

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.205/MP/2021**

- Subject : Petition under Sections 62(a) and 79(1)(a) of the Electricity Act, 2003 read with Regulation 76 and 77 of the CERC (Terms and Conditions of Tariff) Regulations, 2019 read with Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 for recovery of additional expenditure incurred due to ash transportation charges consequent to Ministry of Environment, Forest & Climate Change, Government of India Notification dated 3.11.2009 & Notification dated 25.1.2016 on a recurring basis.
- Petitioner : NTPC Limited
- Respondents : Uttar Pradesh Power Corporation Limited & 37 ors.
- Date of Hearing : **7.12.2021**
- Coram : Shri P.K. Pujari, Chairperson  
Shri I.S. Jha, Member  
Shri Arun Goyal, Member  
Shri Pravas Kumar Singh, Member
- Parties Present : Shri Ventakesh, Advocate, NTPC  
Shri Ashutosh K. Srivastava, Advocate, NTPC  
Ms. Mehak Verma, Advocate, NTPC  
Ms. Isnain Muzami, Advocate, NTPC  
Shri Abhiprav Singh Advocate, NTPC  
Shri I. Uppal, NTPC  
Shri Manoj Kumar, NTPC  
Shri Aashish. A. Bernard, Advocate, MPPMCL  
Shri Paramhans Sahani, Advocate, MPPMCL  
Shri Anurag Naik, MPPMCL  
Shri Manish Garg, UPPCL  
Shri S. Vallinayagam, Advocate, TANGEDCO  
Ms. B. Rajeshwari, TANGEDCO  
Ms. R. Ramalakshmi, TANGEDCO  
Ms. R. Alamelu, TANGEDCO  
Shri P.V. Dinesh, Advocate, KSEBL  
Shri Ashwini Kumar Singh, Advocate, KSEBL  
Shri Buddy Ranganathan, Advocate, BRPL & MSEDCL  
Shri Anup Varma, Advocate, BRPL  
Shri Rahul Kinra, Advocate, BRPL  
Shri Aditya Ajay, Advocate, BRPL  
Shri Gurmeet Singh, BRPL  
Ms. Megha Bajpeyi, BRPL  
Shri Shashwat Kumar, Advocate, BSPHCL



Shri Rahul Chouhan, Advocate, BSPHCL  
Shri R.K. Mehta, Advocate, GRIDCO  
Ms. Himanshi Andley, Advocate, GRIDCO  
Shri Durga M. Sahoo, GRIDCO  
Shri Mahfooz Alam, GRIDCO  
Shri Arunav Patnaik, Advocate, Karnataka Discoms  
Ms. Bhabna Das, Advocate, Karnataka Discoms  
Shri Anup Jain, Advocate, MSEDCL  
Shri Swapnil S. Katkar, MSEDCL

### **Record of Proceedings**

Case was called out for virtual hearing.

2. During the hearing, the learned counsel for the Petitioner made detailed oral submissions as under:

- (a) The notification dated 25.1.2016 of the Ministry of Environment, Forest and Climate Change (MOEF&CC), GOI has cast obligation on the Petitioner to ensure that 100% fly ash is utilized. Accordingly, in Petition No.172/MP/2016 filed by the Petitioner, the Commission vide order dated 5.11.2018 held that the MOEF&CC notification dated 25.1.2016 which prescribes for sharing of the transportation cost by the coal and lignite based thermal power plants with the fly ash users is covered under Change in law. Also, the Commission, in exercise of the regulatory powers, held that the actual additional expenditure incurred by the Petitioner towards transportation of ash in terms of the MOEF&CC notification was admissible under 'Change in law' as additional O&M expenses, subject to prudence check.
- (b) The Petitioner has incurred huge expenditure towards transportation of fly ash for the 2019-24 tariff period and the delay in recovery of the said expenditure, on a month to month basis, has resulted in cash flow problems to the Petitioner, apart from the carrying cost liability on the beneficiaries. Even if the Tariff Regulations notified by the Commission do not envisage the recovery of expenditure towards transportation of fly ash, the Commission may, in terms of the observations of the Hon'ble Supreme Court in PTC India Limited v CERC & ors, exercise its powers under Section 79(1)(a) read with clauses (b), (c) and (d) of section 61 of the Electricity Act, 2003, to grant relief to the Petitioner.
- (c) The provisions of the 2019 Tariff Regulations notified by the Commission, provide for recovery of certain additional charges, separately i.e. water charges, capital spares and security charges {Regulation 35(6)}, statutory charges (Regulation 56), deferred tax liability (Regulation 67), cost of hedging or FERV (Regulation 69) and reimbursement of filing fees & publication expenses {Regulation 70(2)}. Therefore, the Commission is not precluded from considering the prayer of the Petitioner for recovery of fly ash transportation cost.
- (d) The contention of the Respondents that the claim of the Petitioner for fly ash transportation cost can only be considered in the pending tariff petitions for determination of tariff and truing up of tariff, is not acceptable as the Commission in its order dated 17.11.2021 in Petition No.444/GT/2020, had decided that the fly



ash transportation claim of the Petitioner, will be governed by the decision in the present petition.

- (e) The Petitioner has filed all information as sought by the Commission and pleadings have been completed in the matter. Therefore, it is in interest of the parties as well as end consumers that the Petitioner is permitted to recover the said cost at the earliest.

3. The learned counsel for the Respondents, BRPL & MSEDCL, mainly submitted the following:

- (a) The Commission's order dated 5.11.2018 in Petition No.172/MP/2016, holding that the MOEF&CC notification dated 25.1.2016 is a change in law event, relates to the 2014-19 tariff period. The Petitioner cannot, therefore, rely on the said order to seek recovery of fly ash transportation cost in the present petition, which relates to the 2019-24 tariff period.

- (b) The prayer of the Petitioner for recovery of fly ash transportation cost is already pending consideration of this Commission in the tariff petitions filed by the Petitioner for determination of tariff of its generating stations for the 2019-24 period. Moreover, all issues including the failure of the Petitioner to utilize 100% fly ash in terms of the said notification, is required to be decided only in the tariff petitions filed by the Petitioner. In view of this, the Petitioner cannot be permitted to seek recovery of fly ash transportation cost by way of a separate petition.

- (c) Though the 2019 Tariff Regulations provide for recovery of certain additional charges separately, as indicated by the Petitioner, the said regulations do not provide for the recovery of fly ash transportation cost. In the absence of any provision under the 2019 Tariff Regulations to grant relief, the prayer of the Petitioner for relaxation of the regulations cannot be entertained. The power to remove difficulty does not contemplate the removal of hardship that may arise as a result of giving effect to the Regulations (*judgment of the Hon'ble Supreme Court in M. U. Sinai v Union of India [(1975) 2 SCR 640] was relied upon*)

- (d) The Petitioner has not complied with the directions contained in order dated 5.11.2018 in in Petition No.172/MP/2016, as the auditor's certificate has not been placed on record;

4. Due to paucity of time, the hearings remained part heard.

5. The other respondents shall commence their arguments on the next date of hearing.

6. The Petition shall be listed for hearing in due course for which separate notice will be issued to the parties.

**By order of the Commission**

**Sd/-**  
(B. Sreekumar)  
Joint Chief (Law)

