**CENTRAL ELECTRICITY REGULATORY COMMISSION**
**NEW DELHI**

**Petition No. 130/MP/2018**

**Coram:**

**Shri P.K. Pujari, Chairperson**
**Dr. M.K. Iyer, Member**
**Shri I.S. Jha, Member**

**Date of Order: 09.05.2019**

**In the matter of**

Petition under section 62 and 79 (1) (a) of the Electricity Act, 2003 read with Regulation 3(13) of CERC Tariff Regulations, 2014, Regulation 111 and 115 of the CERC (Conduct of Business) Regulations, 1999 and Regulation 3(13) of CERC Tariff Regulations, 2014 for extension of Cut-off date of Vindhyachal STPS, Stage- V (1×500 MW) from 31.03.2018 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**

**Versus**

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 Urja Vikas Nigam Ltd
   Vidyut Bhavan, Race Course,
   Vadodara - 390 007

4. Chattisgarh State Electricity Distribution Co. Ltd.,
P.O. Sundar Nagar, Danganiya,
Raipur – 492013

5. Chief Electrical Engineer
3rd Floor, Vidhyut Bhavan,
Panaji, Goa-403001

6. Superintending Engineer,
Divisional office, Vidhyut Bhavan,
Near 66/11kV Kachigam Sub Station,
Somnath – Kachigam Road,
Kachigam, Daman-396210

7. DNH Power Distribution Corporation Ltd
UT of DNH, Silvassa-396230

...**Respondents**

**Parties present:**

Shri Nishant Gupta, NTPC
Shri Manish Jain, NTPC

**ORDER**

The Petitioner has filed the present Petition with the following prayer:

a) Extend the cut-off date of the instant station from 31.03.2018 to 31.03.2019 i.e. for one year by invoking Commission's powers under Regulation 3(13) of Tariff Regulations'2014.

b) Issue any such order on its own which deems fit in such case.

**Background:**

2. The Petitioner, NTPC Limited. (Formerly National Thermal Power Corporation Ltd.), (hereinafter to be referred as 'NTPC'), is a Government Company within the meaning of the Companies Act, 1956. Further, it is a 'Generating Company' as defined under Section 2(28) of the Electricity Act, 2003.

3. The Petitioner is having power stations/ projects at different regions and places in the country. Vindhyachal Super Thermal Power Station Stage-V (hereinafter referred to as VSTPS-V) is one such station located in the State of Madhya Pradesh having an

approved installed capacity of 500 MW (1x500 MW). The station has been declared on Commercial Operation (CoD) w.e.f. 30.10.2015 and according to proviso to clause 3 (13) of the Central Electricity Regulatory Commission (Terms and conditions of Tariff) Regulations, 2014 (hereafter referred to as the Tariff Regulations, 2014), the Cut-off date for the station is 31st March 2018.

4. The tariff of the VSTPS-V for the tariff period from the CoD of station i.e. 30.10.2015 to 31.03.2019 was determined by the Commission vide its order dated 31.08.2016 in Petition No. 234/GT/2015 in accordance with the Tariff Regulations, 2014.

5. The Projected Additional Capitalization under original Scope of works as allowed by the Commission in the order dated 31.08.2016 in Petition No.234/GT/2015 is as under:

| FY | 2015-16 (30.10.2015 to 31.03.2019) | 2016-17 | 2017-18 | 2018-19 | Total |
|---|---|---|---|---|---|
| Add Cap (₹ in lakh) | 9960.00 | 56521.02 | 25506.22 | 0.00 | 91987.24 |

6. The Petition was admitted on 19.12.2018 and notices were issued to the Respondents to file their replies. The Respondent No 1 i.e. MPPMCL has filed its reply vide affidavit dated 23.10.2018 and the Petitioner has also filed its rejoinder vide affidavit dated 04.12.2018 to the reply filed by MPPMCL. Respondent No. 2 to 7 have not filed their reply to the petition, despite notice.

**Submissions of the Petitioner**

7. The Petitioner vide affidavit dated 26.04.2018 mainly submitted as under :

   a) The tariff of the VSTPS-V for the tariff period from the CoD of station i.e. 30.10.2015 to 31.03.2019 was determined by the Commission vide its order dated 31.08.2016 in Petition No. 234/GT/2015 in accordance with the Tariff Regulations, 2014.

   b) As per the Tariff Regulations, 2014, the cutoff date of VSTPS-V worked out as 31.03.2018. The expenditure amounting to about 1.3 % of total capital cost i.e.

about Rs 35.72 Cr, pertaining to certain balance works under original scope of work for the instant station, would get spilled over beyond cut-off date, despite regular monitoring & follow-up by the petitioner on account of the various reasons beyond the reasonable control of the petitioner. The balance works/assets like supply of Wagons, Initial spares and balance CHP/MGR works etc. are in progress and likely to be completed by FY 2018-19.

c) The station has commenced to serve the beneficiaries before schedule CoD by supplying affordable and reliable power. However, inspite of the generator's work efficiency and best efforts, some Non-COD related works got delayed (to the proportion of only 1.3% of completed capital cost) due to the reasons not attributable to the petitioner.

d) This non-CoD related expenditures spilling over the cut-off date is not detrimental to beneficiaries as it even protects the beneficiaries from front loading of the tariff and therefore no additional burden is imposed on them due to such delays in balance works.

e) Some of the capital works amounting to Rs. 35.72 Cr. which were projected to be completed under the cut-off date, could not be capitalized on account of the various reasons, which are not under control of the Petitioner and are being brought out in subsequent paragraph for the consideration of Commission.

(i) Implementation of Goods and Service Tax:

The change in Taxation structure led to

(i) Sudden additional unanticipated work in modification of the systems for incorporation of revised structure of taxation

(ii) Data updation and Incorporation of customer codes, HSN codes of hundreds of thousands of materials of running and awarded Purchase orders

(iii) GST Amendment of Purchase Orders took long time due to multiple cross correspondence and verification from suppliers for the amount of input tax credit or benefit. The input tax credit could only be confirmed by the parties after filing of the return and its availability online in September 2017.

(iv) The training of personnel for familiarization and corresponding amendments in the systems also added to the delay in material orders. The sudden change was un-anticipated and its learning, clarity, implementation and stabilization took lot of time in revision and amendments of orders in pipeline. All the above factors led to delay in procurement of capital spares and materials.

f) The capitalization against the approved works totaling to Rs. 15.75 Cr. which were envisaged to be capitalized under original scope of works are HP rotor, Hydraulic Voith Coupling, PA fan Rotor assembly etc. spilled over due to above mentioned reasons.

(ii) <u>Delay in works involving Railway's approval:</u>

(i). Shaktinagar Exchange yard: As NTPC does not have enough expertise in the construction/augmentation of railway MGR/siding and associated works for stage-IV and stage - V, the work of Railway siding, S&T system augmentation and associated electrical was awarded to M/s RITES Ltd on 23.11.2009 as Project Management Execution Consultant (PMEC), which includes S&T (Signal and Telecom) work of five yards (1. Nigahi Yard, 2. Dudhichua Yard, 3. Wagon Tippler Yard, 4. MGR Yard, and 5. Shaktinagar exchange yard).

(ii). The fifth yard i.e. Shaktinagar (SKTN) Exchange Yard was meant to facilitate Coal Racks movement between Northern Coal Field (NCL), NTPC and Indian Railway main line. The work at SKTN exchange yard was delayed due to multiple revisions (2~3 Nos) of Engineering Scale Plan (ESP) by Indian Railway between May '15 to November '17.

(iii) <u>Delay in supply of Wagons:</u>

(i). Additional wagons for transportation of coal were planned to be procured for the instant station. Accordingly, the order for 14 numbers of wagon was placed on M/s Jupiter, Kolkata on 28.06.2016 with delivery period upto Dec'2017. However, subsequent to implementation of GST, the Purchase Order was amended on

09.12.17 with revised supply scheduled by Feb'2018.

(ii). The wheel for the wagons is proprietary item of the railway. M/s Jupiter has placed the Purchase Order (PO) for proprietary wheel sets on Railway Wheel Factory (RWF), Bangalore on 01.02.2017 with supply period of 90 days. Subsequently, the POs were amended 2~3 times due to fluctuation in prices of steel and changes in taxation rates subsequent to GST implementation. The POs by M/s Jupiter was finally amended and accepted by Railways Wheel Factory, Bangalore on 07.03.2018 and payment was remitted on 17.03.2018 and is expected to reach site shortly.

(iii). Further, as per specification of Research Designs and Standards Organization (RDSO), the procurement of 'Z' section was to be made necessarily from Steel Authority of India (SAIL).

(iv). The delay in supply of wheel sections and AXLE sets from RWF Bangalore and Z sections from SAIL has caused a delay in manufacturing and supply of wagons amounting to Rs. 14 Cr.

(v). Most of the works which are within the original scope of work are at an advanced stage of completion and are likely to get completed by 31.03.2019.

**<u>Submission of the Respondent No.1-MPPMCL</u>**

8. The Respondent vide affidavit dated 23.10.2018 has submitted as under:

a) The COD of Vindhyachal STPS-V happens to be on 30.10.2015 and in view of definition provided in Clause-3 (13) of the Tariff Regulations, 2014, the cut-off date of the Generating Stations shall be 31.03.2018. Accordingly, full two financial years and five months were available to the petitioner for completion of major capital works of the project. A period of 29 months is pretty long time for execution of even a whole project and seeking extension of cut-off date beyond a period of 30 months is highly objectionable and may not be allowed.

b) The investment approval of Vindhyachal STPS Stage-V (500 MW) was accorded by the board of the petitioner company (NTPC) on 28.12.2011. The actual COD of Unit is 30.10.2015. Accordingly, Unit was declared under commercial operation after 46 months from the date of investment approval. The time line for completion of projects specified in Appendix-1 of the Tariff Regulations, 2014 is 42 months for an extension project from the date of investment approval for the unit size of 500 MW and for subsequent units at an interval of 6 months. If the unit were declared under COD as per the time line specified in the Tariff Regulations, 2014, the schedule COD for Unit should be 27.06.2015. The project was delayed by more than 4 months causing additional burden of IDC and IEDC and unavailability of crucial power to the beneficiaries. However, the cut-off date of Vindhyachal STPS Stage-V (500 MW) is 31st March 2018. It is highly inappropriate on the part of the petitioner to seek extension of cut-off date on the pre-text of introduction of GST in July 2017, delay in works involving approval of railway, delay in capitalization for supply of wagons, etc. The plant which has failed to achieve the time line for completion of the project is now seeking further extension of the cut-off date which is highly unreasonable, arbitrary and without any legal basis and therefore, the petition is liable to be disallowed.

c) It is the respondents who are being penalised by way of higher IDC capitalization, delayed availability of power etc. on account of inappropriate project management by the petitioner. The beneficiaries/respondents are being penalised manifold on account of inefficient performance in commissioning of the project. The respondents not only will be burdened of higher AFC due to inflated capital cost on account of increased IDC/IEDC due to delay in commissioning but also deprived of availability of contracted power for a period of delay.

d) The petitioner company (NTPC Ltd.) is a Maharatna Company of Govt. of India having huge resources and easy access to different channels of hierarchy in Central as well as State Govt. administration and it is expected that it must live up to the expectation of performance being expected from such a Company of international repute. The inability of the petitioner to complete the project within cut-off date i.e. 31.03.2018 is solely attributable to the petitioner itself and no further relaxation in cut-off date may be granted on account of any reason whatsoever.

e) Regulation-3 (13) of the Tariff Regulations, 2014 specifically empowers the Commission to consider the request for extension of cut-off date on the basis of documentary evidence that reasons for delay in capitalisation are beyond the control of the project developer. However, in absence of documentary evidence that the reason for delay in capitalization are beyond the control of the petitioner, the request of the petitioner for extension of cut off date cannot be considered by the Commission on account of reasons whatsoever and therefore the petition is liable to be rejected. It is therefore, humbly prayed that no relaxation may be allowed to the petitioner in the interest of justice and to avoid undue financial burden on beneficiaries.

f) It has also been observed in the Electricity Act, 2003, and Tariff Policy that the norms should be efficient and should progressively reflect increased efficiency. It has further been stated that continued and proven inefficiency must be controlled and penalized. The petitioner's track record in completion of the project within specified time line provided has consistently been poor as almost all the projects being completed by the petitioner in recent past have been delayed and in some of them even the request for extension of cut-off date was also filed by petitioner. Thus, there is a case of proven inefficiency on the part of the petitioner in project management activities. In view of above provisions of the Tariff Policy, there is no scope of considering the request of the petitioner on account of proven inefficiency in project management and timely accomplishment of the project.

g) Petitions are being filed for extension of cut-off date on the pretext that the delay in capitalisation of the project was beyond the control of the project developer as has been done in the instant case. The reply against the petitioner grounds for extension of cut-off date are as under:

   (i) Implementation of Goods and Service Tax: The GST was not introduced overnight or suddenly and it was in the pipeline for several months and was in the process of implementation since long before its final implementation. The Constitution (Amendment) Bill related to introduction of GST was passed by the Parliament in August, 2016 and was given consent by the Hon'ble President around September, 2016. Earlier, it was to be introduced w.e.f. 1st April 2017, but it could finally be introduced w.e.f. 1st July 2017. That sufficient and proper time was available with the petitioner for preparing itself for the changes being introduced through GST. Being a Government owned utility, it is the responsibility and is obligatory on the part of the petitioner that it must be ready for such well known introduction of reforms in tax regime instead of claiming such relief. Further, there was sufficient time available with the petitioner to get its purchase order executed well before introduction of GST in order to stick to the deadline of cut-off date. The GST was introduced in 01.07.2017 and even after introduction of GST nine months were available to the petitioner to complete its capitalization and even accommodating 3-4 months delay on account of introduction of GST, they were having another six months to complete the capitalization activity.

(ii) Delay in works involving Railways approval: Petitioner is a Government of India owned company and they should have approached the Ministry of Railway through their corporate office and Ministry of Power for early resolution of the issues. The petitioner is a reputed customer of the Railways and they must have been able to settle the issues with the Railways in time bound manner. Failure of the petitioner in obtaining clearances from Railways is solely attributable to the NTPC as well as its contractor M/s RITES Ltd. and these liabilities cannot be loaded upon the beneficiaries.

(iii) Delay in supply of wagons: The petitioner has claimed that order for supply of 14 numbers of wagons was placed on 28.06.2016 with the due date of December 2017. It is not understood why these orders were kept pending for a period of more than eight months after the CoD. If this order was issued timely, the supply of wagons might have been executed prior to introduction of GST. The petitioner has failed to produce any documentary evidence for justifying the delay in issuing the order dated 28.06.2016 for supply of wagons. Thus, delay in issuing the order for supply of wagon has ultimately resulted in delay of supply of wagons.

The Annexure-A of the petition indicates that the supply order of the value of Rs 8.5 Cr. was issued by the petitioner on 22.02.2018 resulting in violation of cut-off date and accordingly the delay is solely attributable to the petitioner and hence no relaxation could be granted on this account. Similar is the position with order version 1 dated 09.03.2018 and order version 1 dated 09.12.2017 (Annexure C of the petition) amounting to Rs. 1.98 Cr. and Rs. 13.6 Cr. respectively.

h) The petitioner has failed to produce documentary evidence of delay sought in Railway siding works or wagon supply works to prove that they were for reasons beyond the control of petitioner. These works involve deferent agencies, 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.

**Rejoinder of the Petitioner to the replies of Respondents-MPPCL**

9. In response to the reply dated 23.10.2018 of Respondent, the Petitioner has filed its rejoinder vide affidavit dated 04.12.2018 and has mainly submitted the following:

a) Answering Respondent has completely overlooked the Commission's order dated. 31.08.2016 in Petition 234/GT/2015 for approval of tariff of Vindhyachal Super Thermal Power Station Stage-V (500 MW) from the date of commercial operation (30.10.2015) to 31.3.2019. In the order, the Commission at para no. 53 has decided

*"53. We have considered the submissions of the petitioner and the respondent. The investment approval of the project was accorded by the Petitioner Company Board at its 376th meeting held on 28.12.2011 at a project cost of ' 3431.29 Crore as of price level of 4th Qtr 2011 pending clearance of the Ministry of Environment & Forests, Govt, of India. The environmental clearance from MoEF, Govt, of India was accorded on 2.5.2012. The petitioner has submitted that the zero date shall be reckoned as the date of receipt of environmental clearance from MoEF, Govt, of Indi'a. The actual COD of the generating station is 30.10.2015. As per provisions of Regulation 24(2) read with Appendix-I of the CERC Tariff Regulations, the project has been completed within 42 months and hence, an additional RoE of 0.5% is allowed."*

b) The instant station has achieved its COD before the SCOD and started serving the beneficiaries at the earliest and hence qualified for additional RoE of 0.5 % as per provisions of Regulation 24(2) read with Appendix-I of the Tariff Regulations, 2014.

c) The petitioner has prayed for extension of cut-off date in view of the difficulties faced that were beyond the control of petitioner. The respondent has not gone into the merits of the difficulties submitted in the petition and has cited that extension of cut-off date is in contravention of provisions of Electricity Act-2003 and not in line with revised Tariff Policy. Tariff Policy (notified on 28.01.2016) provides that it is essential to attract adequate investments in the power sector by providing appropriate return for new capacity addition to meet the increasing per capita consumption of the country.

d) Any new system takes time to come in to steady-state condition. NTPC has prepared itself for implementation of new system, expediting the works and even deployed the person at manufacturers' workplace in helping them in understanding and implementing the GST.

e) The Petitioner in the instant petition at para no. 13(i) has clearly spelled out the sequence of events and submitted the substantiating evidences against each event.

f) The Petitioner has made its best efforts for approvals and expediting the works and to successfully get all major works done within stipulated time. However, a small amount remained un-capitalised due to the reasons as brought out in the petition. It is amply clear from the submission that the Railway has been approached many a times for the clearances. Being a large organisation and involving multiple levels of approval, Railway took a significant time to grant the approvals. The sequence of events and the supporting documents, depicting the level of efforts by the Petitioner are also submitted. The petitioner's role in obtaining the approval for the clearances from Railway authorities is minimal; hence, the delay in obtaining approvals from Railway authorities is not attributable to the petitioner.

g) The order for supply of the wagons has been placed as per work requirement and cash flow planning. In the power plant, which is a capital intensive industry, the planning for phasing of works execution and cash flow is very important. This planning not only ensures the optimisation of available resources but also protects the beneficiaries from front loading of the tariff. The work got rather delayed due to the reasons which were not under control of the Petitioner and its contactors, not on account of work phasing.

h) The MPPMCL has ignored the earlier references while claiming that order were placed on 22.02.2018 (8.5 Cr.), 09.03.2018 (1.98 Cr.) and 09.12.2017 (13.6 Cr.). It is obvious from Annexure "A" in the instant petition that the earlier reference date to the order of 22.02.2018 is 21.04.2017. Similarly the earlier reference dates to order of 09.03.2018 and 09.12.2017 are 06.02.2017 and 28.06.2017, respectively. The orders of all the works under original scope of works were placed as planned within the stipulated time and there is no default on the part of the Petitioner.

## Analysis and Decision

10. **The issue which arises for our consideration is whether the Cut-off date extension is to be allowed to capitalise the mentioned assets?**

11. The Petitioner's generating station, VSTPS-V comprises of 1 unit of 500 MW. The CoD of VSTPS-V is 30.10.2015. In terms of Regulation 3 (13) of the Tariff Regulations, 2014, the cut-off date of VSTPS-V is 31.03.2018. The Tariff of VSTPS-V for the period 2014-19 was determined by the Commission vide order dated 31.08.2016 in Petition No. 234/GT/2015.

12. The Petitioner has submitted that the expenditure amounting to about 1.3 % of total of capital cost i.e. about Rs 35.72 Cr, pertaining to certain balance works under original scope of work for the instant station has spilled over beyond cut-off date, despite regular monitoring & follow-up by the petitioner on account of the various reasons beyond the reasonable control of the petitioner. The balance works like supply of Wagons, Initial spares and balance CHP/MGR works etc are in progress and likely to be completed by end of FY 2018-19. Accordingly, the Petitioner has prayed for extension of cut-off date of VSTPS-V for a period of one year i.e. from 31.03.2018 to 31.03.2019 in exercise of Commission's power under Regulation 3(13) of CERC Tariff Regulations, 2014.

13. Regulation 3 (13) of the Tariff Regulations, 2014 is quoted below:

> *"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 the 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;"*

14. The Petitioner has submitted that the works relating to HP rotor, Hydraulic Voith Coupling, PA fan rotor assembly, Shaktinagar Exchange Yard, and Supply of Wagons have been delayed beyond the cut-off date. Accordingly the Petitioner has sought extension of cut-off date for the capitalization of Rs.35.72 Cr. on the following reasons:

(i) Implementation of Goods and Service Tax.
(ii) Delay in works involving Railway's approval.
(iii) Delay in supply of wagons.

The above issues have been dealt in the subsequent paragraphs.

**Implementation of Goods and Service Tax (GST):**

15**.** The Petitioner has submitted that the Govt. of India has implemented the GST from 01.07.2017. The GST is an entirely new system of taxation for the Indian Economy. Initial problems were faced at suppliers end, (as they took time in understanding and implementing the same) right through the supply chain up to the finished product, thereby causing inordinate delay in the supply of many critical components. Moreover, due to implementation of new tax structure, the Purchase order for the supplies and other works had to be modified and amended in line with the new system. The capitalization against the approved works totalling Rs. 15.75 Cr. which were envisaged to be capitalized under original scope of works are HP rotor, Hydraulic Voith Coupling, PA fan Rotor assembly etc got spilled over due to enactment of GST.

16**.** We have considered the submissions of the Petitioner and Respondent. The GST was introduced in India w.e.f 1.7.2017. The Petitioner has claimed that introduction of GST caused lots of initial hiccups in terms of learning, clarity, implementation and stabilization. The transition from earlier prevailing system to GST impacted the workflow of the petitioner. We have perused the supporting documents submitted by the Petitioner. We observe that though the Petitioner was impacted due to GST implementation, but we are unable to conclude that it led to delay in procurement of the listed items beyond 31.03.2018. Therefore, in the interest of justice, we grant liberty to the Petitioner to submit detailed documents along with chronology of events at the time of truing up.

**Delay in works involving Railway's approval and Supply of Wagons:**

17. The Petitioner has submitted that since it does not have enough expertise in the construction/augmentation of railway MGR/siding and associated works for stage-IV and stage - V, the work of Railway siding, S&T system augmentation and associated electrical for Shaktinagar (SKTN) Exchange Yard was awarded to M/s RITES Ltd on 23.11.2009 as Project Management Execution Consultant (PMEC), which includes S&T (Signal and Telecom) work of five yards (1. Nigahi Yard, 2. Dudhichua Yard, 3. Wagon Tippler Yard, 4. MGR Yard, and 5. Shaktinagar Exchange Yard.

18. The Petitioner has submitted that to expedite the work and save the time, the work was split into five packages. M/s RITES Ltd had awarded the work of signal and telecom to M/S Bharat Rail Automation Pvt. Ltd on 27.03.2015 (Package-V) with scheduled completion period of 18 months (April-2015 to September-2016). The fifth yard i.e. Shaktinagar Exchange Yard was meant to facilitate Coal Racks movement between Northern Coal Field (NCL), NTPC and Indian Railway main line. The work at SKTN exchange yard was delayed due to multiple revisions (2~3 Nos) of Engineering Scale Plan (ESP) by Indian Railway between May '2015 to November '2017. ESP approval is the first requirement for commencement of the work. Subsequent to the approval of ESP, following plans/drawings were planned to be prepared: 1.Preparation and approval of signal interlocking plan 2. Cable carriage plan 3. Selection table, 4. Panel diagram and 5. Circuit diagram. M/s RITES has initiated the proposal of ESP for approval of Indian Railway in May-2015. However, after follow up of the matter regularly, Indian Railway approved ESP only in Nov-2017 considering single line between Krishna Shila and Shaktinagar railway station keeping future provision of double line. Due to delay in the approval of ESP, the civil works of Shaktinagar exchange yard had to be retendered by M/s RITES. However, to optimize on cost and time, the work was modified to complete track renewal of existing five tracks in place of laying of seven number tracks to save on land acquisition and hence overall project cost and time. Further, the petitioner also submitted that even delay in the approval of ESP ( Nov-2017), the civil and signalling works of Shaktinagar Exchange Yard is nearing completion as on cut-off date and is expected to be completed soon.

19. The Petitioner has submitted that order for 14 no. of wagons was placed with M/s Jupiter, Kolkata on 28.06.2016 with delivery period upto December, 2017. However,

subsequent to implementation of GST, the Purchase Order was amended on 09.12.17 with revised supply scheduled by Feb.2018. The wheel for the wagons is proprietary item for the railway. M/s Jupiter has placed the Purchase Order (PO) for proprietary wheel sets to Railway Wheel Factory (RWF), Bangalore on 01.02.2017 with supply within 90 days. Subsequently, the POs were amended 2~3 times due to fluctuation in prices of steel and changes in taxation rates. The POs by M/s Jupiter was finally amended and accepted by Railways Wheel Factory, Bangalore on 07.03.2018 and payment was remitted on 17.03.2018 and is expected to reach site shortly.

20. Further, the Petitioner has submitted that as per specification of Research Designs and Standards Organisation (RDSO), the procurement of 'Z' section is necessarily to be made from Steel Authority of India (SAIL). The delay in supply of wheel sections and AXLE sets from RWF Bangalore and Z sections from SAIL has caused a delay in manufacturing and supply of wagons amount totalling Rs. 14 Cr.

21. On the other hand, Respondent has claimed that there was delay on part of the Petitioner in placing the Orders for wagons and that the Petitioner did not follow up properly with relevant authorities for timely delivery. Respondent has claimed that delay is on account of NTPC.

22. We have examined the matter related to delay in works involving Railway's approval and delay in supply of wagons. From the documents furnished by the petitioner, we observe that the petitioner has placed the order well in time and also made correspondences with the concerned agency for timely supply/completion of the pending works. We are of the opinion that the delay in works due to Railway's approval and delay in supply of wagons is not attributable to the Petitioner. Therefore, the Commission is of the view that it is appropriate to allow capitalization of the works/assets pertaining to Shaktinagar Exchange Yard and Supply of Wagons beyond cut-off date and upto 31.03.2019, as the same got delayed due to Railway's approval.

23. Based on the above discussion, we allow capitalization of expenditure beyond cut-off date of 31.03.2018 and upto 31.03.2019 for works related to Shaktinagar Exchange Yard and Supply of Wagons. The Power to Relax under Regulation 54 of the 2014 Tariff Regulation is invoked to this extent only, without relaxing the cut off date in

general. We have already expressed our opinion as regards other items claimed in this petition at paragraph no.16.

24. Petition No. 130/MP/2018 is disposed of in terms of the above.

| | | |
|---|---|---|
| Sd/- | Sd/- | Sd/- |
| **(I.S. Jha)** | **(Dr. M. K. Iyer)** | **(P. K. Pujari)** |
| **Member** | **Member** | **Chairperson** |