

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 217/MP/2022

Coram:

Shri I. S. Jha, Member

Shri Pravas Kumar Singh, Member

Date of Order: 30th August, 2023

In the matter of

Petition Under Section 62 and 79 (1) (a) of the Electricity Act, 2003 read with Chapter-V of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for reimbursement of Ash Transportation charges in Simhadri Super Thermal Power Station, Stage-II (2X500MW) in terms of Ministry of Environment and Forest, Government of India Notification dated 25.1.2016.

And

In the matter of

NTPC Limited

NTPC Bhawan, Scope Complex,

7, Institutional Area, Lodhi Road,

New Delhi – 110003.

...Petitioner

Vs

1. AP Eastern Power Distribution Company Limited,
Corporate Office, P&T Colony, Seethammadhara,
Vishakhapatnam, Andhra Pradesh – 530013.
2. AP Southern Power Distribution Company Limited,
Corporate Office, Back Side Srinivasa Kalyana Mandapam,
Tiruchhanur Road, Keasavayana Gunta,
Tirupati, Andhra Pradesh - 517503.
3. Telangana State Northern Power Distribution Company Limited,
H. No. 2-5-31/2, Vidyut Bhawan, Nakkalgutta, Hanamkonda,
Warangal, Telangana – 506001.
4. Telangana State Southern Power Distribution Company Limited,
Mint Compound, Corporate Office, Hyderabad,
Telangana – 500063.



5. Tamil Nadu Generation & Distribution Corporation Limited,
144, Anna Salai, Chennai, Tamil Nadu – 600002
6. Bangalore Electricity Supply Company Limited,
Krishna Rajendra Circle, Bengaluru,
Karnataka – 560009.
7. Mangalore Electricity Supply Company Limited,
MESCOM Bhavana, Corporate Office, Bejai,
Kavvoor Cross Road,
Mangaluru, Karnataka – 575004.
8. Chamundeshwari Electricity Supply Corporation Limited,
Corporate Office, No. 29,
Vijaynagar, 2nd Stage, Hinkal,
Mysore, Karnataka – 570017.
9. Gulbarga Electricity Supply Company Limited,
Main Road, Gulbarga,
Karnataka - 585102.
10. Hubli Electricity Supply Company Limited,
Corporate Office, P.B. Road, Navanagar,
Hubli, Karnataka – 580025.
11. Kerala State Electricity Board Limited,
Vaidyuthi Bhavnam, Pattom,
Thiruvananthapuram, Kerala – 695004.
12. Superintending Engineer-1
Electricity department, Govt. of Puducherry,
137, Netaji Subhash Chandra Bose Salai,
Puducherry- 605001

...Respondents

Parties Present:

Shri A.S. Pandey, NTPC

Shri Vivek Kumar, NTPC

Order

The present petition has been filed by the Petitioner NTPC Limited under Section 79(1)(a) and (f) of the Electricity Act, 2003 read with Chapter-V of the Central Electricity Regulatory Commission



(Conduct of Business) Regulations, 1999 for reimbursement of Ash Transportation charges in Simhadri Super Thermal Power Station, Stage-II (2X500MW) in terms of Ministry of Environment and Forest, Government of India Notification dated 25.1.2016 with the following prayer(s);

- (a) *Allow reimbursement of net fly ash transportation expenditure, along with carrying cost for the period 2018-19 as detailed above:*
- (b) *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;*
- (c) *Pass such other order(s), as may be deemed fit and proper in the facts and circumstances of the case.*

2. The Petitioner has mainly submitted that the MoEF notification dated 25.1.2016 is prescribed for bearing the transportation cost of Fly Ash generated at power stations. In this regard, Petitioner had filed a Petition, being no. 172/MP/2016, before the Commission seeking reimbursement of the additional expenditure for Fly Ash Transportation directly from the beneficiaries. The Commission vide its order dated 5.11.2018, granted liberty to the Petitioner to approach the Commission at the time of revision of tariff of the generating stations based on true-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.”

3. In terms of above, Petitioner sought reimbursement of additional expenditure towards fly ash transportation w.e.f. 25.1.2016 onwards in its true up petition of Simhadri-II for the period 2014-19, Petition bearing no 293/GT/2020. The Commission vide its order dated 11.1.2022 in true-up Petition No 293/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.

4. 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 Simhadri station comprising of Simhadri-I and Simhadri-II is Rs 5081.07 lakhs. 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 respectfully submitted that irrespective of the method of allocation (based on capacity/generation), total expenditure claimed for the station will remain same.

5. The Petitioner has further submitted that a Memorandum of Understanding (MoU) was entered between NTPC and National Highways Authority of India (NHAI) on 29.6.2018 & 19.2.2019 for bearing cost of transportation cost of ash from NTPC Simhadri station for use in various road construction projects in Visakhapatnam Dist. in compliance of MoEF&CC gazette notification dated 3.11.2009 and its amendment dated 25.1.2016. The rate for transportation of fly ash was as per the Schedule of Rates (SoR) of Andhra Pradesh (A.P.) of 2017-18 the rates of which was found out to be lowest in the prevailing years i.e. 2017-18 and 2018-19. Payment was made to NHAI in line with the provisions of MOU. The petitioner has also borne the entire cost of transportation of ash to the site of road construction project within a radius of three hundred kilometer as per the clause 14 of the MOEFCC notification dated 25.1.2016.

6. The petitioner has submitted that it has earned total revenue from sale of fly ash silo of Rs. 173.68 lakhs (i.e. Rs 40.17 lakhs in 2016-17, Rs. 30.74 lakhs in 2017-18 and Rs. 102.77 lakhs in 2018-19). This ash fund of Rs 173.68 lakhs was earlier intended to be adjusted from Expenditure towards fly ash transportation however in compliance of CERC order dated 1.5.2017 in 50/RP/2016 and order dated 11.1.2022 in 293/GT/2020, the ash fund is being adjusted against the disallowed work of Railway Siding.

Reply filed by Respondent TANGEDCO

7. The Respondent TANGEDCO vide affidavit dated 13.1.2023 has mainly submitted that:

(a) The Petitioner has to furnish the details of the revenue generated from sale of fly ash and fly ash products upto 25.1.2016 and from 25.1.2016 separately. The Petitioner has stated that the cumulative ash fund for the period from 2016-19 is Rs. 173.68 lakhs. In this regard, the Petitioner has not furnished the details of revenue generated from sale of fly ash up to 25.1.2016 and the Petitioner has not furnished the details of the same.

(b) The Petitioner, without obtaining the prior concurrence from their beneficiaries, unanimously and unilaterally entered into MoU with NHAI for which the Petitioner has incurred the ash



transportation cost. CERC may direct the Petitioner to furnish a copy of the MoU entered with NHAI on 29.6.18 and 19.2.19.

- (c) Further, it is the duty of the petitioner to file the petition before the Commission without any errors/ omissions/ shortcomings. Seeking a blanket approval for rectification at later stages cannot be admitted and Hon'ble CERC may dismiss the claim.

Rejoinder to the Reply filed by Respondent TANGEDCO

8. The Petitioner in its rejoinder vide affidavit dated 31.1.2023 has mainly submitted that:

- (a) The audited certified details of the Revenue generated from sale of fly ash/ fly ash products and the expenditure incurred towards Ash utilization up to 25.1.2016 and from 25.1.2016 to till date for all stations including Simhadri has been provided by Petitioner vide affidavit dated 1.8.2022 in petition no. 205/MP/2021. It is also submitted that revenue generated from fly ash sales has been maintained in a separate account as per the MoEF notification.
- (b) A Memorandum of Understanding (MoU) was entered between NTPC and National Highways Authority of India (NHAI) on 29.6.18 & 19.1.19 for bearing cost of transportation cost of ash from NTPC Simhadri station for use in various road construction projects in Visakhapatnam Dist. in the State of Andhra Pradesh for its utilization in compliance of MoEF&CC gazette notification dated 3.11.2009 and its amendment dated 25.1.2016. The copy of MoUs dated 29.6.18 and 19.1.19 along with MOEFCC clarification dated 7.9.2017 clarifying that NHAI road projects are qualified as projects under the Asset creation program of Government is being attached.
- (c) The Petitioner reserves its rights to make any further submissions, if required and/or directed by this Commission. In light of the above submissions, the objections raised by TANGEDCO, ought to be outrightly rejected as misconceived and erroneous.

9. The case was last heard on 22.2.2023. Considering the judgment of APTEL, the Petitioner had requested the Commission to revise the calculations. The Commission had accordingly considered the request and allowed the Petitioner and Respondents time till 17.5.2023 including the reply and rejoinders and subsequently reserved the order. Based on all the replies and rejoinders, we now examine the case.



Analysis and Decision

10. 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 truing –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.”

11. The Petitioner had filed Petition No 293/GT/2020 for truing up of tariff for the generating station (i.e. Simhadri-II) for the period 2014-19. In terms of above direction in Petition No.172/MP/2016, the Petitioner in the said truing up petition had sought reimbursement of additional expenditure towards fly ash transportation w.e.f. 25.1.2016 onwards for Simhadri-II generating station for the period 2014-19. The Commission vide order dated 11.1.2022 in true-up Petition No 293/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 11.1.2022 is quoted below:



“192. However, it is noticed that the Petitioner has only furnished the Auditor Certificate and Conveyance charges of materials-common Schedule of Rates, 2017-18, 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 the (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. However, the Petitioner is granted liberty to file a separate petition with all the supporting documents and justification for the claim of expenditure towards fly ash transportation.”

12. 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 Simhadri station comprising of Simhadri-I and Simhadri-II is Rs 5081.07 lakhs. 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.

13. The Respondent TANGEDCO has submitted that the Petitioner has not furnished the details of the revenue generated from sale of fly ash up to 25.1.2016 and from 25.1.2016 separately. In this regard it is observed that the claim of the Petitioner specifically pertains to the year 2018-19 and the Petitioner has already furnished the audited certificates in this regard in Petition No. 205/MP/2021. Further, TANGEDCO has alleged that the Petitioner has entered in to MoU with NHAI without concurrence from the beneficiaries. However, the letter dated 23.8.2017 issued by MoEF&CC, certifies that NHAI road construction programme comes under Asset creation Programme of Government.

14. The Petitioner in its submission has submitted the details like quantum of ash transported, locations, the distance of end user (in km), applicable rate of transportation. The details submitted and claimed by the Petitioner are as under:



Sl. No.	Quantity of ash (CuM)	Distance from NTPC (Km.)	Chainage (km)		Rate per Km /CUM	APSOR unit rate (Rs./CuM)	Total Amount without GST (Rs. Lakh)	Total amount with GST@12% (Rs. Lakh)
1.	1,18,528	61.15	679+730	80+790	10.95	669.76	793.85	889.11
2.	71,005	62.75	678+180	679+040	10.92	685.28	486.58	544.97
3.	42,106	70.97	669+930	670+780	10.78	765.01	322.12	360.77
4.	1,07,405	72.56	668+180	669+050	10.76	780.43	838.22	938.81
5.	98,965	87.13	653+370	654+300	10.58	921.76	912.22	1021.69
6.	64,513	91.34	649+200	650+030	10.54	962.6	621.00	695.52
7.	52,055	103.54	636+730	637+650	10.44	1080.94	562.68	630.20
	5,54,576							5081.07

15. The Petitioner has submitted the details of the quantum of ash, the distance in km along with the rate per km and total amount including GST as Rs 5081.07 lakh for the generating station. However, there is no award of any transportation work through competitive bidding procedure. The Petitioner has submitted that a Memorandum of Understanding (MoU) was entered between NTPC and National Highways Authority of India (NHAI) on 29.6.2018 & 19.2.2019 for bearing cost of transportation cost of ash from NTPC Simhadri station for use in various road construction projects in Visakhapatnam Dist. in the State of Andhra Pradesh for its utilization in compliance of MoEF&CC gazette notification dated 3.11.2009 and its amendment dated 25.1.2016. Accordingly, the rate for transportation of fly ash was as per the Schedule of Rates (SoR) of Andhra Pradesh (A.P.) of 2017-18 and payment was made to NHAI in line with the provisions of MOU.

16. The Petitioner has submitted a letter dated 23.8.2017 issued by MoEF&CC, wherein it has clarified that NHAI road construction programme comes under Asset creation Programme of Government. Further, MoEF&CC vide letter dated 7.9.2017 had also clarified that the roads being constructed by NHAI as well as the State Government are covered by the Notification dated 25.1.2016 in order to fully utilize the fly ash.

17. Earlier, the Petitioner had filed Petition No. 294/GT/2014, for determination of tariff for the period 2014-19 w.r.t. the generating station (Simhadri Super Thermal Power Station Stage-II). The Petitioner in the said petition had claimed projected additional capital expenditure of Rs 2431.99 lakh in 2014-15 under Regulation 14 (1)(ii) and Rs 733.51 lakh in 2015-16 under Regulation 14(3)(iii) and 14(3)(iv) for work towards railway siding. The Petitioner in justification had submitted that site has envisaged for bulk transportation of dry ash through Railway rakes to the nearby Cement Industries and this package



is being executed through RITES and is a planned work only to be taken up after completion of the dry ash evacuation system and front clearance given by the agency. The Commission vide order dated 29.7.2016 had disallowed the claim of the Petitioner with the following observations:

“31. The matter has been examined. It is also observed that the said notification provides that all coal/lignite based thermal stations would be free to sell the fly ash to user agencies subject to certain conditions as mentioned therein. Moreover, the amount collected from sale of fly ash or fly ash based products by coal and/or lignite based thermal power stations or their subsidiary or sister concern unit, as applicable should be kept in a separate account head and shall be utilized only for development of infrastructure or facilities, promotion and facilitation activities for use of fly ash until 100% fly ash utilization level is achieved. Since the said notification provides that the money collected from the sale of fly ash or fly ash based products should be utilized for development of infrastructure for use of fly ash, the petitioner is not prevented from utilizing the money for the work of railways siding. Moreover, the income generated from sale of fly ash is not passed on to the beneficiaries. Hence, we are of the view that it would not be prudent to load the said expenditure on railway siding as additional capital expenditure, when such expenditure is neither covered under change in law nor the income from fly ash utilization is shared with the beneficiaries. Based on the above, the projected additional capital expenditure is not allowed.”

18. Aggrieved by the above decision of the Commission, the Petitioner filed a Review Petition bearing No. 50/RP/2016 for review of the order in this regard. The Commission vide Order dated 1.5.2017 in Review Petition (Petition No. 50/RP/2016) had allowed the projected expenditure of Rs 2431.99 lakhs in 2014-15. However, the projected expenditure of Rs. 733.51 lakhs in 2015-16 is rejected with a view that the money collected from the sale of fly ash and fly ash based products should be utilized by the petitioner towards fulfilling the obligations as per MoEF notification dated 3.11.2009. The relevant extract of review order dated 1.5.2017 is as below:

It is evident from the above that the Commission had disallowed the additional capital expenditure of `2431.99 lakh in 2014-15 and `733.51 lakh in 2015-16 towards Railway siding mainly on the ground that the notification of the MoEF dated 3.11.2009 provides for 100% ash utilization and that the money collected from the sale of fly ash or fly ash based products should be utilized for the development of infrastructure for use of fly ash. It also observed that the income generated from the



sale of fly ash was not being passed on to the beneficiaries and that the petitioner is not prevented from utilizing the money for the work of Railway siding. The petitioner has submitted that the denial of expenditure of `2431.99 lakh in 2014-15 is contrary to the earlier orders as the expenditure on railway siding forms part of the original scope of work and has been deferred for work of execution. It is however noticed from the submissions of the petitioner and the earlier orders of the Commission dated 26.9.2012 in Petition No. 55/2011 and 2.11.2015 in Petition No. 303/GT/2014 that the expenditure towards railway siding had been allowed to the petitioner as it is within the original scope of work of the generating station and within the original cut-off date of 31.3.2015. This aspect was overlooked by the Commission while passing order dated 29.7.2016 wherein the said expenditure was disallowed. This in our view is an error apparent on the face of the order and the same is required to be reviewed. Accordingly, we are inclined to allow the additional capital expenditure of `2431.99 lakh in 2014-15 towards railway siding which form part of the original scope of work of the project. Hence review of order dated 29.7.2016 is allowed on this ground. As regards the expenditure of `733.51 lakh in 2015-16, it is noticed that the same is for the work of transportation of dry ash through railway rakes to nearby cement industries and hence the money collected from the sale of fly ash and fly ash based products should be utilized by the petitioner towards fulfilling the obligations of 100% ash utilization as per MoEF notification dated 3.11.2009. Accordingly, we find no reason to review the order dated 29.7.2016 and allow the additional capital expenditure of `733.51 lakh in 2015-16. There exists no sufficient reasons to review the order dated 29.7.2016 on this ground and accordingly the submissions of the petitioner are rejected. As stated above the expenditure of `2431.99 lakh is allowed to be capitalized in 2014-15.

19. Subsequently, an appeal was filed in APTEL by the Petitioner in this regard. APTEL vide its judgement dated 1.12.2022 in Appeal no. 25 of 2017 has allowed the expenditure of Railway Siding work, the relevant para of the said order is extracted as under:

49. However, it is seen from the submissions made by the Appellant that the work of railway siding was claimed under original scope of works in 2014-15 and under change in law in 2015-16 in view of MoEF guidelines regarding 100% utilization of ash, on the contrary we find that the Central Commission overlooked the aspect of work being part of original scope of works and disallowed the full amount vide the Impugned Order and directed to fund the above infrastructure from sale of fly ash.



50. Subsequently, during the proceedings in the review petition, the Central Commission re-examined the issue and considering that the work was covered under the original scope of work, allowed the expenditure for the FY 2014-15 but maintained its stance intact for disallowance in 2015-16 and re-iterated to fund the said amount from sale of fly ash.

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53. We do not find strength in the decision of the Central Commission, once the original scope works planned for 2014-15 has been allowed, then, its balance work cannot be funded differently, the decision is not harmonious in nature and unreasonable, hence, the complete work should be allowed under the same principle of funding.

20. Based on the above, the Commission during the course of hearing in the instant petition, vide ROP of the hearing dated 22.2.2023 directed the Petitioner to submit the revised calculation considering the APTEL judgment. Accordingly, the Petitioner has submitted the revised calculation as under:

		Earlier submission in Petition	Revised submission (After APTEL Order dtd 1.12.22)
Sl. No.	Particular	Amount (Rs Lakh)	Amount (Rs Lakh)
1.	Expenditure towards fly ash transportation for Simhadri Station comprising of Simhadri-I (1000 MW) and Simhadri-II (1000MW) (A)	5081.07	5081.07
2.	Net Ash sale fund available after adjustment (B)	0.00	173.68
3.	Net Expenditure towards fly ash transportation for Simhadri Station (2000MW) (C = A-B)	5081.07	4907.39
4.	Net Expenditure towards fly ash transportation for Simhadri-II (1000MW) (D = C/2)	2540.54	2453.70

21. The Petitioner has submitted that the total fly ash transportation expenditure for Simhadri Station (Simhadri Stage-I and Simhadri Stage-II combined) in 2018-19 is Rs. 5081.07 lakhs. Expenditure incurred for the entire station has been allocated based on the capacity of the stages in the entire station. Further, the petitioner has earned total revenue from sale of fly ash silo of Rs. 173.68 lakhs (i.e. Rs 40.17 lakhs in 2016-17, Rs. 30.74 lakhs in 2017-18 and Rs. 102.77 lakhs in 2018-19). Accordingly, the net expenditure towards fly ash transportation on prorata basis now being claimed by the Petitioner is Rs 2453.70 lakh for the Simhadri Stage-II Super Thermal Power Station.



22. The Petitioner has furnished all the details of the distance to which fly ash has been transported from the generating station, schedule rates applicable for transportation of fly ash, as notified by the Government of Andhra Pradesh along with details, including Auditor certified accounts. The documents furnished by the Petitioner has been examined and accordingly, the reimbursement of Rs. 2453.70 lakh (pro rata based on capacity) as claimed by the Petitioner for the year 2018-19, towards fly ash transportation expenses towards Simhadri Stage-II is allowed.

23. However, it is noticed that the Commission vide order dated 22.2.2023 in Petition No. 292/GT/2020 while allowing the expenditure towards fly ash transportation for Simhadri Stage-I had allowed the reimbursement of Rs. 2540.54 lakh for the year 2018-19. In the said order the adjustment towards revenue from sale of fly ash was not taken into consideration. Accordingly, the revenue of Rs 173.68 lakhs earned by the Petitioner for Stage-I and Stage-II of the Simhadri Super Thermal Power Station is now adjusted in the instant petition in Simhadri Stage-II. Accordingly, we allow the net Expenditure of Rs 2366.85 lakh towards fly ash transportation for Simhadri-II (1000MW), to be recovered in 6 (six) equal monthly instalments. 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.

24. The Petition No. 217/MP/2022 is disposed of in terms of above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(I. S. Jha)
Member

