

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 21/RP/2014

in

Petition No. 176/GT/2013

**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: 1.10.2014

In the matter of

Review of order dated 15.5.2014 in Petition No.176/GT/2013 pertaining to revision of tariff of Rihand Super Thermal Power Station, Stage-I (1000 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. Uttar Pradesh Power Corporation Ltd
Shakti Bhawan,
14, Ashok Road,
Lucknow – 226001

2. Jaipur Vidyut Vitran Nigam Ltd
Vidyut Bhawan, Janpath,
Jaipur – 302205

3. Ajmer Vidyut Vitran Nigam Ltd
Old Power House,
Hatthi Bhatta, Jaipur Road,
Ajmer – 305001

4. Jodhpur Vidyut Vitran Nigam Ltd
New Power House, Industrial Area,
Jodhpur – 342003

5. Tata Power Delhi Distribution Ltd
33 kV Sub-station, Kingsway Camp, Delhi –110009



6. BSES Rajdhani Power Ltd
BSES Bhawan, Nehru Place,
New Delhi – 110019
7. BSES Yamuna Power Ltd
BSES Bhawan, Nehru Place,
New Delhi – 110 019
8. Haryana Power Purchase Centre,
Shakti Bhawan, Sector, 6
Panchkula – 134109
9. Punjab State Power Corporation Ltd
The Mall, Secretariat Complex,
Patiala – 147 001
10. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House,
Shimla-171004
11. Power Development Department,
Government of J&K,
Secretariat, Srinagar-19009
12. Electricity Department (Chandigarh),
Union Territory of Chandigarh,
Addl. Office Building,
Sector 9D, Chandigarh – 160009
13. Uttarakhand Power Corporation Ltd
Urja Bhawan, Kanwali Road,
Dehradun – 248001

....Respondents

Parties present:

Shri M.G. Ramachandran, Advocate, NTPC
Ms. Anushree Bardhan, Advocate, NTPC
Shri Vivek Kumar, NTPC

ORDER

This petition has been made by the petitioner, NTPC Ltd, for review of order dated 15.5.2014 in Petition No.176/GT/2013 whereby the Commission had revised the tariff of Rihand Super Thermal Power Station, Stage-I (1000 MW) 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.

2. Aggrieved by the said order, the petitioner has sought review of the said order dated 15.5.2014 on the ground of error apparent on the face of the order, raising the following issues:

- (a) *Revising the allowance of capital expenditure earlier made in the order dated 7.6.2012 in Petition No. 261 of 2009 on Electro Static Precipitators (ESPs) of the value of ₹13000 lakh;*
- (b) *Not allowing exclusion of the de-capitalization of the assets which had become old and unserviceable when the value of the corresponding replaced assets are not allowed to be capitalized. This is in regard to an amount of (-) ₹703.36 lakh and (-) ₹285.99 lakh on account of replacement items and Locos & Wagons respectively;*
- (c) *In computing the depreciable value during the tariff periods 2010-11, 2011-12, 2012-13 and 2013-14, an amount of ₹327.38 lakh has not been accounted for on the wrong premise that the same relates to freehold forest land, whereas the related land is on leasehold;*
- (d) *De-capitalization of Wagons and Locos effected for the years 2010-11 and 2011-12 has not been taken into consideration while computing the cumulative depreciation reduction due to de-capitalization; and*
- (e) *The adjustment of cumulative Depreciation on account de-capitalization of spares during the period 2011-12 which are part of capital cost amounting to (-) ₹27.16 lakh has been considered wrongly in the year 2009-10 instead of 2011-12 when the de-capitalization was effected*

3. 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.

Revising the allowance of capital expenditure earlier made in the order dated 7.6.2012 in Petition No. 261 of 2009 on Electro Static Precipitators (ESPs)

4. The petitioner has submitted that the Commission in its order dated 7.6.2012 in Petition No. 261 of 2009 had allowed the value of ₹13000 lakh towards Electro Static Precipitators (ESPs) proposed to be installed by NTPC, in terms of Regulation 9(2)(ii) of the 2009 Tariff Regulations dealing with Change in Law. The petitioner has also submitted that the ESPs were to be installed in compliance with the directions contained under the Pollution Control Laws and having allowed the same after due consideration, the Commission ought not to have reconsidered the claim and rejected the same on the ground that the generating station would be entitled to get Special Allowance from the year 2015-16 as per the provisions of the 2014 Tariff Regulations since the generating station

would have completed 25 years of commercial operation by then. The petitioner has further submitted that the ESP package was awarded on 1.3.2013 after the same was allowed by the Commission and considering the time line of 36 months, the package is likely to be commissioned /capitalised during 2015-16. The petitioner has contended that the claim for ESP ought to have been considered as per scope of Regulation 9(2)(ii) dealing with change in law and if the claim is admissible under the said provision, it cannot be rejected by reference to any other generic provision such as Regulation 10 of the 2009 Tariff Regulations. The petitioner has stated that R&M of ESPs is for compliance of statutory provision and not for extension of life of the station and therefore should not be linked to Special allowance. The petitioner has argued that the Commission has acted beyond the scope of Regulation 9(2)(ii) in linking the claim with Special allowance and rejecting it consequentially. Accordingly, the petitioner has submitted that there is error apparent on the face of the order and the same needs to be rectified.

5. We have examined the matter. Regulation 9(2) of the 2009 Tariff Regulations as amended on 31.12.2012 provides that the *capital expenditure incurred or projected to be incurred after the cut-off date, may in its discretion*, be admitted by the Commission, subject to prudence check. The Commission had allowed the additional capital expenditure of ₹13000.00 lakh towards R&M of ESPs in order dated 7.6.2012 in Petition No. 261/2009 observing as under:

"28. Taking into consideration the submissions of the petitioner, we are of the view that the additional capital expenditure of ₹13000.00 lakh towards R&M of ESPs should be allowed for capitalization during 2013-14 under Regulation 9(2)(ii), subject to the petitioner demonstrating the achievement of the emission level of 100 mg/Nm³, specified by the Uttar Pradesh Pollution Control Board. Since, the units/generating station would be at the fag end of its useful life during the years 2012-13 and 2013-14, during which time the modification of ESPs have been proposed, we are of the view that recovery of R&M costs should not be necessarily linked to the repayment tenure as per provisions of the 2009 Tariff Regulations. Moreover, R&M of ESPs would extend the useful life for a reasonable period. Since, the generating station would operate for an extended life of 20 to 25 years (approx) after R&M, we consider it reasonable, if the investments on R&M of ESPs are serviced over a period of 20 years, beginning from the date of completion of R&M of ESPs, instead of the 8 years proposed by the petitioner. This according to us would take care of the interest of the parties"

6. Though the expenditure towards ESP was allowed to be capitalised by order dated 7.6.2012 in Petition No. 261/2009, as above, the petitioner in Petition No.176/GT/2013 (truing-up) had not claimed any additional capital expenditure for 2009-14, under this head. However, the petitioner vide its affidavit dated 8.5.2013 had submitted that the package was awarded to M/s Hitachi after incorporating the environment norm for ESP emission. The petitioner had further submitted that considering the timeline in the contract, the requirement of shutdowns, the actual capitalization would stretch beyond 2013-14 and would continue till 2015-16. Though capitalisation of the expenditure for 2013-14 was allowed by order dated 7.6.2012 based on the submissions made thereunder, the Commission, taking into account the submission of the petitioner in truing-up that the capitalization of this expenditure would stretch beyond 2013-14 and would continue till the year 2015-16, disallowed the projected additional capital expenditure on R&M of ESPs during 2009-14 on the ground that the Units/generating station would be eligible to claim Special Allowance in lieu of R&M after expiry of 25 years of useful life, by the time the expenditure on ESPs are actually capitalized by the petitioner. Having disallowed the expenditure under this head based on the revised submissions of the petitioner as indicated above, the petitioner cannot contend that the expenditure should not be revised or rejected by the Commission. In our view, there exists no error apparent in the face of the order on this count and hence, review is rejected.

Not allowing exclusion of the de-capitalization of the assets which had become old and unserviceable when the value of the corresponding replaced assets are not allowed to be capitalized. Amount of (-)₹703.36 lakh and (-)₹285.99 lakh on account of replacement items and Locos & Wagons respectively

7. The petitioner in the truing up petition had sought the exclusion of (-) ₹703.36 lakh [(-) ₹114.21 lakh in 2009-10, (-)₹526.38 lakh in 2010-11 and (-)₹62.77 lakh in 2011-12] for de-capitalization of old assets replaced under R&M schemes. Further, the petitioner had sought the Exclusion of (-) ₹55.79

lakh [(-)₹22.80 lakh in 2010-11 & (-)₹32.99 lakh in 2011-12]] on account of de-capitalization of Wagons and (-)₹230.20 lakh [(-)₹198.31 lakh in 2010-11 and ₹31.89 lakh in 2011-12] on account of de-capitalization of Locos. However, the Commission in order dated 15.5.2014 did not allow the exclusions of (-)₹703.36 lakh on replaced assets and (-)₹285.99 lakh on Locos & Wagons.

8. As regards the rejection of the exclusion of the de-capitalised assets due to replacement of items amounting to (-) ₹703.36 lakh, the petitioner has submitted that the Commission had not allowed the capitalisation of the value of replaced assets in order dated 7.6.2012 in Petition No. 261/2009. The petitioner has contended that if the corresponding capitalisation of new assets is not allowed, the value of old assets which have become unserviceable ought not to be de-capitalised. The petitioner has further submitted that it has incurred capital expenditure on replacement of old and unserviceable assets and the petitioner should not be penalized by (a) de-capitalizing the value of old and unserviceable assets from the capital cost and (b) not allowing capitalization of the value of replaced assets. In other words, the petitioner has pointed out that in case capitalization of replacement value of assets is not allowed, logically, the de-capitalization of the value of old and unserviceable assets should be excluded for the purpose of tariff.

9. As regards the rejection of the exclusion of the de-capitalized assets amounting to (-) ₹285.99 lakh [(-)₹230.20 lakh for Locos and (-)₹55.79 lakh for Wagons], the petitioner has submitted that the Commission has not allowed the capital expenditure incurred on procurement of Wagons on the ground that there is no provision under Regulation 9 (2) of the 2009 Tariff Regulations to consider the expenditure for procurement of Wagons and replacement of old Wagons. The petitioner has further submitted that the Commission in its order dated 7.6.2012 in Petition No. 261/2009 had not allowed expenditure of ₹828 lakh on re-powering of locomotives during the period 2012-13 and 2013-14.

Accordingly, the petitioner has submitted that if the corresponding capitalisation of the new assets is not allowed, the value of the old assets which have become unserviceable ought not to be de-capitalized.

10. The submission of the petitioner has been examined. The Commission in its order dated 15.5.2014 while dealing with exclusions has clearly given the reasons for disallowing the exclusions of de-capitalization of old assets replaced by new assets (though not allowed in tariff) as they form part of the capital cost. In a cost plus tariff any asset which is part of the capital cost should be taken out from the capital base as and when the asset is de-capitalized on the ground that the asset does not render any useful service to the generating station. Accordingly, we find no merit in the submission of the petitioner that since capitalization of new assets has not been allowed, the old assets which have become unserviceable and are not rendering useful service should not be taken out from the capital base of the generating stations. Accordingly, the review of order dated 15.5.2014 on this ground is rejected.

In computing the depreciable value during the tariff periods 2010-11, 2011-12, 2012-13 and 2013-14, an amount of ₹327.38 lakh has not been accounted for on the wrong premise that the same relates to freehold forest land, whereas the related land is on leasehold;

11. The petitioner has submitted that the Commission in its order dated 15.5.2014 has allowed capitalization of forest land of the value of ₹327.38 lakh in the year 2010-11. However, it has pointed out that the Commission while calculating the depreciated value of the assets has considered the value of freehold land as ₹5996.75 lakh without taking into account that out of the above, the forest land capitalized for ₹327.38 lakh ought not to be considered as the same was on lease hold basis and not on freehold basis. Accordingly, the petitioner has submitted that the amount of ₹327.38 lakh

of forest land on lease should have been considered while computing the depreciated value for the period 2010-11, 2011-12, 2012-13 and 2013-14 and the same needs to be rectified.

12. The matter has been examined. It is observed from Form-9 of the petition that the amount claimed by the petitioner under the head of land did not contain any clarification as to whether the same was in respect of freehold land or leasehold land. Accordingly, the said amount was accounted on the premise that the expenditure related to freehold forest land. However, from the balance sheet submitted by the petitioner it has become evident that land is a leasehold land and not freehold. This aspect was inadvertently lost sight of by the Commission at the time of passing the order. In view of this there is error apparent in the face of the order and the error shall be corrected at the time of truing up of tariff of the generating station for the period 2009-14. We order accordingly.

De-capitalization of Wagons and Locos effected for the years 2010-11 and 2011-12 has not been taken into consideration while computing the cumulative depreciation reduction due to de-capitalization;

13. The petitioner has submitted that the Commission while commuting the cumulative depreciation reduction due to de-capitalization for the years 2010-11 and 2011-12 respectively has inadvertently not taken into account the de-capitalization of Wagons and Locos affected by the said order. Accordingly, the petitioner has submitted that the error apparent on the face of the order needs to be rectified.

14. The matter has been examined. We notice that even though the exclusion of de-capitalization of Wagons and Locos was disallowed by the Commission by order dated 15.5.2014, the same has not been accounted for while computing the cumulative depreciation in the said order. This according to us is an error apparent in the face of the record and the same is required to be corrected.

Accordingly, we direct the correction of the error on this ground at the time of revision of tariff based on the truing up petition filed by the petitioner in respect of the generating station.

The adjustment of cumulative Depreciation on account de-capitalization of spares during the period 2011-12 which are part of capital cost amounting to (-) ₹27.16 lakh has been considered wrongly in the year 2009-10 instead of 2011-12 when the de-capitalization was effected

15. The petitioner has submitted that the Commission while computing the adjustment of cumulative depreciation on account of de-capitalization of spares in the year 2011-12 which are part of the capital cost amounting to (-) ₹27.16 lakh has been considered wrongly in the year 2009-10 instead of the year 2011-12 when the de-capitalization was affected. Accordingly, the petitioner has submitted that the error on this ground may be rectified.

16. We have examined the matter. It is noticed that the Commission in order dated 15.5.2014 has considered the de-capitalization of capital spares which are part of the capital cost amounting to (-) ₹27.16 lakh under exclusion during 2011-12. However, it is noticed that while the exclusions were allowed in the order dated 15.5.2014, the year was inadvertently mentioned as 2009-10 instead of 2011-12. In view of this, there is merit in the submission of the petitioner and the error is required to be corrected. Accordingly, we direct the correction of the error on this ground at the time of revision of tariff based on the truing up petition filed by the petitioner in respect of the generating station.

17. Review Petition 21/RP/2014 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