

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEWDELHI**

Petition No. 14/RP/2014

in

Petition No. 160/GT/2012

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M.Deena Dayalan, Member

Shri A.K.Singhal, Member

Date of Hearing: 15.07.2014

Date of Order: 03.12.2014

In the matter of

Review of Commission's order dated 20.2.2014 in Petition No.160/GT/2012 pertaining to determination of tariff of 2X600 MW power plant of Udupi Power Corporation Limited.

And in the matter of

Udupi Power Corporation Limited

.....Petitioner

Vs

1. Power Company of Karnataka Ltd,
KPTCL Building, Kaveri Bhavan, K.G.Road,
Bengaluru -560009
2. Bangalore Electricity Supply Company Ltd,
K.R.Circle, Bengaluru -560001
3. Mangalore Electricity Supply Company Ltd,
Paradigm Plaza, AB Shetty Circle, Mangalore-575001
4. Gulbarga Electricity Supply Company Ltd,
Station Main Road, Gulbarga-585102
5. Hubli Electricity Supply Company Ltd,
Corporate Office, Navanagar, PB Road, Hubli-580025
6. Chamundeshwari Electricity Supply Company Ltd,
Corporate Office, No. 927, LJ Avenue,
New Kantaraja Urs Road, Sarawathipuram
Mysore-570009
7. Punjab State Power Corporation Ltd,
Head Office, the Mall, Patiala-147001

.....Respondents



Parties present : Shri L. Vishwanathan, Advocate, UPCL
Shri R. Parthasarathy, UPCL
Shri M. G. Ramachandran, Advocate, PCKL and others
Shri Anand Ganesan, Advocate, PCKL and others
Ms. Anushree Bardhan, Advocate, PCKL and others
Shri Sanjay Parikh, Advocate for objector
Ms. N. Vidya, Advocate for objector

ORDER

The Commission vide order dated 20.2.2014 had approved the tariff of Udupi Thermal Power Station (2 x 600 MW) ('the generating station') for the period from 11.11.2010 to 31.3.2014 for Unit-I and from 19.8.2012 to 31.3.2014 for Unit-II in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 ('the 2009 Tariff Regulations'). Aggrieved by the said order, the petitioner has filed this review petition on the following grounds.

(a) Disallowance of Gross Station Heat Rate of 2400 kCal/kWh by not taking into account the GSHR as observed by the Commission in para 49 of the order dated 25.10.2005 and as per PPA.

(b) Disallowance of expenditure of ₹27.56 crore towards replacement of return sea water GRP Pipeline (return pipe) with M.S. Pipeline claimed by the petitioner to meet the directions of the State Pollution Control Board.

(c) Inadvertent calculation of the EPC cost in the order as ₹3526.64 crore instead of ₹3668.85 crore.

2. By order dated 3.6.2014, the Commission rejected the prayer of the petitioner on the issues raised in paragraph 1(a) and (c) above, namely, the '*disallowance of Gross Station Heat Rate*' and the '*inadvertent calculation of the EPC cost*'. However, by the same order, the petition was admitted on the issue raised in paragraph 1 (b) namely, the '*Disallowance of expenditure of ₹27.56 crore towards replacement of return sea water GRP Pipeline (return pipe) with M.S. Pipeline*', and notice was ordered on the respondents, including the objector, M/s Janjagrati Samithi, with directions to the parties to complete the pleadings.

3. The distribution licensees of Karnataka (the respondents herein) and the Objector, M/s Janajagrati Samithi have filed replies in the matter and the petitioner has filed its rejoinder to the said reply. Thereafter, the matter was heard on 15.7.2014 and the Commission while reserving its order in the

matter, directed the petitioner to file the details as to the date and year of capitalization of the expenditure incurred towards replacement of GRP pipelines.

4. Heard the learned counsel for the parties. Based on the submissions and the documents available on record, we examine the claim of the petitioner in the subsequent paragraphs.

Disallowance of expenditure of ₹27.56 crore towards Replacement of Return Sea Water GRP Pipeline (return pipe) with M.S. Pipeline

5. The petitioner has submitted that the Commission in the order dated 20.2.2014 while rejecting the prayer for capitalization of this asset has observed in paragraph 97 as under:

"Further, it is observed that an expenditure of ₹ 27.56 crore is proposed to be incurred for replacement of return GRP Sea Water pipeline with M.S. pipeline for improving and maintaining the environmental parameters. The Petitioner has furnished the original cost of GRP pipeline as ₹19.5 crore inclusive of erection cost. However, the capitalization of ₹27.56 crore has not been considered as the petitioner has not furnished any documentary evidence in support of its claim that this has been necessitated due to environmental requirement."

6. The petitioner in support of its prayer for capitalization of the expenditure of ₹27.56 crore for replacement of return Sea Water GRP pipeline with M.S.Pipeline has mainly submitted as under:

- (a) The decision to replace the Glass Fibre Reinforced Plastic (GRP) Pipeline with MS pipeline was taken due to environmental requirements since the project is located in an environmentally sensitive area.
- (b) The consumptive water requirement of the 1200 MW power plant of the petitioner is being met by drawing water from sea about 6 km distance away from the power plant by laying GRP pipe line buried at the depth of about 3 meters underground. The return water pipeline carrying the return water to sea is also buried underneath the ground.
- (c) While designing the power plant, the equipments/systems were selected by the petitioner considering the State of art technology available to ensure that the most efficient equipment system is installed to meet environmental protections stipulated by statutory authorities considering the environmentally sensitive area.
- (d) The petitioner had selected the GRP pipeline for inlet sea water requirements and also for return pipeline so as to ensure that there is no corrosion to the pipeline and environmental stipulations are met in strict terms during the life of the Plant. GRP is a proven material for manufacturing the pipes used for sea water application worldwide. Most of the gas and oil companies located in the Middle-East use GRP material for sea water pipelines and the

industry's feedback on the performance of GRP pipeline has been very satisfactory. GRP pipeline is not only used in petroleum complexes but is also used in the systems where sea water is required to be drawn because of its inherent advantages of high corrosion resistant properties and light weight.

- (e) The decision to lay sea water return MS pipeline was in compliance to the directives of the Karnataka State Pollution Control Board (KSPCB) which had directed the petitioner to carry out the replacement.
- (f) The petitioner had filed the tariff petition before this Commission on 14.12.2011 and at that time it had also proposed an expenditure of about ₹148.29 crore towards additional capital expenditure, which excluded expenditure towards replacement of GRP pipeline by MS pipeline for the return water pipeline since at that stage KSPCB had not issued any directive to replace the GRP sea water return pipeline with MS pipeline.
- (g) The directives from the environmental authorities to implement the scheme of replacement of GRP pipeline by MS Pipeline have come after the Petitioner had filed its Tariff Petition. The petitioner had brought to the notice of this Commission the aforementioned events vide its Rejoinder dated 9.3.2013. In its Rejoinder to the Commission on 10.8.2013, the petitioner has also submitted a copy of the Consent For Operation (CFO) dated 30.6.2012 in which the petitioner was directed to complete the MS return sea water pipeline before June, 2014.
- (h) The petitioner was under the bona fide belief that no further documents would be required to justify the statutory requirement to replace the GRP return water pipes by MS pipelines. The petitioner seeks liberty of this Commission to submit the remaining documents pertaining to the replacement of GRP Pipeline by MS Pipeline for the consideration of the Commission viz.,(i) risk assessment report of SGS; (ii) Fichtner's report on technical feasibility of laying MS Pipeline for sea water return; (iii) directives of KSPCB issued by its letter dated 30.10.2012 for implementing all recommendations of risk assessment study report of M/s. SGS; (iv) Letter dated 29.6.2013 issued by the Petitioner to KSPCB confirming that it has undertaken the works of replacement of sea water return GRP pipeline by MS pipeline.

7. The respondents (discoms of Karnataka) in their reply have submitted as under:

- (a) The petitioner has failed to produce evidence and documents to establish their case for allowing the claim for capitalization of ₹27.56 crore.
- (b) The review jurisdiction is not for production of new evidence by the parties. It is only such evidence which the parties were not in possession of despite due diligence and came to know only after passing the main order.
- (c) The petitioner had deliberately not produce various material documents even though the claims were made by the petitioner on such heads.

(d) The petitioner cannot be allowed to benefit from its own default to produce all the relevant material while making claims before the Commission.

8. The Objector M/s Janajagrithi Samithi has mainly submitted as under:

(a) The petitioner cannot claim any review as the expenditure has been incurred due to its own irresponsible approach and insufficient technical study and knowledge, and therefore, the replacement of intake or return GRP pipeline has to be the responsibility of UPCL and the same cannot be ground for filing review.

(b) It is settled law that under the guise of filing review, a party cannot raise those issues which can be raised only in an appeal.

9. In response, the petitioner in its rejoinder has clarified as under:

(a) Karnataka State Pollution Control Board while issuing the Consent for Establishment letter dated 31.8.2005 had stipulated that the industry shall use sea water from the sea for cooling and desalination. Also the Ministry of Environment and Forests while granting comprehensive clearance for the project had stipulated that the sweet water requirement shall be met from the desalination plant. The ICB bidding document and the EPC contract indicates the use of GRP pipelines for return water. Accordingly, GRP pipelines were installed for the return water for the plant which had to be replaced by MS pipelines.

(b) Since the cost of replacement of GRP pipes by MS pipes is necessitated due to the mandate of KSPCB the expenditure may be approved as part of the capital cost.

(c) The petitioner had also placed on record before the Commission the consent for operation granted by KSPCB vide letter dated 30.6.2012 which clearly required the petitioner to complete the replacement of GRP pipeline by June, 2014. All the documents and pleadings with regard to replacement of GRP pipes have been placed before the Commission with copies to the respondents.

(d) The order of the Commission dated 20.2.2014 suffers from error apparent on the face of the record in as much as it does not refer to the consent for operation issued by KSPCB.

10. Similar submissions were made by the parties during the hearing on 15.7.2014. The petitioner, in compliance with the directions of the Commission, has in its rejoinder dated 31.7.2014 submitted that the work for replacement of GRP pipelines has been completed on 17.5.2014 and will be subject to truing-up by the Commission after necessary prudence check. The petitioner has also submitted that the

Commission may grant in-principle approval of the cost of MS pipes as part of the capital cost since these pipes have been installed by replacing the GRP pipes, under the directives of KSPCB.

11. We have considered the submissions of the parties. As stated, the Commission in its order dated 20.2.2014 had not considered the capitalization of ₹27.56 crore for replacement of GRP pipes on the ground that the petitioner had not furnished any documentary evidence in support of its claim that the capitalization was necessitated due to environmental requirements. However, the petitioner while pointing out that the decision to lay sea water MS pipeline was in compliance with the directives of KSPCB has submitted that the copy of the consent letter dated 9.7.2013 issued by KSPCB had been submitted in the rejoinder filed by the petitioner on 10.8.2013 in response to the reply of the respondents (the discoms of Karnataka) in the main petition. On scrutiny of the said affidavit dated 10.8.2013, it is observed that the consent for discharge of effluents issued by KSPCB on 9.7.2013 under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 was for the period from 1.7.2013 to 30.6.2014 and accordingly, the petitioner had submitted that the work for installation of MS return water pipe will be completed by June, 2014. Admittedly, this letter dated 9.7.2013 had escaped the attention of the Commission while passing the order dated 20.2.2014. Hence, the non-consideration of the affidavit dated 10.8.2013 in order dated 20.2.2014, is in our view, an error apparent on the face of the order. Accordingly, we consider this letter dated 9.7.2013 to examine the prayer of the petitioner for capitalization of this expenditure for installation of MS return water pipe.

12. As stated above, the consent letter of KSPCB is for the period till 30.6.2014 and accordingly the said work for replacement of GRP pipeline by MS pipe line is required to be completed by 30.6.2014.

The petitioner in its rejoinder vide affidavit dated 31.7.2014 has pointed out that the work towards replacement of GRP pipes by MS pipes has been completed on 17.5.2014 and will be subject to truing-up by the Commission after necessary prudence check. The petitioner has also submitted that it is only seeking in-principle approval of the cost of MS pipes as part of the capital cost since these pipes have been installed by replacing the GRP pipes under directives of KSPCB.

13. Firstly, the prayer of the petitioner for grant of in-principle approval of the cost of MS pipes cannot be accepted since the provisions of the 2009 Tariff Regulations, in terms of which the tariff of the generating station had been determined by order dated 20.2.2014, do not provide for the grant of in-principle approval of the expenditure. Secondly, the work for replacement of GRP pipes with MS pipes had been completed on 17.5.2014 and accordingly, the capitalization of the actual expenditure would be guided by the provisions of the CERC (Terms and Conditions of Tariff) Regulations, 2014 applicable for the period 2014-19 and not the 2009 Tariff Regulations. In view of this, we are not inclined to consider the prayer of the petitioner in this petition. However, the petitioner may claim the capitalization of this expenditure towards replacement of GRP pipes in the tariff petition to be filed in respect of the generating station for the tariff period 2014-19 and the same would be considered in accordance with the provisions of the 2014 Tariff Regulations.

14. Accordingly, Petition No. 14/RP/2014 is disposed of in terms of the above.

Sd/-
[A.K.Singhal]
Member

Sd/-
[M. Deena Dayalan]
Member

Sd/-
[Gireesh B.Pradhan]
Chairperson