

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 17/RP/2014

in

Petition No. 304/2009

Coram:

Shri M. Deena Dayalan, Member

Shri A.K.Singhal, Member

Shri A.S. Bakshi, Member

Date of Hearing: 21.8.2014

Date of Order: 24.9.2014

In the matter of

Review of order dated 15.5.2014 determining the tariff for Talcher Thermal Power Station (460 MW) for the period from 1.4.2009 to 31.03.2014

And

In the matter of

NTPC Ltd.
NTPC Bhawan,
Core-7, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003

...Petitioner

Vs

GRIDCO Limited
24, Janpath,
Bhubaneswar – 751007

...Respondent

Parties present:

Shri M.G. Ramachandran, Advocate, NTPC

Ms. Anushree Bardhan, Advocate, NTPC

Shri Vivek Kumar, NTPC

Shri A. Basu Roy, NTPC

Shri Shyam Kumar, NTPC

Shri A.S. Pandey, NTPC

ORDER

This review petition has been made by the petitioner, NTPC Ltd, for review of order dated 15.5.2014 in Petition No. 304/2009 whereby the Commission had determined the tariff of Talcher Thermal Power Station (460 MW) ('the generating station') for the period from 1.4.2009 to 31.3.2014 in terms of the proviso to Regulation 6(1) of the 2009 Tariff Regulations for the period from 1.4.2009 to 31.3.2014. Aggrieved by the said order, the petitioner has sought review on the ground of error apparent on the face of record, raising the following issues:

- (a) Rate of depreciation as per Tariff Regulations 2009;*
- (b) Adjustment of depreciation recovered at 90% of estimated de-capitalised value for assets de-capitalised under R&M;*
- (c) Allowance of disallowed Stage-I items of R&M Phase-IV;*
- (d) Correction of error in double deduction of CW pump de-capitalisation value in tariff;*
- (e) Consideration of de-capitalisation on actual basis at the time of true-up instead of estimated basis @13% of allowed additional capitalisation; and*
- (f) Consideration of upfront fees paid for loans in interest rate for PNB, LIC-III D4 & LIC-III D1 loans.*

2. Heard the learned counsel for the petitioner on 'admission'. Considering the submissions of the petitioner and based on the documents available on record, we dispose of the issues raised by the petitioner, for the reasons stated in the subsequent paragraphs.

Rate of Depreciation as per 2009 Tariff Regulations

3. The petitioner had claimed depreciation considering the weighted average rate of depreciation of 5.25%, 5.09%, 5.10% & 5.12% for the years 2009-10, 2010-11, 2011-12 and 2012-13 and has claimed depreciation for the period from 2013-14 to 2020-21 by spreading of the remaining depreciable value in line with the provisions of the 2009 Tariff Regulations. However, the Commission in its order dated 15.5.2014 had disallowed the claim of the petitioner and allowed the depreciation

rate of 4.5% in line with the decision contained in the orders of the Commission dated 19.6.2002 in Petition No. 62/2000, order dated 23.3.2007 in Petition No. 91/2004 and order dated order dated 5.9.2008 in Review Petition No. 72/2007(in Petition No. 91/2004).

4. The petitioner in this petition has submitted that the claim of the petitioner has been rejected by the Commission by placing erroneous reliance on the earlier tariff orders. The petitioner while pointing out that the rate of depreciation at 4.5% per annum beyond the period 2004-09 is contrary to the 2009 Tariff Regulations applicable for the period 2009-14 has stated that the reduction in the rate of depreciation to 4.5% annum for the period 2009-14 will undoubtedly lead to under recovery of depreciation at the end of the useful life of the generating station. Accordingly, the petitioner has submitted that there is error apparent on the face of the record for review of order.

5. The matter has been examined. The petitioner has contended that the claim for depreciation considering the weighted average rate is in line with the provisions of the 2009 Tariff Regulations and the reduction of rate of depreciation in order dated 15.5.2014 is contrary to the provisions of the said regulations. It is noticed that though the claim of the petitioner was in accordance with the provisions of the 2009 Tariff Regulations, the Commission, after taking into consideration the various orders passed in the petitions referred above in respect of this generating station and keeping in view that the R&M activity is yet to be completed and that the life of the generating station would be extended for 20 years, by a conscious decision, applied the weighted average rate of depreciation of 4.5% for calculating the depreciation. The petitioner, in our considered view, has sought to re-argue the case on merits, in this review application, which is not permissible. The Commission, having considered the submissions of the petitioner and allowed the depreciation of 4.5% on the strength of various other orders in respect of the generating station, there is no reason to review the said decision arrived at in

order dated 15.5.2014. Accordingly, the prayer of the petitioner is rejected and review on this ground fails.

Adjustment of depreciation recovered at 90% of estimated de-capitalised value for assets de-capitalised under R&M

6. The petitioner has submitted that the Commission in its order dated 15.5.2014 has adjusted depreciation recovered for de-capitalised assets (i.e estimated de-capitalised and actual de-capitalised items) by considering the depreciation adjustment in the same ratio as the one submitted by NTPC for actual de-capitalisation items. The petitioner has also submitted that it had submitted the adjustment based on actual de-capitalised items only, which included many items which has been capitalised in the last few years for which full depreciation had not been recovered. While pointing out that the adjustment considered for actual de-capitalisation, year-wise was 73.6%, 80.5%, 56.5% and 60.3% for the years 2009-10, 2010-11, 2011-12 and 2012-13 respectively, the petitioner has submitted that the Commission has adopted the same ratio of de-capitalisation adjustment for 2013-14 as for 2012-13 in the absence of actual de-capitalisation for 2013-14. However, the petitioner has further stated that most of assets whose de-capitalisation has been considered by the Commission are the ones which were capitalised before takeover i.e. 1995 and therefore the depreciation adjustment for these R&M assets de-capitalised ought to have been at 90% of the estimated de-capitalised value. The petitioner has added that the details of the year of capitalisation for assets de-capitalised on estimated basis were duly submitted by NTPC and specific reference may be made to affidavits filed on 26.6.2013 and 7.11.2013 for the periods 2009-12 and 2012-13 respectively.

7. The matter has been examined. It is noticed that in respect of most of the R&M assets de-capitalised under R&M, the corresponding de-capitalisation value was considered on estimated basis in order dated 15.5.2014. Since, these de-capitalisation were on estimated basis and the actual year

of de-capitalisation were not known at the time of computation of tariff, depreciation adjustments for these R&M assets de-capitalised on estimated basis, have been made considering proportion of such adjustment as claimed by the petitioner. Moreover, this depreciation adjustment made is subject to revision at the time of truing-up of tariff of the generating station. In view of this, the error in the depreciation adjustments shall be rectified based on the details submitted by the petitioner during truing-up of tariff in terms of Regulation 6(1) of the 2009 Tariff Regulations. The prayer of the petitioner is disposed of accordingly.

Allowance of disallowed Stage-I items of R&M Phase-IV

8. The petitioner has submitted that Commission in its order dated 15.5.2014 has wrongly disallowed additional capitalization expenditure for R&M Phase-IV, Stage-I. The petitioner has submitted that it had claimed ₹32.11 crore in 2009-14 towards capitalization of R&M Phase-IV schemes including Stage I & II and other T&P and the Commission in its order dated 15.5.2014 has allowed ₹13.00 crore for Stage-II and disallowed ₹19.10 crore for Stage-I, by placing wrong reliance on the order dated 7.6.2013 passed in Petition No.212 of 2010. The petitioner has pointed out that the claim for Stage-I of the generating station was only ₹9.44 crore and there has been no explanation or justification for how the figure of ₹19.10 crore for Stage-I was arrived at by the Commission.

9. We have examined the matter. Against the expenditure for ₹32.11 crore claimed by the petitioner in respect of R&M Phase-IV, the Commission in its order dated 15.5.2014 had allowed expenditure for ₹13.00 crore on Stage-II items only. However, after prudence check, an expenditure of ₹19.10 crore was disallowed which comprised exclusively of Stage-I items of ₹7.79 crore, Stage-I & II combined items of ₹1.65 crore, expenditure of ₹6.81 crore from O & M budget, Expenditure of ₹ 0.006 crore towards Tools & Tackles, Minor Assets of ₹1.26 crore and general items of ₹1.56 crore.

In view of this, the contention of the petitioner is not acceptable and the prayer of the petitioner for review of the order dated 15.5.2014 on this ground is rejected.

Correction of error in double deduction of de-capitalisation towards CW pump

10. The petitioner has submitted that it had de-capitalised assets for ₹22.66 crore including an amount of ₹35.26 lakh towards CW pumps capitalised during R&M Phase-III in the year 2011-12. The petitioner has also submitted that the Commission has allowed additional capitalisation for R&M Phase II, III and IV after considering the estimated de-capitalisation @13% for these items. However, the petitioner has pointed out that as CW pumps were included in the actual de-capitalisation submitted earlier, there has been double deduction of de-capitalisation towards capitalisation of CW pump in order dated 15.5.2014.

11. We have examined the matter. It is observed that the Commission in order dated 15.5.2014 had allowed additional capitalization for R&M Phase II, III and IV items including CW pump, after considering the estimated de-capitalisation of @13% for these items. However, the petitioner while claiming the additional capitalisation for ₹159.15 lakh for CW pumps Stage-I had not indicated that the de-capitalisation had already been considered for this item. Moreover, the said amount for ₹35.26 lakh shown by the petitioner towards de-capitalisation of CW Pump Stage-I do not find mention in the details provided in Annexure-1B of the affidavit dated 7.11.2013 filed by the petitioner. Only an amount of ₹39.18 lakh towards de-capitalisation of CW Pump was indicated and it was neither submitted that this de-capitalisation claimed was against the R&M for the year 2011-12 nor was it clear from the submissions as to whether the said claim was related to Stage-I or Stage -II of the generating station. In this background and in the absence of any details from the petitioner, de-capitalisation was effected based on the submissions available on record. In view of this, there exists

no error apparent on the face of the order and the prayer of the petitioner for review of order on this ground is rejected.

Consideration of de-capitalization on actual basis at the time of true-up instead of estimate basis @13% of allowed additional capitalisation

12. The petitioner has submitted that the Commission has considered estimated de-capitalization @13% for allowing additional capitalization with corresponding de-capitalisation under R&M Phase-II, III & IV in line with the de-capitalization allowed by Commission in Petition No.35/2014 for 2009-14 tariff vide order dated 25.6.2006, but has however not mentioned that the de-capitalisation on actual basis as per books of accounts shall be considered at the time of truing-up in line with the principle followed in R&M Phase-IV order dated 7.6.2013. Accordingly, the petitioner has prayed that the order dated 15.5.2014 is required to be reviewed to include a statement regarding consideration of de-capitalisation on actual basis for the purpose of tariff as per books of accounts at the time of truing-up of tariff of the generating station.

13. The matter has been examined. Admittedly, the petitioner had not furnished the details as to the original gross value of old assets for the purpose of de-capitalisation while allowing additional capitalization under R&M Phase-II, III & IV. Hence, in the absence of any actual de-capitalisation figure furnished by the petitioner and in terms of the order dated 25.6.2006, the estimated de-capitalization @13% was considered. Accordingly, no provision was made in order dated 15.5.2014, indicating that the de-capitalization on actual basis as per books of account shall be considered at the time of truing-up of tariff of the generating station. However, considering the fact that the Commission in its order dated 7.6.2013 in Petition No. 212/2010 had granted liberty to the petitioner to furnish the actual value of old assets for de-capitalisation (pertaining to R&M Phase-IV) and since tariff allowed is

subject to truing-up in terms of Regulation 6(1) of the 2009 Tariff Regulations, we are inclined to grant the relief to the petitioner as prayed for on this ground. We order accordingly.

Consideration of upfront fees paid for loans in interest rate for PNB, LIC-III D4 & LIC-III D1 loans

14. The petitioner has submitted that the Commission in its order dated 15.5.2014 on the issue of interest on loan applied a different rate of interest as against the rate of interest, details of which was duly submitted by NTPC in Form-8. The petitioner has also submitted that the interest rate considered in order dated 15.5.2014 does not include adjustment in interest rate on account of upfront fees paid by NTPC at the time of drawl of these loans which was provided in the original petition. The petitioner has pointed out that the Commission had granted the upfront fees in respect of this station for the period 2004-09 vide order dated 3.9.2012 in Petition No. 184/2009. Accordingly, the petitioner has submitted that the details provided by NTPC have clearly escaped the attention of the Commission and the error apparent on the face of the record may be rectified.

15. The matter has been examined. The petitioner has claimed additional interest rate @ 0.05% & 0.02% in lieu of upfront fees corresponding to PNB and LIC-III loans. On scrutiny of Form-8 in respect of the above said loans, it was observed that the same loans have also been allocated to various other generating stations such as Vindhyachal STPS, Stage-III, where no additional interest of 0.20% had been claimed by the petitioner. Moreover, in the absence of documentary evidence, the claim of upfront fees in respect of other generating stations of the petitioner had been disallowed by the Commission in its various orders, which had not been challenged by the petitioner. Accordingly, the Commission, following the consistent methodology of not allowing upfront fees to the generating stations of the petitioner, had disallowed the same in order dated 15.5.2014, while working out the weighted average rate of interest on loan. It is also observed that the rate of interest corresponding to

above loans as considered in order dated 15.5.2014 are same as those claimed and considered in the earlier orders of Commission for the instant generating station. Accordingly, these rates had only been considered in order dated 15.5.2014. On scrutiny of the corresponding loan agreement, it is further observed that the upfront fee was to be paid by 31.3.2007. In this backdrop, it is not clear as to why the petitioner has claimed the same as additional interest during this tariff period. In our view, there is no error apparent on the face of the order and review on this count is not maintainable.

16. Review Petition is disposed of in terms of the above at the admission stage.

Sd/-
(A.S. Bakshi)
Member

Sd/-
(A.K.Singhal)
Member

Sd/-
(M. Deena Dayalan)
Member