

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. : 64/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 **Simhadri Super Thermal Power Station Stage-I (2X500 MW)** in compliance of Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 467/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 **Simhadri Super Thermal Power Station Stage-II (2x500 MW)** in compliance of Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 730/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 **Ramagundam Super Thermal Power Station Stage-I & II (3X200+ 3X500 MW)** in compliance of Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

Petition No. : 612/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 **Ramagundam 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. : 613/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 **Kudgi Super Thermal Power Station Stage-I (3X800 MW)** in compliance with the Ministry of Environment and Forests and Climate Change, Government of India notification dated 7.12.2015.

- Petition No.** : 520/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 **Talcher Super Thermal Power Station Stage-II (4X500 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** : AP Eastern Power Distribution Company Ltd. (APEPDCL) 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
Ms. Simaran Saluja, Advocate, NTPC
Shri Rishub Kapoor, Advocate, NTPC
Shri Jayant Bajaj, Advocate, NTPC
Shri Nihal Bhardwaj, Advocate, NTPC
Shri Jatin Ghuliani, Advocate, NTPC
Shri Siddharth Joshi, Advocate, NTPC
Shri Sidhant Kumar, Advocate, APEPDCL, APSPDCL
Shri S. Vallinayagam, Advocate, TANGEDCO
Shri R.K. Mehta, Advocate, GRIDCO
Ms. Himanshi Andley, Advocate, GRIDCO



Shri A.S. Pandey, NTPC
Shri V. K. Garg, NTPC
Shri Ishpaul Uppal, NTPC
Shri R. Alamelu, TANGEDCO
Ms. R. Ramalakshmi, TANGEDCO
Ms. B. Rajeshwari, TANGEDCO
Shri Madhusudan Sahoo, GRIDCO
Shri Sukanta Panda, GRIDCO
Shri Mahfooz Alam, GRIDCO

Record of Proceedings

The matters were called out for virtual hearing. All the six petitions were heard together as a common question of law and facts is 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 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. Learned counsel appearing on behalf of GRIDCO in Petition No 520/MP/2020 submitted that reply and written submission have been filed in the matter. The gist of the submissions made by him is as follows:

- a. The provisions of Regulation 29 of the 2019 Tariff Regulations have not been complied with by the Petitioner. The Petitioner has not carried out the cost benefit analysis before approaching the Commission for in-principle approval for incurring capital expenditure for installation of ECS.
- b. NTPC has not furnished the present emission level of SO₂ from the generating Units of TSTPSS-II. The Petitioner should furnish the present emission level of SO₂ of the TSTPSS Units so as to ascertain the requirement of FGD for the same.
- c. As huge expenditure is required to be incurred for installation of ECS, the Petitioner may be directed to take a decision with regard to extension of life of the power plant before any approval is granted by Commission for installing FGD system.
- d. The Petitioner has not given any undertaking that in the event of failure to comply with the specified emission norms as per MoEFCC Notification, the Petitioner shall bear the entire cost incurred for ECS and no such cost shall be passed on to the Respondents/ beneficiaries and ultimately the consumers.
- e. The submissions with regard to coal quality, non-submission of details of the past performance of the FGD system, variation in cost, process of bidding and tendering etc. made in its reply may also be considered.



4. The learned counsel appearing on behalf of APEPDCL and APSPDCL submitted that written submissions have been filed in the instant petitions. The gist of the submissions made by them is as follows:

- a. There is a difference between the facts of the order dated 28.4.2021 passed by the Commission in the Petition No. 335/MP/2020 & batch matters and in the instant case. Accordingly, a different approach needs to be adopted by the Commission.
- b. Any approval of ACE on the grounds of change of law is required to be made prior to incurring such expenditure. In the present case, the Petitioner has already awarded various tenders and determined ACE on account of installation of ECS. This is in violation of the procedure prescribed in the 2019 Tariff Regulations.
- c. The revised emission norms stipulated by MoEFCC were to be implemented by 6.12.2017. However, the Petitioner did not initiate any action until March 2017 towards compliance of the MoEFCC Notification dated 7.12.2015. Consequently, after the timelines prescribed by MoEFCC lapsed, the Hon'ble Supreme Court took cognizance of the issue on 13.12.2017. The Petitioner having first delayed the implementation of ECS is now seeking to take advantage of its own lapses.
- d. The Petitioner had adequate opportunity to comply with the mandatory requirements of Regulation 29 of the 2019 Tariff Regulations. It is not the case of the Petitioner that the instant petitions are governed by the 2014 Tariff Regulations, as the expenditure was incurred during the period when the 2019 Tariff Regulations were in force. Despite being bound by the 2019 Tariff Regulations with effect from 1.4.2019, the Petitioner proceeded to act in defiance of the same by (i) awarding the contracts for FGD units from 3.5.2019 onwards, (ii) not sharing the proposal with the Respondents (iii) delaying the filing of the captioned petitions. Therefore, the Petitioner has not followed the provisions of the 2019 Tariff Regulations.
- e. The delay in filing the petitions and conduct of the Petitioner must be taken into consideration on the issue of compliance of Regulations 11 and 29 of the 2019 Tariff Regulations. The Petitioner has to show that steps were taken by it to comply with MoEFCC notification dated 7.12.2015.
- f. Ramagundam TPS (RTPS) I and II covered in Petition No. 730/MP/2020 were put into commercial operation on 1.4.1991 and has completed its useful life on 1.4.2016. As per Regulation 3(24) of the 2019 Tariff Regulations, extended life beyond the useful life may be determined by the Commission on case to case basis. However, no such determination was made in the instant case. CEA in the Five Year National Electricity Plan on Generation (Volume I) dated 28.3.2018 had exempted RTPS I and II from complying with the revised emission norms as per Amended Rules 2021. Accordingly, Petition No. 730/MP/2020 now stands infructuous. The Petitioner has not filed for extension of life in respect of Ramagundam I and II, as mandated under 2019 the Tariff Regulations.
- g. The FGD expenditure on Ramagundam I and II cannot be claimed under Regulation 29 of 2019 tariff Regulations as the Petitioner claims that RTPS I and II are operating on special allowance under the 2019 Tariff Regulations.
- h. The Petitioner has failed to justify such substantial deviation from CEA indicative cost.



- i. The Petitioner has assumed itself to be the competent authority for certification that ECS technology selected for the concerned projects, is in accordance with the CEA's recommendation and advisory dated 7.2.2020 and has merely furnished extracts of the Minutes of Meeting of the Board of Directors of the Petitioner.

5. Learned counsel appearing on behalf of TANGEDCO in Petition No. 467/MP/2020, Petition No. 612/MP/2020, Petition No. 613/MP/2020 and Petition No. 730/MP/2020 submitted that the reply has been filed in these petitions and same may be considered and taken on record. He submitted that the MoEFCC Notification came into effect on 7.12.2015. However, the Petitioner, without approval of the Commission, initiated process for installation of FGD in 2019. The Petitioner has not given any reasons for its inaction in the years 2016, 2017 and 2018. He submitted that if the Petitioner had taken timely action for the implementation of ECS, it would have resulted in lower tariff which in turn would have lowered the burden of beneficiaries. The petition is bereft of any details as required to be shared under Regulation 29 of the 2019 Tariff Regulations. He submitted that the consumers cannot be burdened with the financial impact due to delay by the Petitioner in implementing ECS. He submitted that when a change in law event occurs, a notice is required to be served on the party affected by such change in law event. The Petitioner has failed to do so in the instant petitions. He submitted that the Petitioner has not furnished necessary information on the sustenance of all the units like details of Residual Life Assessment (RLA)/ Renovation and Modernization study. The Petitioner proposes to run the plant for another 10 years, for which additional cost would be incurred. As the cost will be passed on to the beneficiaries and in turn to the consumers, the reliability of the existing units for a period of another 10 years by the means of RLA study has not been justified by the Petitioner.

6. In response to the query of the Commission on whether work has been awarded for implementation of NO_x emission control and the implications of relaxation in the limit from 300 mg/Nm³ to 450 mg/Nm³ (vide MoEFCC Notification dated 19.10.2020), the learned counsel for the Petitioner submitted that COD of Unit-I and Unit-II was 31.7.2018 and that of Unit-III was 15.9.2018. The Kudgi STPS (KSTPS) came into existence after the MoEFCC Notification dated 7.12.2015. He submitted that relaxation qua NO_x is for TPS commissioned during 2003 to 7.12.2015. As KSTPS came to force after MoEFCC Notification dated 7.12.2015, the relaxation in NO_x norms is not applicable to KSTPS. In the notification dated 7.12.2015, the emission norms with respect to Oxides of Nitrogen (NO_x) is 100mg/Nm³ for TPS installed on or after 1.1.2017. Accordingly, the Petitioner has adopted Selective Catalytic Reduction ("SCR") process in the instant station. He clarified that the the above emission norm of 100 mg/Nm³ is under challenge before the Hon'ble Supreme Court and a relaxation in the said stringent norm is being sought by Thermal Power Plants including the Petitioner. Therefore, the matter is sub-judice before the Hon'ble Supreme Court and the installation of SCR will depend upon the outcome of the judgment of the Hon'ble Supreme Court. He further clarified that neither the contract has been awarded nor work has been initiated for implementation of NO_x emission control in respect of Kudgi STPS Unit-III.

7. Learned counsel for the Petitioner submitted the following clarifications:



- a. As regards TANGEDCO's contentions, he submitted that learned counsel for the TANGEDCO appeared in Petition No. 98/MP/2017, wherein the Petitioner had filed the petition for in-principle approval of the capital cost required for installation of ECS and other facilities in Singrauli STPS and Sipat STPS Stage-I and for declaration that ACE for implementation of ECS as per MoEFCC Notification is admissible under "change in law". He submitted that in Petition No. 98/MP/2017, the beneficiaries were party to the proceedings and were well aware of the installation of FGD in various other generating stations of the Petitioner based on the approval granted in Petition No.98/MP/2017. Therefore, the contention of the Respondents that NTPC did not act in a timely manner is misplaced.
- b. As regards notice for 'change in law' to the parties affected, the fact all the beneficiaries appeared in Petition No 98/MP/2017 constitutes a sufficient notice to the Respondents/ beneficiaries regarding the 'change in law' event and NTPC has to incur expenditure for installation of ECS on account of 'change in law'.
- c. None of the beneficiaries had challenged the findings in order dated 28.7.2019 in Petition No. 98/MP/2017. Therefore, the findings in the Petition No. 98/MP/2017 have attained finality and are binding on the parties now.
- d. The contention of the Respondents that petition is filed under Regulation 11 or 28 of the 2019 Tariff Regulations is incorrect as the instant petitions are filed under Regulation 29 of the 2019 Tariff Regulations. The Petitioner is not claiming Special Allowance and RLA study is not required as the instant petition is not for extension of useful life of the plants.
- e. The Petitioner has shared all the information with the Respondents with respect to installation of FGD.
- f. 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.
- g. The Petitioner has an obligation to contemporaneously share the proposal with the beneficiaries at the time of filing of the petitions. 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. All the information has been provided to the beneficiaries qua technology selected, bidding process and cost arrived for the purpose of installation of ECS.
- h. Regulation 29(2) of the 2019 Tariff Regulations enlists specific elements i.e. scope of work, phasing of expenditure, schedule of completion, estimated completion etc. to be provided in the proposal. He submitted that as per Regulation 29(3), it is the Commission's prerogative to call for any other



information over and above than the ones specifically listed in Regulation 29(2) of the 2019 Tariff Regulations. The non-submission of such information to the Respondents, like bid Evaluation report, NIT, cost benefit analysis cannot be construed in a manner that Regulation 29(2) has not been complied with.

- i. 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 the case of the Domestic Competitive bidding (DCB), the local bidders had the option to have JVs with foreign companies, with technology transfer clause. Also, 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 does not distinguish between competitive bidding through DCB or ICB.
- j. Except in the case of the Ramagundam TPS (Petition No.612/MP/2020) and Talchar TPS (Petition No.520/MP/2020), in all other projects, IFB was issued during the 2014-19 tariff period.
- k. Neither the 2014 Tariff Regulations nor the 2019 Tariff Regulations require beneficiaries consent, prior approval or ratification before incurring ACE. Regulation 29(1) of the 2019 Tariff Regulations does not mandate prior consultation with the beneficiaries. It merely provides knowledge or notice to the beneficiaries of the process undertaken for implementation of ECS.

8. 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.

9. The learned counsel for the Petitioner also sought ten days' time to file written submissions in the matter. The Commission acceded to the request of the Petitioner and directed to file written submission by 26.8.2021.

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

By order of the Commission

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

