

**CENTRAL ELECTRICITY REGULATORY COMMISSION**

**NEW DELHI**

**Petition No. 202/MP/2022**

**Coram:**

**Shri I. S. Jha, Member  
Shri P.K. Singh, Member**

**Date of Order: 22<sup>nd</sup> December, 2023**

**In the matter of**

Petition under section 62(a) and 79(1)(a) of the Electricity Act,2003 read with Regulation 8(3)(ii) and 8(7) of the CERC (Terms and Conditions of Tariff) Regulations, 2014 read with Regulation 111 of CERC (Conduct of Business) Regulations,1999 for recovery of additional expenditure, in Sipat STPS Stage-I (1980 MW) and Sipat Stage-II (1000 MW), incurred due to transportation cost of fly ash consequent to Ministry of Environment and Forest, Government of India Notification dated 25.1.2016 as change in law.

**And**

**In the matter of**

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

.....**Petitioner**

**Versus**

1. Madhya Pradesh Power Management Co. Ltd,  
Shakti Bhawan, Vidyut Nagar, Rampur  
Jabalpur-110003.
2. Maharashtra State Electricity Distribution Co. Ltd,  
Prakashgad, Bandra (East),  
Mumbai-400051
3. Gujarat Urja Vikas Nigam Ltd.,  
2nd Floor Sardar Patel Vidyut Bhawan,  
Race course, Vadodara -390007
4. Chhattisgarh State Power Distribution Co. Ltd.  
Vidyut Sewa Bhawan, Dagania ,  
RAIPUR – 492001
5. Electricity Department Government of Goa  
3rd Floor, Vidyut Bhawan,  
Panaji, Goa-403001



6. DNH Power Distribution Corporation Ltd.  
UT of DNH,  
Silvassa-396230

7. Electricity Department, Administration of Daman & Diu,  
Daman-396210

.....**Respondents**

**Parties Present:**

Shri A.S. Pandey, NTPC  
Shri Vivek Kumar, NTPC  
Shri Ravi Sharma, Advocate, MPPMCL  
Shri Anup Jain, Advocate, MSEDCL

**ORDER**

Petition under Section 62(a) and 79(1)(a) of the Electricity Act, 2003 read with Regulation 8(3)(ii) and 8 (7) of the CERC (Terms and Conditions of Tariff) Regulations, 2014 read with Regulation 111 of the CERC (Conduct of Business) Regulations, 1999 for recovery of Additional Expenditure, in Sipat STPS Stage-I (3x660 MW) and Sipat STPS Stage-II (2x500 MW), incurred due to sharing of transportation cost of fly ash consequent to Ministry of Environment and Forest, Government of India Notification dated 25.01.2016 as 'Change in Law' event, and in terms of Hon'ble Commission's Order dated 05.11.2018 in Petition No 172/MP/2016, Order dated 14.04.2022 in Petition No 240/GT/2020 and Order dated 29.05.2022 in Petition No 452/GT/2020.

3. The Petitioner has made the following prayers:

- (i) Admit the present Petition;
- (ii) Allow reimbursement of net fly ash transportation expenditure, along with carrying cost, for Sipat-I and Sipat-II for the period 2018-19 as detailed above;
- (iii) Condone any inadvertent errors omissions/errors/shortcomings and permit the Petitioner to add/change/modify/alter these filings and make further submissions as may be required at a future date;



(iv) Pass such other order / orders, as may be deemed fit and proper in the facts and circumstances of the case.

## **Background**

4. The gist of the background of the instant petition is as follows:

a) The Petitioner is having power stations/ projects at different regions and places in the country. Sipat STPS Stage-I (3x660 MW) and Sipat STPS Stage-II (2x500 MW) of the Petitioner are located in the State of Madhya Pradesh.

b) A notification dated 25.01.2016 had been issued by Government of India, Ministry of Environment, Forest & Climate Change (MOEFCC) under the statutory provisions of Environment (Protection) Act 1986. The said notification of MOEF&CC prescribed for bearing the transportation cost of Fly Ash generated at power stations with the users of Fly Ash. In this regard, Petitioner filed a petition, being Petition No 172/MP/2016, before this Commission seeking reimbursement of the additional expenditure for Fly Ash Transportation directly from the beneficiaries as the same was in the nature of statutory expense. The Commission vide its order dated 05.11.2018 disposed of the said petition and directed as follows:

*“31. Accordingly, we in exercise of the regulatory power hold that the actual additional expenditure incurred by the Petitioner towards transportation of ash in terms of the MOEFCC Notification is admissible under “Change in Law” as additional O&M expenses. However, the admissibility of the claims is subject to prudence check of the following conditions on case to case basis for each station:*

*a) Award of fly ash transportation contract through a transparent competitive bidding procedure. Alternatively, the schedule rates of the respective State Governments, as applicable for transportation of fly ash.*

*b) Details of the actual additional expenditure incurred on Ash transportation after 25.1.2016, duly certified by auditors.*

*c) Details of the Revenue generated from sale of fly ash/ fly ash products and the expenditure incurred towards Ash utilisation up to 25.1.2016 and from 25.1.2016 to till date, separately.*

*d) Revenue generated from fly Ash sales maintained in a separate account as per the MoEF notification.*

*32. The Petitioner is granted liberty to approach the Commission at the time of revision of tariff of the generating stations based on trueing –up exercise for the period 2014-19 in terms of Regulation 8 of the 2014 Tariff Regulations along with all details / information, duly certified by auditor.”*



c) Subsequently, the Petitioner vide Affidavit dated 07.01.2020 filed Petition No 240/GT/2020 for revision of tariff of Sipat-I for the period from 01.04.2014 to 31.03.2019 after the truing up exercise.

Also, the Petitioner vide Affidavit 07.01.2020 dated had filed Petition No 452/GT/2020 for revision of tariff of Sipat-II for the period from 01.04.2014 to 31.03.2019 after the truing up exercise. The Petitioner in the above-mentioned petitions (240/GT/2020 and 452/GT/2020) had inter alia claimed Ash Transportation charges as incurred by the Petitioner in the year 2018-19 in terms of MOEF&CC Notification dated 25.01.2016.

d) Subsequently, the Commission vide Order dated 14.04.2022 in Petition No 240/GT/2020 and Order dated 29.05.2022 in Petition No 452/GT/2020 allowed liberty to the Petitioner to file a separate petition for the said claim towards fly ash transportation with all the supporting documents and justification.

e) The relevant extract of the Order dated 14.04.2022 in Petition No 240/GT/2020 (Sipat-I 2014-19 Truing-up) is quoted below:

*“98. However, it is noticed that the Petitioner has only furnished the auditor certificate but has not submitted the relevant information required in terms of the MoEF&CC notification dated 25.1.2016 (such as the quantum of ash transported, locations, the distance of the end user (in km), the applicable awarded rate in Rs./ton per kilometer, name of the transporters, etc.). From the details furnished by the Petitioner, it is not clear as to (i) the quantum of ash, (ii) if ash transportation is beyond 100 km radius or less than 100 km radius, and (iii) if the sharing of 50% of ash transportation expenses to be shared between the ash (end) user and the Thermal Power plant as stipulated in MoEF&CC notification, were excluded from the claim or not. Therefore, in the absence of the above required information, we are not inclined to allow the said expenditure towards fly ash transportation at this stage. However, the Petitioner is at liberty to file a separate petition for the said claim towards fly ash transportation with all the supporting documents and justification.”*

f) Also, the relevant extract of the Order dated 29.05.2022 in Petition No 452/GT/2020 (Sipat-II 2014-19 Truing-up) is quoted below:

*“89. It is noticed from records that the Petitioner has only furnished the auditor certificate in support of its claim. Also, in compliance to the directions vide ROP of the hearing dated 30.11.2021 the Petitioner has submitted the fly ash utilization details. However, it is observed that the relevant information (such as the quantum of ash transported, locations, the distance of the end user (in km), the applicable awarded rate in Rs./ton per kilometer, name of the transporters, etc.) required in terms of the MoEF&CC notification dated 25.1.2016 has not been furnished by the Petitioner. It is not clear from the details as to*



*whether (i) the quantum of ash, (ii) ash transportation is beyond 100 km radius or less than 100 km radius, and (iii) the sharing of 50% of ash transportation expenses to be shared between the ash (end) user and the Thermal Power plant as stipulated in MoEF&CC notification, were excluded from the claim or not. In the absence of the said information, we are not inclined to allow the expenditure claimed towards fly ash transportation, in this order. However, the Petitioner is at liberty to approach the Commission with a separate petition to claim the fly ash transportation charges with proper justification and supporting documents.”*

g) In terms of the liberty granted by the Commission, as described above, the Petitioner has filed the instant Petition for reimbursement of fly ash transportation expenses borne by the Petitioner for Sipat-I and Sipat-II.

### **Submissions of the Petitioner**

4. The gist of the submissions made by the Petitioner are as follows:

a) Ash transportation expenditure incurred for the entire generating Station, i.e. Sipat STPS (2980 MW) has been allocated to Sipat-I (1980 MW) and Sipat-II (1000 MW) based on the capacity of the stages and irrespective of the method of allocation (based on capacity/generation), the total expenditure claimed for the generating station will remain the same. It is humbly submitted that fly ash utilization has to be achieved for the generating station as a whole, and it is not possible to award stage-wise contracts for fly ash utilization. Further, the cost towards transportation of fly ash utilization is also a common expense, and accordingly it is more prudent to apportion the same on the basis of capacity.

b) With respect to Sipat STPS (2980 MW), the various details required regarding ash transportation expenditure, as mentioned by the Hon'ble Commission in the Order dated 14.04.2022 in Petition No 240/GT/2020 and Order dated 29.05.2022 in Petition No 452/GT/2020, such as quantum of ash transported, location, distance of the end user (in km), applicable awarded rate, name of transporters, etc. has been provided.

c) With regard to sharing of ash transportation expenses, the relevant provisions of MOEF&CC Notification dated 25.01.2016 are quoted below:

“2. ....

(b) ....

*(10) The cost of transportation of ash for road construction projects or for manufacturing of ash based products or use as soil conditioner in agriculture activity within a radius of hundred kilometers from a coal or lignite based thermal power plant shall be borne by such*



*coal or lignite based thermal power plant and the cost of transportation beyond the radius of hundred kilometers and up to three hundred kilometers shall be shared equally between the user and the coal or lignite based thermal power plant.*

.....

*(14) The coal or lignite based thermal power plants shall within a radius of three hundred kilometers bear the entire cost of transportation of ash to the site of road construction projects under Pradhan Mantri Gramin Sadak Yojna and asset creation programmes of the Government involving construction of buildings, road, dams and embankments.*

.....”

d) It is submitted that ash has been transported for manufacturing of ash based products within a distance of 100 km and as such in terms of provision 2(b)(10) of MOEF&CC Notification dated 25.01.2016, as quoted above, the entire cost has been borne by the Petitioner. It is further submitted that ash has been transported within a radius of 300 km for construction of roads under Pradhan Mantri Gramin Sadak Yojna (PMGSY) and National Highway roads. Hence, as per provision 2(b)(14) of MOEF&CC Notification dated 25.01.2016, as quoted above, the entire ash transportation cost has been borne by the Petitioner.

e) The details with regard to mode of award of contracts for transportation of ash have also been provided at Annexure-A/1 and supporting documents with respect to contracts awarded through transparent competitive bidding process are attached herewith at Annexure-A/3. It is further submitted that the Petitioner had claimed Rs 552.08 lakh as Additional Capitalization towards fly ash brick plant during the period 01.08.2012 to 31.03.2014 under Regulation 9(1)(ii) of the Tariff Regulations 2009. The Commission vide Order dated 06.12.2016 in Petition No 295/GT/2014 (Truing-up of Sipat-I for 01.10.2011 to 31.03.2014) dis-allowed the same, however, the Commission opined that the expenditure incurred on fly ash brick plant should be met from the revenue earned by the Petitioner from the sale of fly ash in terms of notification of MOEF. The relevant extract of the Order dated 06.12.2016 is quoted below:

*“26. In view of the above background the claim of petitioner for actual additional capital expenditure of ₹552.08 lakh towards fly ash brick plant is disallowed. However, we are of the considered view that the expenditure incurred on fly ash brick plant should be met from the revenue earned by the petitioner in terms of the notification of Ministry of Environments & Forests, GOI MOEF, GOI.”*



f) Further, for the fly ash brick plant, additional capitalization of Rs 9.88 lakh in 2014-16, claimed by the Petitioner in the 2014-19 Truing-up Petition for Sipat-I, was dis-allowed by the Hon'ble Commission vide Order dated 14.04.2022 in Petition No 240/GT/2020 on the ground that the work was disallowed in the 2009-14 Truing up Petition. Therefore, as explained above, total additional capitalization of Rs 561.96 lakh towards fly ash brick plant was disallowed by the Commission, and as stated by the Commission, the Petitioner needs to meet this expenditure incurred for fly ash brick plant from revenue earned by the sale of fly ash.

g) It is submitted that for Sipat STPS, the Petitioner had started the sale of fly ash from the FY 2015-16 only. The same was also acknowledged by the Commission in Order dated 06.12.2016 in Petition No 295/GT/2014 (Truing-up of Sipat-I for 01.10.2011 to 31.03.2014), from which the relevant extract is reproduced below:

*“24...The petitioner further submitted that the sale of fly ash as a measure of ash utilization has been started in the instant station in 2015-16 and it has been sold for the amount of ₹4.97 lakh whereas the other overheads expenses with respect to the sale of fly ash are much higher than this earning and therefore, there is no net earnings from the sale of fly ash.”*

h) It is further submitted that for Sipat STPS, since the start of sale of fly ash in 2015-16 till 31.03.2019, the cumulative funds from sale of fly ash is Rs 270.88 lakh, i.e. cumulative ash sale fund for Sipat STPS from 25.01.2016 (date of MOEF notification) to 31.03.2019 is Rs 270.88 lakh. Further, the Petitioner started incurring expenditure for transportation of fly ash in terms of MOEF notification in 2018-19.

i) Accordingly, after adjusting cumulative fly ash sale funds of Rs 270.88 lakh in the period 25.01.16 to 31.03.2019 against additional capitalization for fly ash brick plant of Rs 561.96 lakh in the period 01.08.2012 to 31.03.2016, there is no ash fund available for adjustment against ash transportation expenditure incurred. Hence, the entire ash transportation expenditure incurred by the Petitioner needs to be reimbursed (along with carrying cost) to the Petitioner.



j) In terms of above, the summary of ash transportation expenditure incurred by Petitioner for Sipat STPS (2980 MW) and allocation to Sipat-I and Sipat-II based on capacity is tabulated underneath:

Sl. No.	Particular	Amount (Rs Lakh)
1	Ash Transportation Expenditure for Sipat STPS for 2018-19	746.24
2	Additional capitalization for Fly Ash Brick Plant ( period 01.08.2012 to 31.03.2016)	561.96
3	Cumulative Ash sale funds (in the period 25.01.2006 to 31.03.2019)	270.88
4	Ash sale fund available after adjustment against Fly Ash Brick Plant	0.00
5	Net Ash Transportation Expenditure for Sipat STPS (2980 MW)	746.24
6	Net Ash Transportation Expenditure for Sipat-I (1980 MW)	495.82
7	Net Ash Transportation Expenditure for Sipat-II (1000 MW)	250.42

k) It is further submitted that an Auditor Certificate in respect of the above ash transportation expenditure and adjustment of fly ash sale funds against fly ash brick plant is attached. It is also submitted that revenue generated from fly ash sales has been maintained in a separate account as per the MoEF notification. In view of above, it is humbly prayed that the Commission may be pleased to allow reimbursement of net Ash Transportation expenditure for Sipat-I and Sipat-II for 2018-19 of Rs 495.82 Lakh and Rs 250.42 Lakh respectively, along with carrying cost. It is submitted that the Commission in Order dated 16.03.2022 in Petition No 364/GT/2020 (Unchahar-IV 2014-19 Truing-up) has allowed reimbursement of similar ash transportation expenditure.

Reply of Respondent no. 2, Maharashtra State Electricity Distribution Company Limited

5. Respondent MSEDCL vide submission dated 30.11.2022 furnished the following.

a) The obligation of bearing transportation expenditure for Fly Ash disposal was embedded even before the cut-off date, right from the initial MoEF Notification dated 14.09.1999, 27.08.2003 and 03.11.2009. It is only when in 2016, the radius of applicability of the MoEF Notification was decided to be extended from 100 kms to 300 kms, therefore in the said backdrop to bring clarity on the onus / obligation of the party to bear the additional transportation expenditure even





beyond the already prevalent 100 kms range, the MoEF vide amended Notification dated 25.01.2016 issued directions for restricting the excavation of top soil for manufacture of bricks and promoting the utilization of fly ash in the manufacture of building materials and continued the mandate for the Thermal Power Plants to bear the cost of transportation of fly ash to user industry within a radius of 100 kilometres and with respect to the cost for transportation of fly ash beyond 100 kilometres and up to 300 Kilometres, it was specified that the same shall be shared equally by the TPPs and the user. Further, it was also specified therein that the TPPs are required to bear the entire cost of transportation within a radius of 300 KM if ash is transported to the site of road construction projects under Pradhan Mantri Gramin Sadak Yojna and asset creation programmes of the Government. The relevant clause of Notification dated 25.01.2016 is reproduced as under:

*“(9) Every coal or lignite based thermal power plants shall install dedicated dry ash silos having separate access roads so as to ease the delivery of fly ash.*

*(10) The cost of transportation of ash for road construction projects or for manufacturing of ash based products or use as soil conditioner in agriculture activity within a radius of hundred kilometres from a coal or lignite based thermal power plant shall be borne by such coal or lignite based thermal power plant and the cost of transportation beyond the radius of hundred kilometres and up to three hundred kilometres shall be shared equally between the user and the coal or lignite based thermal power plant.*

*(11) The coal or lignite based thermal power plants shall promote, adopt and set up (financial and other associated infrastructure) the ash-based product manufacturing facilities within their premises or in the vicinity of their premises so as to reduce the transportation of ash.*

*(12) The coal or lignite based thermal power plants in the vicinity of the cities shall promote, support and assist in setting up of ash-based product manufacturing units so as to meet the requirements of bricks and other building construction materials and also to reduce the transportation.*

*(13) To ensure that the contractor of road construction utilizes the ash in the road, the Authority concerned for road construction shall link the payment of contractor with the certification of ash supply from the thermal power plants.*

*(14) The coal or lignite based thermal power plants shall within a radius of three hundred kilometres bear the entire cost of transportation of ash to the site of road construction projects under Pradhan Mantri Gramin Sadak Yojna and asset creation programmes of the Government involving construction of buildings, road, dams and embankments”.*



b) The Commission in its Order dated 14.04.2022 in Petition No. 240/GT/2020 and Order dated 29.05.2022 in Petition No. 452/GT/2020 disallowed Petitioner's claims of Ash Transportation charges incurred by the Petitioner in the year 2018-19 as the Petitioner had not submitted the relevant information required in terms of the MoEF & CC notification dated 25.1.2016 (such as the quantum of ash transported, locations, the distance of the end user (in km), the applicable awarded rate in Rs/ton per kilometer, name of the transporters, etc.).

c) The Commission had also stated that from the details furnished by the Petitioner, it is not clear as to (i) the quantum of ash, (ii) if ash transportation is beyond 100 km radius or less than 100 km radius, and (iii) if the sharing of 50% of ash transportation expenses to be shared between the ash (end) user and the Thermal Power plant as stipulated in MoEF & CC notification, were excluded from the claim or not. It is to submit that Petitioner had claimed of Rs. 315.85 lakhs for Sipat – I and Rs. 159.52 lakhs for Sipat – II against Ash Transportation charges incurred in the year 2018-19 in Petition No 240/GT/2020 and Petition No 452/GT/2020 along with auditor certificate. However, in the instant petition, Petitioner has claimed Rs. 495.82 lakhs for Sipat – I and 250.42 for Sipat – II against Ash Transportation charges for 2018-19 which is 57% higher than previous claims. The Petitioner had also submitted revised auditor certificate in complete deviation from the earlier auditor certificate.

d) The Petitioner had not submitted any justified reason to gather what led to such an enormous increase, in the fixed controlled claimed period, wherein there can be no scope of any increase of already incurred expenditure, not being of recurring nature or for subsequent continuous FYs. The Petitioner had also completely failed to justify the present alleged claims on the testing parameters of the conditions as prescribed by this . Commission vide its earlier orders dated 05.11.1018, 14.04.2022 and 29.05.2022. It is not clear as to (i) the quantum of ash, (ii) if ash transportation is beyond 100 km radius or less than 100 km radius, and (iii) if the sharing of 50% of ash transportation expenses to be shared between the ash (end) user and the Thermal Power plant as stipulated in MoEF & CC notification, were excluded from the claim or not.



e) The Petitioner herein, had also completely failed to provide any explanation as to whether, they had met with the conditions as prescribed by this Ld. Commission in the earlier order dated 05.11.2018, and if so then in what manner. The said conditions which remain unfulfilled owing to no explanation being provided in the Petition were as follows:

- i) Award of fly ash transportation contract through a transparent competitive bidding procedure. Alternatively, the schedule rates of the respective State Governments, as applicable for transportation of fly ash.
- ii) *Details of the actual additional expenditure incurred on Ash transportation after 25.1.2016, duly certified by auditors.*
- iii) *Details of the Revenue generated from sale of fly ash/ fly ash products and the expenditure incurred towards Ash utilisation up to 25.1.2016 and from 25.1.2016 to till date, separately.*
- iv) *Revenue generated from fly Ash sales maintained in a separate account as per the MoEF notification.*

f) The answering Respondent respectfully submits that in view of the above, MSEDCL prays that prudence check of claims submitted by Petitioner against Ash Transportation charges for 2018-19 is required to be undertaken by this Ld. Commission.

#### Rejoinder of the Petitioner to the reply of MSEDCL

6. Petitioner vide rejoinder dated 12.12.2022 furnished the following.

a) MSEDCL has raised contention that beneficiaries and consumers of the Petitioners are not at all liable to bear the failure of the Petitioner to utilize 100% fly ash utilization as it is clear from the MoEF notifications that it is the responsibility of the TPPs to achieve 100% ash utilization and not the beneficiaries.

b) With respect to MSEDCL's contentions, it would be worthwhile to mention that utilization of fly ash generated at its thermal plants is not entirely in the hands of the Petitioner since there need to be sufficient avenues available for disposal of fly ash and adequate off-takers in the market to utilise ash in different products/facilities. It is submitted that the Petitioner had been making all out efforts to continuously enhance the utilization of fly ash, however, 100% utilization could not



be achieved primarily due to ash production being very high compared to demand of Fly Ash in the country. The same is true not only for the Petitioner but for most of the coal based generating companies across the country. Recognizing the difficulties being faced in the utilization of fly ash so as to further the enhance its utilization, the MOEF&CC issued amended Notification dated 25.01.2016 in this regard, which has eventually resulted into higher demand for fly ash thereby improving the fly ash utilization percentage.

c) It is also relevant to mention that the contention raised by MSEDCL is no more res integra as in view of the fact that the expenditure to meet the Fly Ash Notification dated 25.01.2016 is a mandatory expenditure that has to be incurred and the same cannot be met through the ash fund generated by sale of ash, therefore, the Hon'ble Commission in its Order dated 05.11.2018 passed in Petition No. 172/MP/2016 was pleased to recognize the said Notification as a Change in Law event and allowed recovery of expenditure incurred on account of ash transportation from the beneficiaries. In view of above, it is submitted that the contentions raised by MSEDCL do not hold ground and are liable for rejection.

d) MSEDCL has contended that the Petitioner had earlier in 240/GT/2020 and 452/GT/2020 claimed Rs 315.85 lakh and Rs 159.52 lakh for Sipat-I and Sipat-II respectively (i.e. Rs 475.37 lakh in totality) against ash transportation expenditure in 2018-19, which in the present petition has been revised to Rs 495.82 lakh and Rs 250.42 lakh (i.e. Rs 746.24 lakh in totality) for Sipat-I and Sipat-II respectively without any justification. In response to above contention of MSEDCL, it is submitted that the Petitioner in the instant petition, from para 18 to para 25 , has explained in detail the basis for claim of Rs 495.82 lakh and Rs 250.42 lakh for Sipat-I and Sipat-II respectively against ash transportation expenditure in 2018-19.

e) It is submitted that the petitioner earlier (in 240/GT/2020 and 452/GT/2020) for Sipat-I (1980 MW) and Sipat-II (1000 MW) combined had claimed Rs 475.37 lakh against net ash transportation expenditure in Sipat STPS (2980 MW), which was based on ash transportation expenditure incurred as Rs 746.24 lakh minus the revenue earned from sale of fly ash as Rs 270.88 lakh.



f) It is further submitted that the petitioner had installed Ash Brick Plant and claimed additional expenditure on behalf of the same in Sipat-I, which was disallowed by the Hon'ble Commission vide Order dated 14.04.2022 in Petition No 240/GT/2020 (Truing-up of Sipat-I for 2014-19) and Order dated 06.12.2016 in Petition No 295/GT/2014 (Truing-up of Sipat-I for 01.10.2011 to 31.03.2014). However, the Commission had also directed that the Petitioner needs to meet this expenditure incurred for fly ash brick plant from revenue earned by the sale of fly ash. Accordingly, the petitioner in the instant petition has adjusted the revenue earned from fly ash sales in Sipat STPS in 2018-19, i.e. Rs 270.88 lakh against the additional capitalization of Rs 561.96 lakh against the fly ash brick plant. Hence, there is no revenue left from sale of fly ash to be adjusted against ash transportation expenditure and accordingly, the net fly ash transportation expenditure claimed in totality in Sipat-I and Sipat-II in instant petition is Rs 746.24 lakh, i.e. same as total fly ash transportation expenditure incurred in Sipat-I and Sipat-II for 2018-19 without adjustment of revenue from fly ash sales. Also, Auditor Certificate in this respect has been provided by the Petitioner in the instant Petition at Annexure-A/4 @ Page No. 27.

g) It is also relevant to mention that the revenue earned from sale of fly ash in Sipat STPS in FY 19-20, FY 20-21 and FY 21-22 has also been adjusted against the remaining additional capitalization of fly ash brick plant after adjustment from fly ash revenue in 2018-19. The Petitioner in 205/MP/2021 had accordingly made submissions and the Commission vide Order dated 28.10.2022 in 205/MP/2021 while allowing Petitioner's claim for fly ash transportation expenditure in its several Stations has inter alia allowed claim for fly ash transportation expenditure in Sipat STPS taking cognizance of the revenue from fly ash sales adjusted against fly ash brick plant. In view of above, it is submitted that the contentions raised by MSEDCL are misconceived and liable to be rejected.

h) MSEDCL has contended that the Petitioner has not provided the details as mandated by the Hon'ble Commission vide Orders dated 05.11.2018, 14.04.2022 and 29.05.2022 such as details of distance up to which ash has been transported, award of fly ash transportation contract through competitive bidding, etc. With respect to above contention raised by MSEDCL, it is



submitted that the Petitioner has duly complied with and provided all the details in the instant petition with respect to fly ash transportation expenses as per the observations made by the Hon'ble Commission vide Orders dated 05.11.2018, 14.04.2022 and 29.05.2022.

i) It is submitted that the details required regarding ash transportation expenditure, as mentioned by the Hon'ble Commission in the Order dated 14.04.2022 in Petition No 240/GT/2020 and Order dated 29.05.2022 in Petition No 452/GT/2020, such as quantum of ash transported, location, distance of the end user (in km), applicable awarded rate, name of transporters, etc. have been provided in a tabular form in the instant petition at Annexure-A/1 @ Page No. 13. It is also relevant to mention that for construction of roads under Pradhan Mantri Gramin Sadak Yojna (PMGSY) and National Highway roads, ash has been transported within a radius of 300 km. Hence, as per provision 2(b)(14) of MOEF&CC Notification dated 25.01.2016, the entire ash transportation cost to road projects has been borne by the Petitioner.

j) Further, with regard to observations made by Hon'ble Commission vide Order dated 05.11.2018 in Petition No 172/MP/2016, the following is submitted:

a. Award of fly ash transportation contract through a transparent competitive bidding procedure. Alternatively, the schedule rates of the respective State Governments, as applicable for transportation of fly ash: It is submitted that the fly ash transportation contracts at Sipat STPS have been awarded through transparent competitive bidding process and relevant documents with respect to the same have been provided in the instant petition.

b. Details of the actual additional expenditure incurred on Ash transportation after 25.1.2016, duly certified by auditors: The Auditor certificate with respect to ash transportation expenses for Sipat STPS for 2018-19 has been provided in the instant Petition.

c. Details of the Revenue generated from sale of fly ash/ fly ash products and the expenditure incurred towards Ash utilisation up to 25.1.2016 and from 25.1.2016 to till date, separately: The details have been provided in Auditor Certificate provided in the instant Petition.



d. Revenue generated from fly Ash sales maintained in a separate account as per the MoEF notification: It is submitted that revenue generated from fly ash sales has been maintained in a separate account as per the MoEF notification.

k) It is also worthwhile to mention that the Petitioner had provided similar details with respect to fly ash transportation expenses incurred by the Petitioner in its other Stations and based on the same, the Hon'ble Commission was pleased to allow the reimbursement of fly ash transportation expenses to the Petitioner vide its several Orders such as Order dated 01.10.2022 in 287/GT/2020 (Unchahar-III), Order dated 01.10.2022 in 302/GT/2020 (Unchahar-I), Order dated 19.09.2022 in 393/GT/2020 (Mauda-I), Order dated 16.03.2022 in 364/GT/2020 (Unchahar-IV), etc. In view of the submissions made above, the objections raised by MSEDCL are liable to be rejected and the Hon'ble Commission may be pleased to allow the prayers of Petitioner as prayed in the instant petition

#### **Reply of Respondent MPPCL**

7. Respondent MPPCL vide submission dated 20.02.2023 furnished the following.

a) In petition no 452 GT 2020, Petitioner has claimed an amount of Rs.160.00 lakhs in 2018-19 towards Ash transportation expenses, as additional O&M expenses and in Petition no. 240/GT/2020, Petitioner has claimed an amount of Rs.315.85 lakhs in 2018-19 towards Ash transportation expenses, as additional O&M expenses however, Petitioner, in present Petition has claimed Rs. 495.82 lakhs for Sipat – I and 250.42 for Sipat – II against Ash Transportation charges for 2018-19 which is 57% higher than previous claims. However, Petitioner has failed to give any reasonable and logical explanation on the exorbitantly increase in cost as well as failed to give details on the cost claimed in Petitions nos. 240/GT/2020 for Sipat – I and Petition No. 452/GT/2020 for Sipat – II for revision of tariff for the period from 01.04.2014 to 31.03.2019. In view of aforesaid, it is humbly prayed before this commission to do the prudence check and only allow what is legally permitted.

b) In view of aforesaid facts and circumstances, present Tariff Petition filed by the Petitioner is against the directions of this commission passed its Order dated 14.04.2022 in Petition No.



240/GT/2020 and Order dated 29.05.2022 in Petition No. 452/GT/2020, therefore, prudence check may be done.

Hearing dated 22.02.2023

8. The Commission vide RoP of hearing dated 22.02.2023 directed the Petitioner to submit following additional information on or before 10.4.2023 after serving copy to the Respondents:

- (a) The details of competitive bidding process;
- (b) The process adopted for selection of L-1;
- (c) The letter and the rate of award;
- (d) The quantum of ash transported by each awardee;
- (e) Work completion certificate and reconciliation with the claimed amount.

**Submissions of the Petitioner pursuant to record of proceedings of hearing held on 22.02.2023**

9. The petitioner vide additional submission dated 10.4.2023 furnished the following details.

**The details of competitive bidding process**

a) The details with respect to list of ash transportation contracts awarded and respective quantum of ash transported, location, distance of the end user (in km), applicable awarded rate, name of transporters, etc. have been provided by the Petitioner in a tabular form at Annexure-A/1 of the present petition.

b) Ash transportation contracts listed at Sl. No. 1 and 21 of Annexure-P/1 were awarded through transparent competitive biddings held through e-tendering process. The Bid Invitations comprising bidding documents were sent to a number of parties. Subsequently, the bids received by the due date were opened on the Bid Opening Date and the bids were awarded on the basis of overall evaluated Techno-Commercial L-1 basis as specified in the bidding documents. The relevant documents such as Notice Inviting Tender (NIT), list of parties invited, etc. with respect to the competitive biddings held for these contracts have been provided at Annexure-A/3 of the present petition.





c) Ash transportation contracts listed from Sl. No. 2 to Sl. No. 19 of Annexure-P/1 were awarded to Fly Ash Brick (FAB) manufacturers. In the FY 2018-19, ash was transported to 18 number FAB manufacturers and the quantum of ash offtake was miniscule as evident from the tabulated details provided in Annexure-P/1. It is submitted that tenders invited for such small quantity of ash did not received much participation from parties and it was also not practically feasible to float bids for transportation of such miniscule quantum of ash to high number of FAB manufacturers. Consequently, a flat rate of Rs 5.4/MT/Km (excluding GST) for ash transportation to FAB manufacturers was arrived by NTPC based on prevailing market rates, offers received from FAB manufacturers, ash transportation contract award on competitive bidding earlier, etc. It is also relevant to note that the said flat rate of Rs 5.4/MT/Km was lower than the rate of Rs 6.11/cum/Km (i.e.  $916/150 = 6.11$ ) discovered for contract of ash transportation to PMGSY road awarded earlier for NTPC Sipat on 05.02.2018 through competitive bidding.

d) Ash transportation contract listed at Sl. No. 20 of Annexure-P/1, i.e. transportation of ash to Simga-Raipur National Highway-200 had to be awarded on urgency basis consequent to the directions of Chhattisgarh Environment Conservation Board (CECB). It is submitted that in a meeting held on 26.09.2018 regarding utilization of fly ash generated in Chhattisgarh for road construction, convened by Member Secretary, CECB, in the presence of officials of NHAI, NTPC Sipat and NSPCL Bhilai, it was directed by CECB to NTPC Sipat to supply fly ash for Simga-Raipur NH-200 road construction on immediate basis. The Minute of Meeting issued for the said meeting held on 26.09.2018 by CECB is attached herewith at Annexure-P/3. Consequently, there was no time for the Petitioner to award the contract following the detailed procedures of competitive bidding. Therefore, due to paucity of time, the Petitioner was bound to award the contract for ash transportation to Simga-Raipur NH-200 on 12.10.2018 on urgency basis based on budgetary offer received from party having satisfactorily executed similar work earlier and the prevailing market rates. It is also relevant to mention that the said contract on urgency basis was awarded on 12.10.2018 at a rate of Rs 7.46/cum/km ( $932.5/125 = 7.46$ ), which is comparable to the rate of Rs 7.38/cum/km ( $922/125 = 7.38$ ) discovered through competitive bidding for a



contract awarded a few months later on 07.01.2019 for ash transportation to the same Raipur-Simga NH-200 road.

e) In view of the above and considering the documents furnished, it is submitted that the contracts for ash transportation were awarded based on competitive bidding and established standard procedures of the Petitioner's company. Accordingly, the Commission may be pleased to allow the ash transportation expenses for Sipat-I and Sipat-II as claimed by the Petitioner in the present petition.

The process adopted for selection of L-1

f) Ash transportation contracts based on competitive bidding were awarded to the lowest evaluated (L-1) bidder on the basis of overall evaluated Techno-commercial analysis as per Evaluation Criteria and Award Criteria as specified in the bidding documents. The bidding documents specifying in detail the process adopted for selection of L-1, i.e. Evaluation Criteria and Award Criteria are placed herewith and attached at Annexure-P/4.

The letter and the rate of award

g) The Letters of Award, also indicating the rate of award, for each of the ash transportation contracts awarded, in the order as listed in Annexure-P/1, are attached herewith at Annexure-P/5.

The quantum of ash transported by each awardee

h) It is submitted that the quantum of ash transported by each awardee in 2018-19 has been provided in the tabular format placed at Annexure-A/1 of the present petition, which has also been placed herewith at Annexure-P/1.

Work completion certificate and reconciliation with the claimed amount

i) The Work completion certificates for the quantum of ash transported in 2018-19 and reconciling with the claimed amount in the present petition, in the order of contracts as listed in Annexure-P/1, are attached herewith at Annexure-P/6. It is further submitted that the Auditor Certificate in respect of claimed amount of Rs 746.24 lakh for ash transportation expenses for 2018-19 for Sipat STPS (i.e. Sipat-I and Sipat-II) has been provided at Annexure-A/4 of the



present petition and also placed herewith at Annexure-P/7 and the detailed break-up of the same reconciling with the claimed amount has been provided at Annexure-A/1 of the present petition and also attached herewith at Annexure-P/1.

Rejoinder of the Petitioner to the replies of MPPCL & MSEDCL

10. Petitioner vide rejoinder dated 05.05.2023 furnished the following.

a) Summary of ash transportation expenditure incurred by Petitioner for Sipat STPS (2980 MW) and allocation to Sipat-I and Sipat-II based on capacity is tabulated underneath:

Sl. No.	Particular	Amount (Rs Lakh)
1	Ash Transportation Expenditure for Sipat STPS for 2018-19	746.24
2	Additional capitalization for Fly Ash Brick Plant (in the period 01.08.2012 to 31.03.2016)	561.96
3	Cumulative Ash sale funds (in the period 25.01.2016 to 31.03.2019)	270.88
4	Ash sale fund available after adjustment against Fly Ash Brick Plant	0.00
5	Net Ash Transportation Expenditure for Sipat STPS (2980 MW) for 2018-19	746.24
6	Net Ash Transportation Expenditure for Sipat-I (1980 MW) for 2018-19	495.82
7	Net Ash Transportation Expenditure for Sipat-II (1000 MW) for 2018-19	250.42

b) An Auditor Certificate validating the ash transportation expenses for Sipat STPS for 2018-19 as per above table has also been provided by the Petitioner.

c) The Respondent MSEDCL has contended that beneficiaries are not liable to bear the ash utilization expenses. It would be worthwhile to mention that utilization of fly ash generated at its thermal plants is not entirely in the hands of the Petitioner since there need to be sufficient avenues available for disposal of fly ash and adequate off-takers in the market to utilise ash in different products/facilities. The Petitioner had been making all out efforts to continuously enhance the utilization of fly ash, however, 100% utilization could not be achieved primarily due to ash production being very high compared to demand of Fly Ash in the country. The same is true not only for the Petitioner but for most of the coal based generating companies across the



country. Recognising the difficulties being faced in the utilization of fly ash so as to further the enhance its utilization, the MOEF&CC issued amended Notification dated 25.01.2016 in this regard, which has eventually resulted into higher demand for fly ash thereby improving the fly ash utilization percentage.

d) Further, the contention is no more res integra as the Hon'ble Commission in its Order dated 05.11.2018 passed in Petition No. 172/MP/2016 was pleased to recognize the said Notification dated 25.01.2016 as a Change in Law event and allowed recovery of expenditure incurred on account of ash transportation from the beneficiaries.

e) The Respondents MSEDCL and MPPMCL have contended that the Petitioner had earlier in 240/GT/2020 and 452/GT/2020 claimed Rs 315.85 lakh and Rs 159.52 lakh for Sipat-I and Sipat-II respectively (i.e. Rs 475.37 lakh in totality) against ash transportation expenditure in 2018-19, which in the present petition has been revised to Rs 495.82 lakh and Rs 250.42 lakh (i.e. Rs 746.24 lakh in totality) for Sipat-I and Sipat-II respectively, i.e. an increase of 57%, without any justification.

f) It is submitted that the Petitioner in the instant petition, from para 18 to para 25, has explained in detail the basis for present claim of Rs 495.82 lakh and Rs 250.42 lakh for Sipat-I and Sipat-II respectively against ash transportation expenditure in 2018-19. The petitioner earlier (in 240/GT/2020 and 452/GT/2020) for Sipat-I (1980 MW) and Sipat-II (1000 MW) combined had claimed Rs 475.37 lakh against net ash transportation expenditure in Sipat STPS (2980 MW), which was based on ash transportation expenditure incurred as Rs 746.24 lakh minus the revenue earned from sale of fly ash as Rs 270.88 lakh.

g) Further, as submitted in detail in the instant Petition and also mentioned above in Para 12 and 13 above, the petitioner had installed Ash Brick Plant in Sipat STPS, for which additional capitalization was disallowed by the Hon'ble Commission, however, it was also directed that the Petitioner needs to meet this expenditure from revenue earned by the sale of fly ash. Accordingly, the petitioner in the instant petition has adjusted the revenue earned from fly ash sales in Sipat STPS in 2018-19, i.e. Rs 270.88 lakh against the additional capitalization of Rs



561.96 lakh against the fly ash brick plant. Hence, there is no revenue left from sale of fly ash to be adjusted against ash transportation expenditure and accordingly, the net fly ash transportation expenditure claimed in totality in Sipat-I and Sipat-II in instant petition is Rs 746.24 lakh.

h) MSEDCL has contended that the Petitioner has not provided the details as mandated by the Hon'ble Commission vide Orders dated 05.11.2018, 14.04.2022 and 29.05.2022. It is submitted that the Petitioner has duly complied with and provided all the details with respect to fly ash transportation expenses as per the observations made by the Hon'ble Commission vide Orders dated 05.11.2018, 14.04.2022 and 29.05.2022 and also as per the directions in RoP issued in hearing held on 22.02.2023. The relevant documents with respect to following have been provided by the Petitioner in the instant Petition filed vide affidavit dated 11.07.2022 (page no referred are of consolidated pleadings):

- i) The quantum of ash transported, location, distance of the end user (in km), applicable awarded rate, name of transporters, etc. in a tabular format (Annexure-A/1 @ Pg No. 14)
- ii) A Copy of the MOEF&CC Notification dated 25.01.2016 (Annexure-A/2 @ Pg No 15 to 19)
- iii) Relevant documents with respect to award of fly ash transportation contracts on competitive bidding basis (Annexure-A/3 @ Pg No 20 to 27)
- iv) Auditor certificate with respect to ash transportation expenses for Sipat STPS for 2018-19 as claimed (Annexure-A/4 @ Pg No 28)

i) In view of the submissions made above, it is submitted that the Hon'ble Commission may be pleased to allow the prayers of Petitioner as prayed in the instant petition.

### **Analysis and Decision**

11. We have perused all the submissions, replies, rejoinders and documents available on records.

The Commission vide order dated 5.11.2018 in Petition No. 172/MP/2016, granted liberty to the Petitioner to approach the Commission at the time of revision of tariff of the generating stations for

reimbursement of Ash Transportation charges. The relevant extract is as under:



31. Accordingly, we in exercise of the regulatory power hold that the actual additional expenditure incurred by the Petitioner towards transportation of ash in terms of the MOEFCC Notification is admissible under “Change in Law” as additional O&M expenses. However, the admissibility of the claims is subject to prudence check of the following conditions on case to case basis for each station:

(a) Award of fly ash transportation contract through a transparent competitive bidding procedure. Alternatively, the schedule rates of the respective State Governments, as applicable for transportation of fly ash.

(b) Details of the actual additional expenditure incurred on Ash transportation after 25.1.2016, duly certified by auditors.

(c) Details of the Revenue generated from sale of fly ash/ fly ash products and the expenditure incurred towards Ash utilisation up to 25.1.2016 and from 25.1.2016 to till date, separately.

(d) Revenue generated from fly Ash sales maintained in a separate account as per the MoEF notification.

32. The Petitioner is granted liberty to approach the Commission at the time of revision of tariff of the generating stations based on trueing –up exercise for the period 2014-19 in terms of Regulation 8 of the 2014 Tariff Regulations along with all details / information, duly certified by auditor.”

12. The Petitioner had filed Petition No 240/GT/2020 and Petition No 452/GT/2020 for trueing up of tariff of Sipat-I and Sipat-II respectively for the period 2014-19. In terms of above direction in Petition No.172/MP/2016, the Petitioner in the said trueing up petition had sought reimbursement of additional expenditure towards fly ash transportation w.e.f. 25.1.2016 onwards for Sipat-I and Sipat-II generating station for the period 2014-19. The Commission vide Order dated 14.04.2022 in Petition No 240/GT/2020 and vide Order dated 29.05.2022 in Petition No 452/GT/2020 has granted liberty to file a separate petition with all the supporting documents and justification for the claim of expenditure towards fly ash transportation. The relevant extract of the Order dated 14.04.2022 in Petition No 240/GT/2020 is quoted below:

“98. However, it is noticed that the Petitioner has only furnished the auditor certificate but has not submitted the relevant information required in terms of the MoEF&CC notification dated 25.1.2016 (such as the quantum of ash transported, locations, the distance of the end user (in km), the applicable awarded rate in Rs./ ton per kilometer, name of the transporters, etc.). From the details furnished by the Petitioner, it is not clear as to (i) the quantum of ash, (ii) if ash transportation is beyond 100 km radius or less than 100 km radius, and (iii) if the sharing of 50% of ash transportation expenses to be shared between the ash (end) user and the Thermal Power plant as stipulated in MoEF&CC notification, were excluded from the claim or not. Therefore, in the absence of the above required information, we are not inclined to allow the said expenditure towards fly ash transportation at this stage. However, the Petitioner is at liberty to file a separate petition for the said claim towards fly ash transportation with all the supporting documents and justification.



13. The relevant extract of the Order dated 29.05.2022 in Petition 452/GT/2020 is quoted below:

*89. It is noticed from records that the Petitioner has only furnished the auditor certificate in support of its claim. Also, in compliance to the directions vide ROP of the hearing dated 30.11.2021 the Petitioner has submitted the fly ash utilization details. However, it is observed that the relevant information (such as the quantum of ash transported, locations, the distance of the end user (in km), the applicable awarded rate in Rs./ton per kilometer, name of the transporters, etc.) required in terms of the MoEF&CC notification dated 25.1.2016 has not been furnished by the Petitioner. It is not clear from the details as to whether (i) the quantum of ash, (ii) ash transportation is beyond 100 km radius or less than 100 km radius, and (iii) the sharing of 50% of ash transportation expenses to be shared between the ash (end) user and the Thermal Power plant as stipulated in MoEF&CC notification, were excluded from the claim or not. In the absence of the said information, we are not inclined to allow the expenditure claimed towards fly ash transportation, in this order. However, the Petitioner is at liberty to approach the Commission with a separate petition to claim the fly ash transportation charges with proper justification and supporting documents.*

14. Accordingly, the Petitioner has filed the present petition for reimbursement of expenditure towards fly ash transportation as O&M expense in terms of liberty granted by the Commission. The total expenditure towards fly ash transportation for Sipat generating station comprising of Sipat-I and Sipat- II is Rs 746.24 lakhs (Rs 495.82 lakh and Rs 250.42 lakh for Sipat-I and Sipat-II respectively) for ash transportation expenditure in 2018-19. The Petitioner has submitted that the Expenditure incurred for the entire station has been allocated based on the capacity of the stages in the entire station. This is just a method of allocation of the total expenditure. However, it is submitted that irrespective of the method of allocation (based on capacity/generation), total expenditure claimed for the station will remain the same.

15. The Respondent MSEDCL has submitted that the obligation of bearing transportation expenditure for Fly Ash disposal was embedded even before the cut-off date, right from the initial MoEF Notification dated 14.09.1999, 27.08.2003 and 03.11.2009. Respondent further submitted that the Petitioner had claimed of Rs. 315.85 lakhs for Sipat – I and Rs. 159.52 lakhs for Sipat – II against Ash Transportation charges incurred in the year 2018-19 in Petition No 240/GT/2020 and Petition No 452/GT/2020 along with auditor certificate. However, in the instant petition, Petitioner has claimed Rs. 495.82 lakhs for Sipat – I and 250.42 for Sipat – II against Ash



Transportation charges for 2018-19 which is 57% higher than previous claims. Respondent also raised the issue of quantum of ash, distance, sharing of 50% of ash transportation expenses and alleged that Petitioner had completely failed to provide any explanation as to whether, they had met with the conditions as prescribed by this Ld. Commission in the earlier order dated 05.11.2018.

16. The Respondent MPPCL has also raised the issue of mis-match between the claims made by the Petitioner in tariff petitions and in the instant petition.

17. The Petitioner in its rejoinders to the replies of the Respondents and in clarification to the RoP queries has furnished as below.

a) In regards to increase in claims in the instant Petition as compared to the claims in the original tariff petitions, the Petitioner clarified that petitioner earlier had (in 240/GT/2020 and 452/GT/2020) for Sipat-I (1980 MW) and Sipat-II (1000 MW) combined had claimed Rs 475.37 lakh against net ash transportation expenditure in Sipat STPS (2980 MW), which was based on ash transportation expenditure incurred as Rs 746.24 lakh minus the revenue earned from sale of fly ash as Rs 270.88 lakh.

b) The Petitioner also clarified that the petitioner had installed Ash Brick Plant and claimed additional expenditure on behalf of the same in Sipat-I, which was disallowed by the Hon'ble Commission vide Order dated 14.04.2022 in Petition No 240/GT/2020 (Truing-up of Sipat-I for 2014-19) and Order dated 06.12.2016 in Petition No 295/GT/2014 (Truing-up of Sipat-I for 01.10.2011 to 31.03.2014). However, the Hon'ble Commission had also directed that the Petitioner needs to meet this expenditure incurred for fly ash brick plant from revenue earned by the sale of fly ash. Accordingly, the petitioner in the instant petition has adjusted the revenue earned from fly ash sales in Sipat STPS in 2018-19, i.e. Rs 270.88 lakh against the additional capitalization of Rs 561.96 lakh against the fly ash brick plant. Hence, there is no revenue left from sale of fly ash to be adjusted against ash transportation expenditure and accordingly, the net fly ash transportation expenditure claimed in totality in Sipat-I and Sipat-II in instant petition is Rs 746.24 lakh, i.e. same as total fly ash transportation





expenditure incurred in Sipat-I and Sipat-II for 2018-19 without adjustment of revenue from fly ash sales. Also, Auditor Certificate in this respect has been provided by the Petitioner in the instant Petition.

18. In reply to the queries raised by Commission vide RoP of hearing dated 22.02.2023 and in compliance to the observations/requirements made by Commission vide Order dated 05.11.2018 in Petition No 172/MP/2016, the following justifications are furnished by the Petitioner:

The details of competitive bidding process

a) The details with respect to list of ash transportation contracts awarded and respective quantum of ash transported, location, distance of the end user (in km), applicable awarded rate, name of transporters, etc. have been provided by the Petitioner in a tabular form as given below.

Annexure-A/1

Sl. No.	Location of Ash Transportation	Name of Transporter	Contract Award Date	Lead Distance from Sipat STPS(Km)	Quantum of Ash Transported		Rate (Rs. per Cum) or (Rs per MT)	Amount (Rs)	GST (%)	GST Amount (Rs)	Total Amount (Rs)	Mode of Award of Contract
					Unit	Quantity						
1	Road under Pradhan Mantri Gram Sarak yojna (PMGSY) at CGRROA Bemtera & Beria	AK Sharma	05.02.2018	150.00	Cum	29,568.00	916.00	2,70,84,288.00	5%	13,54,214.40	2,84,38,502.40	Competitive Bidding
2	AshB,11:k Industry, M/s Choudhary Bricks	Choudhary Bricks	07.06.2018	9.40	MT	115.52	50.76	5,863.69	0%		5,863.69	Contacts for Transportation of Ash to Fly Ash Brick Units awarded by NTPC Committee at a rate of Rs 5.4/MT/Km excluding GST), i.t.at a rat@ lower than that discovered earlier through competitive biddings for ash transportation to other locations
3	Ash Brick Industry, M/s PAWANBRICKS	Pawan Bricks	07.06.2018	25.70	MT	1,209.97	138.78	1,67,919.64	0%		1,67,919.64	
4	Ash Brick Industry,M/s Mayank Fly Ash Brick	Mayank Fly Ash Bricks	14.06.2018	52.00	MT	465.25	280.80	1,30,642.20	0%		1,30,642.20	
5	Ash Brick Industry, M/s Sahu Ash Bricks.	Sahu Fly Ash Bricks	14.06.2018	21.10	MT	165.68	113.94	18,877.58	0%		18,877.58	
6	Ash Brick Industry, M/s Shri Sai Fly Ash Bricks.	Shri Sai Fly Ash Brick	14.06.2018	25.00	MT	250.97	135.00	33,880.95	0%		33,880.95	
7	Ash Brick Industry, M/s Swat industries	Swati Industries	14.06.2018	25.20	MT	503.88	136.08	68,567.99	0%		68,567.99	
8	Ash Brick Industry, M/s Deep Fly Ash Bricks	Deep Fly Ash Bricks	14.06.2018	23.00	MT	259.76	124.20	32,262.19	0%		32,262.19	
9	Ash Brick Industry, M/s Om Rakhad Etta Udyog Sendri	Om Rakhad Etta Udyog Sendri	19.06.2018	24.10	MT	281.96	130.14	36,694.27	0%		36,694.27	
10	Ash Brick Industry, M/s Nav Nirman Associates.	Nav Nirman Associates	19.06.2018	22.60	MT	516.07	122.04	62,981.18	0%		62,981.18	
11	Ash Brick Industry, M/s Divya Fly Ash Brick	Divya Fly Ash Brick	19.06.2018	48.00	MT	1,064.50	259.20	2,75,918.40	0%		2,75,918.40	
12	Ash Brick industry M/s Sahu Fly Ash Brick.	Sahu Fly Ash Bricks	29.06.2018	71.20	MT	317.56	384.48	1,22,095.47	0%		1,22,095.47	
13	Ash Brick Industry, M/s Tanya Industries.	Tanya Industries	29.06.2018	22.60	MT	251.77	122.04	30,726.01	0%		30,726.01	
14	Ash Brick Industry, M/s ShriR.im Supertech Industries.	ShriR.im Supertech Industries	29.06.2018	92.10	MT	115.95	497.34	57,666.57	0%		57,666.57	



15	Ash Brick Industry, M/s Jain Bricks Industries.	Jain Bricks Industries	04.07.2018	23.90	MT	216.75	129.06	27,973.76	0%		27,973.76	
16	Ash Brick Industry, M/s Maa Industries.	Maa Industries	04.07.2018	65.10	MT	162.96	351.54	57,286.96	0%		57,286.96	
17	Ash Brick industry M/s Praksah Bricks	Praksah Bricks	04.07.2018	23.40	MT	356.43	126.36	45,038.49	0%		45,038.4	
18	Ash Brick Industry, M/5 Parshuram Fly Ash Bricks.	Parshuram Fly Ash Bricks	09.07.2018	34.80	MT	12.00	1S7.92	2,255.04	0%/4		2,255.0	
19	Ash Brick Unit of Multi Utility Centre Ganiyari Kota, Takhatpur.	Praksah Bricks	20.03.2019	50.00	MT	45.68	270.00	12,333.60	0%		12,333.60	
20	Simga - Raipur Road NH-200 (in a stretch of approx 2 Km)	A K Sharma	12.10.2018	125.00	Cum	7,459.20	932.50	69,55,704.00	5%	3,47,78S.20	73,03,489.20	Based on competitive bidding rates discovered earlier
21	5imga - Raipur Road NH-200 (in a stretch of approx 2 km)	Aakar Engineers & Contractors	0'7.01.2019	125.00	Cum	34,645.50	922.00	3,19,43,1SL00	18%	57,49,767.18	3,76,92,918.18	Competitive Bidding
Total (Rs)											7,46,23,893.78	

b) Ash transportation contracts listed at Sl. No. 1 and 21 of above table were awarded through transparent competitive biddings held through e-tendering process. The Bid Invitations comprising bidding documents were sent to a number of parties. Subsequently, the bids received by the due date were opened on the Bid Opening Date and the bids were awarded on the basis of overall evaluated Techno-Commercial L-1 basis as specified in the bidding documents. The relevant documents such as Notice Inviting Tender (NIT), list of parties invited, etc. with respect to the competitive biddings held for these contracts have been provided.

c) Ash transportation contracts listed from Sl. No. 2 to Sl. No. 19 of above table were awarded to Fly Ash Brick (FAB) manufacturers. In the FY 2018-19, ash was transported to 18 number FAB manufacturers and the quantum of ash offtake was miniscule as evident from the tabulated details provided in above table. It is submitted that tenders invited for such small quantity of ash did not received much participation from parties and it was also not practically feasible to float bids for transportation of such miniscule quantum of ash to high number of FAB manufacturers. Consequently, a flat rate of Rs 5.4/MT/Km (excluding GST) for ash transportation to FAB manufacturers was arrived by NTPC based on prevailing market rates, offers received from FAB manufacturers, ash transportation contract award on competitive bidding earlier, etc. It is also relevant to note that the said flat rate of Rs 5.4/MT/Km was lower than the rate of Rs



6.11/cum/Km (i.e.  $916/150 = 6.11$ ) discovered for contract of ash transportation to PMGSY road awarded earlier for NTPC Sipat on 05.02.2018 through competitive bidding.

d) Ash transportation contract listed at Sl. No. 20 of above table, i.e. transportation of ash to Simga-Raipur National Highway-200 had to be awarded on urgency basis consequent to the directions of Chhattisgarh Environment Conservation Board (CECB). It is submitted that in a meeting held on 26.09.2018 regarding utilization of fly ash generated in Chhattisgarh for road construction, convened by Member Secretary, CECB, in the presence of officials of NHAI, NTPC Sipat and NSPCL Bhilai, it was directed by CECB to NTPC Sipat to supply fly ash for Simga-Raipur NH-200 road construction on immediate basis. Consequently, there was no time for the Petitioner to award the contract following the detailed procedures of competitive bidding. Therefore, due to paucity of time, the Petitioner was bound to award the contract for ash transportation to Simga-Raipur NH-200 on 12.10.2018 on urgency basis based on budgetary offer received from party having satisfactorily executed similar work earlier and the prevailing market rates. It is also relevant to mention that the said contract on urgency basis was awarded on 12.10.2018 at a rate of Rs 7.46/cum/km ( $932.5/125 = 7.46$ ), which is comparable to the rate of Rs 7.38/cum/km ( $922/125 = 7.38$ ) discovered through competitive bidding for a contract awarded a few months later on 07.01.2019 for ash transportation to the same Raipur-Simga NH-200 road.

e) In view of the above and considering the documents furnished, petitioner has submitted that the contracts for ash transportation were awarded based on competitive bidding and established standard procedures of the Petitioner's company.

#### The process adopted for selection of L-1

19. Ash transportation contracts based on competitive bidding were awarded to the lowest evaluated (L-1) bidder on the basis of overall evaluated Techno-commercial analysis as per Evaluation Criteria and Award Criteria as specified in the bidding documents. The bidding documents specifying in detail the process adopted for selection of L-1, i.e. Evaluation Criteria and Award Criteria are provided in petition. The Letters of Award, also indicating the rate of



award, for each of the ash transportation contracts awarded, in the order are provided in instant petition

The quantum of ash transported by each awardee

20. The quantum of ash transported by each awardee in 2018-19 has been provided in the tabular format in the table provided in para 18 above.

Work completion certificate and reconciliation with the claimed amount

21 The Work completion certificates for the quantum of ash transported in 2018-19 and reconciling with the claimed amount in the present petition has been provided. It is further submitted that the Auditor Certificate in respect of claimed amount of Rs 746.24 lakh for ash transportation expenses for 2018-19 for Sipat STPS (i.e. Sipat-I and Sipat-II) has been provided and the detailed break-up of the same reconciling with the claimed amount has been provided.

Revenue generated from fly Ash sales maintained in a separate account as per the MoEF notification:

22. It is submitted that revenue generated from fly ash sales has been maintained in a separate account as per the MoEF notification.

23. Petitioner further emphasized that the Petitioner had provided similar details with respect to fly ash transportation expenses incurred by the Petitioner in its other Stations and based on the same, the Hon'ble Commission was pleased to allow the reimbursement of fly ash transportation expenses to the Petitioner vide its several Orders such as Order dated 01.10.2022 in 287/GT/2020 (Unchahar-III), Order dated 01.10.2022 in 302/GT/2020 (Unchahar-I), Order dated 19.09.2022 in 393/GT/2020 (Mauda-I), Order dated 16.03.2022 in 364/GT/2020 (Unchahar-IV), etc.

24. The Commission vide order dated 05.11.2018 in Petition No 172/MP/2016 in regards to the expenses incurred for the transportation of ash in compliance to the MOEF&CC notification dated 25.01.2016 had already considered under change in law and directed the generators to approach the Commission as per the stipulated directions and procedure. It is evident from the submissions and clarifications of the petitioner that the Petitioner has complied with the



methodology and procedure envisaged by Commission vide order dated 05.11.2018 in Petition No 172/MP/2016 for expenses incurred for the transportation of ash in compliance to the MOEF&CC notification dated 25.01.2016.

25 In view of above, we allow the net expenditure of Rs 746.24 lakh towards fly ash transportation for Sipat STPS (i.e. Sipat-I and Sipat-II), to be recovered in 6 (six) equal monthly interest free instalments without any carrying cost . Further, considering the fact that reimbursement of ash transportation expenses is being allowed based on the MOEF&CC notification, these expenses should not be made part of the O&M expenses and the consequent annual fixed charges.

26. Petition No. 202/MP/2022 is disposed of in terms of the above discussions and findings.

Sd/  
(P. K. Singh)  
Member

Sd/  
(I. S. Jha)  
Member

