

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 21/RP/2022

in

Petition No. 240/GT/2020

Coram:

Shri I. S. Jha, Member

Shri Arun Goyal, Member

Shri Pravas Kumar Singh, Member

Date of Order: 9th January, 2023

In the matter of

Review of Commission's order dated 14.4.2022 in Petition No. 240/GT/2020 with regard to the revision of tariff of Sipat STPS Stage-I (1980 MW) for the 2014-19 tariff period, after truing-up exercise.

And

In the matter of

NTPC Limited,
NTPC Bhawan
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road
New Delhi – 110 003

.... Review Petitioner

Vs

1. Madhya Pradesh Power Management Company Limited,
Shakti Bhawan, Vidyut Nagar, Rampur,
Jabalpur – 482 008
2. Maharashtra State Electricity Distribution Company Limited,
Prakashgad, Bandra (East),
Mumbai – 400 051
3. Gujarat Urja Vikas Nigam Limited,
2nd Floor Sardar Patel Vidyut Bhawan,
Race Course, Vadodara – 390 007
4. Chhattisgarh State Power Distribution Company Limited,
Vidyut Sewa Bhawan,
Dagania, Raipur – 492 001
5. Electricity Department,
Government of Goa, Vidyut Bhawan,
Panaji, Goa – 403 001



6. DNH Power Distribution Corporation Limited,
UT of Dadra Nager & Haveli, Silvassa – 396 230

7. Electricity Department,
Administration of Daman & Diu,
Daman – 396 210

...Respondents

Parties Present:

Shri A.S. Pandey, NTPC
Shri Vivek Kumar, NTPC
Shri Ravin Dubey, Advocate, MPPMCL

ORDER

Petition No. 240/GT/2020 was filed by the Review Petitioner, NTPC, for truing-up of tariff of Sipat STPS Stage-I (1980 MW) (in short “the generating station”) for the 2014-19 tariff period and the Commission vide its order dated 14.4.2022 (in short “the impugned order”) disposed of the same in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as “the 2014 Tariff Regulations”). Aggrieved by the said impugned order, the Review Petitioner has sought review on the ground of error apparent on the face of the order, raising the following issues:

(A) Difference in the rate of interest on loan, as claimed and allowed;

(B) Disallowance of capital spares of Rs.11.58 lakh as part of exclusions as well as capital spares consumption claimed in 2018-19.

Hearing dated 12.8.2022

2. The Review Petition was heard through virtual conferencing, on 12.8.2022. During the hearing, the representative of the Review Petitioner made detailed submissions in the matter. Considering the submissions of the Review Petitioner, the Review Petition was ‘admitted’ on the issues raised in paragraph 1 above vide interim order dated 23.8.2022. Notice was ordered on the Respondents with directions to the parties to complete pleadings in the matter. Reply to the Review Petition has been filed



by the Respondent MPPMCL on 7.9.2022 and the Review Petitioner has filed its rejoinder to the same, on 14.9.2022.

Hearing dated 2.11.2022

3. During the hearing of the Review Petition on 2.11.2022, the representative of the Review Petitioner made detailed oral submissions. The learned counsel for the Respondent, MPPMCL referred to the reply and made elaborate submissions in the matter. Accordingly, the Commission after hearing the parties, reserved its order in the matter

4. Based on the submissions of the parties and documents on record, we proceed to examine the issues raised by the Review Petitioner in the subsequent paragraphs.

(A) Difference in the rate of interest on loan, as claimed and allowed;

Submissions of the Review Petitioner, NTPC

5. The Review Petitioner has submitted that from the certified copy of back-up calculation sheets received by the Review Petitioner, in respect of the impugned order dated 14.4.2022, it is evident that the rate of interest considered by the Commission for certain loans is different from those submitted by the Review Petitioner in Form-13 of the main petition. The details of such loans claimed and allowed, are tabulated as under:

Sl. N. of the loan as per Form-13	Name of Loan	Claimed/ Allowed	Interest Rate				
			2014-15	2015-16	2016-17	2017-18	2018-19
47	ICICI-V repayment starts from 20.12.2020 (refinancing UCO Bank - II as on 20.12.2016 and later refinanced by corporation bank as on 11.01.2019)	Claimed	--	--	8.8275%	8.0243%	8.4135%
		Allowed	--	--	8.6941%	7.8910%	8.2801%
48	SBI-VIII repayment starts from 30.1.2022 (Refinanced from OBC-I as on 14.2.2017)	Claimed	--	--	8.5000%	8.2290%	8.2138%
		Allowed	--	--	8.5000%	8.0290%	8.0138%
49	Corporation Bank (refinancing ICICI-V as on 11.1.2019)	Claimed	--	--	--	--	8.3640%
		Allowed	--	--	--	--	8.2000%



6. The Review Petitioner has also submitted that some of the loans allocated to the generating station had been refinanced by taking new loans, with a lower rate of interest. It has further stated that details of the same were furnished in the main petition, which appear to have escaped the attention of the Commission, while passing the impugned order dated 14.4.2022. The Review Petitioner has added that as per Regulation 8(6) read with Regulation 26(7) of the 2014 Tariff Regulations, the benefit of refinancing of loans has to be shared with the beneficiaries in the ratio of 2:1 (beneficiaries: generator) and the same principle has been applied by adjusting the rate of interest of new loans, while computing the weighted average rate of interest. It has stated that the adjustment in rate of interest for new loans has been done as illustrated below:

- a. Rate of interest of existing loan: 8.000% (say)
- b. Rate of interest of new loan for refinancing of existing loan: 6.000% (say)
- c. Rate of interest of new loan considered for computing weighted average rate of interest: 6.667%

7. Accordingly, the Review Petitioner has submitted that the rate of interest may be corrected, and the review on this count, may be allowed.

Submissions of the Respondent, MPPMCL

8. The Respondent, MPPMCL in its reply, has submitted that Regulation 8(6) of the 2014 Tariff Regulations, specifically indicates that the financial gains on account of controllable parameters shall be shared on monthly basis, with annual reconciliation. It has also submitted that this Regulation excludes the provision of Regulation 8(2)(a)(iv) for sharing of gains on account of re-financing of loan. The Respondent has stated that in case of re-financing of loan, Regulations 26(7) is applicable, which is explicit in nature and clearly states that the net savings, shall be shared between the beneficiary and generating company in the ratio of 2:1 only. It has further submitted that the same provides for sharing of gains for that particular financial year in which net saving has occurred and cannot be allowed to be shared during the coming financial years, as the



Regulations do not provide for the same, and will also be in gross contravention to the provisions of the 2014 Tariff Regulations. Referring to Section 61(c) of the Electricity Act, 2003, the Respondent has submitted that every stake holder in the electricity sector, including the Review Petitioner is mandated to ensure the economical use of resources and optimum investments is duty bound to ensure the compliance of above provision of law and to explore every possibility of reducing its cost of investment. The Respondent has stated that the sharing of the gains of re-financing of loan, should be a onetime affair, and cannot be allowed to be passed on to generator in the future years to come.

Rejoinder of the Review Petitioner, NTPC

9. In response the Review Petitioner has submitted that once the existing loan is refinanced with a new loan, at a lower interest rate, the benefits of such refinancing occur not only in the year in which the loan is refinanced, but also in all the subsequent years, till the loan is fully repaid. It has also submitted that the methodology adopted by the Review Petitioner to claim the refinancing benefits, enables the sharing of such benefits, with the beneficiaries ,in the ratio of 2:1, till the loan gets fully repaid. The Review Petitioner has further submitted that it has made sincere efforts to refinance the existing loans, with new loans, at a lower interest rate, wherever possible, even when larger share (two-third) of the benefits of refinancing, is passed on to the beneficiaries. Referring to contention of the Respondent that sharing of net savings be limited to the year of refinancing, the Respondent desires to pass on the share of net savings to the Petitioner only in the year of refinancing and reap itself the 100% share of refinancing benefits in all the subsequent years, till the loan gets fully repaid, which would be in gross violation of the provisions of the Regulation 26(7) of the 2014 Tariff Regulations. Accordingly, the Review Petitioner has submitted that it may be permitted to claim the share of benefits of refinancing of loan, in line with Regulation 26(7) of the 2014 Tariff Regulations.



Analysis and Decision

10. The matter has been examined. Regulation 26(5) of the 2014 Tariff Regulations provides as under:

“26(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of actual loan portfolio after providing appropriate accounting adjustment for interest capitalized”

11. Sub-clauses (7), (8) and (9) of Regulation 26 of the 2014 Tariff Regulations provides as under:

“24(7) The generating company or the transmission licensee, as the case may be, shall make every effort to re-finance the loan as long as it results in net savings on interest and in that event the costs associated with such re-financing shall be borne by the beneficiaries and the net savings shall be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1.

(8) The changes to the terms and conditions of the loans shall be reflected from the date of such re-financing.

(9) In case of dispute, any of the parties may make an application in accordance with the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, as amended from time to time, including statutory re-enactment thereof for settlement of the dispute:

Provided that the beneficiaries or the long-term transmission customers /DICs shall not withhold any payment on account of the interest claimed by the generating company or the transmission licensee during the pendency of any dispute arising out of re-financing of loan.”

12. It is evident from the above, that the weighted average rate of interest (WAROI) shall be calculated based on the actual loan portfolio i.e., with actual loans carrying actual rate of interest. Further, in terms of the above regulations, the net savings on interest, on account of refinancing of loan, is to be shared between the beneficiaries and the generating company or the transmission licensee, as the case may be, in the ratio of 2:1. The Review Petitioner has claimed the interest rate on refinanced loans, including the one-third share of benefits, to be shared between the beneficiaries and the generating company. Accordingly, by impugned order dated 14.4.2022, the rate of interest on loan was computed in accordance with Regulation 26(5) of the 2014 Tariff Regulations, by considering the weighted average rate of interest (actual) calculated on the basis of the



actual loan portfolio. We therefore find no error apparent on the face of the impugned order dated 14.4.2022, on this aspect. However, the manner in which the net savings of refinancing of loan, is to be shared was not clearly indicated in the impugned order dated 14.4.2022, which, according to us, is an error apparent on the face of the impugned order. The review on this aspect is allowed and the manner of sharing the net savings of refinancing of loan, is sought to be incorporated by this order. Accordingly, in terms of the provisions of Regulation 26(7) and Regulation 26(8) of the 2014 Tariff Regulations, the beneficiaries and the Review Petitioner, shall mutually share the net savings on account of refinancing of loan in the ratio of 2:1. In the event of any dispute regarding sharing of net savings on account of refinancing any of the parties may approach the Commission for its resolution. However, the beneficiaries shall not withhold any payment on account of the interest claimed by the generating company during the pendency of such dispute.

13. The Review Petitioner has further submitted that to arrive at the weighted average rate of interest for each year of the period 2014-19, the IDC capitalized, which was accrued during the execution of work, has been adjusted from the total interest on loan for the respective year, without making corresponding adjustment in principal amount, due to which effective interest on the loan has got reduced and consequently the weighted average rate of interest for the respective years has also got reduced. It has also submitted that IDC is first booked to CWIP and when the asset is ready for its intended use, then same is capitalized to Gross Block along with main cost of the asset. The Review Petitioner has pointed out that when IDC is booked to CWIP, it is not necessary that IDC only pertains to the year of capitalization. IDC incurs since the inception of the acquisition, construction or production of a qualifying asset. Accordingly, the Review Petitioner has submitted that the Commission has apparently erred in deducting the total amount of IDC capitalized to Gross block, for the purpose of



calculation of rate of interest, in the year of capitalization only, when the same accrues to asset over a period.

14. The Review Petitioner has further submitted that due to the above methodology (of adjusting IDC only without corresponding adjustment in principal) adopted by the Commission, the servicing of loan is not getting done to the full, due to adjustment of IDC. To explain the same, supposing that there is only a single loan of Rs 1000 Crores in a particular year and total interest accrued during the year on actual loan is Rs 80 Cr (@ 8%). Further, in the same year suppose an asset worth Rs 500 Cr is capitalised and allowed during this year for the purpose of tariff. IDC accrued from date of start of the said work to the date of capitalisation is Rs 70 Cr (say). So, by the current method adopted by the Hon'ble Commission, effective interest on loan will be $80 - 70 = 10$ Cr and effective rate of interest on the loan will be 1.0%. The Review Petitioner has stated that in this methodology, the weighted average Rate of Interest for the purpose of calculation of loan has reduced and in fact, if the IDC capitalized is more than the interest on loan during the year, the value of weighted rate of interest may become negative, which seems erroneous and not the intention of the Commission and the Regulations. The Review Petitioner has therefore submitted that while calculating the weighted average rate of Interest (i.e. total Interest on loan divided by Average Net Loan) on the loan portfolio, if the numerator is being adjusted by way of deduction of IDC capitalized from the Interest on loan of a particular year then the denominator too needs to be adjusted accordingly by deducting corresponding principal amount (i.e. loan portion of the asset capitalized) from the Average Net loan of that respective year. In case, these corresponding deductions are not done both in the numerator and the denominator then it will result into under recovery in the Interest on loan, as allowed to the Review Petitioner as explained above. The Review Petitioner has stated that in the present case, the Commission has inadvertently carried out the adjustment only in the numerator, without



carrying out the corresponding adjustment in the denominator, which seems to be an error apparent on the face of record and needs to be rectified. Accordingly, the Review Petitioner has submitted that the methodology as adopted by the Commission for calculating the weighted average rate of interest on loan may be reviewed, considering the above aspects.

15. The submissions have been considered. While computing the year wise WAROI, for the period 2014-19, the IDC allowed in the additional capital expenditure has been adjusted in accordance with Regulation 26(5) of the 2014 Tariff Regulations, which provides as under:

“(5) The rate of interest shall be the weighted average rate of interest calculated on the basis of actual loan portfolio after providing appropriate accounting adjustment for interest capitalized”

16. This methodology of adjusting IDC, while working out WAROI, is consistently followed since the 2004-09 tariff period, although no provision, similar to the above mentioned regulation for adjustment of interest capitalized (IDC) existed. This methodology appears to have attained finality, as the Review Petitioner had never challenged the same. The grievance of the Review Petitioner is with the issue of change in the actual rate of interest. The Commission in its order dated 19.9.2022 in Petition No. 393/GT/2020 (revision of tariff of Mauda STPS-I (1000 MW) for the period 2014-19) had considered the issue of IDC capitalization and has provided the appropriate accounting adjustment, in the interest amount, while carrying out true-up exercise. The Review Petitioner, during the course of hearing, has prayed that the adjustment of IDC in term of the aforesaid order dated 19.9.2022, may be considered. In view of this, we find force in the submissions of the Review Petitioner and the error apparent on the face of the order dated 14.4.2022 is rectified by considering the adjustments (as carried out in order dated 19.9.2022 in Petition No. 393/GT/2020). Hence, review on this ground is allowed



and the interest on loan as allowed in paragraph 59 of the order dated 14.4.2022, is revised in this order. Issue (A) is disposed of accordingly.

(B) Disallowance of capital spares of Rs.11.58 lakh as part of exclusions as well as capital spares consumption claimed in 2018-19.

17. The Commission in the impugned order dated 14.4.2022 in Petition No. 240/GT/2020 had observed as under:

“16. The Petitioner has claimed exclusion of de-capitalization of capital spares not forming part of admitted capital cost of the generating station of Rs.11.58 lakh in 2018-19. In justification of the same, the Petitioner has submitted that these capital spares are being claimed under exclusion in this Petition and do not form part of capital cost and accordingly their de-capitalization has been claimed as exclusions. It is observed from the submission of the Petitioner that these capital spares are not forming part of the allowed capital cost, however on scrutiny of Form-9Bi, it is observed that the Petitioner has failed to provide the year of put to use details of these spares to establish that these spares are the one's which have not been allowed for the purpose of tariff. Accordingly, the Petitioner's claim for exclusion of de-capitalization of these spares is not allowed.”

Submissions of the Review Petitioner, NTPC

18. The Review Petitioner has submitted that the exclusion of de-capitalisation of capital spares, not forming part of the admitted capital cost of the generating station amounting to Rs 11.58 lakh (name of the spare: "PUMP SHAFT#37-WEIR BFP-PR:FK4E36") were claimed in 2018-19, but the Commission had disallowed the same on the ground, that the year of put to use details of these spares, were not furnished in Form-9Bi for 2018-19. It has submitted that the Commission had considered these spares as part of the capital cost and consequently disallowed the capital spares consumption for Rs.11.58 lakh in 2018-19, corresponding to these spares. The Review Petitioner has further submitted that Spares for Rs.11.58 lakh, was put to use in 2016-17, and their capitalization was allowed under exclusion, and therefore, the said spares do not form part of the admitted capital cost of generating station.

Reply of the Respondent, MPPMCL

19. The Respondent, MPPMCL has submitted that the Review Petitioner has claimed additional capital spares as per Regulation 29 of the 2014 Tariff Regulations. While



pointing out to the observations of the Commission in paragraph 80 of the impugned order dated 14.4.2022, the Respondent has submitted that there is no error apparent on the face of record and the disallowance of capital spares for Rs.11.58 lakh may not be considered on review.

Rejoinder of the Review Petitioner, NTPC

20. In response, the Review Petitioner, has submitted that the Commission had disallowed capital spares consumption as the Review Petitioner had inadvertently not indicated the details regarding the 'year of put to use' for the said capital spares, which was a bonafide mistake on the part of the Review Petitioner. The Review Petitioner has further submitted that it has, in the present petition, furnished the year of put to use and specific details of the said capital spares. The Review Petitioner has also illustrated that the capitalization of capital spares for Rs.11.58 lakh was claimed under exclusion in 2016-17 and was allowed by order dated 14.4.2022 in Petition No. 240/GT/2020 and hence, the Review Petitioner's claim for decapitalization of the said spares, in 2018-19, under exclusion, and also under capital spares consumption (not part of capital cost), as per Regulation 29(2) of the 2014 Tariff Regulations, may be allowed.

21. We have examined the submissions. For admissibility of the exclusions of de-capitalisation, the details of put to use of assets, as given in Form-9Bi (Details of assets de-capitalised during the period) is considered. In the present case, the Review Petitioner, in Form-9Bi, had indicated the year put to use details of all the assets de-capitalised, except for the asset (capital spares) which is being considered. Since the year of put to use details in respect of the assets was not furnished by the Review Petitioner, in the main petition, it was not possible for the Commission, to establish as to whether the asset formed part of the admitted capital cost. The Review Petitioner had also not provided proper linkages, indicating the orders, through which the asset was



dis-allowed. Accordingly, the exclusion for said de-capitalisation in 2018-19 was disallowed and consequently, the capital spare consumption for Rs.11.58 lakh in 2018-19 was also disallowed. The Review Petitioner, in none of the tariff forms, i.e., Form-9Bi, 9D or 17, had indicated the year of put to use of the said assets. In our view, the prayer of the Review Petitioner, to rectify the error, by furnishing the details submitted in the review petition, on the ground that it was a bonafide mistake, is not acceptable, as the impugned order was passed, based on the available information, as provided by the Review Petitioner. In this background, the prayer of the Review Petitioner for review of the impugned order dated 14.4.2022, on this ground is not allowed. Issue No. (B) is decided accordingly.

Revision of tariff for the period 2014-19

22. Consequent upon issue No. (A) being allowed, as stated in paragraphs 12 to 15 above, the tariff of the generating station for the period 2014-19 is rectified and allowed as stated below:

Interest on loan

23. Interest on loan, as allowed in paragraph 59 of the order dated 14.4.2022 stands revised as under:

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Gross opening loan (A)	614409.02	631344.73	643290.44	646028.41	646485.71
Cumulative repayment of loan upto previous year (B)	90405.28	135560.49	181720.13	228254.08	274763.42
Net Loan Opening (C) = (A)-(B)	524003.74	495784.23	461570.31	417774.33	371722.28
Addition due to additional capital expenditure (D)	16935.71	11945.71	2737.97	457.30	1701.16
Repayment of loan during the year (E)	45170.38	46204.41	46762.35	46896.48	46981.36
Less: Repayment adjustment on account of de-capitalization (F)	15.17	44.77	228.39	387.14	407.36
Net Repayment of loan during the year (H) = (E) - (F) + (H)	45155.21	46159.64	46533.96	46509.34	46574.00
Net Loan Closing (I) =(C) +(D) - (H)	495784.23	461570.31	417774.33	371722.28	326849.44
Average Loan (J) = (C+I)/2	509893.99	478677.27	439672.32	394748.30	349285.86



	2014-15	2015-16	2016-17	2017-18	2018-19
Weighted Average Rate of Interest of loan (K)	7.7841%	7.7698%	7.8354%	7.8754%	8.0272%
Interest on Loan (L)=(J)*(K)	39690.74	37192.25	34450.25	31087.83	28038.04
Less Interest Capitalized (M)	271.83	277.45	112.67	1.86	420.04
Net Interest on Loan (N) = (L)-(M)	39418.91	36914.80	34337.58	31085.97	27618.00

Interest on working capital

Receivables

24. The Receivable component of working capital, as allowed in paragraph 129 of the impugned order dated 14.4.2022 is revised as under:

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Variable Charges - for two months corresponding to NAPAF	28810.24	28889.18	28810.24	29504.47	29504.47
Fixed Charges - for two months corresponding to NAPAF	31092.35	31446.83	31798.16	32015.07	31032.80
Total	59902.59	60336.00	60608.41	61519.54	60537.26

25. Accordingly, Interest on Working Capital as allowed in paragraph 133 of the impugned order dated 14.4.2022 stands revised as under:

	<i>(Rs. in lakh)</i>				
	2014-15	2015-16	2016-17	2017-18	2018-19
Working Capital for Cost of Coal towards Stock (15 days) corresponding to NAPAF	6953.44	6953.44	6953.44	7120.99	7120.99
Working Capital for Cost of Coal towards Generation (30 days) corresponding to NAPAF	13906.88	13906.88	13906.88	14241.99	14241.99
Working Capital for Cost of Secondary fuel oil (2 months) corresponding to NAPAF	619.21	620.91	619.21	634.13	634.13
Working Capital for Maintenance Spares @ 20% of O&M expenses corresponding to NAPAF	7441.34	7839.15	8507.72	9295.80	8791.85
Working Capital for Receivables (2 months) corresponding to NAPAF	59902.59	60336.00	60608.41	61519.54	60537.26
Working Capital for O&M expenses (1 month)	3100.56	3266.31	3544.88	3873.25	3663.27
Total Working Capital	91924.03	92922.69	94140.55	96685.70	94989.50
Rate of Interest	13.5000%	13.5000%	13.5000%	13.5000%	13.5000%
Interest on Working Capital	12409.74	12544.56	12708.97	13052.57	12823.58



Annual Fixed Charges

26. Based on the above, the annual fixed charges as allowed in paragraph 135 of the impugned order dated 14.4.2022 stands revised as under:

(Rs. in lakh)

	2014-15	2015-16	2016-17	2017-18	2018-19
Depreciation	45170.38	46204.41	46762.35	46896.48	46981.36
Interest on Loan	39418.91	36914.80	34337.58	31085.97	27618.00
Return on Equity	52348.35	53821.47	54441.49	54576.41	54814.58
Interest on Working Capital	12409.74	12544.56	12708.97	13052.57	12823.58
O&M Expenses	37206.72	39195.73	42538.60	46479.00	43959.25
Total	186554.10	188680.97	190788.99	192090.43	186196.77

27. The difference between the tariff determined by this order and the tariff recovered by the Review Petitioner in terms of the order dated 14.4.2022 in Petition No. 240/GT/2020, shall be adjusted in terms of Regulation 8(13) of the 2014 Tariff Regulations.

28. Review Petition No. 21/RP/2022 in Petition No. 240/GT/2020 is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

