

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. : 183/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on installation of various Emission Control Systems at Barh Super Thermal Power Station Stage-II (2x660 MW) in compliance of Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 333/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Talcher Super Thermal Power Station Stage-I (1000 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 508/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Farakka Super Thermal Power Station, Stage-I & II (1600 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 342/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Farakka Super Thermal Power Station, Stage-III (1x500 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.



- Petition No.** : 522/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Kahalgaon Super Thermal Power Station Stage-I (4x210 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.
- Petition No.** : 517/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Kahalgaon Super Thermal Power Station, Stage-II (1500 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.
- Petition No.** : 510/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Singrauli Super Thermal Power Station (2000 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.
- Petition No.** : 545/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Rihand Super Thermal Power Station Stage I (2x 500 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.
- Petition No.** : 501/MP/2019
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Rihand Super Thermal



Power Station Stage-II (1000 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 66/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on installation of various Emission Control Systems at Rihand Super Thermal Power Station Stage-III (1000 MW) in compliance of Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 502/MP/2019
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on installation of various Emission Control Systems at Tanda Thermal Power Station (440 MW) in compliance of Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 267/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Feroze Gandhi Unchahar Thermal Power Station St-I (2x210 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 496/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Feroze Gandhi Unchahar Thermal Power Station St-II (2 x 210 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.



Petition No. : 501/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Feroze Gandhi Unchahar Thermal Power Station Stage-III (1 x 210 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 553/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on account of installation of various Emission Control Systems at Feroze Gandhi Unchahar Thermal Power Station Stage IV (1 x 500 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 414/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on installation of various Emission Control Systems at National Capital Thermal Power Station (NCTPS), Dadri Stage-I (840MW) in compliance of Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 499/MP/2020
Subject : Petition under Section 79 of the Electricity Act, 2003 read with Regulation 29 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for approval of additional expenditure on installation of various Emission Control Systems at National Capital Thermal Power Station, Stage-II (980 MW) in compliance of Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Date of Hearing : 13.8.2021

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member



Shri Arun Goyal, Member
Shri P.K Singh, Member

Petitioner : NTPC Ltd.

Respondents : West Bengal State Electricity Distribution Co. Ltd and others

Parties present : Shri Venkatesh, Advocate, NTPC
Shri Ashutosh K. Srivastava, Advocate, NTPC
Shri Suhael Buttan, Advocate, NTPC
Shi Abhiprav Singh, Advocate, NTPC
Shri Abhishek Nangia, Advocate, NTPC
Shri Neil Chatterjee, Advocate, NTPC
Ms. Mehak Verma, Advocate, NTPC
Shri Anant Singh, Advocate, NTPC
Shri Siddharth Joshi, Advocate, NTPC
Shri Rishub Kapoor, Advocate, NTPC
Shri Jayant Bajaj, Advocate, NTPC
Shri Nihal Bhardwaj, Advocate, NTPC
Shri Jatin Ghuliani, Advocate, NTPC
Ms. Swapna Sheshadari, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri Shashwat Kumar, Advocate, BSPHCL
Shri Rahul Chouhan, Advocate, BSPHCL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri Nitin Kala, Advocate, TPDDL
Shri Kunal Singh, Advocate, TPDDL
Shri R. K. Mehta, Advocate, GRIDCO
Ms. Himanshi Andley, Advocate, GRIDCO
Shri Anand Shrivastava, Advocate, TPDDL
Ms. Priyansha Indra Sharma, Advocate, TPDDL
Shri Nitin Kala, Advocate, TPDDL
Shri Kunal Singh, Advocate, TPDDL
Shri Rahul Jajoo, Advocate, TPDDL
Shri Amit Kapur, Advocate, BRPL and BYPL
Shri Rahul Kinra, Advocate, BRPL and BYPL
Shri Anupam Varma, Advocate, BRPL and BYPL
Shri Aditya Gupta, Advocate, BRPL and BYPL
Shri Utkarsh Singh, Advocate, BRPL and BYPL
Ms. Suparna Srivastava, Advocate, PSPCL
Shri Tushar Mathur, Advocate, PSPCL
Shri A.S. Pandey, NTPC
Shri V. K. Garg, NTPC
Shri Ishpaul Uppal, NTPC
Ms. Megha Bajpeyi, BRPL
Shri Sameer Singh, BYPL



Shri S.E. SPA TC, UPPCL
Shri Brijesh Kumar Saxena, UPPCL
Shri Manish Garg, UPPCL
Shri R. Alamelu, TANGEDCO
Ms. R. Ramalakshmi, TANGEDCO
Ms. B. Rajeswari, TANGEDCO
Ms. Shefali Sobti, TPDDL
Shri Madhusudan Sahoo, GRIDCO
Shri Sukanta Panda, GRIDCO
Shri Mahfooz Alam, GRIDCO
Shri Anurag Naik, MPPMCL

Record of Proceedings

The matters were called out for virtual hearing. All seventeen petitions were heard together as a common question of law and facts are to be decided by the Commission, between a common petitioner and different respondents.

2. The Commission observed that detailed submissions on facts and prayers have already been made by the Petitioner in these petitions during the hearing on 29.4.2021 and, therefore, in order to avoid repetition of the submissions by the Petitioner, the Commission directed the Respondents to make submissions/ raise objections, if any, and thereafter the Petitioner to submit its clarifications.

3. The learned counsel appearing for GRIDCO (in Petition No. 342/MP/2020 and Petition No. 517/MP/2020) submitted that reply has been filed in both the matters. Referring to the submissions made in the reply, he made submissions on present SO₂ emission levels, coal quality, past performance of FGD, life cycle analysis, cost benefit analysis and deviation from CEA benchmark cost.

4. The representative of UPPCL (in Petition No.508/MP/2020, Petition No. 522/MP/2020 and Petition No. 517/MP/2020) submitted that reply has been filed in these petitions. He submitted that huge investment has to be made for installation of FGD and, therefore, it is necessary to determine the optimum cost and useful life of FGD, which are vital for determining the additional per unit cost, which the consumers have to bear. He submitted that the Petitioner has taken four years to decide on implementation FGD and to float tender after the MoEFCC Notification dated 7.12.2015. This delay has resulted in huge escalation in prices. He submitted that the information relating to the technical part of NIT has not been submitted by the Petitioner. There is no information regarding the gestation period in IFBs (invitation for bids) or in LOAs (letters of award) issued to successful bidders. He further submitted that, on an average, the cost claimed by the Petitioner is higher by Rs.8.05 lakh/MW than the indicative cost suggested by CEA. Therefore, there shall be an extra burden of Rs.80,000 lakh from these 10 generating stations. Therefore, he prayed to consider and approve the cost of FGD provisionally at



existing CEA benchmark cost subject to adjustment after CEA conveys the revised cost estimates on the directions of the Commission. He submitted that the submissions made in its written submissions may be considered and taken on record.

5. The learned counsel appearing on behalf of BRPL (in Petition No. 508/MP/2020, Petition No. 522/MP/2020, Petition No. 517/MP/2020, Petition No. 510/MP/2020, Petition No. 545/MP/2020, Petition No. 501/MP/2020, Petition No. 267/MP/2020, Petition No. 66/MP/2020, Petition No. 545/MP/2020, Petition No. 501/MP/2019, Petition No. 414/MP/2020 and Petition No. 499/MP/2020) made detailed submissions referring to his Note for Arguments. The gist of his submissions is as follows:

a. The reliance placed by the Petitioner on Hon'ble Supreme Court judgment dated 18.11.2010 in the case of Commissioner of Central Excise Vs Hari Chand Gopal & ors, on doctrine of substantial compliance is misplaced. He submitted that as per Section 79(3), Section 61 and Section 7 of the Electricity Act, 2003, proceedings are required to be conducted in transparent and fair manner with the objective of determining the optimum cost.

b. The instant petitions have been filed after the Notification of the 2019 Tariff Regulations. Therefore, the mandate of Regulation 29 of the 2019 Tariff Regulations is required to be followed by the Petitioner. However, the Petitioner has failed to provide any proposal and/ or consultation with the beneficiaries regarding the proposed ACE prior to floating/ finalizing of the bids. The Petitioner has filed the present Petitions under Regulation 29 of the 2019 Tariff Regulations. However, the Petitioner has contended that the process for installation of FGD was initiated in the 2014-19 tariff period.

c. The reliance placed by the Petitioner on order dated 28.4.2021 in Petition No. 335/MP/2020 & Ors, where the Commission has granted 'in-principle' approval to various power plants of NTPC for installation of ECS under Regulation 11 of the 2019 Tariff Regulations, is not correct. The basis for granting 'in principle' approval under Regulation 11 in order dated 28.4.2021 was that NTPC had already initiated action for installation of ECS much prior to the Notification of the 2019 Tariff Regulations. However, in the instant petitions, the bidding process and award of contract was initiated after enactment of the 2019 Tariff Regulations. Therefore, a different approach needs to be adopted for such plants.

d. The Petitioner has not provided the (i) details or documents to show that the cost benefit analysis has been conducted in a fair manner and by an independent and competent agency, and (ii) study showing that it has chosen the FGD technology on the basis of the parameters laid down by CEA in its guidelines, which is mandated under Regulation 29(1) of the 2019 Tariff Regulations.

e. As regards placing reliance on Hon'ble Supreme Court case of J. Mohapatra & Co. vs. State of Orissa, he submitted that the Petitioner cannot be a judge in his



own case by self-certifying that the ECS technology selected for the concerned projects is in line with CEA's recommendation and advisory dated 7.2.2020.

f. The Petitioner has not provided any justification for adopting different technologies i.e. DSI based FGD and Wet Limestone FGD (WFGD) respectively for similarly placed stations i.e. Dadri-I and Kahalgaon respectively.

g. The useful life of the six thermal power plants covered in Petition Nos. 414/MP/2020, 508/MP/2020, 510/MP/2020, 522/MP/2020, 267/MP/2020 and 545/MP/2020 of NTPC has been completed or is about to be completed. The Petitioner in its proposal has considered the balance useful life of the plant for depreciation as 10 years. However, the Petitioner has failed to take consent from the beneficiaries as required under Regulation 33(10)(c) of the 2019 Tariff Regulations.

h. In January 2018, CEA proposed for retirement of various generating stations of the Petitioner during 2022-27, including the aforesaid stations. As CEA has already identified these plants for closure on or before 2027, the Petitioner will inevitably try to recover the balance unrecovered depreciation from its beneficiaries. It would unfairly increase the cost of power which would be passed on to the consumers of the beneficiaries.

i. There is no clarity as to how the Petitioner seeks to operate the plants which have completed or about to complete their useful life. The Petitioner has failed to place on record that the generating station shall run for at least 10 years after completion of its "useful life" without any R&M under Regulation 27 of the 2019 Tariff Regulations.

j. The Petitioner has not made out the case for the Commission to exercise the power as per the Electricity Act, 2003 or the 2019 Tariff Regulations. The Petitioner has not provided justification for the choice of technology selected by the Petitioner.

k. In case of Dadri TPS, the Petitioner cannot compare the indicative cost for WFGD with DSI based FGD and claim to have met the CEA standards. The Petitioner has failed to explain the reasons for deviations from the benchmark cost of CEA.

l. The Commission may refer the instant FGD petitions to CEA or to an ex-member of CEA to look into the process of installation of FGD and based on their report may take a suitable view in accordance with applicable regulations.

6. The learned counsel appearing on behalf of the MPPMCL in Petition No. 517/MP/2020 submitted that written submission has been filed in the above petition and the same may be considered and taken on record.



7. The learned counsel appearing on behalf of TANGEDCO in Petition No. 508/MP/2020, Petition No. 333/MP/2020 and Petition No. 522/MP/2020 submitted that he is adopting the arguments of BRPL. He submitted that with relaxation in the norms for NO₂ vide MoEFCC notification dated 19.10.2020, from 300 mg/Nm³ to 450 mg/Nm³ for the plants installed between 1.1.2004 and 31.12.2016, installation of SCNR for NO₂ control is not required. Accordingly, the Petitioner may be directed to submit the details regarding stations wherein it is proposing to install ECS for NO₂ reduction.

8. The learned counsel appearing on behalf of TPDDL (in Petition 508/MP/2020, Petition No. 501/MP/2019, Petition No. 267/MP/2020, Petition No. 522/MP/2020, Petition No. 496/MP/2020 and Petition No. 501/MP/2020) submitted that he is adopting the arguments made by BRPL. He submitted that the underlying principle of the Petitioner in the instant cases should be to optimise FGD cost. The Petitioner has failed to comply with the requirements of Regulation 29 of the 2019 tariff Regulations inasmuch as the Petitioner failed to share the proposal with the Respondents/beneficiaries and consult the Respondents in respect of the proposed ACE prior to inviting bids for the proposed installation of ECS systems. The present set of petitions are materially different from the facts considered by the Commission in order dated 28.4.2021 in Petition No. 335/MP/2020 & Ors. He submitted that in respect of the plants, which are subject matter of the present set of petitions, the invitation for bids and the Board approvals for awarding the FGD package etc. took place after the 2019 Tariff Regulations came into effect. Therefore, there is no reason for the Petitioner to not to comply with the requirements under Regulation 29 of the 2019 Tariff Regulations. The Petitioner has failed to mention the project specific consultation/ recommendation of CEA and the details of the competitive bidding process. He further submitted that the hard cost claimed by the Petitioner is substantially higher and exceeds by 30% of the CEA's indicative cost and the Petitioner has failed to provide reasons justifying this deviation. By placing reliance on order dated 23.4.2020 in Petition No. 446/MP/2019 (Sasan Power Ltd. Vs. MPPMCL & Ors), he prayed to follow a similar approach wherein the Commission limited the additional capex for the FGD system subject to true-up. The Petitioner has failed to obtain the Respondent's consent for extension of the "useful life" of the plants, which has expired or is about to expire.

9. The learned counsel appearing on behalf of BSPHCL (in Petition No. 183/MP/2020, Petition No. 333/MP/2020, Petition No. 342/MP/2020, Petition No. 508/MP/2020 and Petition No. 522/MP/2020) submitted that written submissions have been filed and that the same may be considered and taken on record. He further submitted that he adopts the arguments made by BRPL.

10. The learned counsel appearing on behalf PSPCL in Petition No. 517/MP/2020 submitted that PSPCL has filed written submission in the petition and the same may be considered and taken on record. She further submitted that she is adopting the arguments made by BRPL.

11. The learned counsel appearing on behalf TPDDL (in Petition No. 510/MP/2020, Petition No. 414/MP/2019, Petition No. 545/MP/2020 and Petition No. 499/MP/2020)



submitted that the Petitioner has wrongly claimed extension of “useful life” of the plants in the instant petitions. He submitted that as per Regulation 33(10)(c) of the 2019 Tariff Regulations, the useful life of the thermal power plants covered in Petition No. 414/MP/2020, Petition No. 510/MP/2020 and Petition No. 545/MP/2020 has been completed. The Petitioner in its proposal has considered the balance useful life of the plant for depreciation as 10 years. However, the Petitioner has failed to take consent from the beneficiaries under Regulation 33(10)(c) of the 2019 Tariff Regulations. The Petitioner is required to seek extension of useful life of these power plants separately under the Regulation 27 of the 2019 Tariff Regulations. He further submitted that the present petitions may be considered only for the purpose of installation of ECS and any attempt by the Petitioner to consider automatic extension of the useful life of the aforesaid power plants is not permissible as it is an independent and separate proceedings under the 2019 Tariff Regulations.

12. The representative of UPPCL (in Petition No. 510/MP/2020, Petition No. 414/MP/2019, Petition No. 545/MP/2020, Petition No. 499/MP/2020, Petition No. 501/MP/2020, Petition No. 553/MP/2020 and Petition No. 496/MP/2020) submitted that he is adopting arguments made in Petition No. 508/MP/2020, Petition No. 522/MP/2020 and Petition No. 517/MP/2002 made by BRPL. He further submitted that the Petitioner has neither provided any information (including extended life of the station) nor is the Respondent aware if the Petitioner has apprised the Commission about the “useful life” and depreciation rate in respect of Singrauli TPS and Rihand TPSS-I. He further submitted that the Petitioner has not submitted its rejoinder to the written submissions dated 5.5.2021 filed by the Respondent and be directed to submit the same.

13. The representative for UPPCL appearing (in Petition No. 501/MP/2019, Petition No. 67/MP/2020, Petition No. 267/MP/2020 and Petition No. 502/MP/2019) submitted that the Petitioner has adopted DSI based FGD technology in Tanda TPS. CEA in its advisory dated 20.2.2020 has specified that DSI based technology has low capex (1/4th) and very less APC (1/10th) as compared to WFGD based technology. He submitted that the Petitioner has claimed capital cost of Rs. 56.89 crore. However, it is not clear whether the cost claimed is for 2 units of 110 MW each i.e. 220 MW or for 4x110 MW i.e. 440 MW. He further submitted that the Petitioner has not filed Environment Clearance in these petitions. He also raised issues like present emission level, details of bidding process, shutdown period, supplementary energy charges and delay in tendering the balance of units Tanda TPS and requested to consider the submissions made in written submissions.

14. The learned counsel appearing on behalf of PSPCL in Petition No. 510/MP/2020, Petition No. 545/MP/2020, Petition No. 501/MP/2019, Petition No. 66/MP/2020, Petition No. 267/MP/2020, Petition No. 496/MP/2020 and Petition No. 501/MP/2020 submitted that written submissions have been filed in these petitions and the same may be considered and taken on record. He further submitted that he is adopting arguments of counsels of other Respondents.

15. In response, the learned counsel for the Petitioner made the following submissions:



a. With regard to sharing of the proposal, the Petitioner has an obligation to contemporaneously share the proposal with the beneficiaries at the time of filing of the petitions. By placing reliance on Hon'ble SC judgement dated 18.11.2010 in the case of Commissioner of Central Excise Vs Hari Chand Gopal & Ors, he submitted that the doctrine of substantial compliance is limited and applied to only in context of Regulation 29(1) of the 2019 Tariff Regulations. Accordingly, the moment the petition is filed under Regulation 29(1) of the 2019 Tariff Regulations, the information is served on the beneficiaries through the e-filing portal of the Commission.

b. As regards violation of Section 79(3) and Section of 62 the Electricity Act, 2003, the proceedings under Regulation 29 of the 2019 Tariff Regulation are sub-judice before the Commission and every information has been provided to the beneficiaries relating to contract, technology selected, bidding process, cost arrived for the purpose of installation of ECS. The beneficiaries have filed their affidavits, reply(ies) and written submissions to the information filed by the Petitioner during the course of the proceedings for the instant petitions. There is no substantial non-compliance on the part of the Petitioner. The contention of the Respondents/ beneficiaries that the proceedings are in violation of the provisions of the Electricity Act, 2003 is incorrect and misplaced.

c. The Respondents have placed reliance on order dated 23.4.2020 in Petition No. 446/MP/2019 in the matter of Sasan Power Ltd Vs. MPPMCL & Ors. and order dated 11.11.2019 in Petition No 152/MP/2019 (MPL Vs. TPDDL) and requested to restrict ACE towards ECS to the benchmark cost of CEA. The Petitioner submitted that there was deviation from CEA indicative cost in both the above referred cases and the Commission restricted ACE towards installation of ECS provisionally to the CEA indicative cost and it was subject to reconsideration on the basis of the actual expenditure after installation of ECS. He submitted that the 2019 Tariff Regulations permits to carry out ACE on account of "change in law" and does not require prior approval before incurring ACE.

d. As regards alleged delay on the part of the Petitioner, series of activities took place pan India for implementation of ECS in terms of MoEFCC Notification dated 7.12.2015 during 2016 to 2018.

e. Regulation 29(2) of the 2019 Tariff Regulation enlists specific elements i.e. scope of work, phasing of expenditure, schedule of completion and estimated completion cost to be provided in the proposal. He submitted that it is the Commission's prerogative to call for any information other than the ones specifically listed in the Regulation 29(2) of the 2019 Tariff Regulation and non-submission of such information like bid evaluation report, NIT, cost benefit analysis cannot be construed in a manner to allege that Regulation 29(2) has not been complied with by the Petitioner.



f. The reliance placed on J. Mohapatra & Co. v. State of Orissa is misplaced and incorrect. Neither the MOEFCC Notification nor the 2019 Tariff Regulations/ the Electricity Act, 2003 provides for specific Competent Authority. Accordingly, in the absence of specific Competent Authority, the Petitioner has self-certified that ECS technology selected for the concerned projects is in line with CEA's recommendation and advisory dated 7.2.2020.

g. As regards the mode of bidding, International Competitive Bidding (ICB) was adopted in certain Lots to avail benefits of Mega Power Project policy of the government wherein the stations were qualified for deemed export benefits and custom duty benefit. In case of the Domestic Competitive Bidding (DCB), the local bidders had the option to have JV with foreign companies, with technology transfer clause, and the price discovered in DCBs is less or close to the CEA benchmark cost. He further submitted that Regulation 3(13) of the 2019 Tariff Regulations provides that competitive bidding includes both DCB and ICB.

h. In response to the query of the Commission regarding the Company's policy for bidding, the Petitioner submitted that initially when bidding for Lot-IA was conducted under ICB, only domestic bidders participated. He further clarified that there is no company policy for selecting ICB or DCB and that it was only on the basis of the outcome of Lot-1A that DCB was adopted in later cases.

i. As regards cost benefit analysis, Regulation 29(2) the 2019 Tariff Regulations does not mandate sharing of the same with the Respondents alongwith the proposal and Regulation 29(3) confers power only on the Commission to call for cost benefit analysis before granting the approval of ACE on account of implementation of ECS.

j. Beneficiaries' consent, prior approval or ratification is not required before incurring ACE either in the 2014 Tariff Regulations or in the 2019 Tariff Regulations. Regulation 29(1) of the 2019 Tariff Regulations does not mandate prior consultation with the beneficiaries. It merely provides for knowledge or notice to the beneficiaries of the process undertaken for implementation of ECS.

k. As regards the issue of extension of useful life of the plant and Regulation 33(10)(c) of the 2019 Tariff Regulation, the Commission in the order dated 28.4.2021 in Petition No. 335/MP/2020 & Ors. has already held that the issue of depreciation shall be considered at the time of determination of supplementary tariff for ECS.

l. It is clarified that DSI FGD at Tanda TPS is for four units of Tanda TPS.

16. The learned counsel for the Petitioner appearing in Petition No. 414/MP/2020, referring to her Note for Arguments submitted that the IFB for installation of FGD system in Dadri TPS was issued by the Petitioner on 12.6.2018 and the contract was awarded on 26.10.2018, i.e. much prior to the 2019 Tariff Regulations came into enforce. Though



the instant petition was filed after notification of 2019 Tariff Regulations, Regulation 29 of the 2019 Tariff Regulations cannot be given retrospective effect. Regulation 33(10)(c) of the 2019 Tariff Regulations provides for the manner in which the depreciation will be spread over the years. TPDDL has already filed a Writ Petition before the Hon'ble Delhi High Court and it is part heard. Therefore, TPDDL may not be allowed to re-agitate the same issues in this Petition as raised in the Writ Petition. She submitted that the submissions made in her Note for Arguments may be considered and taken on record.

17. The Commission directed the Petitioner to submit in a tabular form the hard cost per MW for ECS for the lowest bidder for its respective power stations in comparison to the CEA indicative hard cost, by 24.8.2021 with a copy to the Respondents, along with the reasons for deviation, if any, on affidavit with a copy to the Respondents. The Commission also permitted the Petitioner and the Respondents to upload the Note for Arguments referred to by them during the hearing by 24.8.2021.

18. The learned counsel for the Petitioner sought ten days' time to file written submissions in the matter. The Commission permitted the Petitioner to file written submission by 26.8.2021.

19. Subject to above, the Commission reserved the order in the petitions.

By order of the Commission

sd/-
(V. Sreenivas)
Deputy Chief (Law)

