

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 18/RP/2014

Subject : Review of Order dated 13.5.2014 in Petition No.135/GT/2013 revising the tariff of Kahalgaon Super Thermal Power Station, Stage-I (840 MW) for the period from 1.4.2009 to 31.3.2014.

Date of hearing : 11.9.2014

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Petitioner : NTPC Ltd

Respondents : West Bengal State Electricity Distribution Co. Ltd & 18 others

Parties present : Shri M.G. Ramachandran, Advocate, NTPC
Ms. Poorva Saigal, Advocate, NTPC
Shri I. Uppal, NTPC
Shri Sanjay Srivastav, NTPC
Shri R.B. Sharma, Advocate BRPL, JSEB & GRIDCO
Shri Manish Garg, UPPCL

Record of Proceedings

The Commission by interim order dated 31.7.2014 has admitted the review petition on the following issues:

- (i) Allowance of capitalization of expenditure towards 5 km scheme during 2013-14;
- (ii) Consideration of exclusion of de-capitalization of (-) ₹99.83 lakh during 2010-11 on account of assets not owned by the company;

2. The learned counsel of the petitioner made his submissions on the issues as under:
 - (a) Though the scheme for supply of electricity within 5 km radius was withdrawn by the Govt. of India by notification dated 25.3.2013, subsequently by notification dated 5.3.2014 the Govt. of India has granted exemption from withdrawal of the scheme in respect of eight generating stations of NTPC including this generating station.
 - (b) NTPC vide its affidavit dated 12.3.2014 had submitted that majority of the works under the scheme had been completed during 2013-14 and that the accounts for the same were being



reconciled and actual expenditure is to be submitted at the time of truing up. The said affidavit dated 12.3.2014 has escaped the attention of the Commission while passing the order dated 13.5.2014 and hence there is an error apparent on the face of the record and the order is required to be reviewed.

- (c) Accordingly, the Commission may grant liberty to claim the actual expenditure on account of the GOI scheme at the time of final truing up in terms of Regulation 6 of the 2009 Tariff Regulations.
 - (d) The assets/works which were capitalized which were capitalized under community development, wherein ownership of the assets was not with NTPC have been taken out of books of account as per accounting policy. The exclusion of these assets from the gross block was not on account of its serviceability. These assets are rendering useful service. Therefore the removal from capital cost on the ground that they do not render useful service is an error apparent on the face of the order.
3. The representative of the respondent, UPPCL submitted as under:
- (a) The scheme for supply of electricity within 5 km radius form part of community development and hence cannot be claimed for additional capitalization. Being a CSR activity, the expenditure cannot from part of the capital cost.
 - (b) Since the assets/works were capitalized under community development and ownership is not with NTPC, the Commission has rightly not admitted the exclusion on the ground that the asset does not render any useful service.
 - (c) Time to file reply on the above issues may be granted.
4. The learned counsel for the respondents BRPL, JSEB & GRIDCO mainly submitted as under:-
- (a) Reply filed on behalf of the respondent, GRIDCO shall be adopted for the respondents, JSEB and BRPL and the same shall be considered.
 - (b) The expenditure incurred in respect of the scheme for supply of electricity within 5 km radius should be met from the funds under the CSR.
 - (c) The claim for additional capital expenditure under Regulation 9(2) of the 2009 Tariff Regulations is within the discretionary power of the Commission and accordingly, the petitioner has no right to claim such expenditure. Since the Commission in its discretion has rejected the claim of the petitioner, no review is maintainable.
 - (d) There is no provision for exclusion under the 2009 Tariff Regulations. Even the assets which are part of the project, but not in use, are required to be taken out of capital cost. Creation of assets towards Community Development cannot form part of the capital cost and hence non admission of exclusion by the Commission on the ground that they do not render any useful service to the company is valid.

(e) There are definitive limits to the exercise of power of review and the review proceedings have to be strictly confined to the ambit and scope of Order 47 Rule 1 of the Civil Procedure Code.

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

(a) As regards expenditure incurred towards 5 km scheme, the Commission has not taken into cognizance the affidavit dated 12.3.2014 filed by the petitioner.

(b) The de-capitalization of assets not owned by the company have been claimed under exclusion on account of the accounting policy of the petitioner and not because they were unserviceable.

6. The Commission after hearing the parties directed the respondent, UPPCL to file its reply on or before 10.10.2014, with copy to the petitioner, who shall file rejoinder on or before 17.10.2014. No extension of time shall be granted for any reason whatsoever. In case the reply/rejoinder is not filed within the said date, the matter shall be considered based on available records.

7. Subject to the above, order in the petition was reserved.

By order of the Commission

Sd/-
(T. Rout)
Chief (Law)