

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 23/RP/2016

in

Petition No. 315/GT/2014

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K.Singhal, Member

Shri A.S. Bakshi, Member

Date of Order: 30th June, 2017

In the matter of

Review of Order dated 21.12.2015 in Petition No.315/GT/2014 determining the tariff of Singruali STPS for the period 2009-14

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 - 302 205
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 -110 009
6. BSES Rajdhani Power Ltd
BSES Bhawan, Nehru Place,
New Delhi - 110 019
7. BSES Yamuna Power Ltd
Shakti Kiran Building, Karkardoona
New Delhi - 110092



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,
Kumar Housing Complex Building - II,
Vidyut Bhawan,
Shimla-171004
11. Power Development Department,
Government of J&K,
New Secretariat,
Srinagar
12. Power Department,
Union Territory of Chandigarh,
Addl. Office Building, Sector 9D,
Chandigarh
13. Uttarakhand Power Corporation Ltd
Urja Bhawan, Kanwali Road,
Dehradun - 248 001

....Respondents

Parties present:

Shri Ajay Dua, NTPC
Shri Vivek Kumar, NTPC
Shri E.P.Rao, NTPC
Shri Rajnikant Gupta, NTPC
Shri Bhupinder Kumar, NTPC
Shri T. Vinod Kumar, NTPC

ORDER

The petitioner, NTPC has filed this petition for review of order dated 21.12.2015 in Petition No.315/GT/2014, whereby the tariff of Singruali STPS (2000 MW) ("the generating station") was determined by the Commission for the period 2009-14 after truing up exercise in terms of Regulation 6(1) 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 sought review of the order limited to the issue of 'Reduction in Capital cost on account of de-capitalisation of assets'.



2. Heard the representative of the petitioner on 12.7.2016 on 'admission'. Based on the submissions of the petitioner and the documents available on record, the issue raised by the petitioner is disposed of as detailed in the subsequent paragraphs.

Reduction in Capital cost on account of de-capitalisation of assets

3. The petitioner has submitted that the Commission in order dated 21.12.2015 has reduced the capital cost on account of de-capitalization of assets amounting to Rs. 2897.48 lakh and this has in effect eroded the capital base, which is not the intent of the 2009 Tariff Regulations. Referring to the second proviso to Regulation 10(1) of the 2009 Tariff Regulations, the petitioner has submitted that the 2009 Tariff Regulations specifically states that if a generating station has opted for Special Allowance in lieu of R&M, the reduction of capital cost shall not be considered. In other words, the petitioner has submitted that the generating station opting for Special Allowance will neither be allowed any additional capitalization towards R&M of its existing assets nor any de-capitalization of assets will be considered in tariff and the capital cost for the purpose of tariff pertaining to its existing assets will remain constant. The petitioner has further submitted that in a generating station which has lived its useful life requires huge investment to meet the high level of reliability and availability and for extending the life of a generating station, large number of equipments would be replaced. It has also submitted that if the generating station has opted for Special Allowance for meeting its R&M expenditure requirement, it is not allowed any additional capitalization for R&M as it is getting Special Allowance and simultaneously its capital cost pertaining to the portion undertaken for R&M is being removed from the capital cost. Referring to the Statement of Reasons to the 2009 Tariff Regulations, the petitioner has stated that with R&M covering almost all the main equipments in phased manner and if treatment of reduction of capital cost by de-capitalization in a generating station getting Special Allowance is continued, the entire equity would be eroded as there would not be any motivation for the generator to go for Special Allowance and undertake R&M works. The petitioner has submitted that this will deprived the beneficiaries of cheaper source of power as full R&M in one go will enhance the cost of the plan and



in turn the tariff. Accordingly, the petitioner has submitted that the generating station would be adversely affected if such practice is adopted and has prayed that the order dated 20.12.2015 may be rectified.

4. We have examined the matter. The second proviso to Regulation 10(1) of the 2009 Tariff Regulations provides as under:

"10. Renovation and Modernisation

Provided that in case of coal-based/lignite fired thermal generating station, the generating company, may, in its discretion, avail of a 'special allowance' in accordance with the norms specified in clause (4), as compensation for meeting the requirement of expenses including renovation and modernisation beyond the useful life of the generating station or a unit thereof, and in such an event revision of the capital cost shall not be considered and the applicable operational norms shall not be relaxed but the special allowance shall be included in the annual fixed cost:

5. The Statement of the Reasons to the first proviso to Regulation 10(1) of the 2009 Tariff Regulations is as under:

"11. Renovation and Modernization (Regulation 10)

11.1 Draft Regulation 11(1) dealt with renovation and modernization for the purpose of the extension of life beyond the useful life of the generating station or a unit thereof or a transmission system. First proviso to the said clause provided the generators an alternative option to avail of a "special allowance" as compensation for meeting the requirement of expenses including expenses on renovation and modernization beyond the useful life of the generating station or a unit thereof. Clause 4 quantified the special allowance at the rate of Rs.5 lakh/MW/Year during the tariff period 2009-14 unit-wise from the respective date of completion of the useful life with reference to the COD of the respective generating station. This option for special allowance was subject to two conditions. Firstly, there would be no revision of the capital cost. Secondly, option once exercised will be final and shall not be allowed to be changed."

6. The petitioner has pointed out that if a generating station has opted for Special Allowance in lieu of R&M, the capital cost for the purpose of tariff pertaining to its existing assets will remain constant as the station will neither be allowed any additional capitalization towards R&M of its existing assets nor any de-capitalization of assets will be considered in tariff. In other words, the petitioner has submitted that the intent of the said regulation is not to remove the cost of the portion undertaken for R&M from the capital cost, and in such scenario, the regulation specifically provides that the revision of capital cost will not be considered. This submission of the petitioner cannot be accepted. A plain reading of Regulation 10 would reveal that while the special allowance is granted as part of the annual fixed cost, the same is not required to be capitalized and hence does not require revision of the capital cost. However, if any asset has served its life and not in use, the



same is required to be de-capitalized as per the applicable provisions of the 2009 Tariff Regulations. There is no link between the grant of special allowance and decapitalization of assets which has become unserviceable. Both are governed by separate provisions. While the special allowance is governed by Regulation 10, decapitalization of the assets is governed by proviso to Regulation 7 (1) of the 2009 Tariff Regulations which is extracted as under:

"Provided that the assets forming part of project, but not in use shall be taken out of the capital cost."

7. In terms of the above provisions, assets which are not in use have to be de-capitalized and their value cannot be allowed to be part of the capital cost of the generating station for the purpose of tariff. It is pertinent to mention that Appellate Tribunal for Electricity in Appeal No. 86 of 2012 (NTPC v/s CERC & ors) by judgment dated 26.03.2014 had decided that "the assets which are not rendering any useful service, its value has to be de-capitalized from capital cost." The relevant para of the judgment is quoted as under:

"65.As rightly pointed out by the Respondent that based on the cost plus tariff structure any assets which have been taken out from the use, cannot be considered as part of the capital base."

8. Hence, on a harmonious construction of Regulation 10(1) read with Regulation 7(1) of the 2009 Tariff Regulations and in line with the decision of the Tribunal, it can be concluded that on de-capitalization of the assets which are not in use, the same can be reduced from the capital base of the generating station. Accordingly, in the present case, the Commission had reduced the capital cost on account of de- capitalization of assets amounting to Rs 2897.48 lakh as they have been taken out from use and are unserviceable. Therefore, there is no error apparent on the face of the order and the submissions of the petitioner are rejected. Hence, review on this ground fails.

9. Petition No. 23/RP/2016 is disposed of in terms of the above.

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

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

-Sd/-
(Gireesh B. Pradhan)
Chairperson

