
MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION BHOPAL

Subject: In the matter of in-principle approval and seeking directives under proviso 8 & 68 of MPERC Regulations 2020 towards recovery of expenses related to Ash utilization & Transportation including Transportation through Rail Mode to the end user including Cement Manufacturing Industries.

Petition No. 04 of 2023

ORDER

(Date of Order: 11th April, 2023)

M.P. Power Generating Company Ltd.

Block No. 9, Shakti Bhawan,
Rampur, Jabalpur – 482008

- **Petitioner**

V/s

M.P. Power Management Co. Ltd.

Block No. 15, Shakti Bhawan,
Rampur, Jabalpur- 482008

- **Respondent**

Shri Sudhir Saxena, (CE), Shri Rajesh Verma (ACE) and Shri Salil Choudhary, (SE) appeared on behalf of the petitioner.

1. M.P. Power Generating Company Limited, Jabalpur (hereinafter called 'petitioner' or 'MPPGCL') has filed the subject Petition for in-principal approval towards additional capital expenditure likely to be incurred in setting up the facilities for Ash Transportation and seeking directives towards recovery of expenses related to Ash utilization & Transportation including Transportation through Rail mode to the end users including Cement manufacturing industries. Subject Petition is filed under section 181 of the EA, 2003 read with Proviso 8 & 68 of (Terms & Conditions for determination of Generation Tariff) Regulations, 2020 (hereinafter called 'the Regulations, 2020').
2. The petitioner is a wholly owned company of Government of Madhya Pradesh engaged in generation of electricity owned and operated thermal & hydel power stations. M.P. Power Management Company Limited, Jabalpur (hereinafter called 'the Respondent' or 'MPPMCL') is a holding Company for all the three Discoms of MP and authorized for bulk power purchase from generating companies / traders, and supply electricity in bulk to the Distribution Companies in Madhya Pradesh.

3. The petitioner entered into Power Purchase Agreements (PPAs) with MP Tradeco (now MPPMCL) on 29.11.2006 for existing power stations and on 04.01.2011 for its new Thermal Power Stations. Further, the first amendment to the PPA towards Purchase of Power from existing and ongoing petitioner's Thermal and Hydel power units had been signed on 18.07.2017. This First Amendment to PPA provides term period till retirement / decommissioning of all Thermal and Hydel Power Stations of MPPGCL. These PPAs provide that the tariff payable and terms & conditions related thereto shall be as determined by the State Commission.
4. The details of thermal power stations/houses owned and operated by MPPGCL are as given below:

Sr. No.	Power Stations / House	Installed Capacity in (MW)	Year/Date of Commissioning
1	ATPS PH-3	1X210 MW = 210 MW	10.09.2009
2	STPS PH-2 & 3	3X210+1X200 = 830 MW	FY 1980-84
3	STPS PH- 4	2x250 MW = 500 MW	FY 2013-14
4	SGTPS PH- 1	2X210 = 420 MW	FY 1993-94
	SGTPS PH- 2	2X210 = 420 MW } 840 MW	FY 1998-99
5	SGTPS PH- 3	1X500 MW = 500 MW	FY 2008-09
6	SSTPP PH-1	2X600 MW = 1200 MW	FY 2014-15
7	SSTPP PH-2	2 X 660 MW = 1320 MW	FY 2018-19

5. Commission has notified MPERC (Terms & Conditions for determination of Generation Tariff) Regulations, 2020 on 28.02.2020. This regulation is based on multiyear tariff principles and incorporated norms of operation for control period FY 2019-20 to FY 2023-24. Subsequently, first and second amendments to aforesaid Regulations notified on 27.01.2023 and 24.02.2023, respectively.

Background of the petition:

6. The Ministry of Environment, Forest and Climate Change (MoEF&CC) vide Notification S.O.254(E) dated 25.01.2016 had issued Extra Ordinary Gazette Notification regarding the amendments made in the Environment (Protection) Act, 1986) and the Environment (Protection) Rules, 1986), wherein mandatory directives were issued for utilization of Fly Ash (all category of Ashes) generated at the Thermal Power Plants and ensure 100% ash utilization.
7. In compliance to the directions under aforesaid MoEF&CC notification, the petitioner had filed a petition No. 02 of 2021 before the Commission and prayed to exercise proviso 68

("Repeal & Savings") of the Regulations, 2020 to allow recovery of additional expenditure, to be incurred on utilization and transportation of the fly ash to the destination, on actual basis considering the same as Statutory Charges, on year-on-year basis during true up of tariff. In the aforesaid petition, the petitioner had also requested to issue suitable directives/ guidelines / Formats for maintaining the proper details / records towards expenses incurred in utilization and transportation of Fly Ash by respective thermal power stations of MPPGCL, for carrying out prudence check towards its recovery at the time of True-up.

8. Vide order dated 02.07.2021 in aforesaid petition No. 02 of 2021, the Commission had observed that the petitioner has to incur substantial expenditure for compliance with the directives issued by MoEF&CC and appropriate provisions for treatment of such expenditure while determining generation tariff are required to be provided in MPERC (Terms and Conditions for determination of Generation Tariff) Regulations, 2020. The Commission had further observed that similar situation may arise with other coal based thermal power generators also in the State. Therefore, in the aforesaid order dated 02.07.2021, it was mentioned that the Commission shall come up with an appropriate amendment in the Regulations, 2020 after following due process of pre-publication. With the above observations, the petition No. 02 of 2021 was disposed of.
9. Accordingly, the Commission vide Public Notice dated 01.12.2021 issued draft amendment to the Regulations, 2020 incorporating the appropriate provisions for recovery of expenses towards Fly Ash utilization & transportation by proposing Regulation 65.3 of the Regulations, 2020 as given below:

“65.3 Expenses towards Fly Ash utilization & transportation shall be payable in accordance to the directives issued by Government of India, Ministry of Environment, Forest and Climate Change vide Notification S.O. 254 (E) dated 25.01.2016:

Provided that the generating company shall maintain separate accounts/records for expenses towards Fly Ash utilization & transportation reconciled with the Annual Audited Accounts and duly certified by the statutory Auditor. The generating company shall submit complete details of aforesaid expenses to the procurer in FORM TPS 19 (A) along with supporting documents.”
10. In the above draft amendment to the Regulations, 2020, the prevailing MoEF&CC Notification dated 25.01.2016, was referred by the Commission for recovery of expenses towards ash utilization and transportation.

11. Subsequently, looking to constraints in recovery of ash transportation expenses, the Commission vide order dated 29.11.2021 in Petition No. 26 of 2021 of M/s. LANCO Amarkantak Power Ltd. had considered the MoEF&CC notification dated 25.01.2016, under “Change in Law” as statutory expenses and the all generating companies were allowed to recover such expenses directly from the procurer / MPPMCL as per provisions under the said notification subject to fulfillment of certain conditions by the petitioner/generating company and verification of the such conditions for each station by the procurer / MP Power Management Company Ltd.
12. Further, vide Notification dated 31.12.2021, MoEF&CC has made 100% ash utilization mandatory for coal or lignite thermal power plants, (fly ash, and bottom ash) generated in an eco-friendly manner and has been declared the same as a “Change in Law”. The major points covered in the MoEF&CC Notification dated 31.12.2021 are as under:-

- (i) Thermal Power Plants shall achieve 100% utilization of current ash as per following compliance cycle. The ash utilization in the year 2021-22 shall be taken in to account for calculation of percentage of ash utilization –

Utilization percentages of thermal power plants	First compliance Cycle to meet 100 per cent utilization	Second compliance cycle onwards, to meet 100 per cent utilization
>80 per cent	3 years	3 years
60-80 per cent	4 years	3 years
< 60 per cent	5 year	3 years

- (ii) Legacy ash, which is stored in pond at TPPs, will be utilized progressively in such a manner that the utilization will be completed fully within 10 years.
- (iii) Loading, unloading, transport, storage and disposal of ash shall be done in an environmentally sound manner.
- (iv) Imposition of fine as Environment compensation for non-compliance of stipulated utilization of ash (fly ash and bottom ash) and legacy ash will be @ Rs.1000 per ton on un-utilized ash.
- (v) Statutory obligation of utilization of ash shall be treated as a **Change in Law**.
13. Subsequently, second amendment to the Regulations, 2020 was notified on 24.02.2023. In this second amendment, the prevailing MoEF&CC Notification dated 31.12.2021 has been referred by the Commission for recovery of expenses towards ash utilization and transportation. The Commission has incorporated the suitable provisions to enable

generating companies to comply with MoEF&CC norms in accordance to MoEF&CC Notification dated 31.12.2021 and recovery of expenses towards fly ash utilization and transportation in accordance to directives issued by Govt. of India.

14. In view of the MoEF&CC notification dated 31.12.2021 and Commission's order dated 29.11.2021, the petitioner submitted that in order to ensure 100% utilization of Ash, MPPGCL is required to make use of all the options specified in aforesaid MoEF&CC notification for Ash Utilization and has to bear the associated complete cost likely to be incurred on lifting and supply of Ash, starting from Excavation, lifting / loading of Ash from Ash Pond / Dyke or Loading of Ash from Silo including other associated activities, such as Compaction and other works related to protection / retaining structures, plantation etc. as per the provisions of guidelines and procedure for filling of low lying areas prescribed by MoEF&CC/ Pollution Control Board and it is eligible for recovery of expenses on transportation of Ash through Tariff.
15. The petitioner has submitted the various constraints faced by it in achieving the target of Ash utilization as given below:

a) Incentive / Compensation to Ash Procurers/Users like Cement Manufacturing Industries & others :

Presently, there are many sellers (Thermal Power Stations) available in market, as such ash takers (Ash procurers /Users) like Cement Manufacturing Industries, are reluctant in taking ash even on free of cost basis. Ash procurers /User therefore now have expectation to get some incentive/ compensation on Ash collected from Thermal Power Stations.

In the matter, it is gathered that some of the sellers (IPPs) are offering incentive/ compensation to Ash procurers /User) so as to achieve their target of utilization and to avoid levy of penalty towards non-utilization.

The Cement manufacturing industry is a prospective bulk consumer of Ash. It may be seen from the last three years CEA's reports on fly ash utilization records that they are consuming about 25% of the total ash produced in the Country. Therefore, MPPGCL is also being compelled to offer incentive / compensation towards sharing of transportation cost to them so as to ensure continuity and increased utilization of Ash.

In spite of reluctance of Cement manufacturing industries, to achieve the Ash Utilization Target, MPPGCL has no other option but is required to undertake this activity i.e. supply of ash to Cement manufacturing industries free of cost with cost of Transportation borne by MPPGCL/ with due incentive/ compensation, what so

ever required in this regard. Therefore, the complete cost including cost on incentive/ compensation likely to be incurred needs to be borne by MPPGCL.

The Commission is therefore humbly requested to kindly allow recovery of all such expenses to be incurred towards utilization of Ash, as statutory expenditure on actual under other charges.

b) Expenses on work of filling of Mine voids, Backfilling or stowing of mine:

Further, even though it is obligatory on the part of Mine owners to use ash for filling of Mine voids, Backfilling or stowing of mine, however they are not interested to undertake the work of filling of abandoned mine, rather they have shown interest that they may allow MPPGCL to undertake the entire work of filling i.e. supply of Ash free of cost, free transportation and other associated works of mixing of ash with external Overburden dumps under Extended Producer Responsibility (EPR). For which, the owners of mines are making it mandatory for Thermal Generating stations not only to enter into MoU/Agreement, but also for compliance of all statutory norms, as prescribed by SPCB.

In the matter, therefore, for achieving the Ash Utilization Targets, MPPGCL has no other option but is required to undertake this activity which involves supply Ash free of cost including cost of Transportation and also to undertake the entire work of ash filling activity such as compaction, plantation, drainage improvement of filling areas etc. The cost so incurred needs to be borne by MPPGCL.

The Commission is therefore humbly requested to kindly allow recovery of all such above mentioned expenses to be incurred towards utilization of Ash, as statutory expenditure on actual under other charges.

c) Expenses on work of filling of Low lying areas:

Filling of low lying areas with ash need to be carried out with prior permission of the State Pollution Control Board or Pollution Control Committee for approved projects, and in accordance with guidelines laid down by Central Pollution Control Board (CPCB) and the State Pollution Control Board or Pollution Control Committee (PCC) shall publish approved sites, location, area and permitted quantity annually on its website.

However, the owners or authorities related with filling of Low lying areas do not show any interest in identifying and filling of such low lying areas with Ash and therefore they do not initiate the proposal. Therefore, no proposal is being submitted for permission of the State Pollution Control Board or Pollution Control Committee.

MPPGCL however finds no other option than to undertake the works of filling of low lying areas, available where so ever, at their own arrangements which involves supply Ash free of cost including cost of Transportation and also to undertake the entire work of filling activity including identification, survey, compaction, plantation, drainage improvement of areas, etc. and bear the expenses incurred in this regard for meeting Ash Utilization Targets. However, in such case it will not be possible to execute MoU/ Agreement with the owners or authorities related with filling of Low lying areas and therefore permission given by such authorities may be allowed to be acceptable in place of requirement to execute Agreement/ MoU.

The Commission is therefore humbly requested to kindly allow recovery of all such above mentioned expenses to be incurred towards utilization of Ash, as statutory expenditure on actual under other charges.

d) Incentive/ Compensation to Ash Procurers/ Users like Manufacturer of bricks, blocks, tiles, fiber cement sheets, pipes, boards, panels etc.

For all building construction projects (Central, State and Local authorities, Govt. undertakings, other Govt. agencies and all private agencies) located within a radius of three hundred kilometers from a coal or lignite based thermal power plant, it is obligatory to use ash bricks, tiles, sintered ash aggregate or other ash based products.

However, manufacturers of such ash based products viz. bricks, blocks, tiles, fibre cement sheets, pipes, boards, panels; also do not show much interest, as ample quantity of Ash is available in market.

In the matter therefore for achieving the Ash Utilization Target, MPPGCL has no other option but is required to undertake this activity by supplying Ash free of cost, bearing cost of Transportation itself/ providing some incentive/ compensation to ash procurer / User, what so ever required in this regard.

The Commission is therefore humbly requested to kindly allow recovery of all such above mentioned expenses to be incurred towards utilization of Ash, as statutory expenditure on actual under other charges.

e) Transportation Expenditure through Rail mode:

- *At present, as per prevailing practices, Fly/ Pond Ash is being transported by Road mode from all four TPPs of MPPGCL to the end users including Cement manufacturer (A bulk user entity of Ash) etc. However, since only average 65% annual ash utilization has been achieved over the past 3 years, therefore, looking to the compulsion of MoEF&CC for 100% utilization of ash (fly ash, and bottom ash) generated during the year and legacy ash, it is considered imperative to*

explore the possibility to enhance the utilization up to 100% by making use of other modes for bulk transportation of Ash such as transportation through Railway, so as to achieve 100% ash utilization as stipulated in MoEF&CC's Notification of 31.12.2021 read with 1st amendment dated 30.12.2022.

From the above it is evident that for supply/ transportation of huge quantity of Ash in bulk and fast transit, the use of Rail mode is preferable/ economical over Road Transport mode and also environment friendly. Use of Rail mode appears to be one of the best options for supply of bulk quantity of ash for utilization and Cement Manufacturing Industries have best potential to use Ash generated at Thermal Power Stations.

Accordingly, while making efforts to get the potential Buyer (Ash Procurers/Users)/ Transportation Agency for lifting and transportation of ash through Rail mode, it is apprehended that:-

- a) The said approach necessitates implementation/ up-gradation of facilities to use Rail mode for transportation of Ash at all the four thermal power stations of MPPGCL.*
- b) Ash transporter using rail mode will charge for service rendered towards excavation/ collecting/lifting, loading and Transportation of Ash and therefore marginal cost shall also be required to be paid to such Ash transporter by MPPGCL at Power Station end.*
- c) In case of supply of Ash through Rail mode, quantity of Ash to be supplied being huge and transportation being fast, for Ash contained in each rack, the actual end user i.e. Ash Procurers / Users may be multiple in numbers.*
- d) In such cases there is a fair possibility that a Buyer (Ash Procurer/ User) may take Ash from Power Stations of MPPGCL but may not disclose the name/ identity of ultimate end user or the purpose for ash utilization i.e. purpose notified by MoEF&CC, on the ground that disclosure is not possible as per their Business Policy/ confidentiality.*

In such cases, it will be difficult to provide copy of all the agreements / MoU entered into with the actual ash procurer companies, to Respondent (MPPMCL), as directed by Hon'ble Commission vide order dated 29.11.2021 in Petition No. 26 of 2021 of M/s. LANCO Amarkantak Power Ltd.

Under such circumstances, agreement with actual end user shall not be appropriate and instead Ash supply Agreement with Ash transporter using

Rail Mode ready to undertake/ off-take Ash from Thermal Power Station shall be more appropriate and feasible.

The Commission is humbly requested to kindly consider, the agreement executed with agency agreed to take Ash from MPPGCL thermal power stations at discovered cost and Respondent (MPPMCL) may be directed suitably to accept the same for the purpose of billing.

Further, the cost of transportation incurred/ likely to be incurred shall be inclusive of expenses on Excavation, Lifting/ Loading of Ash from Ash Pond/ Dyke or Loading of Ash from Silo and expenses on unloading at destination being single activity as per Schedule of Rate (SoR) of MPPWD.

It is therefore humbly requested before the Commission to kindly allow recovery of these expenses through Tariff and allow the Ash Supply Agreement entered with Ash procurer / User who is ready to undertake/ off-take Ash from Thermal Power Station through Rail mode as supporting document for recovery of these Expenses.

16. Beside the above issues, the petitioner broadly submitted the following in the subject petition:

i. Under the circumstances elaborated in preceding Paras above, when agencies concerned with above identified works/ activities specified for utilization of 100% Ash, do not show their inclination to procure Ash, this attitude hampers the action plan of MPPGCL to achieve targets of Ash utilization.

These circumstances compel, MPPGCL to undertake identified eco-friendly opportunities to achieve Ash utilization target and also to bear the entire expenses likely to be incurred in this regard.

Considering the above it is humbly requested to kindly allow MPPGCL to recover above mentioned actual expenses being incurred in this regard.

ii. MPPGCL further wish to submit that to look forward the feasibility of methodology for transportation of Ash through Rail mode, a contract for the same on trial basis was awarded by MPPGCL to M/s Ash Tech, @ Rs 150/MT + GST for transportation of 5 rakes of ash from SSTPP, Khandwa so as to ensure the success of aforesaid methodology and feasibility of operationalising the scheme. This methodology has been found to work satisfactorily and sufficient quantity of ash from SSTPP, Khandwa has been lifted and transported through Rail mode.

After successful trial, open tender was issued by MPPGCL for this work, against this tender, the rates received are Rs 145/MT +GST.

It is pertinent to mention that due to delay in getting new tender finalized, (being first time tender of this type issued by MPPGCL) the trial order was therefore extended in the phased manner upto 20 rakes. The extensions were awarded with the condition that in case lower rates are received in tender, payment shall be made on lower rates with upper side capping of Rs 150/MT + GST. The rates received in new tender were Rs 145/MT + GST. Thus payment for the extended quantity has been made @ 145/MT + GST.

A similar contract for transportation of ash through Rail mode, on trial basis has also been awarded at STPS, Sarni. However, the response to this effort is not very encouraging.

In the matter, it is observed that smooth and seamless transportation of Ash will require additional expenditure of capital nature for laying of Additional Rail lines and development of certain additional infrastructure to build Silo at Power Station, platforms for temporary ash storage etc. for transportation of Fly Ash through Rail mode in automated manner. For the purpose, a Consultant, M/s M. R. Technofin Consultants Pvt. Ltd., Mumbai has been engaged who has provided the tentative Cost for Silo and other associated setup at PH-I, SSTPP, Khandwa as approx. Rs. 43 Crores. The work of laying of additional Rail lines shall be carried out separately and shall be got done from Railways on Deposit work basis. Efforts are also being made to get this work done on "Build Own – Operate-Transfer (BOOT)" basis. On success of the same, the matter shall be updated to the Hon'ble Commission. The expenses likely to be incurred in this regard shall be on Build-Own-Operate-Transfer (BOOT) basis.

It is pertinent to mention that MPPGCL has also taken up/in process of awarding contract for transportation of ash through normal road mode. MPPGCL has submitted power station-wise summary of rates awarded through transparent open tender/estimate after seeking budgetary offer from prospective bidders / transporters.

In this regards, it is to mention that MOEF&CC permits recovery of transportation cost for other usages, as specified in the foregoing sections. However, supply to the Cement Manufacturing Industries is not specifically mentioned. The table below reveals that if only 40 LMT ash (approximate generation of ash at SSTPP, Khandwa) is transported through rail mode (@ Rs. 145/MT+GST) which will preferably go to Cement Manufacturing Industries will reduce the burden on Discoms by about Rs. 200 Crore approx. per year.

Impact on Discoms on SSTPP, Khandwa-

Sl. No.	Work	Quantity (LMT)	Rate (Rs./MT)	Amount (Cr.) + GST
1	Backfilling of ash in abandoned stone mine at Bhavsinghpura, Dist. Khandwa.	17.5	436.51	76.39
2	Four Lanning project of Dhangaon-Boregaon Section, NH-347 BG.	11.23	379.52	42.62
3	Four lanning of Nanasa to Pidgaon section of NH-47.	24	843.13	202.35
4	Four Lanning of Harda to Temagav section of NH-47.	16.66	783.31	130.5
5	Total	69.39	651.19	451.86
6	For 40 LMT $(451.86 \times 40/69.39) =$			260.48
7	If the whole quantity is transported through Rail	40	145	58
8	Diff.			202.48

The differential impact shall be about 14 paisa per unit on the generation cost of SSTPP, Khandwa. It is pertinent to mention that in the prevailing conditions, if MPPGCL make efforts and dispose ash through modes other than rail mode (except Cement Manufacturing Industries), the cost shall be fully reimbursed and shall be borne by the beneficiaries. However, due to the limitations explained above, if it is not reimbursable to MPPGCL being supply to Cement Manufacturing Industries its burden will come on MPPGCL. Under the circumstances, MPPGCL will have a natural inclination on disposing the same through other modes rather than rail to Cement Manufacturing Industries. Thus in the interest on ultimate benefit of sector and beneficiaries, it is humbly requested to permit reimbursement of expenses incurred, if the ash is disposed to Cement Manufacturing Industries through transparent mode. It is also to submit that the other Gencos./IPPs will also be aiming their business in the similar manner.

- iii. It is also pertinent to mention that the expenses involved in compliance of MOEF&CC norms are huge and it may not be possible to MPPGCL to incur them upfront and recover through True-up petition.

A. **The estimated burden considering 100% utilization based on average rates (of available contracts/ estimate) for normative generation shall be about Rs. 581.21 Crore as elaborated below –**

Station	Installed Capacity in MW	PLF (Normative)	Estimated Coal con. (MT/day)	Estimated Ash Gen.		Estimated rate of disposal (Rs./MT)	Cost of ash utilization on normative gen. (Cr.)
				MT/day	MT/year		

ATPS	210	85%	2657	850	310357	126.35	3.92
SGTPS	4x210	75%	10886	4355	1589414	897.77	142.69
	1x500	85%	6965	2647	966065	897.77	86.73
STPS	2x250	85%	7200	2664	972360	302.76	29.44
SSTPP	2x600	85%	16676	6670	2434714	651.19	158.55
	2x660	85%	16816	6726	2455147	651.19	159.88
MPPGCL	5400	--	61201	23912	8728058	--	581.21

B. The estimated burden considering 100% utilization based on average rates (of available contracts/ estimate) for actual generation based on FY-22-23 shall be about Rs. 485.53 Crores as elaborated below –

Station	Installed Capacity in MW	PLF (Actual)	Estimated Coal con. (MT/day)	Estimated Ash Gen.		Estimated rate of disposal (Rs./MT)	Cost of ash utilization on normative gen. (Cr.)
				MT/day	MT/year		
ATPS	210	74%	2312	740	270028	126.35	3.41
SGTPS	4x210	63%	9504	3801	1387513	897.77	124.57
	1x500	90%	6861	2607	951594	897.77	85.43
STPS	2x250	89%	6865	2540	927133	302.76	28.07
SSTPP	2x600	63%	13773	5509	2010821	651.19	130.94
	2x660	55%	11896	4759	1736861	651.19	113.1
MPPGCL	5400	--	51210	19956	7283951	--	485.53

Thus, provisional recovery of the expenses, actually incurred may please be permitted on monthly basis. MPPGCL will submit the details along with provisional monthly bills in this regard. The true up of the expenses actually done shall be submitted along with audited balance sheet in true up petition of the respective year.

- iv. As bulk and rapid transportation of Ash, Transportation through Rail mode appears to be one of the best options available with MPPGCL. Further on exploring the possibility of Transportation through rail, it has come to notice of MPPGCL that there are few Agencies/ Traders who lift the Ash from Thermal Power Stations through Rail at reasonable cost. Generally, these agencies/ traders do not disclose the identity of end user to whom they will ultimately supply the ash, however, it is learnt that the Cement Manufacturing Industries are usually the end users of Ash.

In case Ash is supplied to Cement Manufacturing Industries on free of cost basis, then also other associated expenses, which are likely to be incurred on lifting of

Ash from Ash Pond/ Dyke/ Silo and its delivery up to unloading point at destination (including expenses on Excavation, Lifting/ Loading from Ash Pond/ Dyke or Loading of Ash from Silo and on unloading at destination), are required to be borne by MPPGCL.

v. Additional Capital expenditure incurred/ likely to be incurred in setting up the facilities for smooth and seamless transportation of Ash at Power Houses:

Regarding recovery of expenses on utilisation of Ash in Cement industry through Rail mode, MPPGCL, therefore, humbly requests Hon'ble Commission to accord approval for recovery of Transportation expenses including other expenses to be incurred by MPPGCL (expenses on Excavation, Lifting/ Loading from Ash Pond/ Dyke or Loading of Ash from Silo and on unloading at destination towards Ash utilization.

In addition to above, MPPGCL humbly request, Hon'ble Commission to kindly accord In-Principle approval towards additional Capital expenditure already incurred and / likely to be incurred in setting up the facilities of capital nature, for smooth and seamless transportation of Ash at Power House end in tariff under Change in Law.

17. With the above submission, the petitioner prayed the following:

- (a) *Allow recovery of additional expenditure, to be incurred on Utilization and transportation of the ash to the destination, on actual basis as detailed in this petition, considering the same as Statutory Charges, under the head Other Charges, on month to month basis & reconciliation on yearly basis during true up of Tariff.*
- (b) *In-principle approval may kindly be accorded towards additional Capital expenditure already incurred and / likely to be incurred in setting up the facilities of capital nature like rail lines, etc. for smooth and seamless transportation of Ash at Power House end in tariff, under Change in Law.*
- (c) *Permit recovery of expenses including transportation of ash, incurred through transparent mechanism in supply of ash to Cement manufacturer, provided that MPPGCL is able to convince the Commission that, expenses incurred in this regard has resulted in lowering the burden on ultimate consumers of State of MP.*
- (d) *Issue suitable directives/ guidelines/ related Formats for maintaining the proper details /records towards expenses incurred in utilization and transportation of Ash by respective thermal power stations of MPPGCL, which the Commission may deem fit for carrying out prudence check towards its recovery at the time of True-up.*

Commission's Observations and findings:

18. MPPGCL has filed the subject Petition for in-principal approval towards additional capital expenditure likely to be incurred in setting up the facilities for Ash Transportation and also seeking directives towards recovery of expenses related to Ash Utilization & Transportation including transportation through Rail mode to the end users including Cement manufacturing industries. The petitioner has also requested to incorporate the provisions of MoEF&CC Notification dated 31.12.2021 regarding 100% ash utilization, under the Regulations, 2020.
19. Motion hearing in the subject matter was held on 21.03.2023 wherein the representative of the petitioner submitted the genesis of the subject petition. Having heard the petitioner, the case was reserved for order on admissibility.
20. On perusal of the subject petition, the Commission has observed that the petition was filed before issue of 2nd Amendment to the Regulations, 2020, which was notified on 24.02.2023. Mainly, the contentions made by the petitioner are as follows:
 - i. As per the petitioner, the Regulations, 2020 do not have any provision for recovery of expenditure to be incurred/ likely to be incurred on Utilization and transportation of the Ash/ Fly Ash to the destination. Therefore, the petitioner has requested to allow recovery of such expenses, on actual, on month-to-month basis with annual reconciliation through true up of tariff, considering the same as Statutory Charges by incorporating a suitable provision in the Regulations, 2020.
 - ii. MPPGCL had filed a petition No. 02 of 2021 towards recovery of Fly Ash utilization & transportation related expenses. The Commission vide order dated 02.07.2021 disposed of the aforesaid petition stating that the Commission shall come up with an appropriate amendment in the Regulations, 2020 after following due process.
 - iii. Subsequently, the Commission vide order dated 29.11.2021 in Petition No. 26 of 2021 of M/s. Lanco Amarkantak Power Ltd. considered the MoEF&CC notification dated 25.01.2016, under "Change in Law" applicable on all the thermal power plants. Accordingly, generating companies were eligible to recover such expenses directly from the procurer / MPPMCL.
 - iv. Later, MoEF&CC vide Notification dated 31.12.2021 mandate 100% Ash Utilization, which has superseded all its previous Notifications on ash utilization. In the said Notification, 100% utilization of ash generated in an eco-friendly manner has also been declared as a "Change in Law".

- v. The petitioner is facing various constraints in achieving the target of 100% Ash utilization in its thermal power stations. On an average 65% annual ash utilization has been achieved over the past 3 years, therefore, looking to the compulsion of MoEF&CC for 100% utilization of ash, generated during the year and legacy ash, it is considered imperative to explore the possibility to enhance the utilization up to 100% by making use of other modes for bulk transportation of Ash, such as transportation through Railways, so as to achieve 100% ash utilization as stipulated in MoEF&CC's Notification.
- vi. Petitioner is exploring feasibility of methodology for transportation of Ash through Rail mode, a contract for the same on trial basis was awarded by MPPGCL to M/s Ash Tech, (@ Rs 150/MT + GST) for transportation of 5 Rail rakes of ash from SSTPP, Khandwa so as to ensure the success of aforesaid methodology and feasibility of operationalizing the scheme. After successful trial, open tender was issued by MPPGCL for this work, against this tender, the rates received are Rs. 145/MT +GST.
- vii. Transportation of ash through rail mode @ Rs. 145-150 per MT excluding GST, having impact of about 4 paisa per unit on generation tariff. This minor enhancement in tariff puts least burden on the electricity consumer and at the same time also enables MPPGCL to comply the norms of MoEF&CC.
21. The subject petition was filed on 17.02.2023, whereas, the Commission issued 2nd Amendment to the Regulations, 2020 on 24.02.2023 incorporating the provision for recovery of expenses towards Ash utilization and transportation. Regarding recovery of expenses including transportation of ash, Regulation 65.3 as per second amendment to the Regulations, 2020 provides as under:
- “65.3 Expenses towards fly ash utilization and transportation shall be payable in according to the derivatives issued by the Government of India, Ministry of Environment, Forest and Climate change vide notification dated No. S.O. 5481 (E) dated 31.12.2021 and subsequent amendment issued from time to time:*
- Provided that the Generating Company shall maintain separate accounts/records for expenses towards Fly ash utilization & transportation reconciled with the Annual Audited accounts and duly certified by the statutory auditor. The generating company shall submit the complete details of aforesaid expenses to the Procurer in Form TPS 19(A) along with the supporting documents.*
22. Appropriate provisions for recovery of expenses towards fly ash utilization and transportation in accordance to MoEF&CC Notification dated 31.12.2021 have already been incorporated in the 2nd amendment to the Regulations, 2020 issued on 24.02.2023.

Therefore, the first prayer of the petitioner, made in the subject petition is already addressed and the petitioner is required to take consequential Actions as per Regulation 65.3 of the Regulations, 2020 as amended.

23. With regard to second prayer made by the petitioner regarding grant of in-principal approval towards additional Capital expenditure for transportation of Ash at thermal power station end, under Change in Law, Regulation 8 of the Regulations, 2020 provides as under:

“In-principle Approval in Specific circumstances:

8.1 The generating company undertaking any additional capitalization on account of ‘change in law’ events or force majeure conditions may file petition for in-principle approval for incurring such expenditure after prior notice to the beneficiaries or the long term customers, as the case may be, along with underlying assumptions, estimates and justification for such expenditure if the estimated expenditure exceeds 10% of the admitted capital cost of the project or Rs.100 Crore, whichever is lower.”

24. The Regulation 8.1 existed in the Regulations, 2020 even prior to the amendments made on 24.02.2023. In accordance to aforesaid Regulation, petitioner needs to file petition for in-principal approval for additional capitalization under change in law events, after prior notice to the beneficiaries along with underlying assumptions, estimates and justification for such expenditure, if the estimated expenditure exceeds 10% of the admitted capital cost of the project or Rs.100 Crore, whichever is lower. The petitioner has failed to come up with such a petition so far.

25. There is other provision also for incurring capital expenditure. With regard to consideration of capital expenditure towards ash disposal including handling and transportation of a new as well as an existing project, Regulations 21.2 (viii) and 21.3 (iv) existed in the Regulations, 2020 even prior to the amendments made on 24.02.2023, which provides as under:

“21.2 The capital cost of a new project shall include the following:

viii. Capital expenditure incurred on the ash disposal including handling and transportation facility of thermal generating station.”

“21.3 The capital cost of an existing project shall include the following:

iv Capital expenditure incurred on the ash disposal including handling and transportation facility.”

26. Regarding additional capitalization towards ash pond or ash handling system including ash transportation facility not covered under Regulation 8.1, Regulation 27.1(iii) and 28.1(f) of the Regulations, 2020 (as amended) provide as under:

“27.1 The additional capital expenditure incurred or projected in respect of an existing or a new project on the following counts within the original scope of work and after the cut-off date may be admitted by the Commission, subject to prudence check:

iii. Deferred work relating to ash pond or ash handling system including ash transportation facility in the original scope of work.

28.1 The capital expenditure in respect of existing generating station incurred or projected to be incurred on the following counts beyond the original scope, maybe admitted by the Commission, subject to prudence check:

e. Deferred work relating to ash pond or ash handling system in addition to original scope of work, on case to case basis:

27. In view of the above, the Commission observes that the Regulations, 2020 (as amended) have appropriate and adequate provisions for approval of capital cost and additional capitalization towards ash pond and ash handling and transportation facilities with the condition that same shall be examined by the Commission on case-to-case basis.
28. With regard to third prayer made by the petitioner regarding recovery of expenses including transportation of ash, incurred through transparent mechanism in supply of ash to Cement manufacturer, the Commission observes that there are appropriate and adequate provisions for recovery of such expenses towards Ash utilization & transportation in the 2nd amendment to the Regulations, 2020. Therefore, the petitioner is eligible to recover such eligible expenses, subject to submission of necessary documents/details to the respondent.
29. Further, the proviso of Regulation 65.3 of the 2nd Amendment to the Regulations, 2020 provides that the Generating Company shall maintain separate accounts/records for expenses towards Fly ash utilization & transportation reconciled with the Annual Audited accounts and duly certified by the statutory auditor. In the aforesaid amendment, the Commission has prescribed a Format prescribing various details related to fly ash utilization and transportation and generating company is required to submit the complete details of aforesaid expenses to the Procurer in that format. Therefore, the fourth prayer made by the petitioner in the subject petition regarding ‘issue of suitable directives/ guidelines/ related Formats for maintaining the proper details /records towards expenses incurred in utilization & transportation of Ash’ is also addressed by way of the aforesaid 2nd Amendment to the Regulations, 2020.
30. In view of the above discussion, the Commission has observed that all the prayers made by the petitioner in the subject petition have already been addressed by the Commission in the Regulations, 2020 and subsequent 2nd amendment dated 24.02.2023. Even the request of

the petitioner for incorporating the MoEF&CC Notification dated 31.12.2021 under the Regulations, 2020 has already been addressed by way of 2nd amendments notified on 24.02.2023. Although, the petition was filed before notification of 2nd Amendment to the Regulations, 2020, the motion hearing took place after the notification. The petitioner failed to establish maintainability of petition in view of the Regulations, 2020 (as amended). The subject petition in its current form is not found admissible at this stage, hence disposed of.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S.P.S. Parihar)
Chairman