20 % of the approved projected cost, the same

cannot be revised. However, the impact of this additional capitalization including the element of the interest and return on equity accrued for the period 2001-2004 would be considered in the next tariff period.

The execution petition is disposed of .

**(Manju Goel)**  
**Judicial Member**

**(A.A. Khan)**  
**Technical Member**