

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
Shri M.Deena Dayalan, Member

Date of hearing: 14.2.2012

Petition No. 279/2009

Subject: Petition for approval of tariff of Feroze Gandhi Unchahar Thermal Power Station Stage-III (210 MW) for the period from 1.4.2009 to 31.3.2014.

Petitioner: NTPC Ltd.

Respondents: Uttar Pradesh Power Corporation Ltd. (UPPCL) and others.

Parties present: Shri V.K.Padha, NTPC
Shri Rohit Chhabra, NTPC
Shri Ajay Dua, NTPC
Shri R.B.Sharma, Advocate for BRPL
Shri Sunil Barnwal, BRPL
Shri Manish Garg, UPPCL

Record of Proceedings

The petitioner, NTPC Ltd. has filed this petition for approval of tariff of Feroze Gandhi Unchahar Thermal Power Station Stage-III (210 MW) for the period from 1.4.2009 to 31.3.2014 based on the CERC (Terms and Conditions of Tariff) Regulations, 2009 (2009 Tariff Regulations).

2. During the hearing, the representative of the petitioner submitted as under:
 - (i) Most of works in respect of the R&M schemes approved by Central Electricity Authority (CEA) and allowed by the Commission in terms of the 2004 Tariff Regulations have been completed and the projected expenditure claimed is towards balance ongoing R&M works.

- (ii) The expenditure claimed towards the cost of initial spares amounting to ₹ 17.03 crore may be allowed and the cost of maintenance spares may be included in the working capital.
- (iii) The projected capital expenditure claimed during 2009-14 is on account of Change in law and on deferred works relating to Ash pond or ash handling system in the original scope of work and the same may be allowed in terms of Regulations 9(2) (ii) and (iii) respectively.
- (iv) The construction of D-Type quarters was delayed due to litigation by the contractor. As this was beyond the control of the petitioner, the additional capitalization claimed on this count may be allowed.
- (v) The cost incurred towards development of infrastructure for implementation of the scheme based on the Government of India notification dated 27.4.2010, which requires the generating stations to supply power to rural households within a radius of 5 km. from the existing/upcoming projects, may be allowed.
- (vi) Additional information as sought for by the Commission and rejoinders to replies submitted by the respondents has been filed and copies served on the respondents.

3. The representative of Respondent No.1, UPPCL submitted as under:

- (i) Regulation 17 of the 2009 Tariff Regulations provides that the initial spares can be capitalized up to 2.5% of the original project cost. The excess expenditure claimed by the petitioner on this count may not be allowed as the same is not justified.
- (ii) The capital expenditure claimed by the petitioner towards balance works under approved cost is beyond the cut-off date and hence, should be disallowed, since the cut-off date in terms of Regulation 14(ix) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004 would be 31.3.2008.
- (iii) Additional capitalization beyond the cut-off date can be claimed only under the provisions of Regulation 9(2)(i) to (iii) of the 2009 Tariff Regulations and some of the expenditure claimed by the petitioner does not fall under these provisions.
- (iv) The claim of the petitioner for inclusion of the cost of maintenance spares as part of the working capital should not be allowed, as it would not improve the efficiency of the generating station. Further,

the claim is on a higher side and it is also not known as to whether the petitioner has invested the same.

- (v) The petitioner has not given reasons for not discharging the liability of ₹ 3023 lakh out of the total un-discharged liability (as on 31.3.2009) till 1.4.2010. Hence, the Commission may consider the unpaid amount as funding by the supplier without interest. However, in case the said un-discharged liabilities are considered as part of capital cost, then the same should form the component of debt, without involvement of any interest.
- (vi) Since the date of commercial operation of the generating station is within the scheduled date, the profits derived is eligible for 100% tax deduction by virtue of Section 80-IA of the Income-tax Act, 1961 for a period of 10 years, which would include the period 2009-14 also. Hence, the grossing up of base rate by tax is inequitable, and the claim of the petitioner under Return on Equity would stand reduced during 2009-14.

4. The learned counsel appearing for Respondent No.6, BRPL submitted that the submissions made on behalf of respondent No.1, UPPCL are being adopted in respect of the projected additional capitalization claim of the petitioner. In addition to this, the learned counsel submitted as under:

- (i) Reply in the petition has been filed and copy served on the petitioner.
- (ii) The Commission may take appropriate decision to appoint consumer bodies/group to represent the interest of consumers in the determination of tariff.
- (iii) The petitioner has not furnished the list of assets forming part of the project, but not in use, in terms of proviso to Regulation 7(1)(c) of the 2009 Tariff Regulations. The petitioner may be directed to give details of the same.
- (iv) In terms of Regulation 9(2) of the 2009 Tariff Regulations, only the expenditure actually incurred after the cut-off date and in the discretion of the Commission may only be allowed and the same cannot be claimed as a matter of right by the petitioner.
- (v) The petitioner having recovered 90% of the capital cost, the salvage value of the assets on completion of the useful life of the Unit I and II, in terms of regulation 17 of the 2009 Tariff Regulations, shall be reduced to 10% of the capital cost for the years 2012-13 and 2013-14 respectively.

- (vi) The Commission may direct the petitioner to provide documentary proof and the actual data related to calculation of Energy Charge Rate (ECR) along with the energy charge bills, containing the Fuel Adjustment Charges of the respondent generating stations. Failure on the part of the petitioner to provide such information should be at the cost of the petitioner and the delayed period should not be counted for the purposes of 'Rebate' and 'Late Payment Surcharge' under Regulations 34 and 35 of the 2009 Tariff Regulations.
- (vii) The additional expenses due to increase in water charges may not be permitted, as tariff is a complete package and its reasonableness is required to be examined in totality.
- (viii) The expenditure towards levy of fees and charges for the services rendered by the Regional Load Despatch Centre (RLDC) has to be met out by the petitioner from its own sources in accordance with the provisions of the Central Electricity Regulatory Commission (Fees and charges of Regional Load Despatch Centre and other related matters) Regulations, 2009, as tariff is a complete package and its reasonableness is required to be examined in totality.
- (ix) Supply of power to housing colonies or township of the generating station is to be accounted for and accordingly adjusted from the cost of the generating station. The said supply does not fall under the Auxiliary Energy Consumption of the generating station. There is a need to have improved norms in line with Regulation 37 read with Regulation 3(4) of the 2009 Tariff Regulations, as the provisions of the regulations have been rendered infructuous by the petitioner.
- (x) As regards the notification dated 27.4.2010 of the scheme for provision of supply of electricity within a radius of 5 km. around the central power generating stations, the petitioner may be directed to submit a copy of the statement made by the Hon'ble Minister of Power on 21.7.2009 in Parliament, for perusal.

5. In response to the above, the representative of the petitioner clarified as under:

- (i) The initial spares towards capital cost have been claimed as per the provisions of 2009 Tariff Regulations. The original project cost to be considered for computation of spares may be based on the Commission's order dated 21.4.2011 in Petition No.181/2009.

- (ii) The initial spares required for the generating station were ordered by the petitioner well before the cut-off date and delay in its supply was attributable to the contractor and hence beyond the control of the petitioner.
- (iii) Even at the time of finalization of norms for the period 2009-14, the petitioner had submitted that the actual stock of maintenance spare was much higher, which was not allowed by the Commission. Therefore, the contention of Respondent No.1, UPPCL that the actual stock is less is unsustainable.
- (iv) The 2009 Tariff Regulations stipulates that Return on Equity (ROE) is to be calculated by grossing up the base rate with the actual rate applicable to the generating station for the respective year. Since, the petitioner is paying income tax at corporate tax rate (33.99%), the same should be taken for calculation of grossed up ROE.
- (v) The petitioner has filed written submissions *vide* affidavits dated 26.3.2010 and 23.6.2010 justifying the admissibility of the claim for additional capitalization based on the provisions of the 2009 Tariff Regulations, which may be considered.
- (vi) The additional capitalization towards works relating to Ash pond/Ash handling system and Change in law has been claimed by the petitioner in accordance with the provisions of 2009 Tariff Regulations.
- (vii) The entire details/data regarding calculation of Energy Charge Rate have been provided to the beneficiaries along with the monthly energy bills.
- (viii) Housing colonies forms part of the generating station as per the definition of 'generating station' envisaged under section 2(30) of the Electricity Act, 2003 and by issuance of the Electricity (Removal of Difficulties) Order, 2005 by the Government of India, the requirement of license for supply of power to the housing colonies/township has been done away with and hence, the colony consumption forms part of auxiliary consumption and no undue benefit is derived by the petitioner out of it.
- (ix) The petitioner has claimed tariff based on PPAs signed by the respondents/beneficiaries and hence the question of deviation of norms does not arise. Also, the difference in tariff, if any, can be adjusted at the time of truing up. Regulation 37 would be applicable

only in case of improved norms of operation are agreed to by the parties.

- (x) The additional capital expenditure due to RLDC charges, etc. is not being raised in this petition, as the Commission had disposed of the same by order dated 6.2.2012 in Petition Nos. 129, 140, 165,171,180, 198/MP/2011.
- (xi) The issue of water charges has been submitted by the parties in Petition No.121/MP/2011.
- (xii) As regards the scheme for provision of supply of electricity within a radius of 5 km. around the central power generating stations, a copy of the Ministry of Power notification dated 27.4.2010 has been submitted to the Commission and a copy thereof has been served on the beneficiaries. The petitioner is just implementing the directives of the Government of India in pursuance of the said notification of Ministry of Power.

6. The learned counsel for the Respondent No.6, BRPL clarified that the clauses of the Power Purchase Agreement cannot supersede the legal provisions under the Act and /or Regulations.

7. The Commission, after hearing the parties, reserved its order in the petition.

By Order of the Commission

Sd/-
(T.Rout)
Joint Chief (Law)