

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.172/MP/2016

Subject : Petition under Section 62 (a) and 79 (1) (a) of the Electricity Act, 2003 read with Regulation 8(3)(ii) and 8(7) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 read with Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 for recovery of additional expenditure incurred due to sharing of transportation cost of fly ash consequent to Ministry of Environment and Forest, Government of India Notification dated 25.1.2016 as 'Change in Law' event.

Date of hearing : 21.8.2018

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

Petitioner : NTPC Limited

Respondents : Uttar Pradesh Power Corporation Limited and Others

Parties present : Shri Sanjay Sen, Senior Advocate, NTPC
Shri S. Venkatesh, Advocate, NTPC
Shri Sandeep Rajpurohit, Advocate, NTPC
Shri Ajay Dua, NTPC
Shri S.C. Kalia, NTPC
Shri U.S. Mohanty, NTPC
Shri Nishant Gupta, NTPC
Shri R.B. Sharma, Advocate, BSEB & GRIDCO
Shri Mohit Mudgal, Advocate, BSEB & GRIDCO
Shri Madhusudan Sahoo, GRIDCO
Shri Anand K. Ganesan, Advocate, GUVNL
Ms. Swapna Seshadri, Advocate, GUVNL
Shri Aashish Anand Bernard, Advocate, MPPMCL
Shri Paramhans, Advocate, MPPMCL
Shri S. Vallinayagam, Advocate, TANGEDCO

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present petition has been filed *inter-alia* seeking recovery of additional expenditure incurred due to sharing of transportation cost of fly ash consequent to the Ministry of Environment and Forest (MoEF) notification dated 25.1.2016. Learned senior counsel further submitted that as per the Committee report, the Petitioner has furnished the requisite information. Learned senior counsel for the Petitioner submitted that the Commission vide order dated 19.12.2017 in Petition No.101/MP/2016 has already allowed the additional cost claimed by the Petitioner towards fly ash transportation on account of amendment to the notification dated 25.1.2016 as Change in Law event.

2. Learned counsel for GRIDCO Ltd. and Bihar State Electricity Board (BSEB) argued at length and submitted as under:

(a) As per MoEF notification dated 14.9.1999, all coal based thermal power plants were divided into two categories namely, (i) all coal based thermal power stations or expansion units in operation before the date of issuance of notification must achieve 100% target of ash utilization within five years, and (ii) all new coal based thermal power stations or expansion units to achieve 100% ash utilization within four years from the date of commissioning. However, the Petitioner has failed to achieve the 100% of the ash utilization as contemplated in the MoEF notification dated 14.9.1999.

(b) The MoEF Notification dated 25.1.2016 is the consequence of failure of the Petitioner to attain 100% ash utilization within the timeline prescribed in the MoEF Notification dated 14.9.1999 in spite of huge money available from the sale of fly ash as well as the additional capitalization permitted by the Commission. The beneficiaries and ultimately the consumers of electricity cannot be penalized due to inaction of the Petitioner which is against the interest of the consumers as per the preamble of Section 61(d) of the Electricity Act, 2003.

(c) As per MoEF notification dated 25.1.2016, the cost of transportation of ash for road construction projects or for manufacturing of ash based products or use as soil conditioner in agriculture activity with radius of 100 km of any coal based power plant shall be borne by such coal based thermal power plant and the cost of transportation beyond the radius of 100 km and upto 300 km shall be shared equally between the user and the coal based thermal power plant.

(d) Regulation 8(3) of the 2014 Tariff Regulations stipulates truing up of tariff of generating station based on uncontrollable parameters and the financial gain and losses arising out of the truing up of the uncontrollable parameters are set out under Regulation 8(7) of the 2014 Tariff Regulations. In the present case, the petitioner has not worked out as how it sets out the financial gain and losses.

3. Learned counsel for GUVNL submitted that the matter has already been argued at length and requested for time to file its written submissions.

4. Learned counsel for MPPMCL adopted the submissions of the learned counsel for GRIDCO and requested for time to file its written submission. Learned counsel for TANGEDCO sought three weeks time to file its written submission.

5. After hearing the learned senior counsel for the petitioner and learned counsels for GRIDCO, BSEB, GUVNL, MPPMCL and TANGEDCO, the Commission directed the parties to file their written submissions by 14.9.2018.

6. Subject to above, the Commission reserved order in the petition.

By order of the Commission

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