

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 300/GT/2020

Subject : Petition for revision of tariff of Feroze Gandhi Unchahar Thermal Power Station, Stage-II (420 MW) for the 2014-19 tariff period after truing up exercise.

Petition No. 438/GT/2020

Subject : Petition for approval of Tariff of Feroze Gandhi Unchahar Thermal Power Station Stage-II (420 MW) for the 2019-24 tariff period.

Petitioner : NTPC Ltd.

Respondent : Uttar Pradesh Power Corporation Ltd & 10 ors

Date of hearing : **13.8.2020**

Coram : Shri P.K Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member

Parties present : Ms. Swapna Seshadri, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri A.S Pandey, NTPC
Shri E.P Rao, NTPC
Shri S.P Kesarwani, NTPC
Shri R.B Sharma, Advocate, BRPL
Ms. Megha Bajpeyi, BRPL
Shri Manish Garg, UPPCL

Record of Proceedings

These Petitions were taken up for hearing through Video Conferencing.

2. During the hearing, the learned counsel for the Petitioner submitted that Petition No.300/GT/2020 has been filed for revision of tariff of Feroze Gandhi Unchahar Thermal Power Station, Stage-II (420 MW) (in short 'the generating station') for the 2014-19 tariff period and Petition No.438/GT/2020 has been filed for approval of tariff of the generating station for the 2019-24 tariff period. The learned counsel for the Petitioner mainly submitted the following:

(i) The Petitioner has claimed the recovery of additional O&M expenses incurred on account of pay revision of employees (with effect from 1.1.2017) and that of CISF and Kendriya Vidyalaya Staff (with effect from 1.1.2016) during the 2014-19 tariff period. This is consequent upon implementation of the 7th Pay Commission recommendations and decision of the Govt. of India communicated vide Office Memorandum of DPE (Department of Public Enterprises) dated 3.8.2017 on the recommendations of the 3rd Pay Revision Committee for Central PSUs. In addition, the impact of increase in gratuity limit from Rs.10 lakh to Rs.20 lakh,



consequent upon the amendment in Payment of Gratuity Act, 1972 has also been claimed;

(ii) The normative O & M expense norms specified under Regulation 29 of the 2014 Tariff Regulations had not factored the impact of such increase in the employee cost due to pay revision. The 2014 Tariff Regulations were based on the actual O & M expenses incurred for the period from 2008-09 to 2012-13 and, therefore, implementation of the recommendations of 7th Pay Commission/ Office Memorandum of DPE is a subsequent event, which has resulted in the increase in O&M expenses of the Petitioner.

(iii) The Petitioner, in Petition No.289/GT/2014, had sought liberty of the Commission to seek enhancement in the O & M expenses with effect from 1.1.2017, on account of the increased salary/ wages and the Commission had allowed the same vide its order dated 31.3.2017. Accordingly, the Commission may allow the increase in O&M expenses due to pay revision under Regulation 54 and Regulation 55 of the 2014 Tariff Regulations;

(iv) The Commission may allow the additional expenditure incurred by the Petitioner due to Change-in-law events namely (i) the enactment of the Goods and Services Tax (GST) with effect from 1.7.2017 and (ii) Notification dated 25.1.2016 of the Ministry of Environment, Forest & Climate Change (MOEFCC), GOI regarding Ash Transportation. The Commission in its various orders has declared the promulgation of GST with effect from 1.7.2017 as a Change in Law event and has also considered the impact on account of GST in the O&M expense norms for thermal generating stations for the 2019-24 tariff period. The Petitioner has considered the impact of the increase in the rate of indirect tax from 15% to 18% on all taxable services and has claimed the same for the period from 1.7.2017 to 31.3.2019. The impact has been calculated on the actual O&M expense incurred during the said period;

(v) Without prejudice to the claim of the Petitioner in Petition No. 244/MP/2016 regarding the measurement of Gross Calorific Value (GCV) of coal which is pending before this Commission, the Petitioner has considered a margin of 120 kcal/kg on the average GCV for the period from October 2016 to March 2019, in terms of the CEA recommendations dated 17.10.2017, for computing the working capital. The Petitioner seeks liberty to make additional submissions based on the outcome of the appeal pending before the Appellate Tribunal for Electricity.

(vi) In terms of the Ozone Depleting Substances (Regulation and Control) Rules, 2000 notified under the Environment (Protection) Act 1986 read with the Montreal Protocol on substances that deplete the Ozone layer, the Petitioner has claimed expenditure for 'Inert Gas system for Central Control Room (CCR) & Central Equipment Room (CER)'. The work projected in 2009-14 could not be capitalized during the period even though most of the work was completed. Subsequently, the total work was completed and capitalized in 2014-15 for Rs.239.58 lakh (including un-discharged liability of Rs.39.80 lakh). The minor deviation from the awarded cost is on account of changes during actual execution of the work vis-a-vis the estimated values;

(vii) The work on 'fire alarm system' could not be completed during the 2014-19 tariff period and is expected to be completed during the 2019-24 tariff period.



There is no un-recovered depreciation upto 31.3.2014 on account of lower availability of the generating station;

(viii) The Petitioner is in the process of installing Emission Control Systems (ECS) in compliance with the MOEFCC notification dated 7.12.2015. The completion of these schemes will affect Auxiliary Power Consumption, Heat Rate, O&M expenses etc., and the availability of the unit/ station would also be affected due to shutdown of the units for installation of ECS. The Petitioner will be filing the details of the same in a separate petition in terms of the Regulation 29 of the 2019 Tariff Regulations;

(ix) The additional capital expenditure for (i) installation of ClO₂ system for safety of public instead of the chlorine gas system and (ii) Online Coal Analyzer to comply with the direction of MOEFCC dated 26.8.2015 during the period 2019-21 has been claimed under Regulation 26(1)(b) & (d) of the 2019 Tariff Regulations and the same may be allowed.

3. The learned counsel for Respondent, BRPL referred to the reply and mainly submitted as under:

- (i) The truing up exercise is required to be undertaken by the Petitioner as well as the Commission in terms of Regulations 8(1), 8(2), 8(3), 8(6), 8(7) and 8(8) of the 2014 Tariff Regulations and accordingly the amount under-recovered or over-recovered along with simple interest is recovered or refunded, as the case may be, by the generating company under Regulation 8(13) of the 2014 Tariff Regulations. The details of the truing up exercise undertaken by the Petitioner is also required to be filed as the Petitioner has been delegated the statutory power of truing up on certain issues. The Petitioner has not filed any such information which is necessary for the truing up of tariff;
- (ii) The truing up exercise under Regulation 8(2) of the 2014 Tariff Regulations is to be carried out by the Petitioner in respect of Auxiliary Energy consumption and re-financing of loan on monthly basis, with annual reconciliation. However, no such details have been furnished in the petition;
- (iii) The actual tax rate applicable to the generating company was to be trued up in accordance with Regulation 6 of the 2009 Tariff Regulations. The generating companies have been allowed huge tax benefits under the Income Tax Act, 1961 in the form of Tax Holiday for enterprises engaged in infrastructure development as per Section 80IA as well as other benefits like higher depreciation in initial years. However, the benefits arising out of the tax benefits were determined by the Commission without considering Regulation 15 of the 2009 Tariff Regulations. Such decision can be re-visited by the Commission and the same cannot be allowed in perpetuity (Judgment of APTEL dated 12.5.2015 in Appeal No.129 & batch was referred to);
- (iv) The truing-up of the grossed up rate of Return on Equity (ROE) at the end of every financial year, based on the actual tax paid including interest thereon, duly adjusted for any refund of tax including interest received from the income tax authorities is to be carried out by the Petitioner. No such details have been filed by the Petitioner;



- (v) The Profit & Loss Account for the period from 2014-15 to 2018-19 show that the Petitioner has not paid any income tax during the entire period. Accordingly, the Petitioner is not entitled for any grossing up of ROE in terms of Regulation 25(1) of the 2014 Tariff Regulations. The entire tax collected by the Petitioner is, therefore, required to be reimbursed with interest to the beneficiaries for the tariff period 2014-19;
- (vi) Regulation 49 of the 2014 Tariff Regulations restricts the claim of tax amount only to deferred tax liabilities up to 31.3.2009, whenever it materializes. As the generating station is in commercial operation since 1.1.1991, the provisions of deferred tax liability are applicable. Also, during the period 2004-09, there was no grossing up of equity and the beneficiaries had paid the income tax on actuals as per the 2004 Tariff Regulations. Since the Respondents were paying the income tax on the generation business without getting the benefits under the Income Tax Act, 1961, the Petitioner may be directed to pay back the extra amount of Income tax after accounting for the benefits allowed under the Income Tax Act, 1961. The Petitioner has not calculated the effective tax rate in accordance with Regulation 25 of the 2014 Tariff Regulations;
- (vii) A total amount of Rs. 249.43 lakh on account of impact of GST has been claimed based on the assessment made by the Petitioner on the impact of increase in indirect tax from 15% to 18% on all taxable services. Any proposal which has a bearing on the O&M expense norms can be accepted only if the Petitioner proves that the said norms are inadequate to meet the additional expenditure on account of GST. Without proving the inadequacy of the O&M norms, any change in these norms would be unreasonable;
- (viii) The adoption of Indian Accounting Standards (IND AS) by the petitioner is against the regulatory procedure for computation of tariff as per the 2014 Tariff Regulations and may, therefore, be rejected.

4. The learned counsel for Respondent, UPPCL referred to the reply and mainly submitted the following:

- (i) As regards the increase in O&M expenses due to pay revision, the Petitioner has not placed on record any details to substantiate its claim that the O&M expense norms notified under the 2014 Tariff Regulations are inadequate or insufficient after factoring in pay revision. The Petitioner has claimed the incremental impact of pay revision amounting to Rs.42.77 crore and not the 'balance amount' which may only be considered for reimbursement in terms of the Statement of Reasons to the 2014 Tariff Regulations;
- (ii) As regards the impact of GST claimed, the Petitioner may be directed to submit the details as to how the said amount has been computed.
- (iii) As regards reimbursement of the additional expenditure for Fly Ash Transportation, the Petitioner has not provided the details of the procedure for award of Fly Ash Transportation contract. Moreover, only the expenditure, net of revenue and not the actual expenditure incurred by the Petitioner, has been certified by the Auditor. Further, the net expenditure of Rs.9363.56 lakh has been apportioned, based on capacity, amongst all four Stages of the generating station. As such, such apportionment ignores factors like running days of unit,



age of plant, technological factors etc. The Petitioner may be directed to provide details of unit-wise ash generation, so that the transportation cost can be more realistically worked out;

- (iv) The Petitioner may be directed to submit the detailed calculation of the effective tax rate, duly certified by Tax Auditor/ Chartered Accountant. The Commission may also direct the Petitioner to match the de-capitalization amount with the amount capitalized for the purpose of tariff;
- (v) The claim for additional capitalization for Inert Gas system may be restricted to Rs.83.20 lakh (on net basis) as per Commission's order dated 31.3.2017 in Petition 289/GT/2014. Also, the replacement of ClO₂ system is not on account of any policy/ law or direction of the Central or State Government and hence the said expenditure is not due to any change in law and may, therefore, be disallowed;
- (vi) As regards the claim for capitalisation of COLD FOG Dust Suppression System for Secondary Crusher under Change in law, the Petitioner may be directed to submit proper justification for the said claim, failing which, the said expenditure may be directed to be met from the Compensation Allowance claimed by the Petitioner;
- (vii) The Petitioner may be directed to substantiate as to how the capitalization of amount towards ESP is beneficial to the beneficiaries, failing which, the capitalization of the said amount may be deferred till the modification work of ESP is completed to achieve the particulate matter emission levels to 100 mg/Nm³.
- (viii) As regards the claim for 'Fire alarm system', the Petitioner may be directed to place on record the confirmation that the said expenditure is in compliance with the TAC guidelines along with the discount, if any, received;

5. In response to the above, the learned counsel for the Petitioner submitted that the calculation of the effective tax rate will be furnished by the Petitioner. She, however, prayed for grant of four weeks' time to file rejoinder to the reply of the Respondents BRPL and UPPCL.

6. The Commission directed the Petitioner to file additional information on the following, with advance copy to the Respondents, on or before **15.9.2020**:

- a) As regards the additional capital expenditure of Rs.10.15 lakh in 2018-19 and Rs.8.29 lakh in 2019-20 claimed for 'COLD FOG Dust Suppression System for Secondary Crusher' under Regulation 14(3)(ii) of the 2014 Tariff Regulations and Regulation 26(1)(b) of the 2019 Tariff Regulations respectively, the Petitioner is directed to furnish proper justification in support of the said claim along with the relevant notification thereof;
- b) With regard to the claim for additional capital expenditure for Rs 891.50 lakh in 2018-19 for 'ESP STG-II' under Regulation 14(3)(ii) of the 2014 Tariff Regulations, additional information shall be submitted as under:

(i) *The applicable norms for outlet Particulate Matter emission levels for units of 210 MW prior to the MOEFCC notification dated 7.12.2015;*



- (ii) OEM guaranteed and PG Test performance of the ESP in terms of the efficiency and outlet Particulate Matter emission levels in mg/Nm³;
- (iii) Detailed note with regard to the bidding process followed including the scope of work as per RFP documents, the number of bidders, the negotiations held with the lowest bidder to further reduce the awarded cost etc. and any other relevant information as deemed necessary by the Petitioner;
- (iv) To clarify as to whether the plant has started meeting the emission norm of 100 mg/Nm³ after incurring the claimed expenditure of Rs.8.92 crore. If no, then the justification for claiming the part expenditure which has not resulted into the desired goal of achieving the Particulate Matter emission of 100 mg/Nm³. As some of the generating stations are meeting the norms of outlet particulate matter emission levels of 100 mg/Nm³ without any major investment on ESP, the Petitioner shall clarify as to whether it had approached the CEA for any expert opinion or guidelines;
- c) It is noticed that an amount of Rs.160.26 lakh as 'Maintenance Charges' (in Form 3B) has been included in the actual water charges claimed during the tariff period 2014-19. In this regard, the Petitioner shall clarify whether the 'maintenance charges' have been paid to the State Government/agency or has been incurred by the Petitioner for the maintenance of water system. In case 'maintenance charges' have been incurred by the Petitioner, then an Auditor certificate may be submitted to the effect that these charges were booked under the head "Water charges" during the period from 2008-09 to 2012-13. The Petitioner shall furnish the details of the 'maintenance charges' and also furnish an 'Auditor certificate' in respect of the actual expenditure claimed along with the computation of the year-wise claim for water charges;
- d) An audited statement with respect to the consumption of capital spares as per Form-17 may be furnished;
- e) Additional O&M expenses of Rs.2537.22 lakh for Ash Transportation in 2018-19 has been claimed in terms of the Commission order dated 5.11.2018 in Petition No.172/MP/2016. Since the admissibility of claim towards Ash Transportation cost is subject to prudence check of the Commission in terms of the said order, the following additional information was directed to be furnished in the said order:
- (i) Award of fly ash transportation contract through a transparent competitive bidding procedure. Alternatively, the schedule rates of the respective State Governments, as applicable for transportation of fly ash;
- (ii) Details of the actual additional expenditure incurred on Ash transportation after 25.1.2016, duly certified by auditors;
- (iii) Details of the Revenue generated from sale of fly ash/ fly ash products and the expenditure incurred towards Ash utilization up to 25.1.2016 and from 25.1.2016 to till date, separately;
- (iv) Revenue generated from fly Ash sales maintained in a separate account as per the MoEF notification;

Accordingly, the Petitioner shall confirm that it has complied with the above conditions and submitted the details thereof along with the computation of the claimed cost towards Ash Transportation. The additional information submitted shall also include the name of the transporters, the distance of the end user (in km.), the awarded rate in ₹/ton per kilometer etc., and any other details as



considered relevant to the said claim in terms of the MOEFCC Notification dated 25.1.2016;

- f) Clarification as to whether any expenditure was incurred towards transporting ash to mines (for filling), cement factories and non-cement plants prior to the MOEFCC Notification dated 25.1.2016. If yes, the details as to how/ where the same was being booked during the period from 2008-09 to 2012-13, to be furnished. In case no expenditure was incurred, an Auditor Certificate to the effect that the entire transportation cost for transporting ash was borne by the end users and nothing was booked in the O&M of the generating station for the period from 2008-09 to 2012-13;
- g) As regards the impact of wage revision and GST claimed, the Petitioner shall furnish the following:
 - i) Detailed break-up of the actual O&M incurred during 2014-19 tariff period (including any arrears paid after 31.3.2019 towards wage revision) in the format which was issued by Commission to all the generating stations for furnishing the actual O&M expenditure data for the period from 2008-09 to 2012-13;*
 - ii) A Comparative table indicating the actual O&M expenditure incurred versus the normative O&M allowed to the generating station;*
- h) Reconciliation of the additional capital expenditure claimed with the additional capital expenditure as per books for the 2014-19 tariff period. Also, the relevant provision of the Regulations under which the additional capital expenditure has been claimed shall be furnished along with detailed justification for incurring such expenditure on each asset forming part of the claim;
- i) Auditor certified tariff filing forms related to additional capital expenditure and other expenditure claimed;
- j) Details of the Compensation Allowance received and the expenditure incurred from the said allowance along with the treatment of the balance Compensation Allowance, if any;
- k) As regards the claim for Rs 712.52 lakh towards installation of ClO₂ system for the 2019-22 period under Regulation 26(1)(b) & (d) of the 2019 Tariff Regulations, any plant specific or a general direction issued by the competent authority thereby resulting in Change-in-law, shall be furnished. Also, the original value of the Chlorine dosing system in operation, along with relevant details as per Form-9Bi of the 2019 Tariff Regulations pertaining to assets being de-capitalized is to submitted.
- l) The MOEFCC Notification dated 26.8.2015 referred to in support of the claim for Rs 61.33 lakh for 'Online Coal Analyser' during 2019-21 period under Regulation 26(1)(b) of the 2019 Tariff Regulations provides that the real time monitoring and auto sampling shall be effective from a date not later than 1.9.2016. In this regard, the Petitioner shall furnish the reasons for not implementing the statutory requirement within the prescribed timeline and projecting the expenditure for the years 2019-20 and 2020-21, five years after the said timeline;



- m) The actual Security Expenses incurred during the year 2018-19 in justification of the claim for the said expenses during the 2019-24 tariff period;
- n) In Row-1 of Form-15 (Quantity of Coal supplied by Coal Company), the Petitioner has included the coal in stock also. In this regard, the Petitioner is directed to furnish the details of the coal purchased/ received at the generating station during the months of October 2018, November 2018 and December 2018 in Form 15 (excluding the stock);
- o) The additional capital expenditure as indicated in Form-9C varies with the additional capital expenditure mentioned in Form-9E in 2018-19. The reason for the said variation shall be clarified and/or revised, if required;
- p) The additional capital expenditure as indicated in Form-9C during the years 2016-17 and 2018-19 varies with the additional capital expenditure mentioned in the Balance sheets of the respective years. The reason for the said variation shall be clarified and/or revised Form-9C be submitted, if required;
- q) The closing gross block as on 31.3.2017 as per the Audited Financial Statement for the year 2016-17 varies with the opening gross block as on 1.4.2017 as per the Audited Financial Statement for the year 2017-18. Reason for such variation shall be clarified, specifically mentioning the reasons for the difference in balances of 'EDP, WP machines and Satcom Equipment' as on the aforesaid dates;
- r) Detailed reason for including the 'capital spares capitalized out of inventory' amounting to Rs.351.67 lakh, to arrive at the Gross Block as per IGAAP as on 1.4.2016, in Form-9C;
- s) Auditor certified statement in respect of the claim under the head 'impact of GST'. Detailed workings, depicting the calculation of the 'impact of GST' claimed shall also be furnished;
- t) Auditor certification of the information contained in Form-9C, Form-9CA, Form-18 and Summary of gross block reconciliation statement as furnished in Annexure-IA (for the 2014-19 tariff period) to be furnished. Further, it shall be ensured that the 'Addition in total gross block' during the year 2016-17 and 'Closing Gross Block' as on 31.3.2017 as per 'Summary of Gross Block Reconciliation statement' i.e., Annexure-IA is in line with the audited Financial Statement, with necessary clarifications, if required;
7. The Respondents are directed to file their replies on or before **30.9.2020**, with advance copy to the Petitioner, who may file its rejoinder, if any, by **9.10.2020**. Pleadings shall be completed by the parties within the due dates mentioned and no extension of time shall be granted.

8. Subject to the above, order in the Petition was reserved.

By order of the Commission

Sd/-
(B. Sreekumar)
Deputy Chief (Law)

