

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 16/RP/2018 in Petition No. 152/GT/2015

Subject : Review of the Commission's order dated 26.12.2017 in Petition No. 152/GT/2015 for approval of tariff after true-up exercise for the period 2011-14 and determination of tariff for the period 2014-19 in respect of 1050 MW unit of Maithon Power Limited

Petitioner : Maithon Power Ltd,

Respondent : Tata Power Delhi Distribution Ltd & 5 Others

Date of hearing : **15.11.2018**

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Parties present: Shri Venkatesh, Advocate, MPL
Shri Sandeep Rajpurohit, Advocate, MPL
Shri Pramod Singh, Advocate, Tata Power
Shri Pankaj Prakash, Advocate, Tata Power
Ms. Puja Priyadarshini, Advocate, WBSEDCL
Shri Nived Veerapareni, Advocate, WBSEDCL

Record of Proceedings

During the hearing, the learned counsel for the petitioner submitted the following:

(a) The Commission in its order dated 26.12.2017 has considered only depreciation rate for the additional capitalization for each year and not the depreciation rate for the average gross block in terms of Form 11 read with Regulation 27(2) and (5) of the 2014 Tariff Regulations.

(b) The prayer for relaxation of measurement of GCV as per order dated 25.1.2016 is not being pressed for by the petitioner as it has complied with the order dated 26.12.2016. However, the Commission may clarify that the order dated 26.12.2017 would not come in the way of adjudication of Petition No. 139/MP/2017 and that the margin of coal on normative basis on the GCV measured is left open for decision. The petitioner may also be permitted to adjust the "as billed" GCV on account of moisture correction based on the formula prescribed in the order and consequently the interest on working capital.



(c) The expenditure with regard to Fly ash disposal to be incurred by the petitioner was in relation to 100% ash utilization as mandated under the MOEF&CC Notification dated 3.11.2009 for the period 1.4.2014 to 25.1.2016. The issue raised in Petition No. 172/MP/2016 is substantially different as the same is based on MOEF&CC notification dated 25.1.2016 which is dependent upon a demand from 'User' and the expenditure incurred thereon. Accordingly, the expenditure may be considered and the order be reviewed on this count.

(d) The Commission in its Order dated 26.12.2017 has not considered the issue of refinancing charges in terms of the affidavits dated 5.2.2016 and 19.2.2016 filled by the petitioner. Hence the same may be allowed in terms of Regulation 16(7) of 2014 Tariff Regulations.

(e) The Weighted Average Rate of Interest for computing interest on long term loan for 2011-14 included the applicable interest rate stipulated by the bank in the CLA and additional interest rate of 1% levied by banks for non-compliance of the securitization clause. The additional interest of 1% in case of non-creation of security on land for whatever reasons was payable as per covenants of CLA. The Commission in its earlier tariff order had permitted the recovery of additional interest charges under the CLA. The Commission may not change the principle at truing-up stage and disallow the actual cost on different reasoning (Judgement of APTEL dated 4.12.2007 in Appeal No. 100 of 2007 and Appeal No. 265 of 2006 was referred to). Accordingly, the petitioner has prayed that the error apparent in the order may be rectified and review may be allowed.

2. The learned counsel for Respondent No. 3, WBSEDCL objected to the above submissions and submitted that the Review Petition is not maintainable. She however circulated a compendium containing judgments of Hon'ble Supreme Court, APTEL and a order of this commission relied upon this matter and made the following submissions:

(a) There is no error apparent in the order and the petitioner may not be permitted to reargue the case on merits.

(b) The additional interest of 1% was imposed due to non-creation of mortgage over land. In the order dated 19.11.2014, the Commission had held that the delay of 158 days due to handover land to the petitioner is attributable to the petitioner. Hence the penalty imposed for this delay cannot be passed on to the beneficiaries. No methodology has been changed by the Commission in the order as contended by the petitioner. Even otherwise, the Commission is duty bound to consider the expenses actually



incurred and also to see that the expenses were prudently incurred. (the Judgement of APTEL in TATA Power Company V. MERC in Appeal no. 104 to 106 of 2012 was referred to)

(c) The Commission in its order dated 26.12.2017 has never disallowed the ash disposal expenses claimed by the petitioner. It has only observed that the decision in Petition No. 172/ MP 2016 shall be applicable to the case of the petitioner. The conclusion of the Commission cannot be revised by way of a review petition.

(d) As regards refinancing charges, the Commission has considered the refinancing charges duly taking into account the provisions of the 2014 Tariff Regulations the petitioner cannot be permitted to reargue the case on merits.

(e) As regards depreciation rates, the Commission may examine if there exists any mathematical errors in calculations, before allowing the prayer of the petitioner.

3. The learned counsel for the petitioner submitted detailed clarification on the above submissions of the respondent and prayed that the review petition may be allowed.
4. At the request of the parties, the Commission granted time to file their written submissions, if not already filed, with a copy to the other, on or before 10.12.2018. Subject to above, order in the review petition was reserved.

By order of the Commission

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

