CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 11/RP/2017
in
Petition No.327/GT/2014

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Date of Order: 03.10.2017

In the matter of

Review of the order dated 06.02.2017 in respect of revision of tariff of Vindhyachal Super Thermal Power Station Stage-II (1000 MW) for the period from 01.04.2014 to 31.03.2019.

And

In the matter of

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

Vs

1. Madhya Pradesh Power Management Co Ltd.

2. Maharashtra State Electricity Distribution Co Ltd.

3. Gujarat Urja Vikas Nigam Ltd

4. Chattisgarh State Electricity Distribution Co. Ltd.,

5. Electricity Department, Vidyut Bhawan, Panaji, Goa

6. Electricity Department, Administration of Daman & Diu

7. Electricity Department, Administration of Dadra & Nagar Haveli, Silvasa

...Respondents

Parties present:
Shri Ajay Dua, NTPC
Ms. Suchitra Maggon, NTPC
Shri Manish Jain, NTPC
Shri Sachin Jain, NTPC
Shri Rajeev Choudhary, NTPC

Shri Anurag Naik, MPPMCL
Shri Ajasra Gupta, MPPMCL

ORDER

This petition has been filed by the petitioner, NTPC for review of order dated 06.2.2017 in Petition No. 327/GT/2014, whereby the Commission had determined the tariff of Vindhyachal Super Thermal Power Station Stage-II, (1000 MW) ("the generating station") for the period 2014-19 in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 ('the 2014 Tariff Regulations").

2. Aggrieved by the order dated 06.2.2017, the petitioner has submitted that there are errors apparent on the face of the order and sought review of the said order on two issues/ assets which were disallowed for additional capitalization viz.;

(a) Continuous Emission Monitoring System (CEMS).

(b) CCTV surveillance system for Stage II and Cable Gallery.

3. The matter was heard on 11.7.2017 and the Commission after hearing the petitioner reserved its order in the petition.

4. The Petitioner, in compliance with the directions of the Commission vide ROP of the hearing dated 11.07.2017 has submitted vide affidavit dated 25.7.2017, that the expenditure on the above issues are being made through

the ‘Capital addition Budget’ and not from Miscellaneous Bought Out Assets (MBOA) budget.

5. The Respondent, Madhya Pradesh Power Management Co. Ltd. (MPPMCL) vide affidavit dated 31.7.2017 has filed its reply and the petitioner vide affidavit dated 24.8.2017 has filed its rejoinder to the same. Based on the submissions of the parties and the documents available on record, we proceed to examine the reliefs prayed for by the petitioner and are stated in the subsequent paragraphs.

<u>Disallowance of expenditure for Installation of Continuous Emission Monitoring System (CEMS)</u>

6. The petitioner in the original petition had claimed projected additional capital expenditure of Rs. 36.75 lakh during the tariff period 2014-19 (Rs. 34.37 lakh in 2014-15 & Rs. 2.38 lakh in 2015-16) for Continuous Emission Monitoring system for Stage-II under Regulation 14(3)(ii) of the 2014 Tariff Regulations. In justification, the petitioner has submitted that it is a new statutory requirement as per guidelines issued by MOEF vide circular dated 6.4.2011. It has also pointed out that in terms of these guidelines, the stack emission as well as Ambient Air Quality (as per notified standards) is to be continuously monitored.

7. However, the Commission vide order dated 06.2.2017 had rejected the claim of the petitioner and had observed as under:

> *“19. We have considered the matter. It is noticed that the claim of the petitioner was allowed on projected basis vide order dated 14.11.2013 in petition 133/GT/2013 under Regulation 9(2)(2) of the 2009 Tariff Regulations, however, it is observed that the petitioner while claiming the expenditure towards Continuous Emission Monitoring System in 2013-14*

in petition 296/GT/2014 had submitted that the work has been awarded and capitalized during the period 2104-19. Accordingly, the Commission vide its order dated 6.12.2016 had observed that the claim of the petitioner during 2014-19 would be considered in accordance with 2014-19 Regulations. The petitioner has claimed the expenditure under Regulation 14(3)(ii) of the 2014 Tariff Regulations in accordance with MOEF guidelines dated 6.4.2011. It is noticed that petitioner has not submitted documentary evidence in support of the same nor any justification substantiating the requirement of this assets. In this background, we are not inclined to allow the expenditure on account of CEMS. It is also noticed that the petitioner had claimed the expenditure towards online CO2 monitoring system in respect of this generating station during the period 2009-14 and the same was disallowed by the Commission under the ground that there is no change in law. On Appeal filed by the petitioner, Tribunal vide judgment dated 12.5.2015 had affirmed the order of the Commission. Accordingly, the claim of the petitioner on account of CEMS is rejected."

8. The petitioner in the present review petition has submitted that the installation of Continuous Emission Monitoring System (CEMS) has been initially envisaged for control period 2009-14 as it was a new statutory requirement according to guidelines issued by MOEF vide circular no J-11013/41/2006-IA.II(I) dated 06.04.2011. As per these guidelines, the stack emission as well as ambient air quality (as per notified standards) is to be continuously monitored. Further, Commission vide its Order dated 14.11.2013 in Petition No 133/GT/2013 has allowed an amount of Rs 60 Lacs as projected expenditure in FY 13-14 for the claimed work (shown as CO_2 monitoring system in the order). The Petitioner has claimed CEMS in Tariff Period 2009-14 also, but due to inadvertent clerical error, the same was admitted against Online CO_2 monitoring system in place of CEMS on projected basis vide order dated 14.11.2013 in petition 133/GT/2013. The

Petitioner further submits that it is an inadvertent error as CERC in its order dtd. 24.02.2017 in Petition 342/GT/2014 for Approval of generation tariff of Vindhyachal STPS Stage-III (1000 MW) for 2014-19 has allowed the Add Cap against CEMS.

9. The Respondent Madhya Pradesh Power Management Co. Ltd. vide its affidavit dated 31.7.2017 has submitted that this expenditure does not qualify to be considered as change in law or compliance of any existing law and hence, is not covered under the provision of Regulation 14 (3) (ii). Further, MPPMCL has submitted that expenses of such nature shall be borne by the petitioner through compensation allowance being allowed to the petitioner and through its Corporate Social Responsibility fund as, there will be no direct benefit to beneficiaries in terms of generation of electricity. Finally, MPPMCL humbly prayed to disallow the same since compensation allowance has been provided for meeting such expenses.

10. In response, the Petitioner submitted that expenditure for installation of CEMS, which is Statutory in nature and falls under Regulation 14(3)(ii) cannot be met from Compensation Allowance as per Regulation 14 of Tariff Regulation 2014 which clarifies the nature of Additional Capitalisation which is to be kept out of Compensation Allowance. Further, the Petitioner submitted that CEMS is a statutory norm to be complied with. Depending on the type of fuel and local environmental regulations, a number of gas components, predominantly CO, NOx and S02, are to be monitored continuously in the flue gas at the stack along with particulate matter, (PM), gas flow, temperature and O2 (frequently H2O as well). Measuring data are

transferred to a specific data acquisition system for further processing and reporting to the authorities. Since the stack is the final interface between the power station processes and the environment, these measurements are critical as far as environment norms are concerned. Whereas, CO2 monitoring is a process interface and generally installed at location of combustion. It facilitates in improving Power plant efficiency by continuous monitoring and optimizing of the combustion process. Accordingly the contentions raised by the Respondent are baseless and liable to be rejected.

Analysis and decision

11. We have examined the matter and considered the submission of the parties. It is observed that the Commission in the order dated 06.2.2017 has disallowed the claim of the petitioner of Rs. 36.75 lakh during the tariff period 2014-19 (Rs. 34.37 lakh in 2014-15 & Rs. 2.38 lakh in 2015-16) for Continuous Emission Monitoring system (CEMS) for Stage-II under Regulation 14(3)(ii) of 2014 Tariff Regulations on account of non-submission of documentary evidence or any justification substantiating the requirement of this asset. The petitioner has stated that CEMS is a new statutory requirement for continuous monitoring a number of gas components, predominantly CO, NOx and SO_2 in the flue gas at the stack according to guidelines issued by Ministry of Environment & Forests (MoEF) vide circular no. J-11013/41/2006-IA.II(I) dated 06.04.2011. The Commission has allowed the additional capitalization for CEMS in case of Vindhyachal Stage-III in its order dated 24.2.2017 in petition no. 342/GT/2014. It has been stated as under;

> *"13. The petitioner has claimed projected additional capital expenditure of Rs. 34.37 lakh in 2014-15 and Rs. 2.38 lakh in 2015-16 towards*

Continuous Emission Monitoring System (CEMS) under this head. In justification of the said claim, the petitioner has submitted that Continuous Emission Monitoring System is a new statutory requirement as per guidelines issued by MOEF, GOI on 6.4.2011, which provides that the stack emission as well as ambient air quality (as per notified standards) is to be continuously monitored. The petitioner has further submitted that the Commission vide order dated 15.5.2014 in Petition No. 148/GT/2013 has allowed an amount of Rs. 32.00 lakh as projected additional capital expenditure of Rs. 32.00 lakh in 2013-14 for the said work and the same is being implemented and capitalised during the period 2014-19 after the work was awarded in 2013-14.

14. The respondent, MPPMCL has submitted that the beneficiaries are not going to be benefitted by installation of CEMS in any manner in terms of generation of electricity. It has further submitted that the installation of CEMS is a social responsibility of the petitioner and accordingly it has prayed that the Commission may direct the petitioner to cater the expenditure through CSR funds. In response, the petitioner submitted that it has installed CEMS as per the directions/guidelines of MOEF,GOI vide circular dated 6.4.2011 and hence the expenditure claimed may be allowed.

15. We have examined the matter. It is noticed that in Petition No. 148/GT/2013, the petitioner had claimed an expenditure of Rs. 32.00 lakh in 2013-14 for this work and the same was allowed on projection basis vide order dated 15.5.2014 under Regulation 9(2)(ii) of the 2009 Tariff Regulations on the ground that the same is a statutory requirement as per guidelines issued by MoEF, GOI dated 6.4.2011. However, based on the submissions of the petitioner in Petition No. 343/GT/2014 (truing-up of 2009-14) that the expenditure towards CEMS has been awarded and will be capitalized during the period 2014-19, the Commission vide order dated 6.2.2017 had granted liberty to the petitioner to claim the expenditure during 2014-19 with the observation that the same will be considered in accordance with the 2014 Tariff Regulations. The petitioner, in this petition has claimed the expenditure on CEMS under Regulation 14 (3) (ii) of the 2014 Tariff Regulations on the ground that the same is a statutory requirement in terms of the MoEF, GOI guidelines *dated 6.4.2011. On perusal of the said guidelines dated 6.4.2011, it is observed that the petitioner in terms of the said guidelines is required to comply with certain additional conditions which includes the continuous monitoring of stack emissions as well as ambient air quality and to take corrective measures from time to time to ensure that the levels are within permissible limits. In view of the above, we are inclined to allow the claim of the petitioner for Rs. 34.37 lakh in 2014-15 and Rs. 2.38 lakh in 2015-16 under Regulation 14 (3) (ii) of the 2014 Tariff Regulations."*

12. However, it may be observed that the above order dated 24.02.2017 has been passed subsequent to the impugned order dated 06.02.2017 for which this review petition has been filed. An order in a subsequent case cannot be a ground for review of previous order. Moreover, the Commission has clearly stated in Para 19 of the impugned order (Para 7 of this order) that appeal in the Appellate Tribunal has been dismissed in case of the same asset vide judgment dated 12.05.2015 while considering expenditure towards CO_2 monitoring system.

13. Therefore, the decision taken by the Commission in the impugned order does not suffer from infirmity and is not an error apparent on the face of record. In light of the above, we disallow review sought on this issue.

Disallowance of expenditure for CCTV surveillance system for Stage II and Installation of CCTV in Stage-II Cable Gallery

14. The petitioner in the original petition had claimed projected additional capital expenditure of Rs. 500 lakh (Rs. 100.00 lakh in 2015-16, Rs. 200.00 lakh in 2016-17 and Rs. 200.00 lakh in 2017-18) for CCTV Surveillance System for Stage-II and Rs. 200 lakh (Rs. 100.00 lakh in 2016-17 and Rs. 100.00 lakh in 2017-18) for installation of CCTV in Stage-II cable gallery

under Regulation 14(3)(iii) of 2014 Tariff Regulations on account of higher security of plant. In justification, the petitioner has submitted that the expenditure towards CCTV Surveillance System has been proposed to be incurred for improving the safety & security of the plant equipments as per the advice of National Security Agencies. The petitioner has further submitted that the installation of CCTV in cable gallery was advised by CISF during the technical audit for keeping a watch, detection of fire at an initial stage and for monitoring any movement inside the cable gallery.

15. However, the Commission vide order dated 06.2.2017 had rejected the claim of the petitioner and had observed as under:

> *"22. We have considered the matter. It is observed that the petitioner has not demonstrated the requirement or justification towards CCTV surveillance system and installation of CCTV in stage-II and cable Gallery. The petitioner is entitled for compensation allowance. Therefore, the petitioner shall meet these expenses from compensation allowance."*

16. The petitioner in the review petition has submitted that the projected additional capital expenditure claimed towards CCTV surveillance system for Stage-II is proposed under Regulation 14 (3) (iii) for improving the Safety & Security of Plant Equipments and monitor the locations which are unmanned in line with the advice of top National Security Agencies. Being a security issue, high confidentiality <u>has been advised by the said agency that has instructed the petitioner to not to quote or reproduce any part of recommendations in any manner. Therefore the petitioner could not produce the same</u>. With regard to expenditure on installation of CCTV in cable gallery, the petitioner has submitted that the letter dated 2.2.2013 of the Assistant Commandant, CISF is statutory in nature and the claim of the petitioner is as per Regulation 14(3)(iii). The Petitioner further submitted

that the Commission in its order dated 27.01.2017 in Petition No. 36/RP/2016 in Petition No.270/GT/2014 in the matter of Review of Commission's order dated 27.06.2016 at Para (13) has allowed the Add Cap on account of the expenditure incurred in line with the recommendation by CISF under Regulation 14 (3)(iii) of the 2014 Tariff Regulations considering CISF as a Statutory Body. Hence, the rejection of the claim of the petitioner in order dated 06.02.2017 has been requested to be reviewed.

17. The respondent Madhya Pradesh Power Management Co Ltd. vide its affidavit dated 31.7.2017 has submitted that surveillance is a function which is a part of routine O&M activity. Commission has already granted the O&M expense amounting to Rs.101321.8 lakh (Rs.1013.218 Crores) for the control period 2014-19 to the petitioner. The same must be used to take care of routine surveillance activity and associated installation of CCTV etc. Moreover, the petitioner has also been allowed Rs. 1900 lakhs towards Compensation allowance during control period 2014-19 to meet such type of expenditure. This Compensation allowance coupled with O&M expenses can very well take care of the proposed expenditure on CCTV installation. The Commission has rightly disallowed the same holding that it can be met from Compensation allowance. Thus, there is no error apparent on the face of record and disallowance of additional capitalization of expenditure on CCTV is a considered decision of Commission and therefore there is no case of review.

18. The respondent MPPMCL has further submitted that the amount claimed by the petitioner for CCTV surveillance system is exorbitantly high

and unreasonable and unjustified. Therefore, MPPMCL has prayed that petitioner shall submit the document related to invitation of tender and other related documents before Commission, and such expenditure needs prudence check.

19. The petitioner vide its affidavit dated 24.8.2017 submitted that the projected capital expenditure for the work of Installation of CCTV in Stage-Il Cable Gallery as claimed in the instant station is in accordance with the advise of CISF for keeping a watch & detecting the fire at an initial stage and for monitoring any movement inside cable gallery. Further, the projected capital expenditure on CCTV surveillance system is being carried out in line with the advice of top National Security Agencies for improving the Safety & Security of Plant Equipments and continuous monitoring of the locations which are unmanned. Therefore the above capital expenditures are in line with the specific directions from the agencies which are responsible for National/ Internal security and are in accordance with Regulation 14(3)(iii) of 2014 Tariff Regulations. Therefore the same cannot be covered or met from O&M expenses.

20. In regards to MPPMCL's claim of high cost of CCTV surveillance system, the Petitioner has submitted that the expenditures for the above works were claimed based on the tentative estimate available at the time of filing of tariff Petition for the period 2014-19 which is subject to truing up exercise at the end on tariff period based on actual expenditure incurred for the admitted works. Therefore the contention of answering respondent that the claimed amount is excessive is liable to be rejected.

Analysis and decision

21. We have examined the matter in the light of submission made in the review petition and the records available in the Commission.

22. The Commission in the order dated 06.2.2017 has disallowed the claim of the petitioner of Rs. 700 lakh (Rs. 500 lakh for CCTV surveillance system & Rs. 200 lakh for installation of CCTV in cable gallery) during 2014-19 under Regulation 14 (3) (iii) of the 2014 Tariff Regulations with the observation that the Petitioner has not demonstrated the requirement or justification of CCTV surveillance system and installation of CCTV in stage-II and cable Gallery.

23. The petitioner in the review petition has submitted that the projected additional capital expenditure claimed towards CCTV surveillance system for Stage-II is proposed under Regulation 14 (3) (iii) for improving the Safety & Security of Plant Equipments and monitor the locations which are unmanned in line with the advice of top National Security Agencies.

24. The Respondent, MPPMCL, has contended that the said expenditure on the CCTV Surveillance system and CCTV in Stage-II cable gallery can be met through regular O&M and/or compensation allowance allowed to the station. The Petitioner vide affidavit dated 25.7.2017 in reply to the Commission's directions in ROP of the hearing dated 11.07.2017 has clarified that the expenditure on CCTV is being made through the 'Capital addition Budget' and not from Miscellaneous Bought Out Assets (MBOA) budget. Thus, CCTV Surveillance system and CCTV in Stage-II cable gallery

is in nature of capital assets and may be met out of compensation allowance.

25. The Commission in the impugned order has taken a view that in the absence of proper documentary evidence justifying the requirement of the asset, the expenses for CCTV cannot be allowed and therefore, the Commission directed to meet any such expenses from Compensation allowance which is provided for meeting expenditure of those capital nature of assets which are not admissible under Regulation 14. Regulation 17(1) of the 2014 Tariff Regulations specifies Compensation allowance as under;

> *"(1) In case of coal-based or lignite-fired thermal generating station or a unit thereof, a separate compensation allowance shall be admissible to meet expenses on new assets of capital nature which are not admissible under Regulation 14 of these regulations, and in such an event, revision of the capital cost shall not be allowed on account of compensation allowance but the compensation allowance shall be allowed to be recovered separately."*

26. Hence, any expense of capital nature of assets can be allowed either under Regulation 14 (Additional Capitalisation) or else it could be met from Compensation allowance allowed under Regulation 17. Since, the Commission has not admitted the expenses under Regulation 14, therefore the same was directed to be met from Compensation allowance.

27. The Petitioner has submitted that the letter regarding CCTV in cable gallery from Assistant Commandant, CISF dated 02.02.2013 was submitted with the original petition no. 327/GT/2014 and the Commission did not consider this letter from CISF while passing the Order dated 06.02.2017

wherein it was stated that proper justification in support of requirement was not demonstrated by the petitioner. As regards CCTV surveillance system for stage-II, National Security Agencies have advised the petitioner to maintain high confidentiality and also instructed not to quote or reproduce any part of the recommendation. Thus it could not be produced by the petitioner.

28. The Commission in Para 22 of the impugned order has clearly stated that expenditure towards CCTV surveillance system and installation of CCTV in stage-II and cable gallery should be met from Compensation allowance. Further, in a review petition, arguments on merit are not allowed and, therefore, request of the petitioner justifying its case on merit cannot be permitted. Hence, there is no error apparent on the face of the record and, therefore, the request of the petitioner is disallowed.

29. Petition No. 11/RP/2017 is disposed of in terms of above.

Sd/-	**Sd/-**	**Sd/-**	**Sd/-**
(Dr. M.K.Iyer)	**(A. S. Bakshi)**	**(A. K. Singhal)**	**(Gireesh B. Pradhan)**
Member	**Member**	**Member**	**Chairperson**