



ORDER

OF THE

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

IN CASE NO. OA-415/22-23

**IN REGARD TO THE PETITION FOR APPROVAL OF FINAL PROJECT
COST FOR SANTALDIH THERMAL POWER STATION UNIT 5 (1x250 MW)**

PRESENT:

**DR. MALLELA VENKATESWARA RAO, CHAIRPERSON
SRI PULAK KUMAR TEWARI, MEMBER**

DATE: 11.12.2023



FACTS IN BRIEF

- 1.0 West Bengal Power Development Corporation Limited (WBPDC), hereinafter known as petitioner, submitted an application on 13.04.2022 for approval of Final Project Cost for an amount of Rs. 161284.54 Lakh in respect of Santaldih Thermal Power Station (STPS) Unit-5 as per Sections 61, 62, 86(1)(a) and 86(1)(k) of the Electricity Act, 2003 and Regulation 2.8.5.1 of the West Bengal Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2007 (in short "Tariff Regulations").

Approved Capital Cost

- 2.0 The petitioner (WBPDC) had filed a Petition on 21.01.2010 ("2010 Petition") for determination of tariff for FY: 2008-09, FY: 2009-10 and FY: 2010-11 for STPS Unit- 5. The Commission vide Order dated 30.12.2011 in the Case No. TP-45/09-10 had approved the provisional capital cost for Rs. 127249.00 Lakh.

Direction to WBPDC

- 3.0 The Commission vide Order dated 08.10.2021 in Case No. TP-95/20-21 directed as under:

"4.3.6 In the tariff order dated 30.12.2011 in respect of new generating plants of WBPDC at Bakreswar (units 4 and 5), Santaldih (unit 5) and Sagardighi (units 1 and 2) the Commission decided to withhold 5% of the project cost so determined. Accordingly, the Commission in the order dated 30.12.2011 admitted the project cost for those units @95% of the determined project cost for tariff determination purpose... WBPDC has not yet submitted the Final Project Cost along with related documents as required in terms of Tariff Regulations. Commission has taken a serious note of it and decides to continue with the reduced debt and RoE as considered in the earlier tariff orders for those units. WBPDC has also not submitted the Unit wise Capital Cost considered for estimation of the expenses..."

4.3.7 WBPDC is directed to submit the final project cost in respect of the above generating stations in accordance with the provisions of the Tariff Regulations within six months from date of this order."

Submission of WBPDC

- 4.0 In reply to the above direction of the Commission, the petitioner (WBPDC) filed the instant Petition vide affidavit dated 13.4.2022 for approval of final project cost in respect of STPS-Unit 5 with COD as on 01.04.2009. Subsequently, the petitioner (WBPDC) vide letter dated 18.01.2022 has prayed for submission of the final project cost of the abovementioned generating stations in a phased manner with extension of the time by another six months for such submission of final project cost application. The petitioner (WBPDC) has further prayed that the Commission may consider the actual attainment of operating parameters as well as actual expenditure incurred while approving the cost for STPS Unit 5.



5.0 The petitioner (WBPDC) in the instant petition submitted as under:

"5.2 After due discussions and scrutiny, the Hon'ble Commission provisionally disallowed an amount of Rs. 11568.00 lakhs. It is submitted that in addition to the mentioned disallowance of Rs. 11568.00 lakhs an amount of Rs. 21516.00 lakhs towards future units was also transferred. The details pertaining to Rs. 11568.00 lakhs (provisionally disallowed) by the Hon'ble Commission has been elaborated herein below:

- a) *The Hon'ble Commission disallowed a cost of Rs. 4226.00 lakhs in towards expenses on account of excess erection, testing and commissioning components. Thus, reducing the provisional cost of Rs. 160333.00 lakhs to Rs. 156107.00 lakhs. However, as dealt above, the Hon'ble Commission categorically observed that such disallowance shall be allowed on submission of the final project cost with all relevant documents to substantiate its claim.*
- b) *It is submitted that the amount of Rs. 14829.00 lakhs included only Rs. 10035.00 lakhs towards erection, testing and commissioning cost, however the remaining amount was towards Equipment Supply cost which is included in Rs. 5118.69 lakhs...*
- c) *That the hon'ble Commission disallowed an amount of Rs. 645.00 lakhs towards IDC on account of the amounts disallowed towards excess expenditures in regard to erection, testing, trial run and commissioning of newly installed generating system. The allocation of this disallowed amount of IDC was Rs. 460.00 lakhs to Main Plant Package, Rs. 96.00 lakhs to Coal Handling Plant and Rs. 89.00 lakhs towards Plant water system. In view of the submission above paragraph (a) considering that the erection, testing and commissioning cost is within the benchmark level, the IDC cost disallowed may also be allowed considering that such IDC cost is relating to equipment supply cost and not towards erection, testing and commissioning cost.*
- d) *That the Hon'ble Commission further deducted an amount of Rs. 6697.00 lakhs towards closure of contracts. The Commission, decided to reduce the amount of adjusted estimated capital cost by 5% towards cushion for final settlement of accounts with the suppliers and contractors towards imposition of L.D. clause / penalty for non-performances, if any. It is submitted that the petitioner by way of the present petition has filed all the relevant documents/information for determining the final cost in terms of Regulation 2.8.5.1 of the WBERC Tariff Regulation. Accordingly, the withheld amount of 5% may be allowed. Further, it is submitted that the closure of contracts with BHEL was signed on 28.08.2015 and the settlement summary of the same date is annexed herewith and marked as Annexure-A13.*
- e) *An amount of Rs. 2233.00 lakhs was adjusted in Profit & Loss accounts during the financial year 2015-2016 towards liquidated damage for the delay in COD of Santaldih Unit V and the same was passed in the same year itself in terms of the Accounting Standard 10 issued by ICAI. The issue has also been detailed in the Annual Report of WBPDC of FY 2015-2016 in reply to Comptroller & Auditor General Comments....*

The aforementioned Liquidated Damages amount has already been passed on therefore cannot be again considered while determining the final project cost. Thus, the petitioner is entitled to recover such amount which was been withheld by the Hon'ble Commission since 2011..."

"2.10 A bare perusal of the above extract of the order of this Hon'ble Commission, makes it clear that the project cost of Rs. 127249.00 lakhs was a provisional cost and further reduced capital cost by 5% towards cushion for final settlement of accounts with the suppliers and contractors. It is submitted that the actual cost of the project as on 31.03.2009 was Rs. 160333.00 Lakhs. The



Hon'ble Commission while approving the provisional cost of Santaldih Unit-V of Rs 127249.00 lakhs, has considered after transferring an amount of Rs. 21516.00 lakhs for common facilities to be used in the future units and various provisional disallowances amounting to Rs. 11568.00 lakhs (Detailed in paragraph 5.2 of this Petition), the Hon'ble Commission approved a provisional cost of Rs. 127249.00 lakhs.

2.11 It is submitted that the Hon'ble Commission while approving the provisional cost of the Santaldih Unit V has not considered an amount of Rs. 21516.00 Lakhs towards future unit and Rs. 11568.00 lakhs towards disallowances towards total capital expenditure, which also included the 5% deduction towards cushion for final settlement of accounts which is to be allowed by the Hon'ble Commission. The said amount is to be allowed now by this Hon'ble Commission as the capital cost now stands crystalized and there are no open contracts for the construction of Santaldih Unit V Project. Thus, the Petitioner is entitled to recover such 5% capital cost which has been pending approval in terms of the aforementioned regulations. Accordingly, the Petitioner by way of the present Petition is beseeching the Hon'ble Commission to allow the recovery of the entire project cost with effect from 01.04.2009 (date of COD of the Unit V)."

Observations of the Commission

- 6.0** It is observed that the project cost of STPS Unit 5 as per the DPR (2003) is Rs. 106170.00 Lakh. Subsequently, due to changes in technical and commercial parameters and after detailed discussions with WBPDCCL held on 26.05.2006, the Expert Committee on Techno Economic Clearance ["TEC (2006)"] revised the project cost to Rs. 143000.00 Lakh. STPS Unit 5 achieved COD on 01.04.2009. The project cost was further revised to Rs. 160333.00 Lakh as on 31.03.2009 vide Revised Cost Estimate ("RCE (2009)", based on which the Commission approved the provisional project cost of Rs. 127249.00 Lakh vide order dated 30.12.2011 in Case No. TP-45/09-10.
- 7.0** The Commission directed the petitioner to submit the actual project cost with detailed break-up as on COD (1.4.2009) of Unit 5 and additional capitalisation, if any, post COD, duly certified by the Statutory Auditor. In reply, the petitioner stated that a certificate on actual project cost for Rs. 121404.23 lakh as on 31.3.2009 from M/s KPMG Advisory services, who were also the statutory auditors when 2010 Petition was submitted, had been filed. It is noticed that as per the KPMG certificate dated 31.12.2009, the capital expenditure as on 31.3.2009 is exclusive of the amount of Rs. 22225.96 Lakh towards provisions required to close the contracts. The claimed capital cost in the instant petition does not match with the capital expenditure as per the KPMG certificate. Further, the petitioner (WBPDCCL) submitted the auditor's certificate for the claimed capital cost in the instant petition. Hence, the KPMG certificate becomes redundant for the purpose of approval of final project cost.
- 8.0** As against the provisionally approved project cost of Rs. 127249 Lakh vide Order dated 30.12.2011 in Case No. TP-45/09-10, the final project cost claimed by the petitioner (WBPDCCL) is



Rs. 161284.54 Lakh. WBPDCCL further submitted that the Commission determined the project cost at Rs. 127249 Lakh (based on RCE for ₹ 160333 Lakh) after deducting Rs. 21516 Lakh towards common cost of future unit and Rs. 11568 Lakh towards various disallowances, which also included the 5% deduction towards cushion for final settlement of accounts. WBPDCCL prayed that the Commission may allow the recovery of entire project cost with effect from 01.04.2009. The Commission finds that the submission of WBPDCCL is misplaced in stating that the Commission had determined the project cost as Rs. 127249 Lakh vide the Order dated 30.12.2011 in Case No. TP-45/09-10. The project cost approved vide Order dated 30.12.2011 was only provisional in nature, subject to final approval in accordance with Regulation 2.8.5 of the Tariff Regulations which is reproduced hereunder:

"2.8.5 Approval of Original Project Cost

2.8.5.1 After closing of all contracts the original project cost is to be got approved under regulation 2.8.1.4 or 2.8.2.3 or 2.8.3 or 2.8.4 showing the details of deviations from its investment plan along with reasons of such deviations. The submitted details shall include the audited figures of expenditure on the following heads in the format given in Annexure – 8.

- (a) Package-wise equipment supply cost of relevant items under each package mentioning specific order/ LOA/ Contract Agreement against such package.*
- (b) Above package-wise specific testing, erection and commissioning charges for each package along with details to the extent possible.*
- (c) Above package-wise specific civil construction cost for each package along with material cost separately for each type of construction material along with quantum.*
- (d) Consultancy charges against each of the LOA / Order / Contract Agreement mentioned at (a)*
- (e) Cost of any type of management services if outsourced against each of the LOA / Order / Contract Agreement mentioned at (a) or the Project as a whole.*
- (f) Specific taxes and duties for each order/ LOA/ Contract Agreement mentioned at (a).*
- (g) Project specific insurance cost or specific insurance cost for each order/ LOA/ Contract Agreement mentioned at (a).*
- (h) Specific transportation charges for each order/ LOA/ Contract Agreement mentioned at (a).*

2.8.5.2 During the project construction period, the incurred capital expenditure and other expenditure under project cost shall also be audited annually according to each package separately with specific reconciliation of supplied items against the said expenditure along with the status of erection and commissioning. Such audit report / certificate is to be submitted to the Commission within the 30th September of the succeeding year, along with a report of actual progress against the scheduled programme in terms of package-wise material supply position, actual status and programme of



construction / erection, testing and commissioning programme and status of payment against the schedule of payment along with related conditionality of the schedule of payment for each package.

2.8.5.3 For each package under a project, the contract is to be closed within two years of COD of the last package. For new generation project or distribution project or transmission project or R&M project of generating plant the owner of such project shall disclose the operational status of each equipment of such packages as well as deviation, if any, in specification of such installed equipment from that of the contract agreement/ order, through a third party certification by a reputed engineering firm not involved in the execution of the package from any side. Such report shall also show whether the provision of different penalty(ies) or incentive (s) of contractual conditions were duly applied or not. The fact of waiver or non-application of penalty or incentive shall be specifically mentioned along with the grounds cited by the concerned licensee or generating company for such waiver or non-application of penalties or disincentives. Such analysis shall be given against each such provisions of penalty(ies) or incentive(s) specifically stipulated in the contract. Only on submission of such reports the final project cost of such generation project or distribution project or transmission project will be determined."

Background of final project cost

- 9.0 In light of the above provisions of the Tariff Regulations and based on the documents submitted on record, the Commission has undertaken the approval of final project cost in the instant Order.
- 10.0 During scrutiny of the submissions of the petitioner, certain information was found to be deficient in the petition. Subsequently, the petitioner submitted only a part of additional information as directed by the Commission. It has been observed that for most of the information as directed for submission on record, WBPDC referred to its submissions in 2010 Petition, which in any case was provisional in nature.
- 11.0 Due to the incomplete information submitted by WBPDC, the Commission vide the letter dated 17.02.2023 again sought the information as under:

"The Commission while allowing the Project Cost vide order dated 30.12.2011 in Case No. TP-45/2009-10, disallowed 5% from the components of capital cost towards cushion for final settlement of claims on account of LD/contract closure, the details of which are as follows:

Sl. No.	Particulars	Amount deducted in Case No. TP-45/09-10 (Rs. Lakh)	Remarks
1.	Main Plant package cost	5670.00	Settlement summary A/c. M/s. BHEL submitted and LD recovery had been accounted for in P & L A/c. and passed on in APR for 2015-16 vide the order dated 29.05.2022 in Case No. APR – 50 / 15-16
2.	Coal Handling Plant (CHP)	412.00	Except agreement of supply for equipment and materials, no other document relating to contract closure has been submitted on record in the instant petition.



Sl. No.	Particulars	Amount deducted in Case No. TP-45/09-10 (Rs. Lakh)	Remarks
3.	Plant Water System	288.00	Except agreement of supply for equipment and materials, no other document relating to contract closure has been submitted on record in the instant petition.
4.	Railway Infrastructure	57.00	No documentary evidence relating to contract closure has been submitted on record in the instant petition.
5.	Other civil works	110.00	No documentary evidence relating to contract closure has been submitted on record in the instant petition.

... submit necessary documentary evidences in support of each of the above (except Sl. #1)..."

12.0 In reply, WBPDCCL vide letter dated 03.03.2023 submitted the certificate from the auditors, who certified the final project cost, which reads as under:

"Auditor's Certificate on imposition of liquidated damages in respect of following Contracts executed by The West Bengal Power Development Corporation Limited with Vendors for supply of goods/services/works to be undertaken by them.

...
1) Coal Handling Plant (CHP/STPS-5):

...
On examination of the available records, it was observed that no liquidated damages for delay or liquidated damages for shortfall in performance have been imposed on McNally Bharat Engineering Company Limited...

2) Plant Water System (PWS/STPS-5):

...
On examination of the available records, it was observed that SPML did not complete the work within the scheduled period as per LOA. SPML vide letter No. 2B:OC-125:DD:629, dated 25.10.2013 served a notice of arbitration. At present, the Arbitration proceeding is continuing.

3) Railway Infrastructure (STPS-5):

...
On examination of the available records, it was observed that no liquidated damages for delay or liquidated damages for shortfall in performance have been imposed on RITES Limited...

4) Other Civil Works (STPS-5):

We have been informed that there were multiple Orders for Other Civil Jobs and on examination of the books of account and records as made available, it was observed that no liquidated damages for delay or liquidated damages for shortfall in performance, have been imposed on the contractors engaged for those jobs."

13.0 Further, the petitioner vide letter dated 07.07.2023 submitted as under:

"The Petitioner is submitting the following additional documents, which are available:



- a) A statement of delay analysis i.r.o. of main plant package of Santaldih TPS (Unit:5) is enclosed as **Annexure-1**.
- b) A statement of Interest During Construction (IDC) as per DPR is enclosed as **Annexure-2**.
- c) A statement of actual Interest During Construction (IDC) incurred for the project is enclosed as **Annexure-3**."

- 14.0 Now, the Commission has analyzed the details of deviation in project cost under each head as submitted by WBPDC, which have been discussed in the subsequent sections of the Order. The Commission has considered the above reproduced auditor certificate in the approval of package wise cost as detailed hereunder.
- 15.0 The Expert Committee while according TEC (2006) has approved the Capital Cost of Rs. 143000 Lakh (including IDC of Rs. 8900 Lakh). subject to the following conditions:
- Capital Cost shall not exceed the revised cost except on account of change in rate of taxes and duties included in the project cost and additional taxes and duties (if any) levied subsequently.
 - Change in law resulting in change in cost.
 - IDC shall be as per actuals but not exceeding the amount included in the Project Cost.
- 16.0 In this regard, the Commission directed the petitioner to submit comparative statement showing detailed break-up of project cost as approved by the Expert Committee amounting to Rs. 143000 Lakh (including IDC of Rs. 8900 Lakh) and the actual project cost along with reasons for variation and supporting documents thereof. The Petitioner has failed to submit the information as desired by the Commission.
- 17.0 The Commission directed the petitioner (WBPDC) to submit the bifurcation of cost claimed under various heads such as project management services, erection, testing and commissioning, taxes and duties, and overheads along with detailed justification and supporting documents. The Petitioner has not submitted the information as required by the Commission.
- 18.0 The petitioner (WBPDC) has also not submitted many details required by the Commission for determination of final project cost claimed by the petitioner even after granting ample opportunity. The Commission has taken a serious note of the same. In light of the above, the Commission is constrained to approve the final project cost based on the provisional approval vide order dated 30.12.2011 in the Petition/ Case No. TP-45/09-10 and information available on record in the instant petition. Admittedly, the contracts have been closed and therefore, the Commission makes it abundantly clear that the petitioner having failed to submit the required information in spite of getting repeated extension of time, the project cost as approved in the instant order is final with no further submission shall be allowed subsequently except those contracts which are under arbitration/dispute