

CENTRAL ELECTRICITY REGULATORY COMMISSION

New Delhi

Petition No. 414/MP/2020

- Subject** : Petitions 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 National Capital Thermal Power Station (NCTPS), Dadri Stage-I (840 MW) in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.
- Date of Hearing** : 31.3.2021
- Coram** : Shri P.K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member
- Petitioner** : NTPC Ltd.
- Respondents** : Uttar Pradesh Power Corp. Ltd. (UPPCL) and 10 others
- Parties present** : Shri Anand Ganesan, Advocate, NTPC
Ms. Swapna Sheshadari, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri Shivam Sinha, Advocate, TPDDL
Shri Amit Kapur, Advocate, BRPL
Shri Anupam Varma, Advocate, BRPL
Shri Rahul Kinra, Advocate, BRPL
Ms. Suparna Srivastava, Advocate, PSPCL
Shri S. E. SPA TC, UPPCL
Shri Brijesh Kumar Saxena, UPPCL

Record of Proceedings

The matter was called out for video conferencing.

2. The Learned counsel for the Petitioner submitted that the Notification No. S.O. 3305(E) dated 7.12.2015 of the Ministry of Environment, Forest and Climate Change, Government of India (in short, "the MoEFCC Notification") that amended the Environment (Protection) Rules, 1986 introducing/ amending the emission standards for environmental pollutants to be followed by all existing and new thermal power plants, constitutes a "Change in Law" event. The Commission has already



recognized the MoEFCC Notification as a Change in Law event in its order dated 20.7.2018 in Petition No. 98/MP/2017 and observed that the additional capital expenditure (ACE) incurred by NTPC towards implementation of Emission Control System (ECS) for meeting the revised emission standards in terms of the MoEFCC Notification shall be admissible under "Change in Law" after prudence check by the Commission. She submitted that the issue of PPA and liability of the BRPL and BYPL raised in Petition Nos. 60/MP/2021 and 65/MP/2021 cannot be linked to maintainability of the instant petition. She submitted that similar petitions filed by NTPC for in-principle approval of ACE towards installation of ECS has been already admitted by the Commission and, therefore, the instant petition may also be admitted. She requested the Commission to address the issues raised by the Respondents on merits since contentions raised by them are not related to maintainability of the petitions. She further submitted that irrespective of the useful life of the plant, the mandate of MoEFCC notification dated 7.12.2015 is required to be implemented.

3. The learned counsel for BRPL submitted that the Petitioner has not followed the mandate of the Regulation 29 of the 2019 Tariff Regulations. The Petitioner has not shared the proposal for installation of ECS before filing of the instant petition. Even after filing of the instant petition, the Petitioner has not till date furnished information/ documents relating to bidding and implementation of FGD. He submitted that before incurring such huge capital expenditure, the useful life of the plant has to be considered.

4. The learned counsel for BRPL further submitted that Petition No. 60/MP/2021 and 65/MP/2021 has been filed before the Commission seeking adjudication of dispute with NTPC and Northern Regional Load Despatch Centre (NRLDC) with regard to supply of power from Stage-I of the Petitioner's generating station at Dadri. He submitted that NTPC has acted in violation of Regulation 17 of the 2019 Tariff Regulation and despite there being no mutual agreement to extend the power supply after the PPA lapsed on 1.12.2020, the Petitioner has raised invoice on the Respondents (BRPL and BYPL) towards deemed generation of approximately Rs.33 crore every month even though no power is being scheduled from the Stage-I generating station by the Respondents. He further submitted that the Respondents have filed the Interim Applications (IA) seeking reliefs i.e. restraining NTPC from taking any coercive actions including invocation of Letter of Credit, levy of late payment surcharge for the non-payment of invoices and restraining the NTPC from raising any further bills on the Respondents during the pendency of the Petitions. The learned counsel requested the Commission to list the Petition No. 60/MP/2021 and 65/MP/2021 along with the instant petition and grant interim protection against any coercive action by NTPC till the disposal of the petitions.

5. Learned counsel for TPDDL submitted that the Petitioner is required to obtain the consent of the beneficiaries under Regulation 33(10)(c) of the 2019 Tariff Regulations for continuation of the plant beyond its useful life. However, the Petitioner has not obtained the same and the Petitioner may be directed to provide justification for the same. In response, the learned counsel for the Petitioner



submitted that the Respondent has raised the same issue in the proceedings before the Delhi High Court. The Respondents cannot be permitted to raise the same issue simultaneously in both the proceedings.

6. After hearing the parties, the Commission admitted the petition. The Commission further observed that the Respondents have the right to make submissions on merits on their liability in Petition Nos. 60/MP/2021 and 65/MP/2021.

7. The Commission directed the Petitioner to submit the following information on affidavit, by 9.4.2021 with an advance copy to the Respondents/ beneficiaries.

- a) Certificate from the competent authority to the effect that the ECS technology selected is as per the recommendations made by CEA and is the best suited cost-effective technology in terms of CEA's advisory dated 7.2.2020, that would meet the ECS norms as specified in the MoEFCC Notification.
- b) Copy of the decision by NTPC with resolution and date to issue NIT to procure FGD installation.
- c) Copy of NIT along with bid opening/ closing dates.
- d) Copy of the recommendations of the Bid Evaluation Committee and approval of the competent authority to award the work.
- e) Certificate from the competent authority that bidding and award of the work has been carried out in a fair and transparent manner as per the applicable GOI/ NTPC guidelines.
- f) A note on the process of bidding for award of different packages of ECS, with names of the bidders who participated in the bid and name of the successful bidder, with a copy of the Letter of Award/ Letter of Intent issued to the successful bidder.
- g) The present status of implementation of FGD. If commissioned, the date of commissioning.
- h) Studies, if any, conducted to show that the adopted FGD technology would meet the evaluation criteria indicated by CEA in its advisory dated 7.2.2020 and is the best suited cost-effective technology.
- i) Station-wise/ unit-wise break-up of the capital cost claimed for FGD as per the following table:



Unit No.	Capacity (MW)	CEA's indicative hard cost (₹ lakh per MW)	Hard cost claimed (₹ lakh per MW)	Total IDC claimed (₹ lakh)	Total IEDC claimed (₹ lakh)	Total FERV claimed (₹ lakh)	Total taxes & duties claimed (₹ lakh)	Total of Other costs claimed (₹ lakh)	Total cost claimed (₹ lakh)
1									
2									
3									
4									
5									
6									

j) Reasons for deviation from CEA's indicative hard cost, if applicable.

k) If any contract for NOx reduction at the generating station has also been awarded, the cost of the same is to be segregated and the capital cost for FGD is to be provided separately and distinctly.

l) Any other information considered appropriate by the Petitioner.

8. The Commission directed the beneficiaries to submit their reply by 23.4.2021 with a copy to NTPC who may file its rejoinder, if any, by 28.4.2021. The Commission further directed the parties to adhere to the timeline specified and observed that no extension of time shall be granted.

9. The petition shall be listed for final hearing on 29.4.2021.

By order of the Commission

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

