

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 20/RP/2014

in

Petition No. 139/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: 22.12.2014

In the matter of

Review of Order dated 15.5.2014 in Petition No. 139/GT/2013 revising the tariff of Anta Gas Power Station (419.33 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, Ashoka Road,
Lucknow – 226001

2. Ajmer Vidyut Vitran Nigam Ltd.
Old Power House, Hathi Bhsata,
Jaipur Road, Ajmer

3. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jaipur – 302005

4. Jodhpur Vidyut Vitran Nigam Ltd.
New Power house, Industrial Area, Jodhpur

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

6. BSES Rajdhani Power Ltd.
2nd Floor, B Block, Nehru Place,
New Delhi 110019

7. BSES Yamuna Power Ltd.
Shakti Kiran Building, Karkardooma, Delhi – 110092

8. Punjab State Power Corporation Ltd.
The Mall, Patiala – 147001

9. Haryana Power Purchase Centre,
Shakti Bhawan, Sector VI,
Panchkula - 134019

10. Himachal Pradesh State Electricity Board Ltd,
Vidyut Bhawan,
Shimla – 171004

11. Power Development Department (J&K),
Government of J&K,
Mini Secretariat, Jammu

12. Power Department,
Union Territory of Chandigarh,
Additional Office Building, Sector 9D,
Chandigarh

13. Uttrakhand Power Corporation Ltd.
Urja Bhawan, Kanwali Road,
Dehradun- 248001

....Respondents

Parties present:

Shri M.G. Ramachandran, NTPC
Ms. Poorva Saigal, Advocate, NTPC
Shri R.B. Sharma, Advocate, BRPL
Shri Sanjay Srivastav, BRPL

ORDER

This petition has been filed by the petitioner, NTPC Ltd for review of order dated 15.5.2014 in Petition No.139/GT/2013 whereby the Commission had revised the tariff of Anta Gas Power Station (419.33 MW) (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.

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

- (i) *Disallowance of capitalization for Gas Turbine Inlet Air Cooling System;*
- (ii) *Disallowance of capital expenditure on Energy Management System;*
- (iii) *Disallowance of exclusion of reversal of liability on account of adjustment made to the expenditure of additional reservoir;*
- (iv) *Error in the computation of cumulative depreciation for the year 2011-12*

3. The matter was heard on admission and the Commission by interim order dated 4.8.2014 admitted the review petition on the issue raised in para 2 (i) and (iii) above and issued notice to the respondents. While the prayer of the petitioner on the issue in para 2(iv) above was directed to be rectified, the issue in para 2 (ii) above was however rejected by the said order.

4. Heard the learned counsel for the parties on the issues admitted vide order dated 4.8.2014. We now proceed to consider the prayer of the petitioner in the subsequent paragraphs.

Disallowance of Capitalization for Gas Turbine Inlet Air Cooling System

5. The petitioner had claimed expenditure of ₹138.18 lakh during the period 2011-13 towards GT Inlet Air Cooling System. The Commission in its order dated 15.5.2014 had disallowed the capitalization of the said expenditure on the ground that the benefits of improved efficiency is not passed on to the beneficiaries. The relevant portion of the order is extracted as under:

“The petitioner has claimed expenditure of ₹131.18 lakh (₹75.96 lakh on actual basis during 2011-12 and ₹ 55.22 lakh on projected basis during 2012-13). The petitioner while justifying the expenditure has submitted that GTs are rated at 88.71 MW at 27°C and 60% humidity. However, it has been stated that Gas Turbines are not able to generate upto rated capacity during summer due to increase in ambient temperature. The petitioner has clarified that when the Gas Turbines generate to their full rated capacity, the additional power will become available to the beneficiaries during summer. UPPCL has opposed capitalization of the expenditure and has pleaded that the expenditure should be met by the petitioner through its internal resources. It needs to be noted that the generation capacity of the generating station is not being fully utilized because of shortage of APM gas. As such, the plea of additional generation by the petitioner is purely theoretical and without any gain in actual terms. It is further observed that the benefit of improvement in efficiency is to be retained by the petitioner. Hence, there is no

justification to allow capitalization of the expenditure unless the benefit of improved efficiency is passed on to the beneficiaries. As such, there is no justification for installation of inlet air cooling system and the capitalization of the said expenditure is not allowed.”

6. The petitioner has submitted that though the Commission has not disputed the claim being covered under Regulation 9(2)(vi) of the 2009 Tariff Regulations, the claim has been denied on the basis of the gain being retained by NTPC. The petitioner has submitted that there is no provision in Regulation 9(2)(vi) of the 2009 Tariff Regulations to impose a condition that the claim would be admissible only if the gain arising out of installation of the equipment is passed on to the beneficiaries. The petitioner has also submitted that consideration of such aspects to disallow the claim is extraneous to the provisions of the 2009 Tariff Regulations. The petitioner has further submitted that the matter relating to the capitalization of Air Inlet Cooling system in respect of determination of tariff of Gandhar GPS of the petitioner has been remanded to the Commission by the Appellate Tribunal for Electricity (the Tribunal) vide its judgment dated 25.10.2013 in Appeal No. 71/2012 . The petitioner has further submitted that in the record of proceedings in Petition No. 226/2009, the matter regarding capitalization of Air Inlet Cooling system in the case of Gandhar GPS was considered and the Commission had directed the petitioner to file information regarding the increase in the capacity of the plant after installation of Air Inlet Cooling system and the improvement in Heat Rate /Efficiency on account of Air Inlet Cooling system for considering the same in the truing-up petition. The petitioner has also submitted that the Commission in its order dated 25.6.2014 in Petition No. 226/2009 had directed that the expenditure towards Air Inlet Cooling system for Gas Turbine would be considered in terms of the directions of the Tribunal. The petitioner has stated that the non-consideration of the proceedings in Petition No.226/2009 in the present case is an error apparent on the face of record and needs to be rectified.

7. The respondent, BRPL has submitted that the Commission in its order has clearly stated that that no expenditure is needed on this account as the plea of additional generation is purely theoretical and without any gain in actual terms. The respondent has also argued that the order of the Commission in respect of Kawas and Gandhar GPS are not automatically applicable to the present case, as these stations have different facts and circumstances. The respondent, UPPCL has submitted that the order of the Commission is a speaking order and the disallowance of the expenditure is not an error and cannot form part of the review petition. In its rejoinder, the petitioner has pointed out that the beneficiaries stand to benefit due to gain in operating parameters arising out of any reason whatsoever and there is no provision for any additional sharing of any such benefit either wholly or partly. The petitioner has stated that if the beneficiaries are allowed to get the benefit of improved operational parameters without servicing the capital expenditure, it would be unfair and in-equitable. The learned counsel for the parties reiterated the same submissions during the hearing of this petition.

8. We have considered the submissions of the parties. The petitioner has sought review on the ground that the decision of the Tribunal in Gandhar GPS case in Appeal No.71/2012 and the subsequent record of proceedings before the Commission in that case has not been considered in the present case, which constitutes an error apparent on the face of the record. The claim of the petitioner for Air Inlet Cooling system is under the provisions of Regulation 9(2)(vi) of the 2009 Tariff Regulations which provides as under:

“In case of gas/ liquid fuel based open/ combined cycle thermal generating stations, any expenditure which has become necessary on renovation of gas turbines after 15 year of operation from its COD and the expenditure necessary due to obsolescence or non-availability of spares for successful and efficient operation of the stations.

Provided that any expenditure included in the R&M on consumables and cost of components and spares which is generally covered in the O&M expenses during the major overhaul of gas turbine shall be suitably deducted after due prudence from the R&M expenditure to be allowed.”

9. In Gandhar case, the Commission by its order dated 30.12.2011 in Petition No. 226/2009 after considering the claim in the light of Regulation 9(2)(vi) as quoted above had disallowed the capitalization of Air Inlet Cooling system on the ground that there was no commitment on the part of the petitioner to pass on the benefit of improvement in efficiency to the respondent/beneficiaries. In an appeal filed by the petitioner against this order, the Tribunal by its judgment dated 25.10.2013 in Appeal No. 71/2012, remanded the matter to this Commission with the following observations:

"37. The Central Commission should have decided this issue strictly on the basis of its Regulations. The norms for heat rate are decided by the Central Commission in its Regulations and the same could not be decided by NTPC. Therefore, we direct the Central Commission to decide the issue according to its Regulations after considering whether the expenditure on Air Inlet Cooling system is required for renovation of gas turbine or necessary due to obsolescence or non-availability of spares for successful and efficient operation of the gas station, after hearing the concerned parties."

10. The Commission in its record of proceedings dated 6.3.2014 in Petition No. 226/2009 had directed the petitioner to submit the details regarding the increase in capacity of the plant after installation of Air Inlet Cooling system and the improvement in Heat Rate/Efficiency on account of the installation of Air Inlet Cooling system for consideration in the truing-up petition to be filed by petitioner for revision of tariff for 2009-14. The same direction was reiterated vide order dated 25.6.2014 in Petition No. 226/2009.

11. In the light of the judgment of the Tribunal and the direction in the record of proceedings in Petition No.226/2009, the Commission had directed the petitioner in the present case to submit the details regarding the increase in capacity of the plant after installation of Air Inlet Cooling system and the improvement in Heat Rate /Efficiency on account of the installation of Air Inlet Cooling system for this generating station. However, the petitioner has failed to furnish the said information, while reiterating that its claim should be considered in terms of the Regulation 9(2)(vi) of the 2009 Tariff Regulations. In the absence of the required information, the Commission has considered the claim of

the petitioner in accordance with the provisions of Regulation 9(2)(vi) in the light of the observations of the Tribunal in its judgment dated 25.10.2013 in Appeal No. 71/2012 and has come to the conclusion that the expenditure is not necessary as the Gas Turbine is working satisfactorily even without renovation since the date of commercial operation of the generating station. Moreover, for the purpose of obsolescence or non availability of spares, there should be an Air Inlet Cooling system in place. Since the asset is being installed for the first time, the question of obsolescence or non-availability of spares is not a relevant consideration. In the light of the above discussions, we are of the considered view that the installation of Air Inlet Cooling system is neither necessary due to renovation of Gas Turbine nor due to obsolescence or non availability of spares for successful and efficient operation of Gas Turbines in case of Anta GPS. Hence, we find no error in the impugned order dated 15.5.2014 on this ground.

Disallowance of the exclusion of reversal of liability on account of adjustment made to the expenditure of Additional reservoir

12. The petitioner has submitted that the exclusion of reversal of liability has been consistently allowed by the Commission in all other generating stations of NTPC and accordingly the reversal of liability (-) ₹10.64 lakh in case of additional reservoir package may be allowed. The petitioner has further submitted that since the admitted cost is based on cash expenditure, reversal of liability will not have any impact on capital cost considered in tariff. The respondent, BRPL has submitted that the petitioner has failed to clarify the issue and has provided ambiguous statement in the review application. The petitioner relying upon various judgments of the apex court has submitted that '*mistake on the part of the court*' is an error apparent on the face of the order. Accordingly, the petitioner has prayed for correction of error in the order dated 15.5.2014 on this ground. The matter has been examined. Based on the submissions of the petitioner and the documents available on record, we notice the error apparent on the face of the order and the same is required to be rectified. Accordingly,

the reversal of liability of (-) ₹10.64 is allowed. However, the impact of the same will be considered at the time of truing-up of tariff of the generating station for the period 2009-14 in terms of Regulation 6(1) of the 2009 Tariff Regulations.

Error in the computation of cumulative depreciation for the year 2011-12

13. As regards the issue of computation of cumulative depreciation for the year 2011-12, the Commission in its order dated 4.8.2014 had observed that the same will be rectified at the time of passing the final order. In line with this and based on our decision to allow the reversal of liability of (-) ₹10.64 lakh as above, the effect of the same will be accounted for the year 2011-12 (instead of 2010-11) while considering the reduction of cumulative depreciation, at the time of truing-up of tariff of the generating station for the period 2009-14 in terms of Regulation 6(1) of the 2009 Tariff Regulations. We direct accordingly.

14. Review petition 20/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**