

**Appellate Tribunal for Electricity, New Delhi  
(Appellate Jurisdiction)**

**Appeal No. 131 of 2014**

**Dated:29<sup>th</sup> May, 2015**

**Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL  
MEMBER  
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

**In the Matter of:**

NTPC Limited  
NTPC Bhawan, SCOPE Complex  
B7, Institutional Area, Lodhi Road  
New Delhi – 110 003

**...Appellant(s)**

**Versus**

1. Central Electricity Regulatory Commission  
3<sup>rd</sup> & 4<sup>th</sup> Floor, Chanderlok Building,  
36, Janpath, New Delhi – 110 001
2. APTRANSCO  
Vidyut Soudha, Khairatabad,  
Hyderabad – 500082  
Andhra Pradesh
3. A.P. Eastern Power Distribution company Limited  
P&T Colony, Seethammadhara,  
Visakhapatnam – 530 013  
Andhra Pradesh
4. A.P. Southern Power Distribution company Limited,  
Corporate Office  
Back side Srinivasa Kalyana Mandapam  
Tiruchhanur Road, Tirupathi – 517 503  
Andhra Pradesh

5. A.P. Northern Power Distribution Company Limited,  
H.No. 2-5-31/2  
Vidyug Bhavan  
Nikkalagutta, Hanamkonda,  
Warangal – 506 001  
Andhra Pradesh
6. A.P. Central Power Distribution company Limited,  
Mint Compound, Near Secretariat,  
Hyderabad – 500 063  
Andhra Pradesh
7. Tamil Nadu Electricity Board  
800, Anna Salai,  
Chennai – 600002  
Tamil Nadu
8. Power company of Karnataka Ltd.,  
Kaveri Bhawan, Bangalore – 560009  
Karnataka
9. Bangalore Electricity Supply Company Limited,  
K.R. Circle, Bangalore – 560 001  
Karnataka
10. Mangalore Electricity Supply company Limited,  
Paradigm Plaza, Mangalore – 575 001  
Karnataka
11. Chamundeshwari Electricity Supply Company Limited,  
927, L J Avenue, Saraswatipuram,  
Mysore – 570 009  
Karnataka
12. Gulbarga Electricity Supply Company Limited,  
Main road, Gulbarga – 585 102  
Karnataka
13. Hubli Electricity Supply Company Limited,  
P.B. road, Nava Nagar Hubli  
Karnataka – 580 025

14. Kerala State Electricity Board  
Vaidyuthi Bhawan,  
Pattam, Trivandrum – 695004

15. Electricity Department  
Government of Puducherry,  
137 NSC Bose Salai – 605001

16. Electricity Department,  
Govt. of Goa, Vidyut Bhavan,  
Panaji, Goa – 403001

### **... Respondent(S)**

Counsel for the Appellant(s) : Mr. M.G. Ramachandran and  
Ms. Poorva Saigal  
Ms. Anushree Bardha  
Ms. Ranjitha Ramachandran  
Ms. Swagatika Sahoo

Counsel for the Respondent(s) : Mr. S. Vallinayagam for R. No. 7  
Mr. K.S. Dhingra for Resp. No. 1

## **J U D G M E N T**

### **PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER**

1. The present Appeal under Section 111 of the Electricity Act 2003 has been preferred by NTPC against the Central Electricity Regulatory Commission's Order dated 26.02.2014 in case No. 189 of 2013, revising the tariff for the Ramagundam Super Thermal Power Station, Stages I & II (2100 MW) for the period from 1.4.2009 to 31.3.2014.

2. The Appellant NTPC Limited is a Government of India undertaking and a Company incorporated under the provisions of the Companies Act, 1956 with registered office at NTPC Bhawan, Scope Complex, 7, Institutional Area, Lodhi road, new Delhi – 110 003.
3. NTPC is engaged in the business of generation and sale of electricity to various purchasers/beneficiaries in India.
4. NTPC being a generating company owned and controlled by the Central Government is governed by clause (a) of sub-section (1) of Section 79 of the Electricity Act 2003. The generation and the sale of power by NTPC is regulated under the provisions of the Electricity Act by the Central Commission, the Respondent First herein.
5. Respondent No. 1 is the Central Electricity Regulatory Commission (CERC) and the Respondent Nos. 2-16 are the Distribution Companies and Transmission Companies (Beneficiaries) of the Southern Region.
6. Gist of the facts of the case leading to this Appeal by the Appellant are stated below:
  - 6.1 The Petitioner/Appellant, NTPC filed a Petition for revision of tariff of a Ramagundam Super Thermal Power Station, Stage I&II for the period 1.4.2009 to 31.3.2014 in terms of the

Proviso to Regulation 6 of the CERC (Terms and Conditions for Determination of Tariff) Regulations, 2009.

6.2 The generating station with a capacity of 2100 MW comprised of six units, three units of 200 MW each and three units of 500 MW each. The Date of Commercial Operation of different units of the Ramagundam Stage 1-II are as follows:

<b>Units</b>	<b>Date of Commercial Operation</b>
Unit-I	01.03.1984
Unit-II	01.11.1984
Unit-III	01.05.1985
Unit-IV	01.11.1988
Unit-V	01.09.1989
Unit-VI	01.04.1991

6.3 The Appellant/Petitioner filed the petition No. 278 of 2009 for determination of the tariff of the generating station for the period from 1.4.2009 to 31.3.2014 and the Commission by its Order 31.08.2012 determined the annual fixed charges for the generating station. The capital cost considered by the Commission for the purpose of determination of annual fixed charges for 2009-14 by order dated 31.8.2012 is as under:

	2009-10	2010-11	2011-12	2012-13	2013-14
Opening Capital cost	229359.10	229558.93	231561.50	236429.28	237004.28
Additional capital expenditure	199.84	2002.57	4867.78	575.00	238.57
<b>Closing Capital cost</b>	229558.93	231561.50	236429.28	237004.28	237332.85
<b>Average Capital cost</b>	229459.02	230560.22	233995.39	236716.78	237168.57

6.4 The Petitioner filed the Petition No. 189/GT/2013 before the Central Commission seeking revision of the annual fixed charges based on the actual additional capital expenditure incurred for the year 2009-10, 2010-11 and 2011-12 and projections of additional capital expenditure for the years 2012-13 and 2013-14 based on the latest estimates and the status of the work in accordance with clause 1 of Regulation 6 of the 2009 Tariff Regulation.

6.5 The Central commission by its Order dated 26.02.2014 has revised the tariff for Ramagundam Super Thermal Power Station, Stages 1 – II (2100 MW) for the period from 01.04.2009 to 31.03.2014. In the Impugned Order, the Central commission has disallowed the claim of the Appellant (NTPC) in regard to the expenditure incurred on the Ash-Pond works and the Bus Reactor Package on the ground that the same is covered under the Special allowance and/or Compensation Allowance and further that NTPC had not furnished the proper justifications for the escalation in projected expenditure for the year 2013-14 for the Ash Pond. The relevant extracts from the Impugned Order dated 26.02.2014 read as under:

***“The Commission in its order dated 31.8.2012 in Petition No. 278/2012 had allowed the projected expenditure of `395.00 lakh in 2011-12 and `178.57 lakh in 2013-14 for Ash Pond work. The petitioner in this petition has claimed actual expenditure of `420.24 lakh in 2011-12 and projected expenditure of `684.70 lakh in 2012-13.*”**

**The petitioner has submitted that Ash Pond management is of a dynamic nature with respect to geographic usage and involves modification such as raising pond height, re-routing of roads, relocating piping, re-aligning spraying requirements etc. It has also submitted that a rolling plan for certain activities like ash dyke raising, pipe re-routing etc. are needed and are revised periodically. The generating station Order in Petition No. 189/GT/2013 Page 9 of 26 comprise of two stages viz Stage-I & Stage-II and the Ash Pond and Ash handling system is a common facility for both stages. Since Stage-I (600 MW) had completed useful life of 25 years during May, 2010, Special allowance (for R&M) was allowed which also included the work of Ash handling system. Based on this, the Commission vide its order dated 31.8.2012 had allowed expenditure of `395.00 lakh in 2011-12 and `178.57 lakh in 2013-14 after apportionment of expenditure between Stage-I and Stage-II in the ratio of their capacity. The petitioner has now claimed actual expenditure of `420.24 lakh in 2011-12 and the projected expenditure of `684.70 lakh in 2012-13. The petitioner has not submitted proper justification with details for the enhancement of the estimated expenditure from `178.57 lakh to `684.70 lakh. Further, it is also not clear as to whether the projected expenditure claimed for `684.70 lakh pertain only to Stage-II or for Stage-I & II combined. In view of this, the actual expenditure of `420.24 lakh in 2011-12 and the projected expenditure of `178.57 lakh in 2012-13 has only been allowed instead of `684.70 lakh under Regulation 9(2)(ii) of the 2009 Tariff Regulations.**

### **Bus Reactor package**

The petitioner has claimed projected expenditure of 702.00 lakhs in 2013-14 under "Change in law" to have Reactors at

various locations. The petitioner has submitted that the generating station has six units and the feasibility of bay allocation for bus reactor was received based on space availability and techno-economic point of view and place for reactor bay was accordingly identified. The petitioner while pointing out that that bus reactor and bay extension work for reactor was executed in separate packages, has submitted that the bus reactor package awarded to M/s BHEL, was delivered only in December'2012. It has further submitted that the cost of bay extension work being small, the response was very poor even after bid extension and accordingly, the capitalization of bus reactor was not projected at the time of filing the original petition. The petitioner has submitted that subsequent to the 23rd Meeting of Standing Committee held on 22.1.2007, the installation of reactors for voltage improvement was further deliberated in the 5th meeting of Southern Regional Power Committee (SRPC) held at Thiruvananthapuram on 25.8.2007 where the installation of reactors was accepted by the Committee. The submissions of the petitioner were considered. The Commission found no justification in the claim of the petitioner for the expenditure under Change-in-law considering the fact that the Bus Reactor package is an operational requirement as form part of the integrated grid system. The petitioner has been allowed Compensation allowance of `4815.00 lakh under Regulation 19 (e) to meet expenditure on new capital nature assets including minor assets, as stated above and also Special allowance for



₹13759.78 lakh under Regulation 10(4) for Renovation & Modernization activities. The Commission held the view that any expenditure required for modification or improvement in the operation of generating station should be met from the Special allowance and /or the Compensation allowance allowed to the generating station as above. In view of this, capitalization of ₹702.00 lakh for 'Bus Reactors' has not been allowed.

6.6 Aggrieved by this, the Appellate NTPC filed this Appeal and sought for the following reliefs:

**a) Allow the appeal and set aside the order dated 26.02.2014 passed by the Central Commission in Petition No. 189/GT/2013 to the extent challenged in the present appeal.**

**b) Pass such other Order(s) and this Hon'ble Tribunal may deem just and proper.**

7. We have heard Mr. Ramachandran, Learned Counsel for the Appellant and also we have gone through the oral as well as written submissions filed by the Learned Counsel for Appellant and Respondents. Gist of the submissions is as under:-

#### **7.1 ASH POND AND ASH HANDLING SYSTEM**

that the capital expenditure on Ash Pond Raising was disallowed by the Central commission on the ground that the same is covered by the Special allowances allowed to the Ramagundam Station under Regulation 10(4) of the Tariff Regulations, 2009. The Central Commission did not take

into consideration that these expenditures do not form part of the Renovation and Modernization of the generating station/unit but are independent of the same. The expenditure on Ash Pond and associated infrastructure are for new Ash Pond and needs to be considered under Regulation 9 (2) (iii), namely, deferred works relating to Ash Pond or Ash Handling System. Such Ash Pond or Ash Handling System is required for handling ash emanating from the generating station and is not on account of Renovation and Modernization of the generation assets.

7.2 that the Special allowance permitted under Regulation 10 (4) of the Tariff Regulations, 2009 covers only replacement of the plant and equipment and cannot cover facilities such as Ash Pond and associated system to be established from time to time to meet the enhancement of the capacity of Dyke for ash disposal. The Central Commission has failed to appreciate that the Special allowance permitted under Regulation 10 (4) of the Tariff Regulations, 2009 cannot be extended to cover anything other than replacement of the Plant and Machinery.

7.3 that the Regulation 9 (2) permitting the additional capital expenditure on specific aspects are to be considered and allowed over and above the Special allowance given under Regulation 10 (4) as matters covered under Regulation 9 (2) are independent of and in addition to expenditure for replacement of equipment etc. under Renovation and Modernization for extending useful life of the plant.

7.4 It is submitted that Ash Pond management is dynamic in nature and involves modifications such as re-aligning, spraying requirements, relocating pipings etc which are revised periodically. This has a direct bearing on the escalation in the expenditure incurred on account of the difference between cost estimates based on budgetary offers from vendors and the actual progress of the work at the site after final adjustments.

7.5 that the Central Commission erred in holding that NTPC has not submitted the justification and details for enhanced estimated expenditure projected for 2011-12 and 2012-13. In the petition filed before the Central Commission, NTPC had dealt with the revision in capital expenditure for the years 2011-12 and 2012-13 in the format prescribed by the Central Commission.

#### **7.6 BUS REACTOR PACKAGE**

that the Central Commission disallowed the claim of NTPC for the Bus Reactor Package on the ground that the expenditure for modification or improvement of the generating station should be met from the Special allowance and/or Compensation Allowance. The expenditure on the Bus Reactor was specifically claimed under the head 'Change in Law' as provided in Regulation 9(2)(ii) of the Tariff Regulations, 2009 and has to necessarily be considered under the same. If the claim is clearly admissible under the specific Regulation 9(2)(ii) of the Tariff Regulations, 2009, the

same cannot be decided as being covered under generic provision of Regulation 10(4) or 19(e) of the Tariff Regulations, 2009.

7.7 that the Central Commission did not take into consideration that while quantifying the base for the Compensatory Allowance/Special allowance to be granted to a coal based thermal generating station and deciding the norms in the Tariff Regulations, 2009, the Central Commission had not taken into account the expenditure on new equipments like Bus Reactors which are now required for supporting and strengthening the grid and therefore, the same cannot form part of Compensatory/Special allowance. That the Standing Committee on Power System Planning in the Southern Region (in its 23rd Meeting held on 22.01.2007. The Southern Regional Power Committee in its 5th Meeting held on 25.08.2007 specifically directed that the Bus Reactors was to be deployed by NTPC at Ramagundam to contain the over voltage in Southern Grid. In view of the same, the expenditure of Rest. 702 lakhs incurred by NTPC for deployment of a Bus Reactor at Ramagundam falls within the ambit of 'Change in Law' as provided in Regulation 9(2)(ii) of the Tariff Regulations, 2009.

7.8 that as per the definition of 'Change in law' provided in Regulation 3(9) of Tariff Regulation, change by any competent statutory authority, in any consent, approval etc. obtained for the project, is covered under 'Change in law'. In this case the work was necessitated due to directions by Statutory

Committee on Power System planning in SR and Southern Region Power Committee. The expenditure was incurred to comply with direction of the Statutory Committee.

7.9 that the Regulation 9 (2) permits the additional capital expenditure on specific aspects to be considered and allowed irrespective of the Special allowance given under Regulation 10 (4) as matters covered under Regulation 9 (2) are independent of and in addition to expenditure for replacement of equipment etc under Renovation and Modernization for extending useful life of the plant.

7.10 that the Bus Reactor is not deployed as an improvement or modification of the generating station or a mere operational requirement but was installed to ensure the voltage and grid stability as the mandate of law.

7.11 that the Bus Reactor was deployed as a part of the System Strengthening Scheme for the Associated Transmission System in order to ensure grid stability and therefore is an essential part of the Transmission System to maintain the voltage.

7.12 that the location of the Bus-Reactor in NTPC premises was only incidental to the availability of space in NTPC Switchyard for Bus-Reactor bay for use of the said system and in no manner due to any deficiency or lacuna on part of NTPC.

8. Per contra, the submissions of Respondent No.7 are as under:
- 8.1 that the Appellant in Petition No. 189/GT/2013 before the Central Commission claimed Rs. 420.24 lakhs as actual expenditure for 2011-12 and Rs. 684.70 lakhs as projected capital expenditure for 2013-14 under the head Ash Pond without mentioning whether the projected expenditure pertains to Stage-I or Stage-II. The Appellant did not provide the details of enhancement of projected expenditure of Rs. 684.70 lakhs for the year 2013-14 while filing the Petition No. 189/GT/2013.
- 8.2 that even in the additional submissions of the Appellant before Central Commission, it failed to provide detailed justification on the expenditure of Rs. 684.70 lakhs for the year 2013-14.
- 8.3 that the Central Commission disallowed the claim of additional capital expenditure on ash pond and ash pond handling system because the Appellant did not produce details of enhancement in estimated expenditure for 2013-14.
- 8.4 that in the 23<sup>rd</sup> Meeting of Standing Committee on Power System Planning held on 22.01.2007, system strengthening activities to be taken up considering the implementation of Krishnampatnam UMPP, were discussed and the decision to install a Bus Reactor at Ramagundam was arrived

considering the voltage level upon commissioning of the Krishnampatnam Project.

8.5 Under Regulation 19(e) dealing with Operation Maintenance Expenses of CERC (Terms and Conditions of Tariff) Regulations, 2009 there is a provision that 'in case of coal/Lignite fired thermal generating station a separate compensation allowance per unit should be admissible to meet expenses on new assets of capital nature including the nature of minor assets in the following manner, from the year following the year completion of 10, 15 or 20 years of useful life.

<b>Years of operation</b>	<b>Compensation allowance (Rs. In Lakh/MW/Year)</b>
0-10	Nil
11-15	0.15
16-20	0.35
21-25	0.65

8.6 that in line with the provisions in Regulation 10(4) as detailed above, the Commission had allowed a sum of Rs. 13759.78 lakhs towards Special allowance for the period 2009-10 to 2013-14 in its earlier order dated 30.08.2012 in Petition No. 278/2009.

8.7 that it is clear that the claim of Rs. 702 lakhs for the year 2012-13 towards installation of Bus Reactors 'under change in law', is not reasonable and is devoid of merits. The Appellate is misinterpreting the Regulations 19(e) and 10(4) which clearly stipulate the necessity and the need for

allowing Compensation Allowance and Special allowance respectively.

9. After going through the submissions of the Appellant and Respondents, the following issues arise before us for consideration and decision:

**a) Issue No. 1: Whether the action of the Central Commission is right in disallowing of Rs. 506 lakhs, out of Rs. 1106 lakhs claimed for Ash Pond on the ground that the said expenditure is covered under the Special allowance admissible under Regulation 10(4) of the Tariff Regulation 2009?**

**b) Issue No. 2: Whether the action of the Central Commission is right in disallowing Rs. 702 lakhs claimed for the cost of Bus Reactor package on the ground that the expenditure incurred is covered under the Compensation Allowance and/or Special allowance admissible under Regulation 10(4) and 19(e) of the Tariff Regulation?**

10. Now let us deal with each issue separately.

10.1 **Issue No. 1:** The following are the submissions made by the Appellant:

10.2 that the Central Commission while approving the Tariff Order dated 31.8.2012 allowed the projected expenditure of Rs. 395 lakhs for FY 2011-12, Rs. 50 lakhs in 2012-13 and Rs. 178.57 lakhs in 2013.14. The Appellant in Petition No. 189/GT/2013 claimed actual expenditure of 402.24 lakhs in 2011-12 and projected expenditure of 684.70 lakhs in



2012-13 and disallowed on 506 lakhs out of the projected expenditure of 684.70 lakhs.

10.3 that the capital expenditure on Ash Pond was disallowed by the Central commission on the ground that the same is covered by the Special allowances allowed to the Ramagundam Station under Regulation 10(4) of the Tariff Regulations, 2009. Further, the Central Commission did not take into consideration that these expenditures do not form part of the Renovation and Modernization of the generating station but are independent of the same. Further, the Appellant stated that the expenditure on Ash Pond and associated infrastructure are for new Ash Pond and needs to be considered under Regulation 9(2) (iii), namely, deferred works relating to Ash Pond or Ash Handling System.

10.4 The Special allowance permitted under Regulation 10(4) of the Tariff Regulations, 2009 covers only replacement of the plant and equipment and cannot cover facilities such as Ash Pond and associated system to be established from time to time to meet enhancement of the capacity of Dyke for ash disposal.

10.5 Regulation 9(2) permitting additional capital expenditure on specific aspects are to be considered and allowed over and above the Special allowance given under Regulation 19(4) as matters covered under Regulation 9(2) are independent of and in addition to expenditure for replacement of equipment

etc. under Renovation and Modernization for extending useful life of the plant.

10.6 that the Central Commission erred in holding that NTPC has not submitted the justification and details for enhanced estimated expenditure projected for 2011-12 and 2012-13.

**11. Per Contra, the following are the submissions made by the Respondent No. 7:**

11.1 that the Central Commission vide order dated 30.08.2012 in Petition No. 278/2009 had held that the work of Ash handling system is covered under Special allowance. Additional capital expenditure towards Ash handling system for Stage-I is not permitted by the Central Commission under Regulation 9(2) (iii) of the 2009 Regulations, since Stage-I (600 MW) completed useful life of 25 years' service during May 2010.

11.2 that the Appellant in Petition No. 189/GT/2013 before the Central Commission claimed Rs. 420.24 lakhs as actual expenditure for 2011-12 and Rs. 684.70 lakhs as projected capital expenditure for 2013-14 under the head Ash Pond without mentioning whether the projected expenditure pertains to Stage-I or Stage-II. The Appellant did not provide the details of enhancement of projected expenditure of Rs. 684.70 lakhs for the year 2013.14 while filing the Petition No. 189/GT/13.

11.3 that the Central Commission disallowed the claim of additional capital expenditure on ash pond and ash pond handling system because the appellant did not provide the details of enhancement in estimated expenditure for 2013-14.

12. **Our Discussion and Consideration on this Issue:**

12.1 The Respondent Central Commission while approving the revision of Tariff Order, considered the actual expenditure of Rs. 420.24 lakhs for the FY 2011-12 and disallowed 506 lakhs in the project expenditure for the year 2012-13 out of 684.70 lakhs in true up petition for Ash Pond management and considered projected expenditure of Rs. 178.57 lakhs as approved in the Tariff Order dated 31.08.2012.

12.2 the Respondent Central Commission stated that the Appellant had failed to give suitable explanation for the increased projection expenditure of Rs. 684.70 lakhs and hence only 178.57 lakhs is considered in the Interim Order.

12.3 Let us examine the relevant Regulation of Tariff Regulations of the Central Commission as the Appellant's contentions and Respondent's contentions are differing in the matter. Let us examine the following definition and relevant Tariff Regulations, 2009:

***“Section 3 of the Tariff Regulations defines the following issues”:***

***1) 3(11) cut-off date' means 31<sup>st</sup> March of the year closing after two years of the year of commercial***

**operation of the project, and in case the project is declared under commercial operation in the last quarter of a year, the cut-off date shall be 31<sup>st</sup> march of the year closing after three years of the year of commercial operation.**

## **12.4 Capital Cost**

**Regulation 7 of the Tariff Order deals with capital expenditure. The relevant portion of the Regulation 7 is quoted below:**

**(1) Capital cost for a project shall include:**

- (a) the expenditure incurred or projected to be incurred, including interest during construction and financing charges, any gain or loss on account of foreign exchange risk variation during construction on the loan – (i) being equal to 70% of the funds deployed, in the event of the actual equity in excess of 30% of the funds deployed, by treating the excess equity as normative loan, or (ii) being equal to the actual amount of loan in the event of the actual equity less than 30% of the funds deployed, - up to the date of commercial operation of the project, as admitted by the Commission, after prudence check;**
- (b) capitalized initial spares subject to the ceiling rates specified in regulation 8; and**
- (c) additional capital expenditure determined under regulation 9:**

**Provided that the assets forming part of the project, but not in use shall be taken out of the capital cost.**

Further, the proviso of Regulation 7 states that the capital cost admitted by the Commission on 1.4.2009 and the additional capital expenditure projected to be incurred for

the respective year of the of the tariff period 2009-14, as may be admitted by the Commission, shall form the basis for determination on tariff.

12.5 Additional Capitalization is governed by the provisions of the 2009 regulations which regulates the expenditure incurred up to the cut-off date (Regulation 9(1) and the expenditure incurred after the cut-off date (Regulation 9(2)).

Since the cut-off date of the generating station in terms of the 2004 Tariff Regulation specified by the Commission had expired on 31.3. 2007. Hence, the additional capital expenditure for the generating station is to be regulated in terms of the provisions under Regulation 9(2) of the 2009 Tariff Regulation. The relevant Regulation 9(2) of 2009 Tariff Regulation is quoted below:

***“(2) The capital expenditure incurred on the following counts after the cut-off date may, in its discretion, be admitted by the Commission, subject prudence check:***

- (i) Liabilities to meet award of arbitration or for compliance of the order or decree of a court;***
- (ii) Change in law;***
- (iii) Deferred works relating to ash pond or ash handling system in the original scope of work;***
- (iv) In case of hydro generating stations, any expenditure which has become necessary on account of damage caused by natural calamities (but not due to flooding of power house attributable to the negligence of the generating company) including due to geological reasons after adjusting for proceeds from any insurance***

**scheme, and expenditure incurred due to any additional work which has become necessary for successful and efficient plant operation; and**

- (v) In case of transmission system any additional expenditure on items such as relays, control and instrumentation, computer system power line carrier communication, DC batteries, replacement of switchyard equipment due to increase of fault level, emergency restoration system, insulators cleaning infrastructure, replacement of damaged equipment not covered by insurance and any other expenditure which has become necessary for successful and efficient operation of transmission system:**

**Provided that in respect of sub-clauses (iv) and (v) above, any expenditure on acquiring the minor items or the assets like tools and tackles, furniture, air-conditioners, voltage stabilizers, refrigerators, coolers, fans, washing machines, heat convectors, mattresses, carpets etc. brought after the cut-off date shall not be considered for additional capitalization for determination of tariff w.e.f. 1.4.2009”.**

12.6 Regulation 9 of 2009 Tariff Regulations, as amended on 21.6.2011 and 31.12.2012, provides as under:

**“Additional Capitalization. (1) The capital expenditure incurred or projected to be incurred, on the following counts within the original scope of work, after the date of commercial operation and up to the cut-off date may be admitted by the Commission, subject to prudence check”.**

12.7 Regulation 10 of the Tariff Order provides as under:

**“Renovation and Modernization**

**The generating company or the transmission licensee, as the case may be, for meeting the expenditure on renovation and modernization**

***(R&M) for the purpose of extension of life beyond the useful life of the generating station or a unit thereof or the transmission system, shall make an application before the Commission for approval of the proposal with a Detailed Project Report giving complete scope, justification, cost-benefit analysis, estimated life extension from a reference date, financial package, phasing of expenditure, schedule of completion, reference price level, estimated completion cost including foreign exchange component, if any, record of consultation with beneficiaries and any other information considered to be relevant by the generating company or the transmission licensee:***

***Provided that in case of coal-based/lignite fired thermal generating station, the generating company, may, in its discretion, avail of a 'special allowance' in accordance with the norms specified in clause (4), as compensation for meeting the requirement of expenses including renovation and modernization beyond the useful life of the generating station or a unit thereof, and in such an event revision of the capital cost shall not be considered and the application operational norms shall not be relaxed but the special allowance shall be included in the annual fixed cost:***

***Provided also that such option shall not be available for a generating station or unit for which renovation and modernization has been undertaken and the expenditure has been admitted by the Commission before commencement of these regulations, or for a generating station or unit which is in a depleted condition or operating under relaxed operational and performance norms.***

***2. Where the generating company or the transmission licensee, as the case may be, makes an application for approval of its proposal for***

**renovation and modernization, the approval shall be granted after due consideration of reasonableness of the cost estimates, financing plan, schedule of completion, interest during construction, use of efficient technology, cost-benefit analysis, and such other factors as may be considered relevant by the Commission.**

**3. Any expenditure incurred or projected to be incurred and admitted by the Commission after prudence check based on the estimates of renovation and modernization expenditure and life extension, and after deducting the accumulated depreciation already recovered from the original project cost, shall form the basis for determination of tariff.**

**4. A generating company on opting for the alternative in the first proviso to clause (1) of this regulation, for a coal-based/lignite fired thermal generating station, shall be allowed special allowance @ Rs. 5 lakh/MW/year in 2009-10 and thereafter escalated @ 5.72% every year during the tariff period 2009-14, unit-wise from the next financial year from the respective date of the completion of useful life with reference to the date of commercial operation of the respective unit of generating station:**

**5. Provided that in respect of a unit in commercial operation for more than 25 years as on 1.4.2009, this allowance shall be admissible from the year 2009-10.”**

12.8 It is to state that the Stage-I of the Ramagundam Thermal Power Station completed useful life of 25 years of service during May 2010 and is entitled for Special allowance. Accordingly, the expenditure on Ash Pond and Ash Handling System was allowed by the Central Commission in its order



dated 30.08.2012 allowing Rs. 395 lakhs for 2011-12 and Rs. 178.57 lakhs during 2013-14. further, the Appellant NTPC claimed in its Petition No. 189/GT/2013 for Rs. 420.24 lakhs as actual expenditure for 2011-12 and Rs. 684.70 lakhs as projected capital expenditure for 2013-14 under the head Ash Pond without mentioning whether the projected expenditure pertains only to Stage-I or Stage-II.

- 12.9 The issue relates to expenditure towards Ash Pond and Ash Handling System. The Appellant has stated that the expenditure on Ash Pond and associated infrastructure are for new Ash Pond and needs to be considered under Regulation 9(2)(iii), namely deferred works relating to ash pond or ash handling system. Whereas the Central Commission allowed the capital expenditure on Ash Pond under Special allowance allowed to the Ramagundam Thermal Generating Station under Regulation 10(4) of the Tariff Regulation 2009.

The Regulation 10 deals with Renovation and Modernization. The generating companies or the transmission licensee as the case may be for meeting the expenditure on Renovation and Modernization for the purpose of extension of life beyond the useful life of the generating station are unit thereof or the transmission system shall make the application before the Commission for the approval of the proposal with a detailed project report.

12.10 Further, this Tribunal's judgment dated 12.5.2015 in Appeal No. 129 of 2012 in respect of Appellant NTPC vs. CERC, deals with deferred works relating to Ash Pond and Ash Handling System. The relevant portion of the judgment regarding this is reproduced below:

***“This issue relates to additional capitalization under deferred works relating to ash pond or ash handling system as provided under Regulation 9 (2) (iii) of the Tariff Regulations, 2009. We are unable to accept the contentions of the appellant that the work relating to ash pond or ash handling system is to augment the dry fly ash extraction and evacuation which formed part of the original scope of work, the execution of which was started before the cut off date but the work could be completed and capitalized only after the cut off date due to the reasons beyond the control of the appellant. For exercising power under Regulation 9 (2) (iii) of the Tariff Regulations, 2009 the capital expenditure incurred or projected to be incurred on deferred works relating to ash pond or ash handling system must be relating to the original scope of work after the cut off date and then only the Central Commission may, in its discretion, admit the same subject to prudence check. The learned Central Commission has disallowed the said expenditure relating to ash pond or ash handling system on the ground that the said expenditure incurred or projected to be incurred is required to be met from the special allowance admissible to generating station towards renovation and modernization during life extension of the units/generating station. We are not inclined to accept this contention of the appellant that the Central Commission has wrongly held that where the generating station consists of two stages, namely, Stage-I and Stage-II and the ash pond or ash handling system is a common facility for both the stages, Stage-I (600 MW) has completed useful life of 25 years during*”**

**May, 2010 and accordingly, the Stage-I units are entitled for Special allowance under Regulation 10 (4) of the Tariff Regulations, 2009, in lieu of renovation & modernization. The Central Commission has rightly held that the said capital expenditure is not permissible under Regulation 9(2)(iii) of Tariff Regulations, 2009. We are not rejecting this contention of the appellant that the capital expenditure for ash pond or ash handling system ought not to be disallowed on the ground that they are covered by the special allowance under Regulation 10 (4) of the Tariff Regulations, 2009 for reasons that these expenditures of renovation & modernization are not part of the generating station/unit but are independent of the same. Further, we cannot accept the contention of the appellant that special allowance towards continuous and progressive maintenance does not in any way include expenditure required for installation of new assets such as ash pond and the associated works.**

**We note that the appellant NTPC has wrongly claimed the additional expenditure relating to ash pond or ash handling system under deferred work. As per Regulation 9 (2) (iii) of the Tariff Regulations, 2009, no additional capitalization can be granted except the three conditions mentioned therein and any new work cannot be capitalized. The three conditions mentioned in the said provision are firstly the liability to meet the award of arbitration or for compliance of the order or decree of a Court, secondly change in law and thirdly deferred works relating to ash pond or ash handling system in the original scope of work. We uphold the view of the Central Commission that the expenditure incurred by the appellant on ash pond or ash handling system can be met by special allowance under Regulation 10 (4) of the Tariff Regulations, 2009. If the appellant finds that the special allowance is inadequate, in that case, the appellant is free to challenge the said Regulation in the competent Court or Writ Court but during the existence of the said Regulation 9 (2) (iii) of Tariff Regulations, 2009, the**

**said claim relating to ash pond or ash handling system cannot be allowed under the deferred works in the original scope of works.**

**Under Regulation 10 dealing with Renovation & Modernization of Tariff Regulations, 2009 an option is granted to the generating company either to claim expenditure incurred on renovation & modernization or to opt alternatively for special allowance under Regulation 10(4) of the Tariff Regulations, 2009 to meet the expenditure including on renovation & modernization. Once the appellant has exercised its option to claim special allowance, then it cannot be allowed to claim the capital expenditure incurred or projected to be incurred on deferred works relating to ash pond or ash handling system in the original scope of work under Regulation 9 (2) (iii) of Tariff Regulations, 2009. We further find that there is no provision for renovation and modernization before completion of the useful life of the generating station in the Tariff Regulations, 2009 and expenses, if any, of such nature can be met from the compensation allowance under Regulation 19 (e) of Tariff Regulations, 2009.**

**In view of the above discussion, we do not find any force in the contentions of the appellant-NTPC and thus Issue No.B is decided against the appellant NTPC”.**

12.11 The Ash Pond management is a dynamic in nature and involves modifications such as raising of Ash Pond height, re-routing of roads, relocating pipings, re-aligning, spraying requirements, etc. which are revised periodically.

In the above judgment, this Tribunal rejected the contention of the Appellant NTPC relating to additional expenditure pertaining to Ash Pond or Ash Handling System under

deferred work as per Regulation 9(2)(iii) of the Tariff Regulations 2009 and this Tribunal upholding the view of the Central Commission that the expenditure incurred by the Appellant on Ash Pond and Ash Handling System can be met by Special allowance under Regulation 10(4) of the Tariff Regulations 2009, further noted if the Appellant finds that the Special allowance is inadequate in that case, the Appellant is free to challenge the said Regulation in any competent Court or Writ Court but during the existence of the said Regulation 9(2)(iii) of Tariff Regulations 2009, the said claim relating to Ash Pond or Ash Handling System cannot be allowed under the deferred works in the original scope of the works.

12.12 Accordingly, the expenditure met by the Appellant towards Ash Pond and Ash Handling System has to be met from the funds allocated by the Central Commission under Regulation 10(4) for Renovation and Modernization.

12.13 Accordingly, we come to conclusion that any expenditure for modification or improvement in operation of the generating station should be met from the Special allowance under Regulation 10(4) of the Tariff Regulation.

12.14 Accordingly, **this issue is decided against the Appellant and the order of the Commission is confirmed.**

### 13. **Issue No. 2: Bus Reactors**

13.1 The following are the submissions made by the Appellant:

- 13.2 that the Central Commission disallowed Rs. 702 lakhs claim for the cost of Bus Reactor Package on the ground that the expenditure incurred is covered under compensation Allowance and are Special allowance under Regulation 10(4) and 19(e) of the Tariff Regulation, 2009.
- 13.3 that the expenditure on the Bus Reactor was specifically claimed under the head 'Change in Law' as provided in Regulation 9(2) (ii) of the Tariff Regulations, 2009, and has to necessarily be considered under the same. The claim is clearly admissible under the specific Regulation 9(2)(ii) of the Tariff Regulations, 2009, the same cannot be decided as being covered under generic provision of Regulation 10(4) or 19(e) of the Tariff Regulations, 2009.
- 13.4 that the Central commission had not taken into account the expenditure on new equipments like Bus Reactors which are now required for supporting and strengthening the grid and therefore, the same cannot form part of Compensatory/Special allowance.
- 13.5 that the Standing Committee on Power System Planning in Southern Region in its 23<sup>rd</sup> Meeting held on 22.01.2007 and the Southern Regional Power Committee in its 5<sup>th</sup> Meeting held on 25.08.2007 specifically directed that the Bus Reactor was to be deployed by NTPC at Ramagundam to contain the over voltage in Southern grid. In view of the same, the expenditure of Rs. 702 lakhs incurred by NTPC for deployment of a Bus Reactor at Ramagundam falls

within the ambit of 'Change in Law' as provided in Regulation 9(2) (ii) of the Tariff Regulations, 2009.

13.6 As per the definition of 'Change in Law' provided in Regulation 3(9) of Tariff Regulation, change by any competent statutory authority, in any consent, approval etc. obtained for the project, is covered under 'Change in Law'. In this case the work was necessitated due to directions by Statutory Committee on Power System planning in SR and Southern region Power Committee. The expenditure was incurred to comply with direction of the Statutory committee. The Central Commission has failed to appreciate that as per Section 2(55) of Electricity Act 2003, Regional Power Committee is a Committee established by resolution published in Gazette dated 25.05.2005 by Govt. of India and is a statutory body.

13.7 The Bus Reactor is not deployed as an improvement or modification of the generating station or a mere operational requirement but was installed to ensure the voltage and grid stability as the mandate of law.

13.8 The location of the Bus Reactor in the NTPC premises was only incidental to the availability of space in NTPC Switchyard for Bus-Reactor bay for use of the said system and in no manner due to any deficiency or lacuna on part of NTPC.

**14. Per Contra, the following submissions have been made by the Respondent No. 7:**

14.1 that the Appellant agreed that the capitalization of Bus Reactor was not projected at the time of filing the original petition, which clearly indicates that the necessity for installation of Bus Reactor is not related to Ramagundam STPS Stage I&II and only to meet out the voltage level on the implementation of Krishnampatnam UMPP. In other words, it was not in the original scope of the work.

14.2 that the Central Commission in line with the provisions in Regulation 19(e) had allowed a sum of Rs. 4815 lakhs towards compensation allowance for the period 2009-10 to 2013-14 in its earlier order dated 30.8.2012 in Petition No. 278/2009.

14.3 that the Regulation 10(1), Renovation and Modernization provides that 'The generating company or the transmission licensee, as the case may be for meeting the expenditure on Renovation and Modernization (R&M) for the purpose of extension of life beyond the useful life of the generating station or a unit thereof or the transmission system, shall make an application before the commission for approval, of the proposal with a Detailed Project Report.

14.4 that the Regulation 10(4) a generating company on opting for the alternative in the first provision to Clause(1) of this Regulation, for a coal-based/lignite fired thermal generating station, shall be allowed special allowance @ Rs. 5 lakh/MW/Year in 2009-10 and thereafter escalated @ 5.72% every year during the tariff period 2009-14, unit-wise



from the next financial year from the respective date of the completion of useful life with reference to the date of commercial operation of the respective unit of generating station.

14.5 In line with the provisions in Regulation 10(4), the Central Commission had allowed a sum of Rs. 13759.78 lakhs towards Special allowance for the period 2009-10 to 2013-14 in its earlier order dated 30.8.2012 in Petition No. 278/2009.

14.6 that it is clear from the above, the claim of Rs. 702 lakhs for the year 2012-13 towards installation of Bus Reactors 'Under Change in Law' is not reasonable and is devoid of merits.

## **15. Our Discussion and Consideration on this issue:**

15.1 The Appellant NTPC claimed an amount of Rs. 702 lakhs for the cost of Bus Reactor Package and the Central Commission disallowed the same on the ground that the expenditure incurred is covered under Compensation allowance and/or Special allowance admissible under Regulation 10(4) and 19(e) of Tariff Regulation 2009.

15.2 Let us examine, why the Bus Reactor Package is decided by the Southern Region Committee, then we will proceed with the applicability of the Regulation.

- (i) the Electricity Act constituted a Committee under Section 2(55) of the Electricity Act 2003. The relevant section is quoted below:

***“Regional Power Committee” means a committee established by resolution by the Central Government for a specified region for facilitating the integrated operation of the power systems in that region;***

- (ii) As per subsection (55) of Section 2 of the Electricity Act 2003, envisages establishment of Regional Power Committees (RPCS) by a resolution of the Central Government for a specified region for facilitating the integrated operation of the power system in the region.
- (iii) The following are the functions of the Regional Power Committees:
  - (1) to undertake Regional Level operation analysis for improving grid performance.
  - (2) \_\_\_\_\_
  - (3) \_\_\_\_\_
  - (4) \_\_\_\_\_
  - (5) \_\_\_\_\_
  - (6) \_\_\_\_\_
  - (7) to undertake planning for maintaining proper voltages through review of reactive compensation requirement through system study committee and monitoring of installed capacitors.
  - (8) to evolve consensus on all issues relating to economy and efficiency in the operation of power system in the region.
- (iv) Accordingly, AGM Power Grid confirmed that based on studies, the reactors are useful for the grid stability of the systems. In view of the studies, C.E. (SP&PA), CEA

stated that the installation of 25 nos. of reactors (20 bus reactors & 5 line reactors) were discussed in the 22<sup>nd</sup> meeting of the Southern Power Regional Committee and the same agreed in the 23<sup>rd</sup> Meeting held on 22.01.2007. After discussions, it was decided that the reactors would be installed by the respective state utilities/generating stations.

- (iv) Accordingly, the Appellant NTPC was deployed to execute Bus Reactors at Ramagundam Switchyard and Simhadri. In the instant Petition, the expenditure was incurred towards Bus Reactor at Ramagundam Switchyard of the generating station.

15.3 Thus, the installation of Bus Reactor at Ramagundam Switchyard is in no way concerned with the generating station and is for the stability of the Southern Region Grid System as approved by the Southern Region Power Committee in their meeting. Hence, the expenditure is entirely related to Transmission System.

15.4 The Impugned Order dated 26.02.2014 is for the Revision of Tariff of Remagundam Super Thermal Power Station Stage I&II for the period from 01.04.2004 and 31.03.2014 and truing up of tariff determined by Order dated 31.08.2012 in Petition No. 278/2009.

Hence, whatever the expenditure incurred (Rs. 702 lakhs) pertains to Bus Reactor Package at Ramagundam

generating station Switchyard, does not part of the additional capitalization work pertains to the Ramagundam generating station.

15.5 The contention of the Appellant is that the expenditure incurred for the erection of Bus Reactor by the Appellant as deployed by the Southern Region Power Committee at the switchyard of the generating station can be taken into the additional capital expenditure of the generating station under Regulation 9(2)(ii) i.e. 'Change in Law'.

15.6 Further, Regulation (9) of the Tariff Regulations 2009 deals with Additional Capitalization. Section 9(2) of the Regulation deals with the additional capitalization after the cut off date of commercial operation of the generating station. The expenditure incurred on Bus Reactor Package does not belong to the expenditure incurred towards any improvement of the generating station/unit and this cannot be a part of the expenditure to be loaded on the cost of generation of the Ramagundam Super Thermal Station Stage I&II under 'Change in Law', as contented by the Appellant.

15.7 It is pertinent to mention that the Appellant has to execute the work of Bus Reactor at Ramagundam generating station as per the directions of the Southern Region Committee (SRC).

Further, the Appellant has clearly submitted that the capitalization of Bus Reactor was not projected at the time of filing the original petition.

15.8 Thus, the Central Commission in the Impugned Order stated as follows:

***“We find no justification in the claim of the petitioner for the expenditure under Change-in-law considering the fact that the Bus Reactor Package is an operational requirement as form part of the integrated grid system. The petitioner has been allowed Compensation allowance of Rs. 4815.00 lakh under Regulation 19(e) to meet expenditure on new capital nature assets including minor assets, as stated above and also Special allowance for Rs. 13759.78 lakhs under Regulation 10(4) for Renovation & Modernization activities. We are of the view that any expenditure required for modification or improvement in the operation of generating station should be met from the Special allowance and/or the Compensation allowance allowed to the generating station as above. In view of this, capitalization of Rs. 702.00 lakh for ‘Bus Reactors’ has not been allowed”.***

15.9 As per the above, we find that the action of the Central Commission is legal, just and correct one and the Appellant has to adjust the expenditure in the funds allocated by Central Commission under Compensation allowance and Special allowance.

15.10 Thus, we decide this issue against the Appellant and the Impugned Order of the Central commission dated 26.02.2014 is correct and legal one warranting no interference at this stage by us.

## **Summary of the Findings**

### **Issue No. 1:-**

The Central Commission disallowed the projected expenditure of Rs. 506 lakhs pertaining to Ash Pond and Ash Handling System as claimed by the Appellant. This Tribunal in its earlier judgment in Appeal No. 129 of 2012, held that the expenditure on Ash Pond and Ash Handling System cannot be considered under Regulation 9(2)(iii) of the Tariff Regulation, 2009. Further, the capital expenditure incurred or projected to be incurred on deferred works relating to Ash Pond or Ash Handling System must be relating to the original scope of work after the cut off date and then only the Central commission may, in its discretion, admit the same subject to prudence check.

Further, the Ramagundam Thermal Generating Station is having two stages i.e. Stage I&II and the Ash Pond relates to both stages. The Stage-I (600 MW) has completed useful life of 25 years during May 2010 and accordingly, Stage-I units are entitled for Special allowances under Regulation 10(4) of the Tariff Regulations, 2009, in lieu of Renovation and Modernization.

The Central Commission has rightly held that the said capital expenditure is not permissible under Regulation 9(2)(iii) of Tariff Regulations, 2009.

## **Issue-II:-**

The Southern Regional Committee in its 23<sup>rd</sup> Meeting decided to install 25 nos. reactors in the Southern grid as per the studies for the stability improvement of the voltage conditions in the Southern grid.

Out of which, the Appellant NTPC was deployed to erect one no. Bus Reactor at Ramagundam Switchyard. Accordingly, the Appellant, NTPC took up the work and spent Rs. 702 lakhs for the erection of Bus Reactor Package at Ramagundam Switching Station.

The Appellant prayed to consider this expenditure under additional capital expenditure under Regulation 9(2)(ii) i.e. 'Change in Law' but the Central Commission did not allow this expenditure under the Regulation 9(2)(ii), but allowed the same under Regulation 10(4) and 19(e) i.e. to adjust the expenditure under the sanctioned amount under Compensatory allowance and Special allowance.

We feel that the expenditure incurred by the Appellant NTPC is entirely for the strengthening of the Southern grid Systems and not in any way relating to the generating station or for an unit and hence this expenditure cannot be considered towards generating station.

In view of the above, we hold that the action of the Central Commission is correct and hence we confirm the decision of

the Central Commission and reject the prayer of the Appellant NTPC.

Consequently, this Appeal is dismissed and the Impugned Order dated 26.02.2014 passed by Central Commission in Petition No. 189 of 2013 is confirmed. No costs

Pronounced in the Open Court on this **29<sup>th</sup> day of May 2015.**

**(T. Munikrishnaiah)**  
**Technical Member**

**(Justice Surendra Kumar)**  
**Judicial Member**

**Dated, the 29<sup>th</sup> May, 2015.**

**REPORTABLE / ~~NON-REPORTABLE~~**