

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 22/RP/2012

Subject: Review of order dated 7.6.2012 in Petition No. 261/2009 regarding determination of generation tariff for Rihand Super Thermal Power Station Stage-I (1000 MW) for the period from 1.4.2009 to 31.3.2014.

Date of Hearing: 18.12.2012

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

Petitioners: NTPC Ltd., New Delhi

Respondents: Uttar Pradesh Power Corporation Ltd. and 12 others

Parties Present: Shri Ajay Dua, NTPC
Shri Shankar Saran, NTPC
Shri Navneet Goel, NTPC
Shri Vivek Kumar, NTPC
Shri S. K Sharma, NTPC
Shri R B Sharma, Advocate, BRPL
Shri Manish Garg, UPPCL

RECORD OF PROCEEDINGS

During the hearing the representative of the petitioner, NTPC submitted as under:

(a) The Commission *vide* its order dated 14.11.2012, had admitted the petition on two issues namely, the disallowance of capital expenditure for phasing out of Halon fire fighting system with alternate inert gas and the adjustment on cumulative depreciation in respect of un-discharged liability as on 31.3.2009 (on account of land). The phasing out of Halon fire fighting system was part of the CEA approved schemes and this work was done as a statutory requirement under the National Fire Protection Association Standard on Clean Agent Fire Extinguishing system (NFPA-2001). The Commission in its order had apparently overlooked this fact while disallowing the expenditure on CEA approved schemes. Also, the Commission has allowed expenditure on this

count in respect of other generating stations of the petitioner like Auriaya GPS, Anta GPS, and Dadri GPS, under Regulation 9(2)(ii) of the 2009 Tariff Regulations. Hence, there is an error apparent on the face of the order and the order may be reviewed accordingly.

2. On a specific query by the Commission as regards the claim of expenditure for Halon fire fighting system under Regulation 9(2)(ii)-change in law, the representative of the petitioner clarified that the changes under the Ozone Depleting Substances (Regulation and Control) Rules, 2000 were introduced by which the generating companies were allowed to continue with the existing fire fighting system for a period of 10 years, after which the production and servicing of the same was stopped. In accordance with the said provisions, the work was undertaken during the period 2010-11 for which the expenditure had been claimed in the petition.

3. The representative for the respondent, UPPCL submitted as under:

(a) The petitioner has claimed expenditure of ₹192.38 lakh on account of phasing out of Halon firefighting system with alternate gas during 2010-11 but has not provided the de-capitalization amount for the said asset/work.

(b) The petitioner has not pointed out the existence of any error on the face of record and the prayer of the petitioner cannot be considered in this petition.

(c) The petitioner has not provided any reference in the order as regards its prayer for modification in the cumulative depreciation adjustment. Thus the linkage in the submissions of the petitioner with respect to the order of the Commission could not be established. The petitioner may therefore be directed to submit a detailed submission in the matter.

4. The learned counsel for the respondent, BRPL submitted as under:

(a) The claim for additional capitalization on phasing out of Halon system fire fighting system can be considered only when there is change in law under Regulation 9(2) of the 2009 Tariff Regulations. Also, the claim of the petitioner does not fall under the 'definition' clause provided under Regulation 3(9) of the 2009 Tariff Regulations. Moreover, the petitioner has not enclosed any notification/order or any document to show that it is entitled for the said expenditure under this head.

(b) The submission of the petitioner that expenditure on similar works has been allowed by the Commission in the petitions relating to gas based generating stations namely, Auraiya GPS, Anta GPS and Dadri GPS does not automatically entitle the petitioner to seek capitalization of

expenditure in respect of its thermal power generating stations. There are distinguishing features with different facts and circumstances in respect of both gas and thermal based generating stations, and the same is not comparable. The submission of the petitioner would also amount to challenging the order passed by the Commission in the above referred petitions. The review petition filed by the petitioner is in the nature of an appeal in disguise, and the error in judgment cannot be cured by way of a review petition.

(c) As regards the claim for modification in the cumulative depreciation adjustment, the review petition is sketchy and does not contain any document/calculations to substantiate the said claim. No details have been also given as to whether the freehold land amount is sought to be reviewed by the petitioner. Thus, the petitioner has not established any error apparent on the face of the record.

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

(a) As regards halogen fire fighting system, the amount of de-capitalization is ₹55.23 lakh.

(b) As regards modification in the cumulative depreciation adjustment, there is a calculation error in the said order which is sought to be rectified. By modification of cumulative depreciation adjustment, there would be reduction in tariff.

(c) As regards, expenditure on halon fire fighting system, it has been prayed for correction of inadvertent error by the Commission while disallowing CEA approved schemes and also to consider the various orders of the Commission allowing the said claim in respect of other coal based generating stations of the petitioner like Korba Stage-I & II and Vindhyachal STPS.

6. The Commission directed the petitioner to submit detailed calculations as regards the prayer for modification in the cumulative depreciation adjustment with copy to the respondents, on or before 7.1.2013.

7. Subject to the above, Commission reserved its order in the petition.

By order of the Commission

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