

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Review Petition No. 27/RP/2023

in

Petition 411/GT/2020

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri Pravas Kumar Singh, Member

Date of Order: 17th May, 2024

In the matter of

Petition for review of the order dated 30.5.2023 in Petition No. 411/GT/2020 pertaining to the determination of tariff of Vallur Thermal Power Station (1500 MW) for the period 2019-24.

And

In the matter of

NTPC Tamil Nadu Energy Company Limited,
NTPC Bhawan, Core-7, Scope Complex,7,
Institutional Area, Lodhi Road
New Delhi-110 003

.....Review Petitioner

Vs

1. A. P Transmission Corporation Limited,
Vidyut Soudha, Khairatabad, Hyderabad - 500 082.
2. A. P. Eastern Power Distribution Company Limited,
P&T Colony, Seethammadhara,
Vishakapatnam - 503 013
3. A. P. Southern Power Distribution Company Limited,
Beside Srinivassakalyana Mandapam, Tiruchanur Road,
Kesavayana Gunta, Tirupati- 517501
4. Transmission Corporation of Telangana Limited
Vidyut Soudha Khairatabad, Hyderabad - 500 082
5. Telangana State Southern Power Distribution Company Limited,
Mint Compound, Corporate Office, Hyderabad-500 063



6. Telangana Northern Power Distribution Company Limited,
H. No. 2-5-31/2, Vidyut Bhavan, Nakkalagutta,
Hanmkonda, Warangal - 506 001
7. Power Company of Karnataka Limited,
KPTCL Complex, Kaveri Bhawan,
Bangalore - 560 009
8. Bangalore Electricity Supply Company Limited,
Krishna Rajendra Circle, Bangalore-506001
9. Mangalore Electricity Supply Company Limited,
MESCOM Bhavna, Corporate Office,
Bejai Kevai Cross Road
Mangalore-575 004
10. Chamundeshwari Electricity Supply Company Limited,
Corporate Office No. 29, Ground Floor,
Kaveri Grameena Bank Road,
Vijayanagar 2nd Stage, Mysore - 570 017
11. Gulbarga Electricity Supply Company Limited,
Main Road, Gulbarga, 585102
12. Hubli Electricity Supply Company Limited,
Navanagar , P.B. Road, Hubli - 580 025
13. Kerala State Electricity Board Limited,
Vaidyuthi Bhavanam, Pattom
Thiruvananthapuram - 695 004
14. Tamil Nadu Generation & Distribution Corporation Limited,
NPKRR Maaligai, 144, Anna Salai
Chennai - 600 002
15. Electricity Department,
Government of Puducherry,
137, NSC Bose Salai,
Puducherry-605 001

....Respondents

Parties Present:

Ms. Swapna Seshadri, Advocate, NTECL
Ms. Ritu Apurva, Advocate, NTECL
Shri Karthikeyan Murugan, Advocate, NTECL
Shri Shahrab Zaheer, NTECL
Shri S. Vallinayagam, Advocate, APTCL



ORDER

Initially, Petition No. 411/GT/2020 was filed by the Review Petitioner, NTPC Limited, for the determination of the tariff for Vallur Thermal Power Station (1500 MW) (in short, 'the generating station') for the period 2019-24, under the provisions of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short 'the 2019 Tariff Regulations') and the Commission vide order dated 30.5.2023 (in short the 'impugned order') disposed of the said petition. Aggrieved by the impugned order dated 30.5.2023, the Review Petitioner has filed this Review Petition seeking review of the impugned order limited to the following issues:

- a) *Non-consideration of an amount of Rs.86 lacs spent by the Review Petitioner on Segregation of Plant Drains towards additional capitalization.*
- b) *Auxiliary Power Consumption (APC) given at 6.69% instead of 7.19% as sought for by the Petitioner.*

Hearing dated 29.11.2023

2. The Review Petition was heard on 'admission' on 29.11.2023, and the Commission 'admitted' the Review Petition on the above issues and ordered notice on the Respondents, with directions to the parties to complete their pleadings in the matter. The Review Petitioner was also directed to file an additional affidavit correlating the submissions made in the Review Petition with the pleadings in Petition No. 411/GT/2020.

Hearing dated 4.4.2024

3. During the hearing, the learned counsel for the Review Petitioner made detailed oral submissions and prayed that the review petition be allowed. She also submitted that an affidavit correlating the claims made in the review petition with the claims made in the



original petition was placed on record on 29.12.2023. The learned counsel for Respondent APTCL made detailed oral submissions opposing the reliefs sought in the review petition. The Commission, after hearing the parties, reserved its order in the review petition.

4. The Respondent TANGEDCO has filed its reply vide affidavit dated 22.1.2024, and the Review Petitioner filed its rejoinder to the said reply vide affidavit dated 16.2.2024. Based on the submissions and the documents on record, we now proceed to examine the issues raised in the Review Petition, as stated in the subsequent paragraphs.

Re: Disallowance of Rs. 86 lakh towards additional capitalisation for Segregation of plant drains

5. The Commission, vide its order dated 30.5.2023 in Petition No. 411/GT/2020, had disallowed the additional capital expenditure of Rs 86.00 lakh for the Segregation of plant drains in 2018-19, with the following observations.

“26. We have considered the matter. The State Pollution Control Board ensures the safety and security of the people and plant and accordingly issues directions to the new generating stations, which needs to be adhered to for the smooth and safe running of the generating station. However, the consent to operate is a general condition of work which is applicable to each and every generating station and the issuance of such direction is a primary condition to run the generating station by the project developer. In our view, the segregation of plant drains is a general condition under consent to operate and is a basic necessity. The general conditions under consent to operate already form part of the original investment approval and cannot be a change in law event to claim the expenditure. Accordingly, the additional capital expenditure on this count is not allowed.”

Submissions of the Review Petitioner

6. The Review Petitioner has submitted that Regulation 26(1)(b) of the 2019 Tariff Regulations provides for allowing the additional capital expenditure beyond the original scope, incurred or projected to be incurred on various counts, including for change in law or for the compliance with existing law. It has also submitted that the Commission has



allowed a similar claim in respect of the Bhilai Expansion Power Plant (500 MW) vide its Order dated 27.9.2022 in Petition No. 396/GT/2020, wherein the work was claimed under Regulation 26(1)(b) of the 2019 Tariff Regulations in compliance with the 'Consent to Operate' granted by the CECB vide its letter dated 21.3.2018 under the Water (Prevention and control of Pollution) Rules. The Review Petitioner has also submitted that the Commission had allowed the similar claim in respect of Anta Gas Power Station vide its Order dated 10.7.2023 in Petition No. 369/GT/2020, wherein the similar work was undertaken as per the direction of Rajasthan State Pollution Control Board. The Review Petitioner has further submitted that the Consent to Operate (CTO) issued by the Tamil Nadu Pollution Control Board is dated 1.12.2014 and issued under Section 25 of the Water (Prevention and Control of Pollution) Act 1974. It has stated that the CTO was issued on 1.12.2014 i.e., under an existing law, and the work undertaken by the Petitioner, namely the segregation of plant drains, is to comply with an existing law. The Review Petitioner has added that the CTO cannot be read down to be a general condition of work since the same is issued under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974, and has to be done to comply with this law. Accordingly, the Review Petitioner has submitted that the finding of the Commission that the CTO is some general condition of work and not the result of the application of existing law is an error apparent on the face of the record and is against the plain language of Regulation 26(1)(b) of the 2019 Tariff Regulations.

Reply of the Respondent TANGEDCO

7. The Respondent TANGEDCO has submitted that the Segregation of Plant Drains works comes under routine maintenance/general works, and the general conditions under



CTO already form part of the original investment approval and cannot be a change in law event to claim the expenditure. It has also been submitted that the above general condition work has to be met from the O&M expenses of the generating station if not carried out during the project construction. The Review Petitioner has submitted that there is no provision under the Regulation to claim the additional capitalization beyond the original scope under Regulation 26(1)(b), as the segregation of drains is a primary requirement that has to be included in any new project. It has also pointed out that the units were commissioned during the period 2012-15 and the CTO was issued during 2014 with the above condition. Accordingly, the Respondent has submitted that the Review Petitioner has not explained as to why the work was not carried out as part of the project completion work and that there is no explanation as to why the work was not executed even after four years of the commissioning of the generating station. The Review Petitioner while stating that the claim cannot be under a change in law, as the same forms part of the original investment approval, has prayed that the claim of the Review Petitioner may be rejected.

Rejoinder of the Review Petitioner to the reply of Respondent TANGEDCO

8. The Petitioner, in its rejoinder, has clarified that interpreting the consent to operate as a general condition of work and not as a result of the application of the law is nothing short of an error and runs counter to Regulation 26 (1) (b) of the 2019 Tariff Regulations.

Analysis and Decision

9. The matter has been considered. The Commission, after considering the submissions of the Review Petitioner in the original Petition, had observed that prior to the commencement of operation of any industry, project, or generating station, the project developer requires consent to operate under the provisions of the Water



(Prevention & Control of Pollution) Act, 1974 and Air (Prevention & Control of Pollution) Act, 1981. Accordingly, the Commission, in the impugned order, had concluded that the general conditions under consent to operate already form part of the original investment approval and cannot be a change in law event. Moreover, the provisions of the Water (Prevention & Control of Pollution) Act, 1974, and Air (Prevention & Control of Pollution) Act, 1981, cannot be construed as a change in law in 2018-19. The Review Petitioner, in our view, cannot be permitted to reargue the case on merits, and the same is not permissible in review. It is settled law that review cannot be an appeal in disguise, whereby an alleged erroneous decision is to be reheard and corrected. In view of this, we find no reason to entertain the review on this ground, and the prayer of the Review Petitioner on this count is rejected.

Re: Auxiliary Power Consumption

10. The Commission vide its order dated 30.5.2023 in Petition No. 411/GT/2020 had allowed the Auxiliary Power Consumption (APC) of 6.69% for the generating station with the following observations:

“93. While allowing the Auxiliary Power Consumption of 6.69%, vide order dated 11.7.2017 in Petition No. 277/GT/2014, the Commission has gone through the details of actual Auxiliary Power Consumption due to additional features. The Petitioner, vide affidavit dated 6.10.2015 in Petition No. 277/GT/2014 had submitted that 5.99 MW is required for cross country pipe conveyor, 4.44 MW for Grab unloader at Jetty (for unloading coal from the ship) and 5.26 MW electrical equipment (for desalination of sea water through RO system). Accordingly, the total additional load of 15.69 MW was considered for calculating the APC for the generating station i.e. additional 1.04% of the APC. The normative Auxiliary power consumption allowable as per 2014 Tariff Regulations was 5.75%. However, the Petitioner was allowed 6.69% as claimed, including additional features for desalination plant. This was subject to submission of details of actual Auxiliary Power Consumption, PLF of the station since COD of Unit-III to 31.3.2019 at the time of truing up of the tariff.

94. The additional APC of 1.04% includes 5.99 MW for cross country pipe conveyor, 4.44 MW for Grab unloader at Jetty (for unloading coal from the ship) and 5.26 MW electrical equipment (for desalination of sea water through RO system). was allowed to the generating station for the period 2014-19. However, the Petitioner has now claimed 0.94% due to additional features. The Petitioner has not submitted the breakup of now



claimed additional Auxiliary power consumption of 0.94%. Further, it is noticed that the additional APC of 0.94% claimed is less than the additional APC of 1.04% as allowed by the Commission for the period 2014-19. However, the generating station was new at the time of submission of the actual power consumption details by the Petitioner, during 2015, and due to number of start-stop of the units during synchronization, the plant consumes more APC. Moreover, the auxiliary power consumption also depends on loading factor, number of start-stop and also due to shutdown period. Now that the generating station is smoother and stable, the Petitioner is directed to furnish the detail of actual Auxiliary Power Consumption, PLF and NAPAF of the generating station since COD of Unit-III to 31.3.2019 at the time of truing up of tariff. In this background, we allow the APC of 6.69% as allowed vide orders dated 11.7.2017 in Petition No. 277/GT/2014 and order dated 20.3.2023 in Petition No.576/GT/ 2020.”

Submissions of the Review Petitioner

11. The Review Petitioner has submitted that while the 2014 Tariff Regulations provided for the normative APC at the rate of 5.75%, the 2019 Tariff Regulations provided for the normative APC at 6.25%. It has also been submitted that the normative values of APC have been increased across all the plants by the Commission, but the additional equipment that has been specifically installed at the Petitioner's generating station, such as cross-country pipe conveyor, grab unloader at the jetty (for unloading coal from ship) and electrical equipment for desalination of seawater through the RO system, require an additional APC of about 0.94%. The Review Petitioner, while pointing out that these equipment's remained the same during the periods 2014-19 and 2019-24, has submitted that, therefore, the additional APC of 0.94%, as allowed during the period 2014-19, ought to have been allowed over and above the normative APC of 6.25% during the period 2019-24. The Review Petitioner has also stated that the Commission, while deciding the norms of APC in terms of the 2019 Tariff Regulations, had not considered the additional auxiliary energy consumption of coastal plants for the usage of seawater and that the same has to be considered separately, on a case-to-case basis. It has also furnished details of the actual APC, PLF and NAPAF of the generating station since the COD of Unit-III to 31.3.2019 and has submitted that the claim of APC was



clearly proven and justified by the actual APC numbers. Accordingly, the Review Petitioner has submitted that the fixation of APC at 6.69% for the period 2019-24, as against the claim of 7.19%, is an error apparent on the face of the record.

Reply of the Respondent TANGEDCO

12. The Respondent TANGEDCO had objected to the claim of the Review Petitioner to relax the APC and has submitted that the APC has been consistently high in the generating station due to reduced availability/ PLF of the Units. It has also been submitted that the increase in APC is only due to the reduced PLF/ Availability. The Respondent has further submitted that the availability has never been near the normative factor of 85%, thus enabling the plant to achieve the normative APC value. The Respondent stated that the Commission had already relaxed the APC to 6.69% to accommodate the increase in the APC on account of the added features of the equipments and based on the actual APC, PLF, and NAPAF of the generating station since the COD of Unit-III to 31.3.2019. Accordingly, the Respondent has submitted that there is no error in the APC allowed, and the claim may be rejected.

Rejoinder of the Review Petitioner to the reply of Respondent TANGEDCO

13. The Petitioner has submitted that the contentions raised by the Respondent TANGEDCO are beyond the scope of the present petition. It has stated that the relaxed APC of 6.69% approved for the period 2014-19 was also insufficient since the average APC for the said period was 7.46%. The Review Petitioner has submitted that during 2019-20, the actual APC was 9.05%, and during 2020-21, the actual APC was 9.54%.

Analysis and Decision

14. We have examined the matter. It is evident from the impugned order dated



30.5.2023 that the Commission had allowed the APC of 6.69% to the generating station, in the backdrop of liberty being granted to the Review Petitioner to furnish the details of the actual Auxiliary Power Consumption, PLF, and NAPAF of the generating station, at the time of truing up of tariff. In view of this, we find no further reason to entertain the prayer of the Review Petitioner at this stage. Accordingly, the review sought by the Review Petitioner on this count is rejected. However, the Review Petitioner is directed to furnish the following information at the time of truing up of tariff of the generating station:

- (a) Actual Auxiliary Power consumption (annual) from COD of the generating station to 31.3.2024 along with PLF and NAPAF;*
- (b) APC achieved during PG test of the units, PG test of cross-country conveyor system, grab unloader and desalination plant etc., duly signed and audited.*
- (c) The Auxiliary Power consumption of DM plant and make up water system of conventional similar capacity thermal generating stations.*

15. Review Petition No. 27/RP/2023 in Petition No.411/GT/2020 is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(Jishnu Barua)
Chairperson

