

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.304/2009

Subject: Approval of tariff of Talcher TPS (460 MW) for the period from 01.04.2009 to 31.03.2014

Date of hearing: **26.11.2013**

Coram: Shri Gireesh B. Pradhan, Chairperson
Shri M.Deena Dayalan, Member
Shri A.K. Singhal, Member

Petitioner: NTPC Ltd.

Respondents: GRIDCO Ltd.

Parties present: Shri Ajay Dua, NTPC
Shri Rohit Chhabra, NTPC
Shri V. Ramesh, NTPC
Shri Shailendra Singh, NTPC
Shri A. Basu Roy, NTPC
Shri Navneet Goel, NTPC
Shri R.B.Sharma, Advocate, GRIDCO

RECORD OF PROCEEDINGS

This petition has been filed by the petitioner, NTPC for approval of tariff of Talcher TPS (460 MW) (the generating station) for the period from 01.04.2009 to 31.03.2014 in accordance with the CERC (Terms and Conditions of Tariff) Regulations, 2009 ('the 2009 Tariff Regulations').

2. During the hearing, the representative of the petitioner submitted as under:
- (a) The generating station was initially owned and operated by Orissa State Electricity Board (OSEB) and comprises of 4 units of 60 MW each commissioned during 1967-69 and 2 units of 110 MW each commissioned during 1982-83. Due to inability of OSEB, the generating station was transferred to the petitioner on 03.06.1995. PPA was signed with Orissa State Electricity Board and Govt. of Orissa on 08.03.1995.
 - (b) The generating station is more than 25 years old. The PLF of the generating station at the time of transfer was less than 30%. Based on the request of the respondent to carry out R&M, the petitioner had planned R&M in Phases. Accordingly, after discussion and approval of the respondent, Phase I and III was carried out by the petitioner.
 - (c) The PLF of the generating station is more than 90% and the respondent is availing the cheapest power from the generating station. The entire benefit of improved performance of the generating station is passed on to the beneficiaries in the form of PLF, SHR etc.
 - (d) The petitioner filed Petition No. 212/2010 for in principle approval of R&M Phase – IV schemes and the Commission vide its order dated 7.6.2013 had approved the same. In terms of the direction of the Commission in the said order capitalization of towards R&M Phase IV schemes based on actual expenditure for the period 2009-12 and estimated projected expenditure for the period 2012-14 has been filed. Thereafter, revised forms including actual additional capital expenditure for 2009-

13 and projected additional capital expenditure for 2013-14 has been filed vide affidavit dated 4.11.2013

- (e) The copy of audited accounts for 2012-13 along with reconciliation of additional capitalization with the audited accounts has also been included in the petition. The audited accounts for the period upto 30.9.2013 would be submitted in course of the day.
- (f) Additional submissions/clarification as sought for by the Commission has been filed and copy of the same has been served on the respondent. Rejoinder to the replies filed by respondent has been submitted.
- (g) Tariff of the generating station may be determined based on the submissions made in the petition.

3. The learned counsel for the respondent, GRIDCO referred to his reply and made submissions as under:

- (a) Replies in the matter have been filed vide affidavits dated 11.2.2010, 4.5.2010, 30.7.2010, 22.10.2013, 18.11.2013. Out of this, the submissions made in affidavit dated 4.5.2010, 30.7.2010 respectively may not be relevant as some of the issues raised have been settled.
- (b) The profit and loss account statement of the generating station could reveal that the petitioner is deriving huge profits in comparison of its own claim of return on equity (ROE) in the petition. During the years 2011-12 and 2012-13, the petitioner has already earned of 1.41 times the ROE claimed though the P & L account is based on the provisional tariff allowed to the petitioner. This would further increase pursuant to determination of tariff in this petition.
- (c) The huge profits derived by the petitioner is mainly on account of a) liberal operational norms, b) allowing claims even though no provision exists in the regulation c) allowing capitalization without sharing the benefits of efficiency improvements and d) non restoration of loss capacity.
- (d) The Commission may not allow claims of the petitioner under Power to relax on the ground that this is a old generating station since the generating station is already operating under relax norms. Even though the petitioner had undertaken to restore the loss capacity, the same has not been restored till date. It is noticed that the generating station is operating with a capacity of 470 MW pursuant to R&M programme but for the purpose of tariff, the capacity has been kept as 460 MW by the petitioner, thus claiming unreasonable tariff. (*Annexure R-3 to 6, 9 and 10 referred to*).
- (e) Huge amount of additional capitalization has been claimed by the petitioner which also includes capitalization of expenditure for the next control period (i.e. 2014-15).
- (f) Regulation 37 of the 2009 Tariff Regulations provides that the norms of operation to be the ceiling norms. Since the said provision provides that the parties could agree for improved norms of operation to be applicable for determination of tariff, the Commission may direct the parties for mutual discussion on the operational norms to be agreed upon for determination of tariff. Accordingly, the Commission may explore the possibility of granting 10 days time for the same. The contention of the petitioner that the PPA should have contained mutually agreed norms is not tenable since the same would render Regulation 37 as redundant.
- (g) In Form 9 of the Petition an expenditure of ₹374.77 lakh for Ash handling/Ash Dyke works has been claimed under Regulation 9(2)(iii). As deferred works can only be allowed only if the same is within the original scope of work, the claim of the petitioner is not permissible as the petitioner has not furnished any as to whether the said work is within the original scope of work.

- (h) The claim of the petitioner on environmental system under change in law is not permissible since no document indicating the occurrence of any change in law necessitating expenditure on this count has been furnished by the petitioner.
- (i) The claim for an expenditure of ₹14523.45 lakhs for works under implementation in Phase II and III on the ground that the works were approved by the respondent is not permissible since the said amount has not been approved by the Commission under Regulation 10 of the 2009 Tariff Regulations. Even the said amount was not placed before the Commission in the petition (Petition No. 212/2010) filed by the petitioner.
- (j) The claim of the petitioner towards MBOA assets and spares by relaxation of the norms under Regulation 44 of the 2009 Tariff Regulations and towards tools and tackles may not be permitted, since the petitioner is deriving huge benefits on the basis of relaxed norms.
- (k) The expenditure claimed towards the scheme for supply of power within 5km radius of the generating station is not permissible as the said scheme has been withdrawn by the Ministry of Power, GOI. In any event this expenditure could be carried out under the CSR activities of the petitioner.
- (l) The inclusion of un-discharged liabilities relating to the period prior to 1.4.2004 and 2004-09 after reconciliation of books can only be permissible provided proper details as to the year etc. is indicated by the petitioner.

4. In response, the representative of the petitioner clarified as under:

- (a) The issue raised by the respondent has been adequately dealt with by the petitioner in the rejoinders filed against the reply.
- (b) The tariff of the generating station is determined based on the regulations specified by the Commission in terms of Section 61 of the Electricity Act, 2003 taking into consideration the views of all the stakeholders/beneficiaries. The respondent cannot question the same which have already been settled. The submission of the respondent that the petitioner is making huge profits is thus not tenable.
- (c) As regards the issue of lost capacity, the issue stands settled by the judgment of the Appellate Tribunal. An appeal filed against his judgment by the respondent is pending before the Hon'ble Supreme Court and no stay has been granted. In response the learned counsel for respondent clarified that the issue of rated capacity pending before the SC related to the period prior to 2006.
- (d) The capital cost in respect of this generating station is much less than the cost of other new generating stations despite being very old and the R&M expenses being high.
- (e) Since the Commission has provided norms substantially better than that agreed in the PPA with the petitioner, the submission of the respondent for mutual discussions under Regulation 37 may be rejected.
- (f) Rejoinders filed in the matter may be considered.

5. The Commission after hearing the parties reserves its order in the petition.

By order of the Commission

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