

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Review Petition No. 12/RP/2019
In Petition No. 102/TT/2018

Coram:

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

Date of Order: 11.12.2019

In the matter of:

Petition for review and modification of the order dated 2.5.2019 in Petition No. 102/TT/2018.

And in the matter of:

NTPC Limited,
NTPC Bhawan,
SCOPE Complex, Institutional Area,
Lodhi Road, New Delhi – 110003

...Review Petitioner

Vs.

1. Essar Power Transmission Company Limited,
Lower Ground Floor,
Hotel Treebo Conclave Riviera A-20,
Kailash Colony,
New Delhi 110048.
2. Essar Steel India Limited
27th KM on Surat-Hazira Road,
Hazira, District-Surat -394270.
3. Energy Department,
Government of Madhya Pradesh,
Mantralaya 435,
Vallabh Bhavan,
Bhopal 462004.
4. Essar Power M.P Limited
11th Floor, 11 KK Marg,
Opp Race Course,



Mahalaxmi,
Mumbai - 400 034
Maharashtra.

5. Power Grid Corporation of India Limited,
Saudamini, Plot No.2,
Sector 29,
Near IFFCO Chowk
Gurgaon (Haryana) -122001.
6. Western Regional Power Committee
F-3, MIDC Area, Marol, Opp. SEEPZ,
Central Road, Andheri (East),
Mumbai - 400093.
7. Power Systems Operation Corporation Limited,
B-9, Qutab Institutional Area,
Katwaria Sarai,
New Delhi-110016.

... Respondents

For Review Petitioner:

Shri Gopal Jain, Sr. Advocate, NTPC
Shri Avjeet Lala, Advocate, NTPC
Ms. Shikha Pandey, Advocate, NTPC
Ms. Meha Chandra, NTPC, Advocate
Shri Rajesh Jain, NTPC,
Shri P.Piyush, NTPC
Shri A.S Pandey, NTPC

For Respondents:

None

Order

Instant Review Petition is filed by NTPC seeking review and modification of the order dated 2.5.2019 in Petition No. 102/TT/2018.

Background

2. Essar Power Transmission Company Limited ("EPTCL") filed Petition No. 102/TT/2018 for true up of transmission tariff in respect of two bays at Gandhar



Switchyard owned by NTPC for the period 2009-14 i.e. from 23.2.2013 to 31.3.2014 under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as “2009 Tariff Regulations”) and determination of tariff under Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “2014 Tariff Regulations”).

3. The instant assets were part of the licence granted to EPTCL vide order dated 10.4.2008 in Petition No. 157 of 2007 and the same was subsequently modified vide order dated 15.9.2009. The said assets were to be commissioned at NTPC station at Gandhar in terms of Commercial Agreement dated 11.2.2010 entered into between EPTCL and NTPC. NTPC capitalized the subject assets as additional capital expenditure in its existing generating station at Jhanor-Gandhar GPS and the Commission determined the tariff for 2009-14 period vide its order dated 30.3.2017 in Petition No. 326/GT/2014 and vide order dated 10.4.2017 in Petition No. 325/GT/2014 for the 2014-19 period.

4. EPTCL filed Tariff Petition No.173/TT/2013 in respect of the subject assets from 23.2.2013 (COD) to 31.3.2014 for 2009-14 period and Petition No.111/TT/2015 for truing up of the transmission charges including the subject assets. In terms of Commission’s provisional order dated 12.9.2013 in Petition No.173/TT/2013, EPTCL



was making payment to NTPC for the bays. The Commission vide order dated 15.6.2016 in Petition No. 173/TT/2013 determined the tariff of the assets and the same was trued-up in Petition No. 111/TT/2015 for the period up to 31.3.2014. In the said order, Commission observed that NTPC and EPTCL should jointly file a tariff petition in respect of two bays at Gandhar Switchyard and on its approval EPTCL will recover the tariff of the assets and will reimburse the same to NTPC. After issuance of said order EPTCL stopped making payment to NTPC. NTPC filed Review Petition No. 55/RP/2016 against the aforesaid order of the Commission and the Commission vide its order dated 30.1.2018 directed NTPC to provide the cost of the two bays at Gandhar Switchyard to EPTCL and also directed EPTCL to file a Petition for determination of tariff of the two bays at Gandhar Switchyard within 30 days of issue of the order on the basis of the details of cost furnished by NTPC. Accordingly, EPTCL filed Petition No.102/TT/2018 based on the capital cost and other details as shared by NTPC with it.

5. In Petition No. 102/TT/2018, the Commission considered the capital cost as per books of account of NTPC duly certified by Auditor. The Commission while allowing the transmission charges in order dated 2.5.2019 in Petition No. 102/TT/2018 restricted the capital cost to the approved cost and disallowed the additional capital



expenditure amounting to ₹19.69 lakh during 2013-14. Aggrieved by this disallowance, the Review Petitioner has filed the instant Review Petition.

6. The Review Petitioner has made the following prayers:-

- “a) Admit the Review Petition,
- b) Allow the present Review Petition on the aspects limited to allowing additional capital expenditure amounting to ₹19.69 lakh during 2013-14.
- c) Modify the tariff calculations in the order under Review, and
- d) Pass such further order(s) or direction(s) as the Commission may deem fit and proper in the facts and circumstances of the case.”

Submissions of the Review Petitioner

7. The Review Petitioner has submitted following grounds for review of the impugned order:-

- (a) As per the Investment Approval, the Sub-Committee of the Board of Directors of NTPC approved the cost of the instant bays at Gandhar Switchyard of NTPC as ₹1416.03 lakh exclusive of all taxes, duties and levies applicable on direct transaction between ABB and NTPC but inclusive of Service Tax and cess. EPTCL filed Form-5B vide affidavit dated 17.8.2018 in Petition No.102/TT/2018, giving the break-up of the actual capital cost of ₹1409.07, which includes the taxes and duties of ₹28.02 lakh. Accordingly, the capital cost after excluding taxes and duties and inclusion of additional capital expenditure of ₹26.65 lakh during 2013-14 is ₹1407.70 lakh which is below



the approved cost of ₹1416.03 lakh and hence there is no cost over-run in case of the instant bays.

(b) The break-up submitted by EPTCL was not considered by the Commission in impugned order and inadvertently capital cost in the current asset is restricted to approved cost thereby restricting the claimed additional capital during 2013-14. This is an error apparent on the face of record which requires to be rectified. EPTCL prayed for allowing the whole additional capital expenditure during 2013-14 and to consider the capital cost of ₹1435.72 as on 31.3.2014 for computation of tariff.

Analysis and Decision

8. The Review Petition was admitted vide order dated 23.9.2019 and notice of the same was served upon the respondents. However, none of the respondents appeared during the hearing on 3.12.2019 or filed any response to the Review Petition.

9. We have examined the contentions of the Review Petitioner and have perused the materials available on record.

10. The Review petitioner has submitted that the break-up of the capital cost provided in Form 5-B was not considered so as to exclude ₹28.02 lakh paid towards taxes and duties. On scrutiny of order dated 2.5.2019, we find that the completion



cost of the subject assets was claimed as ₹1435.72 on as 31.3.2014 as against the approved cost of ₹1416.03 lakh. Accordingly, the Commission restricted the total completion cost to ₹1416.03 lakh and disallowed ₹19.69 lakh out of the total additional capital expenditure claim of ₹26.65 lakh. However, we notice that ₹28.02 lakh was paid towards taxes and duties and the same was inadvertently not considered in the impugned order. Accordingly, we modify our order dated 2.5.2019 insofar as it relates to deduction of ₹28.02 lakh paid towards taxes and duties and as such we observe that there is no cost over-run even if additional capital expenditure incurred in the year 2013-14 to the extent of ₹19.69 lakh is allowed.

11. Accordingly, we hereby allow the total additional capital expenditure of ₹26.65 lakh to be included in the completion cost of the subject asset. We further observe that the completion cost is within the approved cost in terms of the Investment Approval. Accordingly, the impugned order is modified and the revised capital cost is as follows.

(₹ in lakh)

Capital cost as on COD	Add-cap during 2013-14	Total cost as on 31.3.2014	Add-cap during 2014-15	Capital cost allowed as on 31.3.2019
1406.73	26.65	1433.38	2.34	1435.72

12. All other terms of the order dated 2.5.2019 shall remain unchanged.



13. The revision of tariff of the instant bays on account of the revision of the capital cost allowed in the instant Review Petition will be given effect at the time of truing up of the tariff of the 2014-19 period.

14. Review Petition No. 12/RP/2019 is disposed of in terms of above.

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

sd/-
(P.K. Pujari)
Chairperson

