

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 8/RP/2020

in

Petition No. 199/GT/2017

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Date of Order: 9th February, 2021

In the matter of

Review of Commission's order dated 8.1.2020 in Petition No. 199/GT/2017 regarding determination of tariff of Kudgi Super Thermal Power Station, Stage-I (2400 MW) for the period from COD of Unit-I to 31.3.2019

AND

In the matter of

NTPC Ltd
NTPC Bhawan, Core-7, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110003

.... Petitioner

Vs

1. Andhra Pradesh Eastern Power Distribution Company Ltd
Corporate Office P&T Colony, Seethammadhara,
Visakhapatnam-530013
2. Andhra Pradesh Southern Power Distribution Company Ltd,
Corporate Office, Back side Srinivasa Kalyana Mandapam
Tiruchhanur Road, Kesavayana Gunta,
Tirupati-517503
3. Telangana State Northern Power Distribution Company Ltd
H.No 2-5-31/2, Vidyut Bhawan, Nakkalagutta, Hanamkonda,
Warangal-506001
4. Telangana State Southern Power Distribution Company Ltd
Mint Compound, Corporate Office, Hyderabad-500063
5. Tamil Nadu Generation & Distribution Corporation Ltd.
144, Anna Salai, Chennai- 600002
6. Bangalore Electricity Supply Company Ltd.
K.R. Circle, Bengaluru- 560001



7. Mangalore Electricity Supply Company Limited Corporate Office,
MESCOM Bhavan, First floor, Kavoor Cross Road, Bijai,
Mangalore-575004

8. Chamundeshwari Electricity Supply Company Limited
Corporate Office No. 29, Vijayanagara 2nd Stage, Hinkal,
Mysore- 570017

9. Gulbarga Electricity Supply Company Limited
Station Main Road, Gulbarga- 585102

10. Hubli Electricity Supply Company Limited
Corporate Office, Navanagar, PB Road,
Hubli- 580025

11. Kerala State Electricity Board Ltd
Vaidyuthi Bhavanam, Pattom
Thiruvananthapuram- 695004

...Respondents

Parties present:

Shri Venkatesh, Advocate, NTPC
Shri Ashutosh K. Srivastava, Advocate, NTPC
Shri Rohit Chhabra, NTPC
Shri Patanjali Dixit, NTPC
Shri Arunav Patnaik, Advocate, BESCO
Shri Shikhar Saha, Advocate, BESCO
Shri Krishnamurthy, BESCO
Shri S. Vallinayagam, Advocate, TANGEDCO
Ms R.A Alamelu, TANGEDCO

ORDER

The Petitioner, NTPC has filed this review petition against the Commission's order dated 8.1.2020 in Petition No 199/GT/2017, whereby the tariff of Kudgi Super Thermal Power Station, Stage-I (2400 MW) (hereinafter referred to as 'the generating station') for the period from the actual COD of units till 31.3.2019 was determined in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as "the 2014 Tariff Regulations").

2. Aggrieved by the said order dated 8.1.2020, the Petitioner has sought review on the ground that there are errors apparent on the face of the order, raising the following issues:



- A. *Disallowance of time overrun of Unit-III of the generating station due to 'delay in Land Acquisition for Railway Siding and Water Reservoir Lagoon';*
- B. *Disallowance of time overrun due to drought from March, 2016 to June, 2016 for all three units of the generating station:*
- C. *Deduction of IDC & IEDC;*
- D. *Disallowance of FERV;*
- E. *Interest rate calculation with respect to foreign loans; and*
- F. *Consideration of the cut-off date of the generating station.*

3. The Commission heard the learned counsel for the Petitioner and the Respondents TANGEDCO and BESCO on 'admission' through Video Conferencing on 25.6.2020. We now proceed to consider the issues raised by the Petitioner, as discussed in subsequent paragraphs.

(A) Disallowance of Time overrun of Unit-III due to 'delay in Land Acquisition for Railway Siding and Water Reservoir Lagoon'; and
(B) Disallowance of time overrun due to drought from March, 2016 to June, 2016 for all three units of the generating station.

4. In respect of the above issues, the Review Petitioner in the review petition has submitted the following:

Drought

(a) The Commission while returning its finding on 'Drought' in paragraph 32 of the order dated 8.1.2020 has not considered the contention of the Petitioner that the Petitioner could not draw water required for pre-commissioning activities and initial operations during the period from March 2016 to July 2016 due to (i) the water level in the Alamatti Reservoir being consistently lower than the prescribed value in the proposal dated 2.3.2016; (ii) intermittent problems with the pumping system due to unavailability of power supply;

(b) The aforesaid issue was specifically pleaded by the Petitioner in the main proceedings and has been recorded in paragraphs 28 and 33 of the order dated 8.1.2020. However, the Commission has not returned any finding on it and, therefore, the said order suffers from an error apparent on the face of the record;

(c) Water is one of the key elements required for running a power plant. The requirement of water is particularly high during the pre-commissioning activities. In the present case, the source of water was identified as Alamatta Reservoir and the Review Petitioner had entered into an Agreement with Krishna Bhagya Jala Nigam Ltd (KBJNL) on 27.9.2014 for drawal of water from Alamatta Reservoir. However, there were certain issues, which even though were considered by this Commission in the order, no relief was granted to the Petitioner;



(d) The Commission did not condone the delay on account of drought during the period of March 2016 to June 2016 and has rejected the same without appreciating the material and submissions advanced by the Review Petitioner.

(e) Issues faced by the Petitioner due to Low level of water in the Alamatti Reservoir are as under:

(i) On 1.1.2016, the Review Petitioner wrote to KBJNL regarding the water requirement for the Project and, *inter-alia*, stated that the water required for the project was identified to be drawn from the Alamatti reservoir and the State Government vide order dated 6.5.2010 had accorded permission to draw the water and an agreement to this effect has already been entered into between Petitioner and KBJNL and the initial advance in the form of BG of Rs. 52,80,000 was deposited on 10.09.2014.

(ii) As per the above agreement, once the regular operation of the plant is commenced, the Petitioner would require 5.23 TMC of water per year which will be drawn at the rate of 0.43 TMC per month during the period from January to March, May and from October to December, while it would be 0.54 TMC in June, and 0.55 TMC per month from July to August.

(iii) 0.3 TMC of water would be required for the purpose of pre-commissioning and initial operation from middle of January 2016 to May 2016. Accordingly, it was requested to allocate the necessary quantity so that the water drawl can be started from 3rd week of January 2016.

(iv) On 16.2.2016, the MD (Managing Director) of KBJNL wrote to Chief Engineer of KBJNL regarding water requirement at the Petitioner's Project and *inter-alia*, stated that (a) in accordance with agreement dated 27.9.2014 between Petitioner and KBJNL, the Chief Engineer, KBJNL was permitted to allow the Petitioner to draw 0.30 TMC water upto May 2016 subject to the condition that (i) a formal clearance from the Deputy Commissioner, Vijayapura and Regional Commissioner, Belagavi shall be obtained before commencing drawal of water and (ii) the priority to mitigate the drinking water problem till June 2016 should not be affected under any circumstances.

(v) On 26.2.2016, the Petitioner wrote a letter to Regional Commissioner, Belagavi seeking clearance to draw water from Alamatti Reservoir and on 2.3.2016, the Regional Commissioner, Belagavi wrote to the Petitioner regarding clearance to draw water from Alamatti Reservoir and stated that (a) As on 27.2.2016, Alamatti reservoir was having only 7.111 TMC usable water. For the requirement of towns/ villages and multi-village drinking water scheme and evaporation of the water, presently 750 cusecs (0.064 TMC) water was being consumed; (b) In the forthcoming days, the temperature due to summer will increase and water consumption may increase to 0.080 cusecs (0.069 TMC) per day. For the drinking water and for evaporation losses till 15.6.2016, total of 7.193 TMC of water is required and hence it is necessary to preserve water in the dam; and (c) For supplying drinking water for the



towns/ villages and multi-village drinking water scheme, minimum level of 507 m is to be maintained in the dam.

(vi) On 2.3.2016, the representative of the project visited and discussed the situation that Alamatti Reservoir is having very low level of water and accordingly requested the Regional Commissioner, Belagavi to give permission for lifting 0.05 TMC of water instead of 0.3 TMC for starting of the unit. Considering the low level of water in Alamatti Reservoir, permission was granted for lifting 20 cusecs of water per day for 30 days, totalling 600 cusecs (limited to 0.05 TMC) from Alamatti Reservoir for the Project.

(vii) On 29.3.2016, the Petitioner wrote to the Regional Commissioner, Belagavi stating that in line with the letter dated 2.3.2016, the Petitioner had started drawing water after due intimation to KBJNL from 4.3.2016 which enabled the project to continue and hasten the pace of initial testing and commissioning activities of the first 800 MW. As on 29.3.2016 i.e. in 25 days, the Petitioner has been able to draw water totalling to only 0.020 TMC as against the permitted quantity of 0.05 TMC, due to intermittent problems with the pumping system established for drawing the water. The plant commissioning activities peaked and to complete the testing and commissioning activities it was essential to draw water to the cumulative 0.05 TMC. Accordingly, permission to draw 0.05 TMC for another 30 days was sought by the Petitioner.

(viii) The situation of drought worsened and the water level in the Alamatti dam went further down. In fact, the drought situation in the State was termed as worst in the past four decades. The situation of drought in the State was widely covered by local as well as national newspapers.

(ix) Further, the level of water in the dam was consistently low and had gone below the minimum level prescribed for drawl on various days during the concerned period. The same prevented the Petitioner to draw water from the reservoir and caused delay in commissioning the units. The water level was consistently below the permissible level of 507 meters in the month of May and June 2016 and the same is evident from the daily water level in the dam during the said months.

(x) The above facts were specifically pleaded by the Petitioner before the Commission and the letter dated 2.3.2016 which stipulated conditions on drawl of water were also placed before the Commission. However, the Commission while passing the order dated 8.1.2020 has not considered the conditional approval granted to the Petitioner which impaired the Petitioner's ability to secure adequate water for its commissioning activities and delayed the commissioning of all the units of the Project. Drought and low water levels in the dam are force majeure conditions and amount to 'uncontrollable factors'. Therefore, the order passed by this Commission suffers from an error apparent on the face of the record which warrants the exercise of review.



(f) Issues faced due to intermittent problems with pumping system are as under:

(i) Even though the Commission has condoned the time overrun caused due to the intermittent problems with the pumping system for the period from 24.3.2017 to 16.6.2017, the Commission has not taken into consideration that the issue with the pumping system persisted in the year 2016 as well. This issue was brought up by the Petitioner on 29.3.2016 when it issued a letter to the Regional Commissioner, Belagavi and requested to extend the permission to draw 0.05 TMC of water for another 30 days due to intermittent problem with the pumping system. From the said letter, it is evident that even though access was given to draw water, the Petitioner could not physically draw water due to issue with the pumping system which has been accepted as a situation which was beyond the control of the Petitioner and is an uncontrollable factor.

(ii) The issue of pumping system cannot be seen in isolation as the impact of the same has to be derived from the force majeure event/ uncontrollable factors. The Petitioner had put in best efforts to ensure the completion of pre-commissioning activities. However, due to the force majeure event, the Petitioner could not draw water at the required rate which caused further delay in the commissioning the units. These issues had escaped the attention of this Commission as no finding has been returned on this aspect and, therefore, there exists an error apparent on the face of the record.

Delay in Land Acquisition for Railway Siding and Water Reservoir Lagoon

(g) The Commission in its order dated 8.1.2020 has rejected the contention of the Petitioner for condonation of delay due to land acquisition on the ground that it had not taken any steps between the period of 8.12.2012 to 3.1.2016. Despite the Petitioner's best effort, the process of land acquisition was not completed by the Karnataka Industrial Area Development Board (KIADB) which led to the delay in setting up of Railway Siding and Water Reservoir which were essential for declaring the COD of Unit-III of the Project.

(h) The Petitioner had taken several steps during the said period and had issued several letters requesting KIADB for expediting the matter. The Petitioner had submitted the copies of certain letters sent to KIADB/ MoMs to other authorities for consideration of the Commission in the main petition.

(i) The Commission in paragraph 45 of the order dated 8.1.2020 has not condoned the delay for the period from 13.3.2018 to 15.9.2018 though the delay was caused on account of land acquisition related issues which were beyond the control of the Petitioner and amounts to an uncontrollable factor/ force majeure.

(j) The Commission has assumed that the Petitioner did not take up the matter of land acquisition with the concerned authorities during the period 8.12.2012 (i.e. date on which land requirement request was made by the Petitioner) and 3.1.2016 (first letter to KIADB for land acquisition issue for Railway Siding). However, as may be seen from the facts stated below, the



Petitioner had put in its best effort to ensure timely completion of the project and had issued various letters to the concerned departments to get the issue of land acquisition resolved at the earliest.

(i) On 28.12.2011, investment approval of the Petitioner's Project was accorded by NTPC Board at its 376th meeting at a project cost of Rs 16934.65 crore. On 25.1.2012, Ministry of Environment, Forest and Climate Change (MoEFCC) granted Environmental Clearance (EC) to Petitioner's Project. The Petitioner has considered this date as the 'Zero Date' for the Project.

(ii) On 4.9.2014, the Petitioner filed an affidavit of undertaking before the Hon'ble Supreme Court in C.A. No. 3870 of 2014 in the matter of NTPC Ltd v M.P. Patil & Ors. A perusal of the said affidavit establishes the fact that the Petitioner was not given the complete possession of land by KIADB and that the Petitioner was facing severe resistance from the local inhabitants.

(iii) On 16.10.2014, the Petitioner wrote to KIADB regarding the delay in possession of land and stated that (i) KIADB was already aware of various issues related to balance land acquisition and handing over of land for the Project and the same was discussed in the meeting chaired by Chief Secretary, Govt. of Karnataka on 5.8.2014; and (ii) While there had been some progress, a lot of balance activities were still pending to be expedited by KIADB to ensure physical possession of balance land to Petitioner, namely the handing over of physical possession of Ash Dyke Area, handing over of land for Railway Siding, handing over of land for township land, handing over of land for Ash pipeline corridor and additional land for reservoir and handing over of road corridor from township to Nallah.

(iv) KIADB was aware that the works at the Project started in March 2012 and it had been 32 months since the construction started. However, land acquisition process was yet to be concluded. Acquisition of complete land was critical for commissioning of the units and the delays that have occurred have already put a constraint on adhering to the committed time schedule. Accordingly, the Petitioner requested for immediate resolution of the issues.

(v) On 20.11.2014, the Petitioner issued another letter to KIADB regarding land acquisition issues of the project and stated that as KIADB was already aware that since the construction work of the Project was under progress in various fronts, to address the security issue necessitating fencing of the boundary and providing front for the works to be started in the areas like Ash Dyke and Township, the Petitioner was looking for speedy disbursement of all payments to the land owners without further delay from KIADB side. Further, the Petitioner requested to resolve all the pending issues pertaining to land in all the phases. It was evident from the notes of discussion that the responsibility for arranging land for railway siding and reservoir was of KIADB and the Petitioner was regularly taking up the matter with it.



(vi) On 25.3.2015, the Petitioner wrote to the Dy. Superintendent of Police, Bijapur regarding the issues faced in land acquisition and stated that the previous land owners, despite receiving compensation from KIADB are not vacating land. Therefore, the Petitioner sought the intervention of the Police to commission the project in time.

(vii) On 30.4.2015, the Petitioner wrote to KIADB regarding the land acquisition issue and stated that it has received the possession certificate after making payment for the total area. However, the physical possession of the total area was still pending and the process of land compensation was still not completed by KIADB.

(viii) The Project construction had reached a stage where the entire land area was essential. Accordingly, the Petitioner requested KIADB to take immediate action to ensure encumbrance free land availability for timely execution of the Project. The Petitioner again highlighted the issue of delay in possession of Railway Siding land in the said letter.

(ix) On 18.9.2015, the Deputy Commissioner, Vijayapura wrote to the Additional Chief Secretary to the Government of Karnataka regarding issues related to land acquisition faced by the Petitioner's Project and stated that (a) the first unit of the Project was scheduled to be commissioned by March 2016 and the subsequent two units were planned to be commissioned at six-month intervals; (b) As per the MOU between the Petitioner and Govt. of Karnataka, 50% of Electricity generated by the Project would be made available to State of Karnataka. This project's progress was being monitored by Govt. of India through the Prime Ministers office, for which the District Administration was regularly sending status reports; and (c) The Petitioner was putting all-out efforts towards commissioning the units on time.

(x) In the meeting held on 2.3.2016 by the Cabinet Committee on Investment and Project Monitoring Group, to review progress of project, the Deputy Commissioner, Vijayapura was directed to resolve the issues regarding physical possession of land for Railway Siding in 20 days on top priority. On 9.3.2016, the Review Petitioner wrote to the Dy. Commissioner and explained the criticality of land acquisition for commissioning of the Project as the same was required for Railway Siding and Ash Pipeline Corridor. Accordingly, Dy. Commissioner was requested to intervene and take necessary action for providing possession of land to the Review Petitioner.

(xi) In the meeting held on 3.5.2016 by the Cabinet Committee on Investment and Project Monitoring Group, the Chief Secretary informed Special DC, KIADB to complete the disbursement of payment by 10.5.2016 and Deputy Commissioner, Vijayapura to coordinate the handing over of land. On 19.5.2016, the Petitioner wrote to the Tahsildar, Vijayapura and requested for his intervention in land acquisition for railway siding which was essential for the commissioning of the units.

(xii) In the meeting held on 30.8.2016 by the Cabinet Committee on Investment and Project Monitoring Group, to review progress of project,



the Chief Secretary instructed all the concerned Deputy Commissioners to complete the process of handing over of the land by 15.9.2016. On 5.10.2016, the Petitioner wrote to KIADB and requested to look into the issue of land compensation being raised by the land owners. It was again pointed out that obstruction by the land owners was adversely affecting the project and hence, KIADB was requested to resolve the issue at the earliest.

(xiii) In the meeting held on 13.1.2017 by the Cabinet Committee on Investment and Project Monitoring Group, to review progress of project, the Deputy Commissioner, Vijayapura stated that out of the 31.73 acres required for railway siding, payment has already been made for 14.18 acres, the award has been passed for 9.38 acres and work in 8.18 acres of Government land was under progress. It was further mentioned that some farmers were resorting to hunger strike etc. seeking more compensation from KIADB. The Chief Secretary instructed KIADB to sort out the issue at the earliest to avoid stoppage of work. In response, Deputy Commissioner, Vijayapura assured that the pending issues regarding physical possession of land for railway siding/ ash pipe corridor would be settled within one month.

(xiv) In the meeting held on 18.5.2017 by the Cabinet Committee on Investment and Project Monitoring Group, to review progress of project, the DC Vijayapura informed that payment of compensation for land is pending in some cases from KIADB. Further, it was informed that the balance amount of Rs. 90 lakh compensation would be released to land owners in two days' time. The Deputy Commissioner, Vijayapura was informed to assist the Petitioner in taking physical possession of the land at the earliest.

(xv) On 6.9.2017, the Petitioner again wrote to KIADB regarding the land acquisition issues of the Project and stated that Unit-I of the Project has commenced commercial operation on 31.7.2017 and the second and third units will be declared under commercial operation in near future. Hence, it was very critical to get possession of land, for Railway Siding for coal rake movement and for reservoir lagoon for storing water from Alamatti Dam. Accordingly, KIADB was requested to resolve the issue at the earliest.

(xvi) It is evident from the above that the Petitioner had diligently followed up with the concerned authorities to expedite the possession of land even prior to 2016. Therefore, the finding of the Commission in para 45 of the order dated 8.1.2020 is an error apparent on the face of the record warranting exercise of review.

(k) Delay in land acquisition was a primary reason for delay in commissioning of plant for the following reasons:

(i) The Railway siding of the Project was connected only from one side i.e. from Southern side to South Western line against the design connection bulb on both sides (Southern and Northern). With one side connectivity of the siding, a maximum of 6-7 rakes/day could reach the plant, with which the coal requirement of only two units operation



could be facilitated. To enable the rake movement up to the level of 9-11 rakes/ day when required to run all three units on sustainable basis after the commercial operation, the completion of northern side bulb of railway siding was essential.

(ii) The works of Northern side Railway Siding bulb were constrained by the delays in land acquisition and the delay in physical possession of land. The land acquisition in respect of the Project was carried out by KIADB, which looks after the industrial area development in the State of Karnataka under the KIADB Act. The land acquisition requirement for the railway siding (both sides) was made by Petitioner on 8.12.2012. Though the works on the Northern Siding bulb had started, the same was on a standstill due to resistance from Villagers. Subsequent to the availability of encumbrance free land (in February, 2018), the construction of one Road over Bridge and one Road under Bridge on the northern side Railway Siding line was also to be taken up.

(iii) Besides availability of Railway Siding land, the physical possession of land for Water Reservoir for Lagoon-2 was also delayed due to resistance from villagers and pending payments from KIADB. The reservoir of Lagoon-1 was under operation which could suffice for sustainable operation of only two units. For continuous running of three units during the summer months, wherein the water drawl was restricted by certain agreement conditions, the water storage capacity would not be sufficient without Lagoon-2.

(iv) Though the northern bulb Railway siding and Water Reservoir for Lagoon-2 were still a constraint, based on the indication from South Western Railways for augmented supply of coal rakes and with the expected onset of monsoon in June 2018, in line with the water agreement conditions, the Review Petitioner had declared the COD of Unit-III on 15.9.2018.

(v) The aforesaid land was of key importance for commissioning of Unit-III and the Review Petitioner had put its best efforts to get the same resolved at the earliest and communications dated 16.10.2014, 20.11.2014, 25.3.2015 and 30.4.2015 wherein the Review Petitioner had requested the authorities to get the issue of land acquisition resolved at the earliest and letter dated 18.9.2015 of the Deputy Commissioner, Vijayapura are relied upon.

(vi) It is therefore evident that the Petitioner had taken the necessary steps between the period from 2012 to 2016 for resolving the issue of land acquisition. Also, the letter dated 18.9.2015 issued by the Deputy Commissioner establishes that the issue of land acquisition was beyond the control of the Review Petitioner and required the intervention of Chief Secretary of the State.

(g) Though the delay caused to the Petitioner was on account of Force majeure conditions, the State of Karnataka and its Discoms had also created impediments for the Petitioner which made the declaration of commercial operation of Unit-III at an earlier date a near impossibility. The said contention is without prejudice to the contention of the



Petitioner that the delay in land acquisition was caused on account of force majeure conditions. The order dated 8.1.2020 does not consider the above stated facts and the finding of the Commission that no action was taken by the Petitioner between the period 2012 and 2016 is an error apparent on the face of the record warranting exercise of review jurisdiction. Accordingly, the Commission may review its observation about no action taken by the Petitioner between December 2012 and January 2016 and condone the delay for the period from 13.3.2018 to 15.9.2018 as the same was caused due to reasons beyond the control of the Petitioner.

5. In the above circumstances, the Petitioner has submitted that time overrun due to the 'delay in Land Acquisition for Railway Siding and Water Reservoir Lagoon' and 'Drought' may be condoned and the review petition may be allowed.

6. During the hearing of the review petition on 25.6.2020, the learned counsel for the Petitioner mainly reiterated the above submissions and prayed that the delay on these counts may be condoned and the order dated 8.1.2020 may be reviewed. The learned counsel for the Respondents BESCO and TANGEDCO objected to the above submissions and contended that the Petitioner has sought to reargue the case on merits, which is not permissible in review. They also submitted that the reasons for the rejection of 'time overrun' on these issues have been elaborated by the Commission in its order dated 8.1.2020 and hence there is no error apparent on the face of the order. The learned counsel for the Respondents therefore prayed that the review petition may be rejected. Accordingly, the Commission reserved its order at the admission stage.

Analysis and Decision

7. We have examined the submissions of the parties and perused the documents available on record. The Commission in its order dated 8.1.2020 in Petition No.199/GT/2017 had examined the issue of time overrun due to 'drought' and decided as under:



“Drought

28. The Petitioner has prayed for time overrun due to drought situation in Bijapur district and has made the following submissions:

Xxxxxx

31. We have examined the matter. The Petitioner has attributed the delay due to drought situation for the period from March, 2016 to July, 2016 to the low annual rainfall during 2015 and has submitted that due to unavailability of water, the commissioning and erection activities of the project were affected. In support of the same, the Petitioner has furnished the newspaper clippings for the period from February, 2016 to May, 2016 with regard to the barring of river water from the Krishna and Bhima Rivers, scarcity of water and drought situation in the State of Karnataka. It is noticed from the details of the milestone activities furnished by the Petitioner, that the work of TG Erection and Boiler erection of all the three units were completed by the year 2015 and the Commissioning activities were scheduled to be on January, 2016 for Unit-I, July, 2016 for Unit-II and January, 2017 for Unit-III. However, the commissioning activities of Units-I, II and III were actually completed during December, 2016, May, 2017 and March, 2018 respectively. Since, the scheduled commissioning of Unit-III was January, 2017, due to drought the activities of schedule completion of commissioning activities of only Unit-I and Unit-II were affected. The Petitioner had completed the Boiler light up of Unit-I on 20.12.2015. It is observed that the Petitioner vide its letter dated 1.1.2016 had requested the Managing Director, Krishna Bhagya Jal Nigam Limited (KBJNL) to allocate the necessary quantum of water so that the water drawl can be started from the 3rd week of January, 2016, as the first unit was targeted to be commissioned by March, 2016. In response to this request, KBJNL vide its letter dated 16.2.2016 had permitted the Petitioner to draw the required quantum of water (0.3 TMC) subject to clearance from Deputy Commissioner, Vijayapura.

32. As stated earlier, the Petitioner required 0.3 tmc of water for the pre-commissioning activities for the period from January, 2016 to May, 2016. It is noticed from records that the District administration on 13.2.2016 had barred the drawing of water for farming and industries due to less storage of water in the Almatti dam. The Petitioner, on 26.2.2016, had requested the office of Regional Commissioner for lifting of water for the Project and in response, the Regional Commissioner, Belgaum, on 2.3.2016, had allowed the lifting of only 20 cusecs of water per day for 30 days (i.e. 0.05 tmc). However, the Petitioner started drawing of water from 4.3.2016 and could only draw about 0.02 tmc of water till 29.3.2016, due to problems in the pumping system established for drawing water. However, the Petitioner has not clarified the status after 29.3.2016 (25 days after it started drawing water from 4.3.2016) with regard to its requirement for water, its availability, and to when it was allowed to draw the normal requirement of water. It appears from the claim of the Petitioner that the position with respect to water availability had improved after July, 2016. From the bar chart for Unit-I, it is observed that with the available water drawl, the Petitioner could achieve the “Steam blowing completion” on 12.6.2016, thereby indicating that sufficient water was available. As such, in the absence of any clear details/position with regard to the availability of water vis-a-vis its requirement, we are of the view that the delay due to drought, which is a force majeure event, was beyond the control of the Petitioner for the period from 15.1.2016 to 3.3.2016 (i.e. the date from which the Petitioner requested for allocation of quantum of water to a date prior to the date on which it started to draw the water) and accordingly, the delay on this count is condoned.”



8. The main grievance of the Petitioner is that the Commission while disallowing the time overrun due to 'drought' from March 2016 to June 2016 had failed to appreciate that the water level in Alamatti dam was consistently lower and that the Petitioner was allowed to lift only 20 cusecs of water per day for 30 days by the Regional Commissioner vide letter dated 2.3.2016, even though the requirement of the Petitioner was 0.3 tmc of water. The Petitioner has further stated that the Commission had failed to note that the drawl of water from 4.3.2016 till 29.3.2016 by the Petitioner was only 0.02 tmc, due to problems in the pumping system established for drawing water. According to the Petitioner, the Commission should have considered these events as force majeure/ un-controllable events and relief should have been granted vide its order dated 8.1.2020. The Petitioner has also submitted that though the aforesaid issue was specifically pleaded by the Petitioner and has been recorded in paragraphs 28 and 33 of the order dated 8.1.2020, the Commission has not returned any finding on it and therefore the said order suffers from an error apparent on the face of the record.

9. In our view, the submission of the Petitioner is misconceived. It is evident from paragraph 32 of the Commission's order dated 8.1.2020 (quoted above) that the Commission, while undertaking prudence check of the time overrun involved in the project, had considered the submissions and the documentary evidence furnished by the Petitioner related to 'drought' and accordingly granted the relief only for the period from 15.1.2016 to 3.3.2016. The Commission had observed that the Petitioner had not clarified the status regarding the requirement for water, its availability, and the details as to when the Petitioner was allowed to draw the normal requirement of water after 29.3.2016. The Commission had also observed that the Petitioner could achieve the "Steam blowing completion" on 12.6.2016 which indicated that sufficient water was available at that point of time. However,



in the absence of the status regarding the requirement for water, its availability, and the details as to when the Petitioner was allowed to draw the normal requirement of water, the Commission by a conscious decision had declined to condone the delay for the period from March 2016 to June 2016. The Commission having considered the submissions and documents furnished by the Petitioner with regard to drought while examining the question of time overrun and having arrived at the findings as such in order dated 8.1.2020, there is no reason to entertain the Petitioner's plea for review of the said order on this issue. Accordingly, there is no error apparent on the face of the order dated 8.1.2020 and, therefore, the prayer of the petitioner for review on this ground is disallowed.

10. As regards the delay due to land acquisition, the Commission in its order dated 8.1.2020 held as under:

"41. In respect of Unit-III of the Project, the Petitioner has claimed time overrun for the period from February, 2018 to September, 2018 on account of the delay caused by resistance by Villagers to the work of Railway Siding and Water Reservoir. The Petitioner has submitted that though Unit-III of the Project was test synchronized on 22.8.2017, the completion works/activities got severely affected after the synchronization, due to the following reasons:

xxxxx

45. We have considered the submissions. The generating station was connected only from one side i.e. from Southern side to South Western line against the design connection bulb on both sides (Southern and Northern) for transportation of coal. A maximum of 6 to 7 rakes per day was possible with the one side connectivity of the siding, with which the coal requirement of only two units operation was possible. To cater the requirement of coal in all the three units 9 to 11 rakes per day is required for the generating station. Hence, the works of Northern side railway siding bulb was required which was constrained by the delays in land acquisition. Besides the availability of Railway siding land, the physical possession of land for water reservoir for Lagoon-2 was also delayed due to villagers' resistance. The reservoir of Lagoon-1 was under operation which could cater to the requirement of only two units of the generating station. As per submissions of the Petitioner, the Scheduled COD of Unit-III of the generating station was 30.5.2017 (considered as 25.5.2017) and the actual COD of the Unit-III of the generating station is 15.9.2018. The Petitioner has attributed the delay from February, 2018 to September, 2018 due to Villagers resistance for possession of land for transportation of coal from the Northern side and Reservoir for Lagoon-2. Land acquisition at the Project was carried out by KIADB, which looks after industrial area development in the State of Karnataka. The Petitioner has made up the land acquisition requirement for the Railway Siding (both sides) on 8.12.2012. However, KIADB did not complete the payment disbursement for the above land and had not provided the possession letter to the Petitioner. It could not be



inferred from the submissions of the Petitioner that during the intervening period of around 4 years, between 8.12.2012 (i.e. date on which land requirement request was made by the Petitioner) and 3.1.2016 (first letter to KIDAB for land acquisition issue for Railway Siding) the Petitioner had taken up the matter with the concerned authorities of the Central Govt. and the State Govt. (MOP, GOI and GoK) to persuade KIDAB to release the payment to the Villagers/Land owners. Hence, the delay for the period from 13.3.2018 to 15.9.2018 cannot be said to be beyond the control of Petitioner.”

11. The Petitioner, in the review petition, has referred to the letters dated 16.10.2014, 20.11.2014, 25.3.2015 and 30.4.2015 addressed by it to various authorities/ KIADB and has contended that the Petitioner had taken necessary steps between the period from 2012 to 2016 for resolving the land acquisition issues and was also proactive in getting the same resolved at the earliest. Relying on the letter dated 18.9.2015 of the Deputy Commissioner, Vijayapura, the Petitioner has argued that the said letter establishes the fact that the land acquisition issue was beyond the control of the Petitioner. It has also contended that the said delay caused to the Project is on account of force majeure conditions and squarely qualifies as an ‘uncontrollable factor’. Accordingly, the Petitioner has submitted that the order dated 8.1.2020 does not take into consideration the above facts and the finding of the Commission that no action was taken by the Petitioner between the period 2012 and 2016 is an error apparent on the face of the record and the same may be reviewed and the delay for the period from 13.3.2018 to 15.9.2018 may be condoned.

12. As stated in the preceding paragraph, the Commission in its order dated 8.1.2020 had examined the question of time overrun after considering the submissions and documents available on record. It is however noticed that the letters dated 16.10.2014, 20.11.2014, 25.3.2015, 30.4.2015 and 18.9.2015 referred to by the Petitioner, were not furnished by the Petitioner for consideration of the Commission during the proceedings in the main petition and accordingly these documents did not find any mention in the order dated 8.10.2020. Therefore, the



reliance placed by the Petitioner on the aforesaid communications in support of its contention that it had taken necessary steps to resolve the land acquisition issue, bear no weightage and cannot also be considered in the review proceedings. Moreover, some of the documents enclosed as Annexures P-18 to P-26 to this review petition, were also not furnished during the proceedings in the main petition. As it could not be inferred from the submissions and documents made available on record, that the Petitioner had taken up the matter with the concerned authorities of the Central Govt. and the State Govt. (MOP, GOI and GoK) to persuade KIADB to release the payment to the villagers/ land owners, the Commission had concluded that the delay for the period from 13.3.2018 to 15.9.2018 cannot be said to be beyond the control of Petitioner. It is settled law that review lies only for a patent error and cannot be an appeal in disguise whereby an erroneous decision is reheard and corrected. Having considered the submissions and documents furnished of the Petitioner, the Commission by a conscious decision had rejected the prayer of the Petitioner on merits, on this issue. The reliance placed by the Review Petitioner to the aforesaid documents in review, cannot be considered, as the Review Petitioner cannot be permitted to file fresh documents and raise new grounds, in justification of the prayer for review of the order dated 8.1.2020. Nothing prevented the Review Petitioner from placing these documents during the proceedings in the main petition. In this background, we find no reason to allow the prayer of the Petitioner for review of order dated 8.1.2020. In our view, the Petitioner has sought to reopen the case on merits and the same is not permissible on review. Accordingly, the submissions of the Petitioner for review of order dated 8.1.2020 on this count stands rejected.

(C) Deduction of IDC & IEDC;

(D) Disallowance of FERV; and

(E) Interest rate calculation with respect to foreign loans.



Deduction of IDC & IEDC

13. The Petitioner has submitted that the Commission in its order dated 8.1.2020 had deducted IDC for non-condonation of the period of 295 days for Unit-III. It has submitted that even if the non-condonation of the said period is accepted, the IDC deducted would be Rs.27858.79 lakh instead of Rs.43271.84 lakh as on COD of the generating station. It has further submitted that the IEDC allowed by the Commission was only Rs.27293.89 lakh instead of Rs.30137.98 lakh, ₹45059.49 lakh instead of Rs.50896.81 lakh and ₹48610.94 lakh instead of Rs.51311.80 lakh respectively for Units-I, II & III of the generating station. However, the notional IDC of Rs.1322.19 lakh is claimed on COD of Unit III. The Petitioner has added that in absence of any workings of IDC/ IEDC details in the backup papers provided to the Petitioner, the detailed computation of the IDC/IEDC considering the principles generally adopted in such cases is annexed with the review petition.

14. As regards notional IDC, the Petitioner has submitted that though the Petitioner had claimed notional IDC of Rs. 1322.19 lakhs as on COD of Unit III, the Commission in its order dated 8.1.2020 had allowed notional IDC of Rs.1120.23 lakh as on the COD of the generating station. The Petitioner while pointing out that the working of notional IDC was submitted to the Commission vide affidavit dated 1.3.2019 in the main petition has submitted that the same had escaped the attention of the Commission while passing the order dated 8.1.2020. The Petitioner has therefore prayed that Commission may review the calculation of notional IDC as claimed by the Petitioner.

Disallowance of FERV

15. As regards the disallowance of FERV (treated as borrowing cost charged to revenue) for Rs.3572.84 lakh, the Petitioner has submitted that the same did not form part of the Auditor certified cash capital cost of Rs. 1362547.36 lakh (as per



IGAAP) and the same has been charged to revenue. Accordingly, the Petitioner has submitted that the same is an error apparent on the face of the order and review on this count may be allowed.

Interest rate calculation with respect to foreign loans

16. The Review Petitioner has submitted that in Form -13 of the petition, the interest rate calculation with respect to foreign loans was made without considering the FERV for the period in the 'closing loan'. It has further submitted that the interest rate for foreign loans appears to be inconsistent with reference to the loan agreement terms. In addition, the Review Petitioner has stated that the interest rate calculation for SBI-VIII (domestic borrowings) appear to be incorrect. Accordingly, the Review Petitioner has submitted that its claim under this head may be allowed.

Analysis and Decision

17. We have examined the submissions and the documents available on record. The calculations pertaining to IDC/IEDC and notional IDC has been rechecked and no discrepancy in the calculations have been noticed, as stated by the Petitioner in this review petition. Also, based on the scrutiny of the IDC allocation sheet as furnished by the Petitioner in the main petition, it was observed that FERV amounting to Rs.3572.84 lakh treated as borrowing cost has already been considered in the IDC calculations and accordingly, the claim of the Petitioner was disallowed subject to truing-up exercise. As regards interest rate calculation with respect to foreign loans and the rate of interest of SBI-VIII loans considered in order dated 8.1.2020, the Petitioner has not pointed out to any inconsistency with reference to the loan agreement. It is pertinent to mention that the calculation of Weighted Average Rate of Interest (WAROI) had been worked out in order dated 8.1.2020 based on the annual rate of interest furnished by the Petitioner in Form-8



of the main petition. However, considering the fact that the tariff determined by Commission's order dated 8.1.2020 in Petition No. 199/GT/2017 in respect of this generating station is subject to truing-up and the discrepancies/errors pointed out by the Petitioner are in the nature of clerical/ arithmetical errors, we deem it fit to consider these issues at the time of truing-up exercise, subject to the Petitioner furnishing the detailed calculations/ computations along with proper linkages to the documents already furnished on record and pointing out the discrepancies/ errors as submitted in this petition. Accordingly, the Petitioner is granted liberty to furnish the aforesaid information/ details at the time of truing-up of tariff. The prayer of the Petitioner is disposed of accordingly.

(F) Consideration of the cut-off date of the generating station.

18. The Petitioner has pointed to the Regulation 3(14) of the 2014 Tariff Regulations and has submitted that since the cut-off date of the generating station falls within the control period of 2019-24, the cut-date should be considered as 30.9.2021 (last day of the 36th month from station COD). Accordingly, it has submitted that the cut-off date considered as 31.3.2021 in Commission's order dated 8.1.2020 is an error apparent on the face of the order and the same may be reviewed.

Analysis and Decision

19. The matter has been examined. The date of commercial operation of Unit-I, Unit-II and Unit-III of the generating station is 31.7.2017, 31.12.2017 and 15.9.2018 respectively. Since, the date of commercial operation of the Unit-III falls during the 2014-19 tariff period, the generating station is governed by the 2014 Tariff Regulations and not the 2019-24 Tariff Regulations as stated by the Petitioner. Regulation 3(14) of the 2014 Tariff Regulations defines cut-off date as under:



'Cut-off Date' means 31st March of the year closing after two years of the year of commercial operation of whole or part of the project, and in case the whole or part of the project is declared under commercial operation in the last quarter of a year, the cut-off date shall be 31st March of the year closing after three years of the year of commercial operation.

20. The Commission in its order dated 8.1.2020 in Petition No. 199/GT/2017 had considered the cut-off date of the generating station as 31.3.2021 in terms of the above said regulation and the same is in order. Hence, there is no error apparent on the face of the order and review on this ground is accordingly rejected.

21. Review Petition No. 8/RP/2020 in Petition No. 199/GT/2017 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

Sd/-
(P.K. Pujari)
Chairperson

