

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.205/MP/2021

Subject : Petition under section 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) Regulation 1999 for recovery of additional expenditure incurred due to ash transportation charges consequent to Ministry of Environment Forest and Climate Change, Govt. of India notification dated 3.11.2009 and notification dated 25.1.2016, on a recurring basis.

Petitioner : NTPC Ltd.

Respondent : UPPCL & ors

Date of hearing: **12.10.2021**

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties present: Shri. Shri Venkatesh, Advocate, NTPC
Shri. Ashutosh K Srivastava, Advocate, NTPC
Ms. Mehak Verma, Advocate, NTPC
Shri. Rishub Kapoor, Advocate, NTPC
Shri. Abhiprav Singh, Advocate, NTPC
Shri. I.Uppal, NTPC
Shri. Manoj Kumar, NTPC
Shri. Ashish A. Bernard, Advocate, MPPMCL
Shri. Anurag Naik, MPPMCL
Shri. Manish Garg, UPPCL
Shri. S Vallinayagam, Advocate, TANGEDCO
Dr. R. Kathiravan, TANGEDCO
Ms. R. Ramalakshmi, TANGEDCO
Shri. R. Srinivasan, TANGEDCO
Shri. P. V. Dinesh, Advocate, KSEB
Shri. Ashwini Kumar Singh, Advocate, KSEB
Shri. Bineesh K, Advocate, KSEB
Shri. Buddy Ranganathan, Advocate, MSEDCL
Shri. Anup Jain, Advocate, MSEDCL
Shri. Swapnil S. Katkar, MSEDCL

The case was called out for virtual hearing 'on admission'.

2. During the hearing, the learned counsel of the Petitioner submitted that the present petition has been filed seeking permission to recover the additional expenditure incurred by the Petitioner, on account of ash transportation from the



generating stations of the Petitioner to the end user of the ash, pursuant to the notifications dated 3.11.2009 and 25.1.2016 issued by the Ministry of Environment & Forest and Climate Change (MOEF&CC), Government of India, which has already been recognised as a 'change in law' event by this Commission vide its order dated 5.11.2018 in Petition No.172/MP/2016. The learned counsel further submitted that the ash transportation charges incurred during the 2019-24 tariff period, for its generating stations, after adjustment of sale proceeds, is Rs.2000 crore (approx.) and the delay in recovery of the said expenditure, apart from creating cash flow problems to the Petitioner, will result in carrying cost/ interest burden on the beneficiaries. He also submitted that the ash transportation charges incurred during the years 2019-20 and 2020-21 which has been claimed in some of the tariff petitions filed by the Petitioner for the 2019-24 tariff period, is substantial and, therefore, the recovery of the same from the beneficiaries, on monthly basis, may be permitted. Referring to the order dated 22.3.2021 in Petition No. 405/MP/2019 (GMRKEL & anr v DHBVNL & anr), the learned counsel submitted that the mechanism of monthly recovery of ash transportation expenditure, with annual reconciliation devised in the said case, may also be allowed in the present case. The learned counsel, pointed to the interim prayer made in the petition and submitted that the Petitioner may be allowed to raise monthly bills, to recover the ash transportation expenditure incurred, during pendency of the present petition.

3. The learned counsel for the Respondent, MSEDCL submitted that the Respondent may be granted some time to file its reply in the matter. He also submitted that the interim prayer of the Petitioner may be considered only after the submissions of the Respondents are placed on record.

4. The learned counsel for the Respondent TANGEDCO raised preliminary objections on 'maintainability' of the petition and mainly submitted the following:

- (a) Since additional O&M expenses towards recovery of ash transportation charges, form part of tariff, the same cannot be claimed through a separate petition. Since the recovery of ash transportation charges claimed by the Petitioner in some of the petitions for the 2019-24 tariff period, is pending before the Commission, filing of a separate petition, for the same relief, is not maintainable.
- (b) Though MOEF&CC notifications have been declared as a 'change in law' event, by order dated 5.11.2018 in Petition No.172/MP/2016, the expenditure claimed, is subject to prudence check, on a case to case basis. Moreover, the Petitioner has not furnished any details/ additional information, as sought for by the Commission in the said order dated 5.11.2018.
- (c) The Petitioner has also not furnished any particulars as to (i) whether the transportation of fly ash is within the radius of 100 km or is for a distance beyond 100 km and upto 300 km or is beyond 300 km range (ii) the quantum of ash being sold and (iii) the contracts executed by the Petitioner with procurers and /or transporters and the charges involved.
- (d) Time may be granted to the Respondent to file its reply on 'maintainability' of the petition.



5. The representative of the Respondent, UPPCL mainly submitted that since the tariff petitions filed by the Petitioner for the 2019-24 tariff period are pending, the claim for one component of tariff (O&M expenses) by the Petitioner, by a separate petition may not be entertained.

6. In response to the above, the learned counsel for the Petitioner submitted that for claiming additional O&M expenses for the 2014-19 tariff period, the Petitioner vide affidavit dated 30.6.2021 has furnished complete details of the ash transportation cost in respect of each generating station. However, for the 2019-24 tariff period, the Petitioner has prayed for recovery of the ash transportation charges, on a standalone basis and not as additional O&M expenses. The learned counsel added that the interim prayer seeking permission to raise monthly bills on the beneficiaries, during the pendency of the petition, is to reduce the carrying cost/ interest burden on the beneficiaries. The learned counsel prayed that the Petitioner may also be granted time to file its rejoinder to the replies of the Respondents.

7. The Commission, after hearing the parties, ordered as under:-

(a) Issue notice for hearing on 'admissibility' of the petition.

(b) The Petitioner to serve copy of the petition on the Respondents immediately, if not already served.

(c) The Respondents to file their replies by **10.11.2021**, after serving copy to the Petitioner, who may file its rejoinder, if any, by **18.11.2021**.

(d) The due date of filing the replies and rejoinder should be strictly adhered to and no extension shall be granted on that account.

8. The Petition shall be listed for hearing 'on admissibility' in due course for which separate notice will be issued to the parties.

By order of the Commission

Sd/-

(B. Sreekumar)
Joint Chief (Law)

