

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 639/MP/2020

Subject : Petition under Sections 62 and 79(1)(a) of the Electricity Act, 2003 read with Chapter-V of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 read with Regulations 76 and 77 of Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019 for relaxation of cut-off date of Feroze Gandhi Unchahar Thermal Power Station Stage IV (1× 500 MW).

Date of Hearing : 21.5.2021

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

Shri P. K. Singh, Member

Petitioner : NTPC Limited (NTPC)

Respondents : Uttar Pradesh Power Corporation Limited (UPPCL) and 5 Ors.

Parties Present : Shri Venkatesh, Advocate, NTPC
Shri Ashutosh K. Srivastava, Advocate, NTPC
Shri Abhiprav Singh, Advocate, NTPC
Shri Anjum Zargar, NTPC
Shri Brijesh Kumar Saxena, UPPCL

Record of Proceedings

Case was called out for virtual hearing.

2. The learned counsel for the Petitioner submitted that the present Petition has been filed for relaxation of cut-off date of Feroze Gandhi Unchahar Thermal Power Station Stage-IV (1×500 MW) ('the Project') up to 31.3.2020 by invoking the provisions of Regulation 76 (Power to Relax) and Regulation 77 (Power to Remove Difficulty) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short, '2019 Tariff Regulations').

3. The learned counsel for the Petitioner further submitted that the Scheduled Commercial Operation Date ('SCOD') of the Project was 31.12.2016. However, the Project achieved the commercial operation on 30.9.2017 and the tariff of the Project for control period 2014-19 was determined by the Commission vide order dated 6.12.2019 in Petition No. 197/GT/2017, wherein the Commission also condoned the time overrun of about 116 days. It was submitted by the learned counsel that due to certain difficulties being faced by the Petitioner, various works relating to BOP Packages, CHP, wagon tippler and railway siding areas have been delayed. The learned counsel pointed out that the actual Project cost has been lower than the cost approved in investment approval and that the balance capitalization is even less than 5% of the actual Project cost. Learned counsel also submitted that subsequent to the filing of the present Petition, the balance Project works have been further

affected by the recent resurgence of Covid-19 and accordingly, sought a liberty to file an additional affidavit in this regard.

3. In response to the specific query of the Commission as to why the Petitioner has sought to raise the issue of extension of cut-off date by filing a separate Petition instead of raising the issue in pending Tariff Petition No. 3/GT/2021 for the Project (for trueing up of tariff for control period 2014-19 and determination of tariff for control period 2019-24), the learned counsel submitted that the Petitioner has sought to file separate Petition in line with the practice adopted by the Petitioner in the past, whereby the Petitioner had raised the issue of extension of cut-off date for its various Projects by way of a separate Petition.

4. The representative of the Respondent No.1, UPPCL, objecting to the maintainability of the Petition, mainly submitted the following:

(a) The Project was commissioned on 30.9.2017 i.e. during the control period 2014-19 under 2014 Tariff Regulations. However, the Petitioner has not sought the extension of cut-off date under Regulation 3(13) of the 2014 Tariff Regulations and has rather filed the Petition under 2019 Tariff Regulations. Thus, the present Petition is not maintainable under the provisions of the 2019 Tariff Regulations.

(b) As per the Petition, work relating to wagon tippler has been delayed mainly due to delay in delivery of material supply as is evident from the letters dated 19.8.2020 filed along with the Petition. However, since the Project has already been commissioned, the issue of delayed supply ought not to have arrived at this stage as the orders for supply of equipments are generally placed prior to start of works at Project site.

(c) The delay in supply of material and poor response from the contractors cannot be sufficient reasons for extension of cut-off date.

(d) Covid-19 pandemic led restrictions and Nation-wide lockdown were in place only w.e.f. 25.3.2020 i.e. almost a year after the expiry of cut-off date on 31.3.2019. Thus, delay in supply of material and poor response from the contractor cannot be attributable to Covid-19 pandemic.

(e) Cause of disturbance by the local villagers is also not understood as the Project has already been commissioned on 30.9.2017.

(f) Prior to this Petition, the Petitioner has raised the issue of extension earlier on two occasions. Firstly, the Petitioner had sought extension in SCOD due to ban on the mining and excessive rains in Petition No. 197/GT/2017, which was allowed by the Commission vide order dated 6.12.2019 and consequently, the SCOD was revised to 30.9.2017. Thereafter, on the above grounds, the Petitioner has also sought extension of cut-off date upto 31.3.2021 along with approval of additional Capex. (of approx. 349 crore) in the Petition filed for true-up of tariff for control period 2014-19 and determination of tariff for control period 2019-24.

(g) The Petitioner cannot raise the grounds for extension of cut-off date which have already been decided by the Commission in Petition No. 197/GT/2017 by way of an extension in SCOD of the Project. Through this Petition, the Petitioner is seeking the extension in the cut-off date for third time. Since the Petitioner cannot maintain multiple Petitions for the same cause, the present Petition deserves being dismissed.

(h) The Respondent, UPPCL may be permitted to file its written submissions in the Petition.

5. In response, the learned counsel for the Petitioner submitted that the order passed by the Commission in Petition No. 197/GT/2017 does not deal with the issues raised by the Petitioner in the present Petition.

6. Having heard the counsel for the Petitioner and representative of the Respondent UPPCL, the Commission is of the view that there is a need to avoid multiplicity of Petitions and therefore, there is no need for a separate Petition only to decide the issue of extension of cut-off date of the Project.

7. Accordingly, the Petitioner is granted liberty to raise the issue of extension of cut-off date in Petition No. 3/GT/2021 that has already been filed by the Petitioner for truing up of tariff for the 2014-19 period and determination of tariff for the 2019-24 period.

8. Thus, without getting into the merits of the issues raised in the Petition, the Petition is disposed of in terms of the above.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**