

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 98/MP/2017

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 14 (3) (ii) and Regulation 8 (3) (ii) of the CERC (Terms and Condition of Tariff) Regulations 2014 for approval of Expenditure on installation of various Emission control systems as detailed in this Petition for compliance of Ministry of Environment and Forests and Climate Change, Government of India notification dated 07.12.2015 mandating compliance with revised environmental norms for thermal power stations.

Petitioner: NTPC Limited

Respondents: UPPCL & others

Date of hearing: 23.4.2018

Coram: Shri P.K. Pujari, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member
Shri Ravindra Kumar Verma, Member (E.O)

Parties present: Shri Venkatesh, Advocate, NTPC
Shri Pratyush Singh, Advocate, NTPC
Shri Somesh Srivastava, Advocate, NTPC
Shri Vikas, Advocate, NTPC
Ms. Swapna Seshadri, Advocate, GUVNL
Shri Rajkumar Mehta, Advocate, GRIDCO
Ms. Himanshi Andley, Advocate, GRIDCO
Shri R.B.Sharma, Advocate, BSPHCL
Shri Dushyant Manocha, Advocate, BRPL
Shri Buddy Ranganathan, Advocate, BRPL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Raunak Jain, Advocate, TPDDL
Shri Vishvendra Tomar, Advocate, TPDDL
Shri Ajay Dua, NTPC
Shri P.B.Venkatesh, NTPC
Shri Manish Garg, UPPCL
Dr. Navin Kohli, MPPMCL
Shri Nishant Grover, BYPL
Shri Ashish Choudhary, APDCL



Record of Proceedings

During the hearing, the learned counsel for the Petitioner, NTPC mainly submitted as under:

(i) The Petitioner has generating projects across the country and owns approximately 40000 MW coal fired thermal generating stations. The present Petition is with respect to Singrauli STPS (2000 MW) installed before 31.12.2003 and Sipat STPS (1980 MW) installed between the period 1.1.2004 to 31.12.2016 and covers indicative expenditure to be incurred by these two stations towards compliance of FGD in terms of MOEFCC notification dated 7.12.2015.

(ii) The MOEFCC notification dated 7.12.2015 mandatorily require all thermal power plants installed till December, 2016 to comply with the revised norms on or before 6.12.2017. Accordingly, the Petitioner is required to install Emission Control System (ECS) in its various Projects.

(iii) The MOEFCC notification is a Change in law event which requires the Petitioner to carry out major capital works/ modifications in order to operate the Projects and supply power to the beneficiaries. As such, the Petitioner would incur substantial one time capital expenditure apart from recurring operational expenditure and additional increase in costs due to change in operational parameters.

(iv) The present Petition has been filed under section 79 of the Electricity Act, 2003 read with Regulations 14 (3) (ii) and 8 (3) (ii) of the 2014 Tariff Regulations for seeking regulatory certainty with respect to treatment of such cost and in-principle approval of the cost to be incurred by the Petitioner for installation of ECS. As the 2014 Tariff Regulations notified by the Commission provides for determination of tariff based on projected expenditure, the concept of in-principle approval is inbuilt in the regulations.

(v) The in-principle regulatory approval of additional cost would be critical for securing finances from financial institutions. The said approval of Change in law event would ultimately lead to adjustment of tariff based on actual amount spent, subject to prudence check by the Commission.

(vi) Even if, the 2014 Tariff Regulations are considered silent on the aspect of in-principle approval, the Central Commission in exercise of its regulatory powers can issue directions in furtherance to the objective of the Electricity Act, 2003. Even otherwise, the non-framing of Regulation is never a pre-condition for granting any relief under the statute. Judgments of the Hon'ble SC in PTC v/s CERC (2010 4 SCC 603), Energy Watchdog case (2017 14 SCC 80), UPSEB v/s City Board, Mussorie (AIR 1985 SCC 883) were referred to.

(vii) The Commission may approve the shut-down period required for installation & commissioning of FGD system as deemed availability under the PPA for payment of fixed charges.



(viii) Special Allowance under the 2014 Tariff Regulations is an alternative to R & M which contemplates expenditure to increase the life of the plant. Whereas, the obligation to comply with the MOEFCC Notification has nothing to do with the useful life of the plant.

2. In response, the learned counsel for the respondent, GRIDCO submitted the following:

(i) The Petition is not maintainable because of different characteristics of the generating stations of the Petitioner, with regard to capacity, age, and different beneficiaries and the nature of changes required to install the ECS.

(ii) The Petitioner has not given details of the impact of installation of ECS on tariff payable by beneficiaries. Without prudence check of the cost of such provisions for individual generating stations, the cost cannot be admitted under Change in law as per the 2014 Tariff Regulations.

(iii) The 2014 Tariff Regulations do not provide for in-principle approval of additional capital expenditure [Commission's order dated 20.3.2017 in Petition No. 72/MP/2016 (Maithon Power Ltd v/s DVC & ors) was referred to].

(iv) The Commission may request CEA to study whether the ECS as per revised norms of MOEFCC are absolutely necessary. The said notification has not specified mandatory installation of ECS irrespective of whether the generating stations meet emission norms or not.

3. The learned counsel for respondent, BRPL submitted the following:

(i) The Petition is not maintainable as the provisions of section 14(3) (ii) and 8 (3) (ii) of the 2014 Tariff Regulations do not provide for the relief sought by the Petitioner. The Commission's order dated 20.3.2017 in Petition No. 72/MP/2016, wherein the Commission held that the Tariff Regulations do not provide for any in-principle approval, is squarely applicable to the present case.

(ii) The Commission by a conscious decision did not provide for in-principle approval of cost under the 2014 Tariff Regulations. In order dated 14.10.2009 in Petition No. 153 of 2009, the Commission had rejected the prayer of Jaypee Karcham Hydro Corporation Ltd for relaxation of provisions of Tariff Regulations to grant approval of estimated completion cost. Hence, the prayer of the Petitioner to grant relief in exercise of the regulatory power by the Commission cannot be permitted.

(iii) The prayer of the Petitioner may be dismissed as not maintainable.

4. The learned counsel for the respondent, PSPCL adopted the above submissions of the respondent, BRPL and submitted that the present Petition is not maintainable. The learned counsel also submitted that the Petitioner has not placed on record all the relevant environment clearances pertaining to each of its



generating stations. She also submitted that in terms of Regulation 7 (1) of the 2014 Tariff Regulations, the application for tariff is required to be made unit- wise and generating station wise and not in a general form. The learned counsel, while pointing out that the Commission is bound by the statutory regulations while determining tariff as laid down in PTC v/s CERC & ors, submitted that the Petitioner has the liberty to approach the Commission at the time of truing-up, wherein claims under uncontrollable factors can be made.

5. In response, the learned counsel for the Petitioner clarified as under:

(i) At present, only two Projects have been covered in the Petition as a sample case for simplistic appreciation of the Commission. Moreover, the approval of the cost to be incurred towards compliance of MOEFCC notification for installation of FGD will facilitate taking investment approval for these expenditures on all other stations of the Petitioner. Procedural laws cannot and ought not to come in the way to grant substantive relief to a party. Judgment of SC in State of Punjab v/s Shamlal Murari (1976 1 SCC 709) was referred to.

(ii) The tariff Petition for the period 2014-19 was filed by the Petitioner in terms of the 2014 Tariff Regulations before 9.9.2014. The MOEFCC notification was notified on 7.12.2015 and for this reason, the Petitioner could not claim the additional capital expenditure (on actual or projected basis) to be incurred for installation of FGD system.

(iii) Though the Petitioner has not incurred any expenditure consequent to the MOEFCC notification, the additional expenditure claimed in this Petition can be admitted on projected basis under Regulation 14 (3) (ii) of the 2014 Tariff Regulations.

6. The Commission after hearing the parties, reserved its order in the Petition. However, at the request of the learned counsel for the parties, time to file written submissions, with copy to the other, has been granted till **4.6.2018**.

By order of the Commission

Sd/-
T.Rout
Chief (Legal)

