

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 18/RP/2014**

**in**

**Petition No. 135/GT/2013**

**Coram:**

Shri Gireesh B. Pradhan, Chairperson

Shri M. Deena Dayalan, Member

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

**Date of Hearing: 11.09.2014**

**Date of Order: 29.12.2014**

**In the matter of**

Review of Order dated 13.5.2014 in Petition No.135/GT/2013 revising the tariff of Kahalgaon Super Thermal Power Station, Stage-I (840 MW) for the period from 1.4.2009 to 31.3.2014.

**And in the matter of**

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

**...Petitioner**

Vs

1. West Bengal State Electricity Distribution Co. Ltd.

Vidyut Bhawan, Block-DJ, Sector-II,  
Salt Lake City, Kolkata-7000091

2. Bihar State Power (Holding) Company Ltd,

Vidyut Bhawan, Bailey Road,  
Patna-800001

3. Jharkhand Urja Vikas Nigam Ltd,

Engineering Building, HEC, Dhurwa,  
Ranchi-834004

4. GRIDCO Ltd.

Vidyut Bhawan, Janpath,  
Bhubaneshwar-751007



5. Damodar Valley Corporation,  
DVC Towers, VIP Road,  
Kolkata-700054.

6. Power Department,  
Government of Sikkim,  
Kazi Road, Gangtok, Sikkim-737101

7. Electricity Department,  
Union Territory of Puduchery  
58, Subhash Chandra Bose Salai,  
Puduchery-605001

8. Tamil Nadu Generation & Distribution Corporation Ltd,  
NPKRP Maaligai, 800, Anna Salai,  
Chennai-600002

9. Madhya Pradesh Power Trading Company Ltd,  
Shakthi Bhavan, Vidyut Nagar,  
Jabalpur-482008

10. Maharashtra State Electricity Distribution Company Ltd,  
Prakashgad, Bandra (East),  
Mumbai -400051

11. Gujarat Urja Vikas Nigam Limited,  
Vidyut Bhavan, Race Course,  
Vadodara-390007

12. Uttar Pradesh Power Corporation Ltd,  
Shakti Bhavan, 14, Ashok Marg,  
Lucknow – 226001

13. Power Development Department,  
Government of J&K, New secretariat,  
Srinagar

14. Power Department,  
UT Secretariat, Additional Office Building  
Sector 9D, Chandigarh-160009

15. BSES-Rajdhani Power Ltd.  
BSES Bhawan, Nehru Place,  
New Delhi – 110019

16. BSES-Yamuna Power Ltd.,  
Shakti Kiran Building, Karkardooma,  
Delhi- 110072

17. Tata Power Delhi Distribution Ltd.,  
NDPL House, Hudson Road,  
Kingsway Camp, Delhi-110009

18. Electricity Department,  
Administration of Dadra and Nagar Haveli,  
Silvassa via VAPI

19. Electricity Department,  
Administration of Daman and Diu,  
Daman-396210

...Respondents

**Parties present:**

Shri M.G. Ramachandran, Advocate, NTPC  
Ms. Poorva Saigal, Advocate, NTPC  
Shri I. Uppal, NTPC  
Shri Sanjay Srivastav, NTPC  
Shri R.B. Sharma, Advocate, BRPL, JSEB & GRIDCO  
Shri Manish Garg, UPPCL

**ORDER**

This application has been made by the petitioner, NTPC Ltd for review of order dated 13.5.2014 in Petition No.135/GT/2013 whereby the Commission had revised the tariff of Kahalgaon Super Thermal Power Station, Stage-I (840 MW) (hereinafter "the generating station') 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 of the said order dated 13.5.2014 on the ground of error apparent on the face of the order and has raised the following issues.

- (i) Allowance of capitalization of expenditure towards 5 km scheme during 2013-14;
- (ii) Consideration of exclusion of de-capitalization of (-) ₹99.83 lakh during 2010-11 on account of assets not owned by the company;
- (iii) Minor corrections in working for interest on loan.

3. The matter was heard on 'admission' on 24.7.2014 and the Commission by its order dated 31.7.2014 admitted the petition on the issues raised in para 2(i) and (ii) above and ordered notice on the respondents. By the same order, the Commission directed that the issue in para 2(iii) above to be rectified at the time of passing final order in the petition.

4. The respondents BRPL, GRIDCO, and UPPPCL have filed reply in the matter and the petitioner has filed its rejoinder to the said replies.

5. Heard the learned counsel for the parties on the issues admitted vide order dated 31.7.2014. We now proceed to consider the prayer of the petitioner in the subsequent paragraphs.

**Allowance of capitalization of expenditure towards 5 km scheme during 2013-14**

6. The petitioner in its petition had claimed projected additional capital expenditure of ₹2577.00 lakh during 2013-14 for creation of infrastructure for supply of reliable power within a radius of five kilometers of the power station of (5 km scheme) and the Commission by its order dated 15.5.2014 had disallowed the same since the scheme for creation of infrastructure for supply of reliable power within a radius of five kilometers was withdrawn by the Govt. of India, Ministry of Power vide its notification dated 25.3.2013.

7. The petitioner in this petition has submitted as under:

(a) The Government of India vide letter dated 27.4.2010 had issued the scheme for supply of electricity within a radius of 5 km of the power stations set up by Central Public Sector Undertakings (CPSU) and under the scheme, the concerned CPSU was required to create infrastructure for supply of reliable power to the households of the villages within a radius of 5 km of existing and upcoming power stations of the CPSUs.

(b) The scheme was taken up for implementation in various stations of the petitioner including this generating station and capitalization of the expenditure to be incurred on the scheme was sought for in Petition No.135/GT/2013 filed for determination of tariff in respect of this generating station.

(c) While issuing the tariff order dated 13.4.2012 in Petition No.282/2009 (Kahalgaon STPS-II) on projected additional capitalization, the Commission had granted liberty to the petitioner to approach the Commission to claim the expenditure towards 5 Km scheme as and when the same was incurred.

(d) Prior to the withdrawal of the scheme, since work was awarded and substantial progress in implementation of the scheme was made in respect of eight stations of the petitioner including this generating station, incurring major portion of expenditure earmarked for GOI scheme, the Ministry of Power, GOI by order dated 5.3.2014 directed the completion of 8 ongoing projects under the scheme as well as to handover the assets to the concerned state power utilities free of cost and to capitalize the expenditure through CERC as per provisions of the scheme.

(e) Based on the progress of work, the projection of expenditure against the 5 km scheme was indicated in the true-up tariff petition for this station. NTPC by affidavit dated 12.3.2014 also submitted that majority of works under the scheme in this station has been completed during 2013-14 and a sample of handing over certificates to this effect was also enclosed with the said submission. It was further submitted in the affidavit that the accounts for the same are being reconciled and actual expenditure shall be submitted at the time of true-up.

(f) In a similar case of Singrauli STPS, the Commission vide its order dated 15.5.2014 in Petition No. 188/GT/2013 had duly allowed the claim based on the facts duly acknowledging the letter dated 5.3.2014 of MOP, GOI. In the instant case, the Commission has not considered the above aspect and it appears that the submission made by the petitioner in affidavit dated 13.3.2014 have escaped the attention of the Commission while passing the order dated 15.5.2014. This is an error apparent on the face of record and there is sufficient cause to allow the review petition.

(g) The Commission may take into cognizance the affidavit dated 13.3.2014 and grant liberty to the petitioner (as in the case of Singrauli STPS) to approach the Commission at the time of final true-up to claim the actual expenditure on account of GOI scheme and MOP directive in terms of Regulation 6 of the 2009 Tariff Regulation.

8. During the hearing on 11.9.2014, the learned counsel for the petitioner reiterated the above submissions. The learned counsel for the respondent, GRIDCO submitted that the expenditure incurred in respect of the scheme for supply of electricity within 5 km radius should be met from the funds under the CSR. The learned counsel also submitted that the claim for additional capital expenditure under Regulation 9(2) of the 2009 Tariff Regulations is within the discretionary power of the Commission and accordingly, the petitioner has no right to claim such expenditure. He added that since the Commission in its discretion has rejected the claim of the petitioner, no review is maintainable. The representative of the respondent, UPPCL has submitted that the scheme for supply of electricity within 5 km radius form part of community development and hence cannot be claimed for additional capitalization. He also submitted that being a CSR activity, the expenditure cannot from part of the capital cost.

9. The submissions of the parties have been considered. The petitioner has submitted that the Commission while passing the order dated 15.5.2014 had not taken into consideration the affidavit dated 12.3.2014 as regards the submissions for capitalization of the expenditure towards 5 km scheme. It is noticed that pursuant to the exemption granted by the MOP, GOI vide notification dated 5.3.2014 against withdrawal of this scheme for 8 generating stations of the petitioner, including this generating station, the petitioner vide affidavit dated 12.3.2014 had claimed ₹2577.00 lakh during 2013-14 for capitalization of the expenditure for implementation of the said scheme. The petitioner had also submitted that the assets under the scheme have been completed and the accounts for the same are being reconciled and actual expenditure shall be submitted at the time of truing-up of tariff. It is also noticed that the Commission in order dated 15.5.2014 in Petition No.188/GT/2013 had allowed the claim of the petitioner for capitalization of this expenditure in terms of the letter dated 5.3.2014 of the

MOP, GOI granting exemption from withdrawal of the scheme in respect of Singrauli TPS. In the above background, the non consideration of the submissions of the petitioner in affidavit dated 12.3.2014 on this issue, is in our view, an error apparent on the face of the order and the same is required to be reviewed. Accordingly, in terms of the submissions of the petitioner, we direct that the additional capital expenditure on 5 km scheme shall be admissible to the petitioner. However, the actual expenditure incurred on this scheme for 2013-14 would be considered at the time of final truing-up of tariff of the generating station for the period 2009-14 in terms of Regulation 6 of the 2009 Tariff Regulations.

**Consideration of exclusion of decapitalization of (-) ₹99.83 lakh on account of Assets not owned by the company**

10. The petitioner in the original petition had claimed the exclusion of (-) ₹99.83 lakh during 2010-11 towards “Assets not owned by the company”. However, the Commission in order dated 15.5.2014 had disallowed the exclusion on the ground that the assets do not render any useful service.

11. The petitioner has now submitted that it had sought the exclusion of de-capitalization of (-) ₹99.83 lakh in 2010-11 on account of “assets not owned by the company” as they were removed from gross block due to change in accounting policy, consequent to the opinion of the Expert Advisory Committee of the Institute of Chartered Accountant of India. The petitioner has also submitted that these assets which were capitalized under community development were taken out of books of account as per accounting policy as the ownership of assets was not with NTPC. The petitioner has further submitted that the exclusion of these assets from the gross block was not on account of its unserviceability as these assets are rendering useful service. Accordingly, the petitioner has submitted that the removal of these assets from capital cost on the ground that they do not render useful service is error apparent on

the face of the record. The learned counsel for the petitioner reiterated the above submissions during the hearing.

12. The learned counsel for the respondent, GRIDCO while pointing out that there is no provision for exclusion under the 2009 Tariff Regulations, submitted that even the assets which are part of the project, but not in use, are required to be taken out of capital cost. He also submitted that creation of assets towards community development cannot form part of the capital cost and hence the non admission of exclusion by the Commission on the ground that they do not render any useful service to the company is valid. The learned counsel added that there are definitive limits to the exercise of the power of review and the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 of the Civil Procedure Code, 1908. Accordingly, the learned counsel has submitted that the review petition is not maintainable on this ground. The representative of the respondent, UPPCL has submitted that since the assets/works were capitalized under community development and the ownership is not with NTPC, the Commission has rightly not admitted the exclusion on the ground that the asset does not render any useful service. In its rejoinder to the reply of UPPCL vide affidavit dated 5.12.2014, the petitioner has submitted that these assets /works were capitalized in 1993-97 as part of the Rehabilitation & Resettlement (R&R) activities and not under community development. The petitioner has also clarified that these assets have been created for fulfilling the obligation of the petitioner towards the compensation for land purchased for the station. The petitioner has reiterated that the ownership of these assets is not vested in NTPC and hence these assets have been taken out of books of account due to change in accounting policy consequent to the opinion of the Expert



Advisory Committee of the Institution of Chartered Accountant of India and not on account of un serviceability of these assets. NTPC has submitted that these assets are rendering useful service.

13. The submissions of the parties have been examined. It is noticed that the petitioner, in response to letter dated 9.10.2012, had vide affidavit dated 22.11.2012 clarified that the amount has been claimed under exclusion, as the work/assets capitalized and put to use under R&R/CSR schemes has been taken out of gross block to comply with the accounting requirements. The relevant submission of the petitioner in affidavit dated 22.11.2012 is extracted as under:

*“Assets not owned by the Company: Claimed under exclusion, as the works/assets capitalized and put to use under R&R/CSR schemes has been taken out of Gross Block as per accounting requirements. Such expenditures are required for constructing and operating the power plants, therefore such expenditure embodies future economic benefits.”*

14. It is seen from the above that the petitioner in the affidavit dated 22.11.2012 had explained the reason for taking out the assets from gross block in order to meet accounting requirements. This information was inadvertently not considered by the Commission at the time of passing the order dated 15.5.2014, and the Commission disallowed the expenditure on the ground that the assets are not in use. The petitioner has in this petition reiterated that the exclusion of these assets from the gross block was not on account of its unserviceability as these assets are rendering useful service but due to the change in accounting policy consequent to the opinion of the Expert Advisory Committee of the Institution of Chartered Accountant of India. We are of the view that the non-consideration of the submissions of the petitioner while passing the order dated 15.5.2014 constitute an error apparent on the face of the record. Accordingly, review of the order dated 15.5.2014 on this ground is allowed. The expenditure on such assets not owned by the petitioner has been incurred for facilitating the completion

of the project and therefore such assets form part of the capital cost. Accordingly, the exclusion of (-) ₹99.83 lakh towards de-capitalization of these assets under “assets not owned by the company” is allowed. It is however clarified that since the tariff period of 2009-14 is over, the impact on account of the exclusion of the said amount shall be considered at the time of truing-up of tariff of the generating station in terms of Regulation 6 of the 2009 Tariff Regulations.

**Minor corrections in working for interest on loan**

15. The petitioner has submitted that in para 56 of the order dated 13.5.2014 relating to the computation for interest on loan, the value of cumulative repayment as on 1.4.2009 has been taken as ₹100982.70 lakh and whereas in para 56(b) of the said order, the value has been mentioned as ₹100982.93 lakh. Accordingly, the petitioner has prayed that the Commission may be pleased to correct the error and modify the order on this count. It is noticed that the cumulative repayment as on 1.4.2009 is ₹100982.70 lakh and the said amount had been inadvertently mentioned as ₹100982.93 lakh in para 56 (b) of the said order. This is an error apparent on the face of the order dated 15.5.2014. Accordingly, the prayer for review of order on this count is allowed and the value of cumulative repayment of ₹100982.70 lakh as on 1.4.2009 will be considered at the time of time of truing-up of tariff of the generating station in terms of Regulation 6 of the 2009 Tariff Regulations.

16. Review petition 18/RP/2014 is disposed of in terms of the above.

**Sd/-  
(A.S. Bakshi)  
Member**

**Sd/-  
(A.K.Singhal)  
Member**

**Sd/-  
(M. Deena Dayalan)  
Member**

**Sd/-  
(Gireesh B.Pradhan)  
Chairperson**