

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No: 38/MP/2018

Coram:

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

Date of Order: 9th of October, 2018

In the matter of

Petition Under Section 62 and 79 (1) (a) of the Electricity Act, 2003 read with Regulation 54 & 55 of CERC (Terms and Conditions of Tariff) Regulation 2014 and Regulation 111 and 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for Extension of cut-off date of Mauda Super Thermal Power Station, Stage-I (2X500MW) from 31.03.2017 to 31.03.2019.

And

In the matter of

NTPC Ltd.
NTPC Bhawan
Core-7, Scope Complex
7, Institutional Area, Lodhi Road
New Delhi-110 003

.....Petitioner

Vs

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Vidyut Nagar,
Jabalpur 482 008
2. Maharashtra State Electricity Distribution Co Ltd.
Prakashgad, Bandra (East),
Mumbai 400 051
3. Gujarat UrjaVikas Nigam Ltd
VidyutBhavan, Race Course
Vadodara – 390 007
4. Chattisgarh State Electricity Distribution Co. Ltd.,
P.O. Sundar Nagar,
Danganiya, Raipur – 492013



5. Chief Engineer (Electricals)
Electricity Department, VidyutBhawan,
Panaji, Goa

6. Electricity Department,
Administration of Daman & Diu
Daman-396 210

7. Electricity Department,
Administration of Dadra & Nagar Haveli,
Silvasa.

... Respondents

Parties Present:

1. Shri Shyam Kumar, NTPC
2. Shri Manish Jain, NTPC

ORDER

The Petitioner, NTPC Limited, has filed the present petition under Section 62 and 79(1)(a) of the Electricity Act, 2003 (hereinafter referred to as the “2003 Act”) read with Regulation 54 & 55 of CERC (Terms and Conditions of Tariff) Regulation 2014 (hereinafter referred to as the 2014 Tariff Regulations) and Regulation 111 and 115 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for Extension of cut-off date of Mauda Super Thermal Power Station (MSTPS), Stage-I (2X500 MW) from 31.03.2017 to 31.03.2019. The Petitioner has made the following prayers in the Petition:

“1. In view of the facts and circumstances submitted above, the Hon’ble Commission be pleased to extend the cut-off date of the instant station from 31.03.2017 to 31.03.2019 i.e. for two years by invoking Hon’ble Commission’s powers under Regulation 54 ‘Power to Relax.’ and Regulation 55 ‘Power to Remove Difficulty.

2. Hon’ble Commission may please issue any such order on its own which deems fit in such case.”

2. Mauda Super Thermal Power Station Stage-I (hereinafter referred to as MSTPS-I) is located in the State of Maharashtra with an approved installed capacity of 1000 MW (2x500 MW). The brief submissions made by the Petitioner are as under:



- (i) MSTPS-I has been declared on Commercial Operation w.e.f. 30.3.2014 and according to proviso to Regulation 3 (13) of the 2014 Tariff Regulations, the Cut-off date for the station is 31.3.2017. The Commission vide its order dated 01.02.2017 in Petition No.328/GT/2014 approved tariff for the period from 01.04.2014 to 31.03.2019 in accordance with the 2014 Tariff Regulations.
- (ii) The projected additional capitalization under original Scope of works as allowed by the Commission in the order dated 01.02.2017 is as under:

Amt. in Rs. lakh

FY	2014-15	2015-16	2016-17	2017-2018	2018-2019	Total
Add Cap	59453.71	43888.57	14173.00	500.00	500.00	118515.28

- (iii) The capital works of Rs. 117515.28 lakh in the matter of MSTPS-I were envisaged to be capitalised during 2014-17 before the cut-off date of the station i.e. 31.03.2017.
- (iv) The expenditure of approx Rs 19734 lakh pertaining to certain balance works under original scope of work are envisaged to get spilled over beyond cut-off date on account of various reasons beyond the reasonable control of the petitioner and despite regular monitoring & follow-up by the petitioner. Majority of above works like Railway siding works, Main and Offsite civil works, Service and land compensation etc are in progress and likely to be completed by FY 2018-19.
- (v) The prime concern of the petitioner was to commence the commercial operation of the unit to serve the beneficiaries at the earliest by supplying affordable and reliable power. Therefore, the generator should not be penalized for its work-efficiency in declaring the COD at the earliest and also when the Non-COD related balance works got delayed (to the proportion of only 2.95% of completed capital cost) due to the reasons not attributable to the petitioner. Further, such non-COD related expenditures spilling over the cut-off date is not detrimental to beneficiaries as it even protect the beneficiaries from front loading of the tariff and therefore no additional burden is imposed on them due to such delays in balance works.



3. The Petitioner has requested the Commission to condone the expected delay in completion of above works and allow the capitalization of the same for the tariff purpose during the tariff period 2014-19 by relaxing the cut-off date beyond 31.03.2017 for two years exercising its powers under Power to Relax under Regulation 54.

4. The Commission admitted the Petition on 9.3.2018 and issued notice to the parties. Further, the Commission directed the Petitioner to submit the copies of correspondences made with Railways & RITES in support of the efforts made by the petitioner to complete the works related to Railway siding within cut-off date. In compliance with the directions of the Commission, the Petitioner vide its affidavit dated 20.3.2018 has filed the information called for. Replies to the petition have been filed by the Respondent No. 1, MPPMCL vide affidavit dated 30.3.2018. However, Respondent No. 2 to 7 have not filed their reply to the petition. The Petitioner vide affidavit dated 5.4.2018 has filed its rejoinder to the reply filed by MPPMCL.

Submissions of the Respondent

MPPMCL

5. The Respondent No. 1, MPPMCL vide its affidavit dated 30.3.2018 has submitted as under:

- (i) The 2014 Tariff Regulations is not applicable in instant case as the petition pertains to Mauda STPS Stage-I (2x500 MW) which was commissioned on 30.03.2014 i.e. during Tariff control period 2009-2014 and hence provisions of Tariff Regulation, 2009 shall be applicable.
- (ii) The investment approval of Mauda Stage-I was accorded by the board of the petitioner company (NTPC) on 26.11.2007. The actual COD of Unit-1 and Unit-2 is 13.03.2013 and 30.03.2014 respectively. Accordingly, Unit-1 was declared under commercial operation after 63.58 months and Unit-2 was declared under COD after 76.14 months from the date of investment approval. The time line specified in tariff regulations, 2009 is 42 months from the date of investment approval for the unit of 500 MW and for subsequent units at



an interval of 6 months. If both the units were declared under COD as per the time line specified in tariff regulations 2009, the schedule COD for Unit-1 & 2 may be 26th May 2011 and 26th Nov. 2011 respectively. Further, the scheduled cut-off date of the project should be 31st March of the year closing after two years of the year of scheduled COD of the project as indicated above. Thus, the cut-off date of Mauda STPS would have been 31st March 2014. It has submitted that if the time line specified in Tariff Regulations 2009 for commissioning of 500 MW projects have been followed by the petitioner the cut-off date must have expired by the time by which the petitioner could hardly achieve the COD of the plant i.e. 30.03.2014.

- (iii) Based on the COD of Mauda STPS-I on 30.03.2014 and cut off date of the Generating Stations on 31.03.2017, full three financial years were available to the petitioner for completion of major capital works of the project and seeking extension of cut off date is highly objectionable and may not be allowed.
- (iv) The petitioner's claim that its prime concern was to commence the commercial operation of the Units to serve the beneficiary at the earliest by supplying affordable and reliable power and therefore, the generators should not be penalised for the work efficiency in declaring the COD at the earliest is highly objectionable as the petitioner has failed to achieve the time line specified in tariff regulations 2009 for completion of the projects. The Unit-1 was delayed by 21.58 months and Unit-2 was delayed by 28.14 months and the petitioner is claiming that this is petitioner's work efficiency in declaring the COD at the earliest. It is humbly submitted that it is the respondents who are being penalised by way of higher IDC capitalisation, delayed availability of power etc. on account of this kind of work efficiency of the petitioner. Thus, the beneficiaries/respondents are being penalised manifold on account of inefficient performance in commissioning of the project such as:
 - a) Higher Annual Fixed Cost (AFC) due to higher capital cost on account of increase in IDC/IEDC due to delay in commissioning,
 - b) Suo-moto extension of cut-off date from 31.03.2014 (as per scheduled time line) to 31.03.2017 (as per actual delayed COD),
 - c) Less availability of power from this generating station during initial period after its date of commissioning (only 49% during 2013-14 and 79% during 2014-15).



Thus, by delay in commissioning of the project the beneficiaries commercial and financial interest have been effected badly and this issue needs to be given prime importance while considering the plea of the petitioner.

- (v) In Tariff Regulations 2009, the period of cut-off date was further extended by one year in case of date of commercial operation prior to 31st Dec. and by 2 years in case COD in the last quarter of the year. The Commission in its 'Statement of Reason' of Tariff Regulations 2009 has observed that:

"Clause-10.2.4 As regards the generators' demand to allow deferred liabilities and deferred works executed after the cut-off date, the Commission is of the view that all the works relating to the project within the original scope including colony etc. should be completed as early as possible, but not later than cut-off date. In fact the cut-off date has been extended by one more year to take care of the concerns of the generating companies/transmission licensees. The Commission expects that all liabilities and deferred works which could not be settled or completed by the COD of the station, must be settled or completed by the cut-off date. A period of 2 to 3 years is considered reasonable enough to complete all works within the original scope except the works relating to ash pond and ash handling system. Any liability remaining unsettled or work remaining unfinished after the cut-off date could only be because of some dispute or otherwise before arbitration or pending before the court which shall be dealt as per the regulations dealing with additional capitalisation after cut-off date".

Thus it was envisaged in Tariff Regulations 2009 that the plant could be completed in all respects with all plant machinery and equipments in place at least within a period of more than 27 months. This time period was considered to be sufficient for undertaking all constructions related activity except for the works like ash pond and ash handling system and therefore the prayer of the petitioner seeking relaxation and extension in cut-off date is mis-conceived , arbitrary and without any legal basis and therefore is liable to be disallowed.

- (vi) The plant was commissioned on 30.03.2014 i.e. during the currency of tariff Regulations 2009-14 and therefore the provisions relating to cut-off date as defined in Tariff Regulations 2009 shall be applicable in case of Mauda STPS-I. The definition of cut-off date provided in Regulation 3(11) specifically provides for duration/time period for consideration of cut-off date. This definition does not provide any Regulatory powers to the Commission to further extend the cut-off date. In absence of any specific provisions in this regard, the Commission has no regulatory authority in so far as it relates to extension of cut-off date in accordance with the provisions contained in CERC (terms and Conditions of Tariff) Regulations, 2009 notification dated 19.01.2009. This fact is evident from the Tariff Regulations 2014 which inter-alia provides such inherent power to the



Commission for extension of cut-off date on the basis of documentary evidence the Regulation-3(13) of Tariff Regulations 2014 provides as under:

“Clause-3(13) – Cut-off Date means 31st March of the year closing after two years of the year of commercial operation of whole or part of the project, and in case whole or part of the project is declared under commercial operation in the last quarter of a year, the cut-off date shall be 31st, March of the year closing after three years of the year of commercial operation.

Provided that the cut-off date may be extended by the Commission if it is proved on the basis of documentary evidence that the capitalisation could not be made within the cut-off date for reasons beyond the control of the project developer”.

- (vii) The provisions of Tariff Regulation 2009 does not provide for consideration of any justification for delay in cut-off date. The petitioner has sighted delay in Railway siding works, Land Compensation works and Water System works which are the departments being dealt by Central/State Govt. Companies/Agencies for which Resolution must have been obtained with the intervention of Central/State Govt. administration and thus these delays are attributable to the petitioners. Further, construction work of township, main plant and off site civil works and steam turbine, TG package etc. were entrusted by the petitioner to various vendors/ contractors on prescribed terms and conditions after technical/ commercial/financial validation and evaluation and non-performance of these contractors are wholly attributable to the petitioners. The petitioner has failed to provide any justification that these causes of delay is not attributable to the petitioner and are beyond control of the petitioner.

Rejoinder of the Petitioner

6. The Petitioner vide its affidavit dated 5.4.2018 has filed its rejoinder to the reply filed by the above Respondent No. 1. The gist of the submissions in the rejoinder is as under:

- (i) Mauda STPS Stage-1 (2x500 MW) was declared under commercial operation on 30.03.2014 during the tariff period 2009-2014 and as per Regulation 3(11) of Tariff Regulations 2009, its cut-off date is 31.03.2017. Since the balance expenditure under original scope of work for the instant station is to be incurred during 2014-19 tariff period, the cut-off date and other provisions shall be applicable as per the 2014 Tariff Regulations and not under CERC Tariff Regulations 2009.
- (ii) In view of the applicability of prevailing Tariff Regulations 2014 for the instant station, the relief for extension of cut-off date has been sought under Regulation 54 'Power to Relax'



and Regulation 55 'Power to Remove difficulty'. Further, Regulation 3(13) of the 2014 Tariff Regulations and Regulation 3 (11) of Tariff Regulations' 2009 dealing of the period between COD and cut-off date for a generating station are exactly similar. The contention of respondent that the Commission has no regulatory authority to consider extension of cut-off date under Tariff Regulations, 2009 is not correct. Commission under the regulation "Power to Relax" has the power to relax any of the provisions of the tariff Regulations on its own motion or on an application made by an interested person.

- (iii) The absence of explicit provisions in CERC Tariff Regulations 2009 in respect of the extension of cut-off date can neither automatically deprive the Petitioner to seek extension of cut-off date for the reasons beyond its reasonable nor halts the Commission to exercise its power under such circumstances. -in similar case in Sipat STPS Stage-1 (order dated 29.3.17 in petition no. 337/GT/2014), the Commission has considered the prayer for extension of cut-off date for one year.

7. After going through the submissions and documents available on record, we proceed to deal with the issue of extension of cut-off date as sought by the Petitioner based on the reasoning and justification of individual works which could not be completed and capitalized within the cut-off date (i.e. 31.3.2017) as stated in the subsequent paragraphs.

Analysis and Decision:

8. The Petitioner's generating station, MSTPS-I comprises of 2 units of 500 MW each. Unit-I achieved COD on 13.3.2013 and Unit-II on 30.3.2014. Thus, the COD of MSTPS-I is 30.3.2014. In terms of Regulation 3(11) of the 2009 Tariff Regulations, the cut-off date of MSTPS is 31.3.2017. The tariff of MSTPS for the period 2009-14 was determined by the Commission vide order dated 21.9.2015 in Petition No. 69/GT/2013. Thereafter, the Commission vide order dated 1.2.2017 in Petition No. 328/GT/2014 had determined the tariff of MSTPS for the period 2014-19.



9. The Petitioner has submitted that out of the projected additional capital expenditure of Rs 117515.28 lakh allowed upto the cut-off date (i.e. 31.3.2017) in order dated 1.2.2017, certain works amounting to Rs 19734 lakh remained un-capitalized due to non-completion of the works. Accordingly, the Petitioner has prayed for extension of cut-off date of MSTPS for a period of two years i.e. from 31.3.2017 to 31.3.2019 in exercise of Commission's power under Regulations 54 (Power to relax) & 55 (Power to remove difficulty) of the 2014 Tariff Regulations for capitalization of the expenditure in respect of the said works.

10. As regards exercise of Power to relax, the APTEL vide its judgment dated 25.3.2011 in Appeal No. 130/2009 (RGPPL v. CERC & anr.) has observed the following:

“18.1 The Regulations of the Central Commission and the decision of the Tribunal and the Supreme Court confer the judicial discretion to the Central Commission to exercise power to relax in exceptional case. However, while exercising the power to relax there should be sufficient reason to justify the relaxation and non-exercise of discretion would cause hardship and injustice to a party or lead to unjust result. It has also to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming relaxation. Further, the reasons justifying relaxation have to be recorded in writing.”

11. Therefore, keeping in view the observations of the APTEL as specified in its judgment dated 25.3.2011 and the Petitioners submission for capitalisation of some of the works, we examine the Petitioner's case accordingly.

12. The Petitioner has sought extension of cut-off date for the following works which could not be completed within the cut-off date:

- (i) Delay in Railway Siding works.
- (ii) Land Compensation
- (iii) Water System
- (iv) Township (due to increase in rate of Royalty for gravel & moorom)
- (v) Main Plant and Off site Civil works
- (vi) Steam Turbine, TG package and Station C&I



Delay in Railway Siding works:

13. The petitioner has submitted that Mauda STPP has been developed as non-pit head station and the coal linkage of the project was granted from the IB valley coal fields of MCL. The transportation of coal has been envisaged through Indian Railways system by constructing a dedicated railway line from Chacher station on Nagpur-Gondia line which is about 8 kms from the project site. The Railway siding (turnkey) package was entrusted to M/s RITES as a project Management & Execution Consultant with the responsibility of the work of detailed engineering of Railway siding system and in Plant rail facilities package. As the work of railway siding for Project involves linking of rail track and systems with the associated railways lines and systems of Chacher station of Indian Railways, the work at Chacher station were identified to be carried out by Indian Railways on deposit basis and its scope of work inter-alia included Railways boundary, Signalling & Telecommunication (S&T), Overhead Electrification (OHE) and track works. However, railways refused to carry out the work citing that work couldn't be taken up by them due to shortage of manpower and permitted RITES to carry out the work under its supervision. During the execution, the requirement of having bidirectional connectivity to bring loaded rakes from Nagpur end has come due to shifting of coal linkage from Mahanadi Coal Fields (Odisha) to Western Coal Fields (Nagpur). However, the work of Railway siding could not be completed as expected due to delay in approvals from Railways as well as heavy rains in the area. The petitioner has further submitted that for erection of overhead electrification, Station modification works & formation work at Chacher railway area and surface connectivity were critical activities which are to be completed by RITES after obtaining approval of Indian Railways. The delay in approval of drawings and scheme from Commissioner of Railways Safety for the construction of a single span RR across Howrah-Mumbai line affected the work. The Girder launching was only possible after getting the required Tariff blocks on busy Howrah-Mumbai line. The Chacher station is in the Mumbai-Howrah line, one of the busiest corridors of



Indian Railways. Due to the heavy traffic, the surface connectivity with Indian Railways could only be achieved after getting necessary clearance from Indian Railways.

14. The pending works are mostly related to the involvement of Railway in Chacher station and to be completed by Railway on deposit basis etc for which approvals of Railway were required at various level from time to time. The approval process have delayed completion of the works under the package, hence, the delay in obtaining approvals from Railway authorities is not attributable to the petitioner. Therefore, the Petitioner has requested the Commission to allow the additional time to complete/ capitalise the work.

15. In compliance to the Commission's directions vide RoP of hearing dated 9.3.2018, the Petitioner vide its affidavit dated 20.3.2018 has submitted the copies of correspondences made with Railways & RITES in support of the efforts made by the petitioner to complete the works related to Railway siding within cut-off date. The Petitioner has submitted the documents/ follow-up letters exchanged with Railways & RITES during the period from 2014 to 2017.

16. We have considered the submission of the petitioner. It has been noticed that the Commission vide order dated 21.9.2015 in Petition No. 69/GT/2013 for approval of tariff during the period 2009-14 had condoned the delay of about three years from 6.12.2010 to 20.9.2013.

The Commission in that order has observed as under:

"31. The petitioner has submitted the delay of 169 days in the declaration of commercial operation was on account of the non-completion of the Railway siding work. From the submissions of the petitioner, it is noticed that the work order for Railway siding package was awarded on turnkey basis to M/s RITES as per schedule on 10.12.2008 and M/s RITES had prepared the DPR for Railway siding package and submitted to Railway authorities in June"2009 for approval. The DPR was approved on 10.5.2010 by the Railways authorities after incorporating the necessary modifications/ suggestions as agreed to with the Railways. It is also observed that the Safety approval was accorded by the Railways in November, 2011. Thus, three years had elapsed for obtaining approval for DPR and Safety clearances from the Railway authorities from date of award of contract to RITES on 10.12.2008. Considering the fact that the petitioner's role in obtaining the approval for DPR and Safety clearances from Railway authorities is minimal, it would not be proper to conclude that the delay of 3 years in



obtaining approvals from Railway authorities is attributable to the petitioner. The Railway siding work from Chacher station to project site consist of two parts namely (i) Signaling, Telecommunication, OHE and Civil works in the Chachar railway station and (ii) laying of 8 km Railway track from Chachar station to plant site and associated work. Though Railways had initially agreed to do the siding work at Chachar station, it refused to do later due to inadequate man power. In this background, the petitioner had no other alternative but to get the railway siding work implemented through M/s RITES in May 2011. All the required processes starting from obtaining approval of DPR and Safety clearances by Railways, the shifting of work of OHE, Signalling & Telecommunication, Civil works etc. in Chachar station from Railways to RITES took considerable period of time of about 2 1/2 to 3 years, thereby resulting in the delay in completion of Railway siding work. As against the scheduled date of completion of work on 6.12.2010, the Railway siding work was completed only on 20.9.2013. Considering the factors in totality, we are of the considered view that the delay due to noncompletion of railway siding as per schedule (6.12.2010) was beyond the control of petitioner and is not attributable to the petitioner. The petitioner has claimed effective delay of 169 days due to non-completion of railway siding work on the basis of the fact that the delay after 6.12.2010 due to non-completion of railway siding work has been subsumed on account of the delay due to non-availability of sand and moorum in 2009- 10, 2010-11 and 2011-12. The delay due to stoppage of work by Govt. of Maharashtra (138 days), the delay of one month due to rain and delay due to railway siding (169 days) constitute the delay of 9.5 months. It is observed that Unit-I was test synchronized on 8.4.2012 and commissioned on 9.4.2012. However, the COD of Unit-I was declared by the petitioner only on 13.3.2013 i.e. before the completion of railway siding work on 20.9.2013. The petitioner has not clearly indicated as to how COD of Unit-I was declared six months prior to the completion of Railway siding work. From the perusal of the submissions and the documents with regard to Railway siding work, it is evident that the petitioner had declared the COD of Unit-I in March 2013 by arranging coal transportation through road, with the expectation that the Railway siding work would be completed by that time. However, due to the non-completion of the Railway siding work, the petitioner was not able to declare COD of the unit as per the scheduled date of 28.5.2012. In this background, the delay of 2 years 9 months [from the scheduled date of 6.12.2010 to the actual completion date of 20.9.2013] in the completion of Railway siding work, leading to the delay of 9.5 months in the actual COD of Unit-I and 16 months in case of Unit-II, is for reasons beyond the control of the petitioner and the petitioner cannot be made attributable to the same. Accordingly, the delay of 9.5 months and 16 months in the COD of Unit-I and Unit-II respectively has been condoned. The delay is not attributable to the petitioner and is therefore covered by the principle [(situation (ii))] of the judgment of the Tribunal dated 27.4.2011 and the generating company is given benefit of the additional cost incurred due to time overrun. However, the LD recovered from the contractor and the insurance proceeds, if any, would be considered for reduction of capital cost.”

17. Considering the fact that delay in Railway Siding works was condoned by the Commission in the order dated 21.9.2015 based on the prudence of the claim and the Petitioner is following up regularly with the Railway/ RITES teams to complete the work and the same has been observed from the follow-up letters placed on record vide affidavit dated 20.3.2018. Accordingly, we are of the view that relaxation in capitalisation of the expenditure of railway siding work after the cut-off date should be allowed, but in no case it shall be extended after 31.3.2019.



Land Compensation

18. The Petitioner has submitted that a provision of one time compensation settlement has been kept in lieu of the employment to the Project Affected People (PAPs) as per agreement with Station Rehabilitation Authority (SRA) whereas the PAPs are demanding employment in lieu of the compensation, which is a deviation from the agreement. For pressing the demands of PAPs, Prahar Yuva Sangathan a local political outfit started the DERA Andolan in May 2016 which continued for nearly two months. During the above period there was complete stoppage of work at site on account of non-availability of man power. The agitation disturbed the working momentum and affected project works severely. Presently, the Compensation in lieu of the Employment to 200 interested PAPs out of total 600 PAPs has been disbursed. The Petitioner has submitted that it is following up the matter regularly. The negotiation process with the help of district authority is in progress and expected to be concluded shortly. The disbursement process will take time, which is not under control of the Petitioner. In view of the above, the Petitioner requested the Commission to give additional time to complete the process of payment of compensation and capitalize the same in the books of accounts.

19. We have examined the matter related to Land Compensation. The matter is related to the payment of one-time compensation being paid/ to be paid to the Project Affected People (PAP) as per agreement with Station Rehabilitation Authority. However, the Petitioner has submitted that PAPs are demanding employment in lieu of the compensation and in this regard an agitation was carried out during May 2016 which continued for nearly two months. Out of 600 PAPs, the Petitioner has disbursed compensation to 200 interested PAPs but with the remaining PAPs, the Petitioner has taken up the matter with district authority. Considering that this delay in work is beyond the reasonable control of the petitioner, we are of the view that in case Land Compensation payment is made in terms of order or decree, the same shall be considered



under relevant provisions in Regulation 14 (3) (i) of the 2014 Tariff Regulations at the time of true-up and accordingly no extension of cut-off date is required.

Water System

20. The Petitioner has submitted that Cooling towers package was awarded to M/s NBCC Ltd. On certain issues, M/s NBCC has sought to dispute resolution through adjudicator as provided in the contract. Subsequent to the order dated 12.05.2016 of the adjudicator which was in favour of NTPC, M/s NBCC has approached the Secretary, Department of Public Enterprises to refer the dispute to the permanent Machinery of Arbitration (PMA). The disputed amount cannot be capitalized until the outcome of the arbitration process. As the matter is subjudice and the delay under this account is not attributable to the Petitioner, the Petitioner has sought additional time to capitalize this work.

21. We have examined the matter. The matter is related to the non-capitalization of amount to be paid to the contractor M/s NBCC due to the matter being pending with the Secretary, Department of Public Enterprises to refer the dispute to the permanent Machinery of Arbitration (PMA). Considering that the matter is pending for adjudication, the capitalisation shall be dealt with under the Regulation 14(3) (i) of the 2014 Tariff Regulations as and when the issue is settled. Accordingly, no relaxation of cut-off date is required in this issue.

Township

22. The Petitioner has submitted that the construction of township is executed in many small packages to economise on cost. Being the low value of the package, generally small contractors participate in award process of township packages. These contractors don't have a huge site establishment and hence, their sustainability to cater the much deviated working environment is



limited. The construction works of the township got affected due to various reasons, which are as under:

- (i) Increase in the rate of Royalty for gravel & moorum: Department of Forest and Revenue, Govt of Maharashtra increased the rate of Royalty for gravel & moorum from Rs 200 per brass to Rs 400 per brass vide notification dated 11.05.2015. Against the above increase in rate of Royalty, Stone Crushers Associations called for strike from 31.10.15 for nearly one month. The above strike resulted in non availability of gravel and moorum which is essentially required for carrying out civil works and work was delayed. The strike resulted in complete stoppage of civil works, which was beyond the control of the petitioner.
- (ii) In the month of July'2016, the total rainfall recorded was about 490 mm which was 157% of normal rainfall. It led to flooding at site and in & around Vidarbha region of Maharashtra, which resulted in restriction of movement of men & machinery and virtually complete stoppage of work for nearly one month, which not only affected the civil works of township, but other project works also.
- (iii) Due to demonetization of currencies of higher denomination by Gol w.e.f November 9, 2016, countrywide cash-crunch scenario arose. This affected those sector very badly where daily wages workers were engaged. During these unforeseen circumstances, the majority of the contractual man power deployed by the agencies left the site abruptly and affected the work progress very adversely.

23. Therefore, on account of delay not attributable to the Petitioner, the Petitioner has requested the Commission to give additional time to capitalize this work.

24. We have examined the matter. The matter is related to delay in construction of township owing to the strike by Stone Crushers Associations against the increase in rate of Royalty for gravel & moorum, Heavy Rains and Demonetization. It has been noted that the conduct of strike by Stone Crushers Associations against the increase in rate of Royalty for gravel & moorum



from 31.10.2015 for nearly a period of one month has resulted in the non-availability of gravel and moorum which are required to carry out civil works. Further, heavy rains in the Vidarbha region of Maharashtra during the month of July 2016 have affected the works since there was an increase of 57% of rainfall than average. The Petitioner has submitted that due to demonetization of currencies of higher denomination by Gol w.e.f November 9, 2016, the majority of the contractual man power deployed by the agencies left the site abruptly and affected the work progress very adversely. The strike lasted for just one month, details of claimed higher rainfall and its effect on work has not been spelt out and demonetisation took place in November 2016 by when the cut-off date was only 4-5 months away. In our view, the reasons forwarded by the Petitioner are not sufficient to extend the cut-off period.

Main Plant and Off site Civil works

25. The Petitioner has submitted that the work of Construction of Main Plant and Off site Civil works package was awarded to M/s Era Infra Engineering Limited (EIEL). M/s EIEL did not perform the work satisfactorily, raised dispute in respect of the contract and invoked the Arbitration vide letter dated 04.05.2015. Delay in completion of civil works due stoppage of works and arbitration proceedings especially in the offsite area consequently delayed the execution of service and general works like AC, Ventilation, Fire protection, Electric Systems etc. Therefore, the Petitioner could not capitalise the projected Capital works in the area of AC, Ventilation, Fire protection, Electric Systems etc within the cut-off date. As the matter is under Arbitration and the outcome and the completion of arbitration process is not under reasonable control of the Petitioner, the Petitioner is putting its best effort to complete the balance sequential works at the earliest. The Petitioner has requested to allow additional time to complete these works.



26. We have examined the matter related to delay in Main Plant & Off site Civil works. The Petitioner has submitted that the delay in works related to Main Plant and off site Civil works is due to the matter being under Arbitration as the contractor has not performed the work satisfactorily and has raised dispute in respect of the contract and invoked the Arbitration. Since the matter is pending for adjudication, the expenditure shall be considered under the Regulation 14(3) (i) of the 2014 Tariff Regulations as and when the arbitration issue is settled.

Steam Turbine, TG package and Station C&I

27. The Petitioner has submitted that due to stoppage of the work and arbitration proceedings by M/s EIEL, the fronts for Hydrogen Plant Building and other civil works could not be made available. The Petitioner has made the best efforts to make up for the delay and less than 3% of work remains un-capitalised as on scheduled cut-off date. Moreover, some of the amount pertains to balance payment against Trial operation, PG test etc for the works which have already been completed and have already been put to use. These expenditures are planned to be discharged shortly. The delay of the activities was not under control of the petitioner. Therefore, a relaxation may please be granted to capitalise the expenditure on this account.

28. We have examined the matter related to delay in works for Steam Turbine, TG package and Station C&I. The petitioner has submitted that the fronts for Hydrogen Plant Building and other civil works could not be made available due to the arbitration proceedings by the contractor (M/s EIEL) in case of Main Plant and off-site civil works. Apart from this, some of the amount pertains to balance payment against Trial operation, PG test etc for the works which have already been completed and have already put to use. In our view, the expenditure regarding front of Hydrogen Plant building and other civil works shall be dealt with under the Regulation 14(3) (i) of the 2014 Tariff Regulations once the arbitration issue is settled.



29. Based on the above discussions, we do not find any justification to invoke provisions of 'Power to Relax' as specified under Regulation 54 of the 2014 Tariff Regulations for extension of cut-off date from 31.3.2017 to 31.3.2019 for the above cited works except for Railway Siding works, where cut-off date is extended as discussed in Para 17. Expenditures for (1) Land Compensation, (2) Water system, (3) Main Plant and Off site Civil works and (4) Steam Turbine, TG package and Station C&I shall be dealt with under Regulation 14(3)(i) of the 2014 Tariff Regulations as when these issues are settled as discussed in Paras 19, 21, 26 and 28 respectively.

30. Petition No. 38/MP/2018 is disposed of in terms of above.

Sd/-
(Dr. M.K. Iyer)
Member

Sd/-
(A. K. Singhal)
Member

Sd/-
(P.K. Pujari)
Chairperson

