

Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Appeal No.221 of 2013

Dated:5th Oct, 2015

Present: HON'BLE MRS. JUSTICE RANJANA P. DESAI, CHAIRPERSON
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

In the Matter of:

NTPC Limited

**NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road
New Delhi-110003**

... Appellant(s)

Versus

- 1) Central Electricity Regulatory Commission
3rd & 4th Floor, Chanderlok Building,
36, Janpath, New Delhi – 110001**
- 2) Uttar Pradesh Power Corpn. Limited (UPPCL)
Shakti Bhawan, 14, Ashok Marg,
Lucknow-226 001**
- 3) Jaipur Vidyut Vitran Nigam Ltd. (JVVN)
Vidyut Bhaban, Janpath
Jaipur-302 005 (Rajasthan)**
- 4) Ajmer Vidyut Vitran Nigam Ltd. (AVVN)
Old Power House, Hathi Bhata,
Jaipur Road, Ajmer-305 001 (Rajasthan)**
- 5) Jodhpur Vidyut Vitaran Nigam Ltd (JVVN)
New Power House, Industrial Area,
Jodhpur-342 003 (Rajasthan)**
- 6) Tata Power Delhi Distribution Ltd (TPDDL)
33 KV Sub Station, Hudson Lines,
Kingsway Camp, Delhi-110 009**

- 7) **BSES Rajdhani Power Ltd (BRPL)**
BSES Bhawan, Nehru Place,
New Delhi-110019
- 8) **BSES Yamuna Power Ltd (BYPL)**
Shakti Kiran Building,
Karkardooma, Delhi-110092
- 9) **Haryana Power Purchase Center (HPPC)**
Shakti Bhawan, sector-VI,
Panchkula, Haryana-134 109
- 10) **Punjab State Power Corporation Ltd (PSPCL)**
The Mall, Patiala-147 001
- 11) **Himachal Pradesh State Electricity Board Ltd.**
Kumar Housing Complex Building –II,
Vidyut Bhavan, Shimla-171004
- 12) **Power Development Department,**
Govt. of Jammu & Kashmir,
Secretariat, Jammu-180 001
- 13) **Electricity Department**
Union Territory of Chandigarh
Add. Office Building,
Sector-9D, Chandigarh-160 009
- 14) **Uttarakhand Power Corporation Ltd. (UPCL)**
Urja Bhawan, Kanawali Road,
Dehradun-28 001

... Respondent(s)

Counsel for the Appellant(s) :Mr. M G Ramachandran
Ms. Poorva Saigal
Mr. Avinash Menon
Ms. Anushree Bardhan
Mr. Ranjitha Ramachandran

Ms. Swagatika Sahoo

Counsel for the Respondent(s): Mr. Pradeep Misra
Mr. Manoj Kuamr Sharma
Mr. Suraj Singh
Mr. Shashank Pandit for R-2
Mr. Alok Shankar for TPDDL
Mr. Vaibhav Choudhary for R-6
Mr. R B Sharma for R-7

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. The present appeal has been preferred by the NTPC under Section 111 of the Electricity Act 2003 before this Tribunal against the Impugned Order dated 16.07.2013 passed by Central Electricity Regulatory Commission (hereinafter called the Central Commission) in Petition No. 16/GT/2013 filed by the NTPC for revision of generation tariff for Dadri Gas Power Station (829.78 MW) for the period from 01.04.2009 to 31.03.2014.
2. The Appellant, NTPC is aggrieved by the Impugned Order dated 16.07.2013 on the following aspects:
 - (a) Disallowance of Capital expenditures towards Replacement of PGB Coolers by plate type heat exchanger amounting to Rs.747 lakh and Renovation of Generator Excitation System amounting to Rs.80.40 lakh

(b) Disallowance of Capital Expenditure towards Energy Monitoring System amounting to Rs.13.53 lakh.

(c) Disallowance of Rs.10.40 Lakh for replacement of Condensate Pre Heater and LP Economizer Tubes

Issue No.1:

3. The Appellant Petitioner in its Affidavit has clarified that the GT R&M package award has shifted and accordingly considering the execution time, the work of R&M of GTs is likely to be commissioned and capitalized beyond 31.3.2014.
4. The Central Commission after going through this decided that in view of the deferment of the R&M activities for GTs & C&I beyond 31.3.2014 (during next tariff period), the expenditure claimed for 2012-14 is not allowed to be capitalized. However, the Central Commission decided that the same would be considered during next tariff period i.e. 2014-19.
5. Accordingly, the amount claimed by the Appellant is disallowed in the Tariff Period 2012-14 and deferred the consideration of the claim to the next tariff period when R&M works expected to be over.
6. We find that the issue raised in the present Appeal No.221 of 2013 is identical in nature and dealt in the judgment of this Tribunal in Appeal No.250 of 2013 and we affirm the decision of the Central Commission and the issue is decided against the Appellant.

Accordingly, the claim of the Appellant is deferred to the next Tariff Period i.e. 2014-19.

Issue No.II:

7. The Appellant/Petitioner submits that the Central Commission disallowed the actual expenditure of Rs.13.53 lakhs claimed by the Appellant/Petitioner during the FY 2010-11 towards Energy Management System under the Energy Conservation system in order to monitor auxiliary power consumption of the Generating Stations. The Central Commission stated that the benefit of reduction in auxiliary power consumption is not passed on to the beneficiaries during the period 2009-14 and hence the Central Commission decided that the expenditure has to be borne by the Petitioner.
8. This Tribunal in Appeal No.173 of 2013 and Appeal No.250 of 2013 has held that the expenditure on implementation of Energy Management System was disallowed and affirmed the order of the Central Commission. Relying on our earlier judgments in Appeal No.173 of 2014 and Appeal No.250 of 2013, we up-hold the same view now.

Issue No.III:

9. The following are the submissions made by the Appellant on this issue:

9.1 that the Capital expenditure on replacement of Condensate Pre Heater & LP Economizer Tubes was already allowed by the Central Electricity Commission vide its order dated 14.6.2012 in Petition No.224/2009. The expenditure having been considered as capital expenditure in the earlier tariff order dated 14.6.2012 ought not to have been rejected on the grounds that it is a part of the O&M expenses. In this regard, the order dated 14.6.2012 is as follows:

“Replacement of Condensate Pre Heater & LP Economizer tubes of WHRB-3

37. The Petitioner has claimed expenditure of Rs.51.00 lakh during 2012-13 for replacement of Condensate Pre Heater (CPH) and LP Economizer tubes of WHRB-3. The Petitioner has submitted that the existing WHRBs are in operation for the last 11 years. Due to acid corrosion of tubes of CPH area and economizer area due to HSD firing several tubes have been damaged causing loss in generation and efficiency. The submission of the Petitioner is accepted and since the asset is considered necessary for efficient and successful operation of the generating station, the expenditure is allowed under Regulation 9(2) (vi) of the 2009 Tariff Regulations along with corresponding de-capitalization. The Petitioner has not submitted the de-capitalization value of the old asset. However, it has been found from the de-capitalization value of GT components on which R&M has been carried out that the estimated value of original component is about 26.67% of the new assets. Accordingly, the de-

capitalization value of old assets works out to Rs.13.60 lakh (51 x 0.26.67). Accordingly, the expenditure of Rs.37.40 lakh (51-13.6) is allowed to be capitalized under Regulation 9(2) (vi) of the 2009 Tariff Regulations”.

9.2 Further, the Appellant stated that the Central Commission erred in proceeding on the basis that the replacement of the Condensate pre heater and LP Economiser tubes involving an amount of Rs.10.40 lakhs is a part of the O&M expenses and not part of the renovation and modernisation expenditure. The Central Commission has failed to consider the nature of the tubes replaced. The tubes replaced are not of the nature which is done on a regular basis during the operation of the Gas Power Stations. The tubes were replaced to give enduring benefits during the operation of the power station and cannot be categorised an ongoing repair and maintenance to be considered as O&M expenditure.

9.3 the Central Commission has failed to appreciated that:

(a) The Regulation provides for prudence check at the initial stage. Once approved during 2009-14 main order, only the amount of expenditure is to be trued up through True UP Petition. Any scheme once allowed after prudence check can not be disallowed during True-Up stage.

(b) This disallowance of scheme earlier approved will create uncertainty in the minds of Generator.

10. Per Contra, the following are the submissions made by the R-2 i.e. UP Power Corporation Limited (R-2):

10.1 that the appellant has claimed projected value of Rs.37.40 lakhs which was allowed by CERC. However, the Appellant has submitted before the Central Commission in Petition No.16/GT/2013 that the expenditure being considered to Rs.10.40 lakhs as it has replaced only some Finned Tubes in heat transfer surface of CPH and LP Economizer. The CERC, therefore, held that it is not a work of capital nature and can be met with O&M expenses.

10.2 the contention of the Central Commission on this issue in the Impugned Order is as under:

“42. In order dated 14.6.2012 in Petition No.224/2009, the Commission had allowed the projected capitalization of Rs.37.40 lakh, considering the de-capitalization value of Rs.13.60 lakh during 2012-13 under Regulation 9(2)(vi) of the 2009 Tariff Regulations. The Petitioner vide its affidavit dated 20.11.2012 has submitted that the scheme of Replacement of Condenser Pre-heater & LP Economiser tubes of WHRB #3 is under execution and the actual expenditure based on actual award is likely to be much lower than projected. Accordingly, the Petitioner has submitted that an expenditure of Rs.10.40 lakh may be considered in place of projected expenditure of Rs.82.00 lakh. It appears that the Petitioner has replaced some finned tubes in the heat transfer surface of CPH & LP Economiser considering the expenditure of Rs.10.40 lakh actually incurred. Moreover, the replacement of a small portion of tubes cannot be said to be R&M work. It appears from the submission of the Petitioner that the work was finally undertaken as a part of O&M work. In view of this, the expenditure claimed has not been allowed to be capitalized”.

Our Consideration on this Issue

11. The contention of the Appellant is that the Central Commission allowed this expenditure in the main Tariff Order dated 14.6.2012 and disallowed the actual expenditure of Rs.10.40 lakhs in the True-up order.
12. Let us examine the relevant Section of the Tariff Regulations, 2009 of the Central Commission. The same is quoted as under:

“6. Truing up of Capital Expenditure and Tariff:

(1) The Commission shall carry out truing up exercise along with the tariff petition filed for the next tariff period, with respect to the capital expenditure including additional capital expenditure incurred up to 31.3.2014, as admitted by the Commission after prudence check at the time of truing up.

Provided that the generating company or the transmission licensee, as the case may be, may in its discretion make an application before the Commission one more time prior to 2013-14 for revision of tariff.

(2)The generating company or the transmission licensee, as the case may be, shall make an application, as per Appendix I to these regulations, for carrying out truing up exercise in respect of the generating station a unit or block thereof or the transmission system or the transmission lines or sub stations thereof by 31.10.2014;

(3)The generating company or the transmission licensee, as the case may be, shall submit for the purpose of truing up, details of capital expenditure and additional capital expenditure incurred for the period from 1.4.2009 to 31.3.2014, duly audited and certified by the auditors”.

13. As per the above Regulations, the Petitioner has approached the Commission for revision of the tariff. The Petitioner, as per the directions of the Commission submitted the year wise/item wise actual audited expenditure incurred for the years 2009-10, 2010-11 and 2011-12 duly certified by the Auditor by its Affidavit dated 3.4.2013 as per Section 6 (3). Accordingly, the Commission examined the actual expenditure in terms of the proviso to Regulation 6 (1) for revision of Tariff of the Generating Stations for 2009-14 after Truing Up.
14. Further, as seen from the submissions of the Appellant and contention of the Respondent Commission that the Petitioner originally estimated for a value of Rs.37.40 lakhs during the FY 2012-13 towards replacement of Condensate Pre Heater & LP Economizer Tubes but the actual expenditure submitted by the Petitioner is Rs.10.40 lakhs. As seen from the Impugned Order that the Appellant initially prepared scheme for total replacement of Condensate Pre Heater & LP Economizer tubes but the Appellant has replaced some finned tubes in the heat transfer surface of CPH and LP Economizer.
15. We also feel that the Appellant has replaced only few damaged finned tubes and we feel that the work has been undertaken as a part of O&M work and hence we affirm the decision of the Central Commission specified in the Impugned Order. Accordingly, the expenditure of Rs.10.40 lakhs disallowed by the Central Commission is justifiable. Accordingly, this issue is decided against the Appellant.

ORDER

16. In view of the above, we do not find any irregularity or perversity with the Impugned Order. We uphold the same view and reasons recorded in the Impugned Order.
17. Consequently, all these issues are decided against the Appellant and the Appeal merits dismissal.
18. With not order as to costs.
19. Pronounced in the Open Court on this **5th day of October, 2015.**

(T Munikrishnaiah)
Technical Member

(Justice Ranjana P. Desai)
Chairperson

Dated, the 5th October, 2015.



REPORTABLE / ~~NON-REPORTABLE~~