

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 62/RP/2016

In

Petition No. 334/GT/2014

Coram:

**Shri A.S. Bakshi, Member
Dr. M.K.Iyer, Member**

Date of Order: 20.7.2017

In the matter of

Review of the Commission's order dated 26.09.2016 in Petition No. 334/GT/2014 in the matter of approval of tariff of Talcher Thermal Power Station (460 MW) for the period from 1.4.2014 to 31.3.2019

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 Sanjay Sen, Senior Advocate, NTPC
Shri Venkatesh, Advocate, NTPC
Shri Shashank Khurana, Advocate, NTPC
Shri Pratyesh Singh, Advocate, NTPC
Shri Sailendra Singh, NTPC
Shri Manoj Kumar Sharma, NTPC
Shri Nishant Gupta, NTPC
Shri Raj Kumar Mehta, Advocate, GRIDCO Limited
Shri Abhishek Upadhyay, Advocate, GRIDCO Limited

ORDER

This petition has been filed by the petitioner, NTPC Limited for review of order dated 26.9.2016 in Petition No 334/GT/2014, whereby the Commission had determined tariff in respect of Talcher Thermal Power Station (460 MW) ("the generating station") for the period from 1.4.2014 to 31.3.2019 in accordance with the provisions of the Central Electricity



Regulatory Commission (Terms & Conditions of Tariff) Regulations, 2014 (hereinafter referred to as 'the 2014 Tariff Regulations'). Aggrieved by the said order dated 26.9.2016, the petitioner has sought review of the order submitting that there are errors apparent on the face of record in regard to the following:

- a) *Disallowance of expenditure of ₹2826 lakh incurred towards work of Ash disposal for mine void filling and related works.*

2. The petitioner had submitted that it had projected an expenditure of ₹2826.00 lakh in 2014-17 towards ash discharge through mine void filling work. It had submitted that the works were claimed under the Regulation 14(3)(iv) and 14 (3)(ii) of the 2014 Tariff Regulations with the following justification:

"The ash generated in TTPS is disposed of in mines through mine filling, as per direction of MOEF and SPCB. These works are required for 100% Ash disposal by mine filling, the details for same were provided in Petition No. 304/2009 vide affidavit dated 25.4.2010. The copy of SPCB directives dated 25.4.2013 enclosed as Annexure-A. The works proposed in 2014-19 are works required for even mine filling and to ensure safety in mine filling area.

- *The purchase order has been awarded on 5.5.2014 and work is in progress.*
- *These works are part of works required for even and safe disposal of ash through mine backfilling, allowed by Hon'ble Commission in past through various tariff orders for 2004-09 and 2009-14 tariff period.*
- *Hon'ble Commission may be pleased to allow the same."*

3. The petitioner had submitted that the Commission in passing order dated 26.9.2016 had committed a mistake of fact and an error apparent on the face of the record by disallowing the expenditure of ₹2826.00 lakh projected by the petitioner towards ash discharge for mine void filling and related works on the pretext that the capital expenditure just before March 2017 is not justifiable as it will not serve any purpose in view of probable restriction in mine void filling after March 2017 due to environmental concerns. The petitioner has submitted that the findings of the Commission is patently incorrect on account of the following:

a) Mine back filling started in the year 2005 as per MOEF guidelines on ash utilization. Since 2008-09, the station has maintained 100% ash utilization through mine back filling. The State Pollution Control Board (SPCB) has been directing TTPS through its periodic concern to discharge ash in mine voids of south Balanda mines as this is the better way of discharging ash and utilizing ash. The SPCB consent dated 15.2.2016 which is valid upto 31.3.2018 has also directed to discharge fly ash in the said mine voids.

b) The MOEF clearance has been granted upto March 2017 with further extension of MOEF clearance subject to outcome of the reports of study conducted by Expert Appraisal Committee (EAC). All the studies conducted by EAC have been completed and the prima facie results are positive although the final reports are awaited. It is expected



that mine void filling permission may be extended further and left over estimated capacity available in mine voids of south Balanda mines will be fully utilized.

c) The Commission in its earlier order dated 29.7.2016 in Petition No. 281/GT/2014 for Talcher STPS stage-I for the period 2014-19 has held that such capitalization shall be considered at a later stage in true-up exercise.

d) The disallowance by the Commission of the said expenditure is in contravention of the Tariff Policy which warrants that a regulator should ensure regulatory certainty in its method of operation to protect the investments made in the power sector.

e) The Commission in the said order had committed a grave error by failing to appreciate that against the projected additional capitalization of ₹2826.00 lakh for mine void filling works, the petitioner had already incurred and put to use works amounting ₹2425.00 lakh in 2014-16 towards these works and the remaining amount will be capitalized in 2016-17. The beneficiary is already availing the benefits of mine void filling as the works have been completed and have been put to use. The capitalization therefore needs to be serviced through tariff which otherwise will tantamount to availing the benefit of asset without having to service the cost by the beneficiaries.

f) The Commission in passing the order dated 26.9.2016 has failed to consider that there is no compensation allowance or special allowance applicable for the generating station. There is also under recovery to the tune of 30% in O & M expenses allowed as per norms vis-à-vis actually incurred.

g) The Commission has also failed to consider that no alternate funding is available with the review petitioner with the mine void filling work.

h) Both ash dyke and mine void filling work are required for the operation of the plant and are not mutually exclusive. As per estimates, the available capacity of mine void will be exhausted by Dec 2018. The petitioner is also constructing ash pond for ash discharge from 2018 onwards. The capacity of ash dyke being constructed is estimated for 4 years, however with deteriorating coal quality, it is expected that ash dyke will be fully utilized by 2021 i.e. end of useful life of the station. Therefore both ash dyke and mine void filling work are required for successfully discharging and utilizing ash upto end of the useful life of the station. Both the assets are therefore very much required for operating the plant and are not mutually exclusive but have to co-exist.

i) The construction of Ash pond I&II and construction of contingency ash dyke were previously approved by the respondent. Further the expenditure against the protection barrier at pilot quarry was as per guidelines of the SPCB vide letter dated 25.4.2013 which directs for disposal of solid waste i.e fly ash of quantity 3000 TPD in south Balanda open cast mine.

j) Backfilling was continued without construction of any check dams/ barriers. However, after around 5 years of ash deposition, there was an urgent need to protect the area with construction of check dams on two sides. Hence the works were taken up during 2010-11/ 2011-12. The small check dams on entry of Quarry- 3A and 3B had been completed earlier and were justifiably allowed by the Commission under ash related works. However, the protection barrier between pilot quarry and Quarry-2 being a large dam involving huge quantity of earth work and engineering consideration took time for completion of the work. the protection barrier started serving its purpose from 2012 onwards, however the work was capitalized in 2014-15 after reaching to the design level of 125m RL. As such, the expenditure made on this account was not only proposed to said objectives from the year of projection but the same had started serving its purpose from 2012 onwards.

k) As the pipes are subject to wear and tear due to handling of abrasive ash slurry, phase wise rotation of pipes is done to enhance the useful life. During execution of such work on the pipeline, it is taken out of service to one and a half months and the other two



lines remain in service, one each for Stage-I and Stage-II, without any spare line during this period. As the petitioner did not have the fourth line (spare line), there was a potential risk to plant operation as well as the pollution in the vicinity in case of failure of pipelines. Therefore to mitigate the risk, fourth ADP line was commissioned as part of the standard scheme.

4. Referring to various judgments of Supreme Court, the petitioner has submitted that there is sufficient reason to review the Commission's order dated 26.9.2016 for the aforesaid grounds.

5. The matter was heard on 6.12.2016 on 'admission'. During the hearing, the learned counsel for the petitioner reiterated the submissions in the petition and prayed that order dated 26.9.2016 may be reviewed.

6. Heard the learned counsel for the petitioner. Based on the submissions of the petitioner and the documents available on record, we proceed to examine the issues raised in the petition as detailed in the subsequent paragraphs.

Disallowance of expenditure incurred towards work of Ash disposal for mine void filling and related works

7. The Commission in its order dated 26.9.2016 had disallowed the projected additional expenditure claimed by the petitioner towards ash handling system and observed as under:

"21. We have examined the matter. It is observed from the minutes of meeting of the 52nd meeting of Expert Appraisal Committee (EAC) on Environment Impact Assessment of Thermal power and coal mining projects held on 29.2.2016 and 1.3.2016 that due to environmental constraints, the permission to the generating station for Ash disposal in South Balanda mines is only up to March 2017 and the Petitioner has therefore considered the construction of Ash pond and corresponding projected capital expenditure after March, 2017. It is also observed that since the Ash disposal is not allowed beyond March 2017, the Petitioner has claimed huge capital expenditure towards the Ash mine back filling and related works during the period 2014-17. It is our considered view that as the Ash disposal is not allowed after March 2017, the projected expenditure in this regard just before 2017 is not justifiable as it will serve no purpose and the consumer/beneficiaries cannot be burdened for the same. Considering the above facts, we are not inclined to allow the expenditure of ` 2497.00 lakh towards Protection Barrier at Pilot Quarry (South Balanda Abandoned Mines), ₹279.00 lakh towards Laying of 4th Ash slurry disposal line from station to mine (South Balanda) and ₹50.00 lakh towards Laying of 4th Approach road from MCL main road to quarry-3B for decantation system and storm water drain from quarry 3B to Quarry 2 and we direct accordingly. However, as regards the claim of the projected additional capital expenditure towards the Ash pond and contingency Ash dyke, the capital expenditure towards the land for Ash pond was approved during the period 2004-09 vide order dated 3.9.2012 in Petition No.184/2009 and since the work of Ash disposal and mine filling is not allowed beyond March 2017, the expenditure of ₹3200.00 lakh towards the construction of Ash pond and the expenditure of ₹250.00 lakh towards the contingency Ash dyke for meeting emergency requirements for the period 2014-19 is allowed."



8. The petitioner has submitted that the Commission has erred in disallowing the claim of ₹2826.00 lakh for mine void filling works on the ground that the capital expenditure before March 2017 is not justifiable due to restriction in mine void filling work after March 2017. This submission of the petitioner cannot be accepted. It is noticed that the petitioner had claimed total projected additional capital expenditure of ₹6276.00 lakh for the period 2014-19 towards ash handling system which comprised of ₹2300.00 lakh towards construction of ash pond- I & II, ₹2497.00 lakh towards protection barrier at a pilot quarry (south Balanda mines), ₹279.00 lakh towards laying of fourth ash slurry disposal lines from station to mine, ₹250.00 lakh towards construction of contingency ash dyke and 50.00 lakh towards laying of fourth approach road from MCL main road under Regulations 14 (3)(iv) and 14 (3)(ii) of the 2014 Tariff Regulations. Though SPCB had directed for the disposal of the solid waste in South Balanda open cast mine, the petitioner vide affidavit dated 19.9.2016 had submitted that there have been issues in mine back filling with regard to MOEF clearance for forest land re- diversion, etc and that the EAC on Environment Impact Assessment on Thermal and Coal mining projects under MOEF, GOI in the 52nd meeting had extended the permission to the generating station for ash disposal in South Balanda mines further upto 1 year from March 2016 i.e upto March 2017 (subject to regular monitoring review by continuing study by National Environment Engineering Institute) regarding various effects regarding ash disposal in mines. It is noticed that on account of permission being granted only upto March 2017, the petitioner had planned the construction of Ash pond- I & II and corresponding projected expenditure after March 2017 and had claimed the same in the petition. Considering the fact that ash disposal in mines was not allowed after March 2017 and as the petitioner had planned the construction of ash pond and contingency ash dyke and claimed additional capital expenditure on this count, the Commission considered it prudent not to allow the expenditure on ash disposal in mines and burden the beneficiaries on this count. Even otherwise, in case permission for ash disposal in mines was not granted beyond March 2017, the petitioner can meet the requirement of ash disposal in the ash pond and contingency ash dyke which has been allowed in order dated 26.9.2016. In this background, the submission of the petitioner that it had already incurred cost and put to use works amounting to ₹2425.00 lakh during 2014-16 towards these schemes and the remaining



amount will be capitalized during 2016-17 was not considered in order dated 26.9.2016. Accordingly we hold that there is no infirmity in the order dated 26.9.2016 disallowing the expenditure on ash disposal for mine filling amounting to ₹2826.00 lakh. In our view, no case has been made out by the petitioner for review of order dated 26.9.2016. Therefore, there is no error apparent on the face of the order and review on this ground fails.

9. Petition No. 62/RP/2016 in disposed of in the admission stage.

Sd/-
(Dr. M.K.Iyer)
Member

Sd/-
(A. S. Bakshi)
Member

