



THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION

LUCKNOW

Petition No. 2130 of 2024

QUORUM

Hon'ble Shri Arvind Kumar, Chairman

Hon'ble Shri Sanjay Kumar Singh, Member

IN THE MATTER OF

Petition under Regulation 20(2)(ii) of the UPERC (Terms and Conditions for Generation Tariff) Regulations, 2019 read with Article 13 of the long-term Power Purchase Agreement dated 26.09.2014 entered into between the Petitioner and the Respondent, Noida Power Company Limited, seeking an approval of the additional Capital Expenditure incurred on account of installation of De-NOx System for Unit 2 necessitated by a 'Change in Law' event i.e. Environment (Protection) Amendment Rules, 2015 dated 07.12.2015, Environment (Protection) Amendment Rules, 2018 dated 28.06.2018, Environment (Protection) Amendment Rules, 2020, and Environment (Protection) Amendment Rules, 2021 and Environment (Protection) Amendment Rules, 2022 issued by the Ministry of Environment, Forest and Climate Change read with the letter dated 01.10.2021 issued by Maharashtra Pollution Control Board and the approval of the incremental Tariff on account of the above.

AND

IN THE MATTER OF

Dhariwal Infrastructure Ltd. (DIL)

CESC House, Chowringhee Square, Kolkata – 700001, West Bengal

..... **Petitioner**

VERSUS

Noida Power Company Ltd. (NPCL)

Electric Sub-station, Knowledge Park-IV, Gr. Noida, Gautam Buddha Nagar, Uttar Pradesh,
Pin- 201301

..... **Respondent**

by



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THE FOLLOWING WERE PRESENT

1. Ms. Shikha Ohri, Advocate, DIL
2. Sh. Shubhayu Sanyan, Representative, DIL
3. Sh. Akash Chatterjee, Executive, DIL
4. Ms. Srishti Rai, Advocate, NPCL

ORDER

(DATE OF HEARING: 22.07.2025)

1. The Petitioner, Dhariwai Infrastructure Limited, has filed the instant Petition for approval of the estimated additional Capital Expenditure to be incurred on account of the installation of NOx Abatement (De-NOx) system for Unit 2 of the Petitioner's 2 x 300 MW Coal-based generating station necessitated by Change-in-Law event, i.e. Environment (Protection) Amendment Rules, 2015 dated 07.12.2015, Environment (Protection) Amendment Rules, 2018 dated 28.06.2018, Environment (Protection) Amendment Rules, 2020 dated 19.10.2020 and Environment (Protection) Amendment Rules, 2021 dated 31.03.2021 issued by the Ministry of Environment, Forest and Climate Change (MoEFCC) read with the letter dated 01.10.2021 issued by the Maharashtra Pollution Control Board (MPCB).
2. The Petitioner has made the following prayers:
 - a) Admit the instant Petition;
 - b) Declare that the Amendment Rules vide MoEFCC Notifications dated 07.12.2015, 28.06.2018, 19.10.2020, 31.03.2021 and 05.09.2022 read with the MPCB Letter dated 01.10.2021 qualify as a 'Change in Law' event for Unit 2 of the Petitioner's Project in terms of Article 13 of the NPCL PPA;
 - c) Approve the Capital Cost of ₹ 13.46 Crores for installation of the Combustion Modification/Process including modification of existing burners to Low-NOx design, adoption of new Separated Over Fire Air system with its nozzles, dampers and actuators and Low Excess Air Firing for 300 MW Unit 2 of the Generating Station for meeting the revised emission norms in respect of NOx as per the Amendment Rules under Regulation 20(2)(ii) of Generation Tariff Regulations 2019;

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- d) Approve the incremental Tariff for the supply of 187 MW Gross Contracted Capacity to the Respondent/NPCL for FY 2023-24 based on the approved Capital Cost of De-NOx system in terms of the provisions of the Generation Tariff Regulations 2019;
- e) Direct the Respondent to make payments towards the invoice(s) for Supplementary Capacity Charges to be raised subsequently for recovery of the approved incremental Tariff for FY 2023-24 as determined by this Hon'ble Commission towards installation of De-NOx system and the Auxiliaries in DIL Unit 2 for supply of 187 MW Gross Contracted Capacity to the Respondent along with applicable Carrying Cost as per the provisions of Generations Tariff Regulations 2019;
- f) The Petitioner seeks liberty of the Commission to submit further information in case it is so directed by the Commission;
- g) Condone any inadvertent omissions/errors/rounding-off differences/shortcomings and permit the Petitioner to add/alter this filing and make further submissions as may be required in future; and
- h) Pass such other Order/s, as the Commission may deem fit and proper, keeping in view the facts and circumstances of the case.

Background as submitted by Petitioner:

3. The Petitioner has developed 2 X 300 MW coal fired thermal generating station at Tadali, Chandrapur in the state of Maharashtra. On 26.09.2014, the Petitioner had signed PPA with the Respondent for the supply of 187 MW Gross Contracted Capacity from 300 MW Unit (2) of its Project. The said PPA was approved by the Commission vide its order dated 20.04.2016 in Petition No. 971 of 2014 read with order dated 15.01.2016. The Petitioner had also executed a long-term PPA dated 27.11.2013 read with its Addendum No.1 dated 20.12.2013 with TNPDC (erstwhile TANGEDCO) for the supply of 100 MW Net Contracted Capacity from Unit (2) of its Project. The TNPDC PPA was executed under the Case-1 bidding process, in terms of Section 63 of the Electricity Act and was approved by the Tamil Nadu Electricity Regulatory Commission (TNERC).

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4. On 07.12.2015, the MoEFCC notified the Environment (Protection) Amendment Rules, 2015. The said Amendment Rules were further amended from time to time. Subsequently, on 19.10.2020, the MoEFCC had issued the Amendment Rules 2020, thereby revising the standards for emission of NO_x from 300 mg/Nm³ to 450 mg/Nm³ for thermal power plants installed after 01.01.2003 and upto 31.12.2016. Accordingly, the applicable standard for NO_x reduction for Unit 2 of the Petitioner's Project, having commissioned on 02.08.2014, is 450 mg/Nm³ as per the Amendment Rules 2020.
5. Thereafter, MoEFCC issued the Amendment Rules 2021 on 31.03.2021 thereby amending the timeline for compliance with the revised norms, including, the above norm for NO_x abatement. As per the categorization by the task force, constituted under these Rules, the Petitioner's Project was classified under 'Category B' and accordingly, the timeline for meeting the emission standards by the Petitioner was revised to 31.12.2023. The plant and machinery erected by the Petitioner at the Generating Station including Unit 2, were not equipped to meet the new norm of NO_x emission notified through the Amendment Rules, 2020, and thus obligating the Petitioner to implement the requisite De-NO_x technology.
6. The Petitioner, in terms of Article 13 of the PPA, is entitled to be compensated on account of occurrence of 'Change in Law' events thereby resulting into any additional recurring/non-recurring expenditure by the seller w.e.f. the Cut-off Date (for Change in Law events), i.e., 26.10.2015 as approved by the Commission vide its Order dated 29.05.2020 in Petition No. 1440 of 2019. The relevant extract of the Order dated 29.05.2020 is reproduced herein below:

"33 The variable cost in Tariff is impacted by various 'Change in Law' event over the period of PPA and assumptions/principles as on cut-off date may not hold good. In view of the Petitioner's submissions dated 26.10.2015, vide which the details of tariff with all assumptions based on the then prevalent price of coal were submitted, it would be reasonable and proper to glue the Petitioner to the proposal made on the basis of assumptions valid as on such date, i.e. 26.10.2015. Therefore, we are inclined to accept 26.10.2015 as the cut-off date for the purposes of determining Change in Law events in the instant case."

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7. The Ministry of Power (MoP) issued a direction to the Central Commission vide communication dated 30.05.2018, stating that the Amendment Rules, 2015 qualify as an event under 'Change in Law' in respect of PPAs under both, Section 62 as well as Section 63 of the Electricity Act, between generating companies and distribution licensees and the cost implications due to installation of the ECS and its operational cost to meet the new environment norms would be considered for pass through in tariff by the Appropriate Commission. The relevant portion of MoP directions is as follows:

".....

5.1 The MoEFCC Notification requiring compliance of Environment (Protection) Amendment Rules, 2015 dated 7th December, 2015 is of the nature of Change in Law event except in following cases:

- a) Power Purchase Agreements of such TPPs whose tariff is determined under Section 63 of the Electricity Act, 2003 having bid deadline on or after 7th December, 2015; or*
- b) TPPs where such requirement of pollutions control system was mandated under the environment clearance of the plant or envisaged otherwise before the notification of amendment rules;*

5.2 The additional cost implication due to installation or up-gradation of various emission control systems and its operational cost to meet the new environment norms, after award of bid or signing of PPA as the case may be, shall be considered for being made pass through in tariff by Commission in accordance with the law.

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5.4 For the TPPs that are under the purview of the Central Commission, the Commission shall develop appropriate regulatory mechanism to address the impact on tariff, and certainty in cost recovery on account of additional capital and operational cost, under concluded long term and medium term PPAs for this purpose

....."

8. The Petitioner had, vide its Letter Ref No. DIL/GM-Coord/NPCL/1349 dated 13.08.2020, duly served the 'Change in Law' Notice on the Respondent regarding the

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developments pertaining to the notification of the Amendment Rules which *inter-alia* qualifies as a 'Change in Law' event and also meets the threshold stipulated under Article 13 of the NPCL PPA.

9. The Petitioner had earlier approached CERC vide Petition No. 261/MP/2022 for grant of in-principle approval of the estimated Capital Cost of installation of De-NO_x system and Auxiliaries in Unit 2 for the purpose of determination of Supplementary Tariff for recovery from TNPDCCL owing to supply of 100 MW Net Contracted Capacity in terms of Section 63 of the Electricity Act under Case-1 long-term PPA from DIL Unit 2. CERC vide its Order dated 08.01.2024 in the said Petition acknowledged the promulgation of Amendment Rules 2015 along with all subsequent amendments read with the MPCB letter dated 01.10.2021 as a 'Change in Law' event in accordance with terms of the TNPDCCL PPA and granted its approval for installation of the De-NO_x system in Unit 2 of the Petitioner's Generating Station. The approval of Capital Cost and determination of Compensation/Supplementary Tariff for the De-NO_x system and the Auxiliaries installed in Unit (2) corresponding to 100 MW Net Contracted Capacity for supply of power to Tamil Nadu Power Distribution Corporation Limited (TNPDCCL) is currently pending before CERC.
10. The Petitioner had also filed Petition No. 1830 of 2022 for approval of the estimated Capital Expenditure, i.e. ₹ 17.72 Crores, towards installation of De-NO_x system for Unit (2) based on the estimates provided by the competent agency through a Feasibility Study Report. Subsequently, the Petitioner vide IA dt. 03.09.2024 withdrew Petition No. 1830 of 2022, since it has already incurred the capital expenditure towards the installation of De-NO_x system and has filed instant Petition before the Commission for approval of the same.
11. The Petitioner has commissioned the De-NO_x system and the Auxiliaries in Unit (2) of its Project on 30.11.2023 and has already incurred the capital expenditure towards the same, except for some minor balance liabilities which are expected to be discharged by 30.09.2024.
12. Tata Consulting Engineers Limited (TCE) was engaged in August 2021 for the study and identification of technologies available for NO_x abatement systems to provide

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comprehensive optimal solutions to comply with the new NOx emission limits. TCE compared available technologies, which are broadly grouped as Combustion Modification/Process and post Combustion Modification/Process as follows:

A. Combustion Modification/Process Control

- a. Low NOx Burners (LNB)
- b. Over Fire Air (OFA)
- c. Low Excess Air Firing

B. Post Combustion Control

- a. Selective Catalytic Reduction (SCR)
- b. Selective Non-Catalytic Reduction (SNCR)
- c. Hybrid SCR-SNCR

- * 13. TCE recommended combustion modification including modification of existing burners to low NOx design, adoption of new Separated Over Fire Air (SOFA) system with its nozzles, dampers and actuators and Low Excess Air (LEA) firing as the most suitable technology at optimal cost for NOx emission control.
14. The proposal for the adoption of Combustion Modification/Process for NOx abatement was made to CEA for its approval on 3.9.2021, CEA vide its letter dated 22.09.2021 approved the technology to be adopted by the Petitioner for NOx abatement and further advised the Petitioner to approach the Appropriate Commission for further course of action.
15. Pursuant to CEA's recommendation dated 22.09.2021, the Petitioner floated the NIT dated 15.10.2022 for supply of De-NOx system and Auxiliaries under the International Competitive Bidding (ICB) mode. The details of the bidders participated in the bidding and their price bids have been reproduced herein below:

Table 1: Price Bids Submitted by the Bidders

Name of Bidder	Initial Bid Price Incl. Tax (₹/Cr.)	Revised Bid Price Incl. Tax (₹/Cr.)	Loading on Bids (₹/Cr.)	Final Price Incl. loading (₹/Cr.)	Remarks on Loading on Bids
GEPIIL	15.86	14.69	-	14.69	-

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LMB	15.01	Not Revised	1.27	16.28	Loading on account of deviation in delivery schedule
SEC	USD 3993693 Conversion rate as on 20.12.2022 1 USD = ₹ 82.7902)	Not Revised	12.40	45.46	Loading on account of deviation in delivery schedule and considering custom duties and inland transport charges

16. GE Power India Limited (GEPIL) emerged as the L1 bidder with a quoted price of ₹ 14.69 Crores. After the negotiation process, the Petitioner on 15.05.2023 issued the LOI to GEPIL for the supply of De-NO_x System and Auxiliaries at ₹ 13.34 Crores (including delivery charges, transit insurance charges, all applicable taxes, duties and other levies including GST prevailing as on to the date of issuing the LOI) for the Generating Station including Unit 1 and Unit 2. The final capital cost of the De-NO_x system along with the Auxiliaries in Unit 2, works out to ₹ 13.46 Crores including Initial Spares, applicable Taxes and Duties, IDC and IEDC. The detailed break-up of the final capital cost has been shown in the following Table:

Table 2: Detailed break-up of the Final Capital Cost

DIL Unit 2- Break-up of Capital Cost of the De-Nox System			
Particulars	Annotation	Unit 2	
		₹Crores	₹Crores/MW
Hard Capital Cost			
Equipment & Material supply	A	6.43	0.021
Initial Spares	B	0.28	0.001
Total Hard Capital Cost of De-Nox System	C=sum (A:B)	6.71	0.022
Soft Capital Cost			
Cost for Dismantling, Removal, Installation, Erection, Commissioning, PG Test and Reliability Run Test-Service Cost	D	6.56	0.022
Engineering and Project Management cost	E	0.05	0.000
Total Base Capital Cost of De-Nox System	F=sum (C,D,E)	13.32	0.044
Insurance	G	0.01	0.000
Incidental Expenses during Construction	H	0.04	0.000
IDC (@Rate of Interest 8.58%)	I	0.09	0.000
Total Soft Capital Cost of De-Nox System	J=sum (D,E,G,H,I)	6.75	0.023
Total Capital Cost of De-Nox System	K=C+J	13.46	0.045

17. Petitioner has deployed internal accruals to fund the entire project cost towards installation of the De-NO_x system and considered the normative Debt: Equity ratio of 70:30 for computation of the incremental Fixed Charges for FY 2023-24. The Petitioner requests the Commission to consider such expenditure for approval under Regulation

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20(2)(ii) of Generation Tariff Regulations 2019 and grant consequential increase in tariff to be recovered from the Respondent through monthly invoices.

Record of Proceedings

18. During the hearing dated 12.11.2024, the Commission admitted the Petition and directed the parties to submit reply and rejoinder. NPCL vide affidavit dated 21.02.2025 filed its reply. During the hearing dated 25.02.2025, the Commission directed the Petitioner to submit status of NOx emission levels pre and post installation of the De-NOx system. Petitioner vide affidavit dated 02.04.2025 filed its rejoinder against the Petitioner's reply dated 21.02.2025 and submitted its response to the queries raised by the Commission vide its RoP Order dated 04.03.2025.
19. During the hearing dated 22.04.2025, the Commission directed the petitioner to submit certification / validation of NOx emission levels by CPCB and also to clarify regarding NOx emission values exceeding the prescribed limit of 450 mg/Nm³ during January 2024 and October 2024. The Petitioner submitted its response on 09.06.2025. During the hearing dated 22.07.2025, counsel for the Petitioner informed the Commission that CERC had reserved the order on 28.04.2025 in the matter related to approval of final capital cost for the De-NOx system in Unit 2 corresponding to power supplied to TNPDC. The Commission heard the parties, concluded the hearing and reserved its order.

Reply of NPCL

20. On 21.02.2025, NPCL filed its reply and mainly submitted as under:
 - a) The Petitioner has relied upon the MoP letter dated 30.05.2018 to support its 'Change in Law' claims qua the Amendment Rules. However, the Petitioner falls under the exception contained in the above-mentioned letter of the MoP dated 30.05.2018, since the requirement of installation of ECS was envisaged under the EC granted to it on 04.12.2009 i.e., prior to the notification of the Amendment Rules. As per the conditions laid in the EC dated 04.12.2009, it appears that DIL was required to make provisions for ECS in its capital cost and regularly monitor the critical emissions, such as SO₂, NO_x, PM, Hg etc. Accordingly, DIL is required

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to explain that prior to notification of the Amendment Rules, there was no requirement for installation of the ECS, including the De-Nox system.

- b) DIL has relied upon the CERC's Order dated 08.01.2024 in Petition no. 261/MP/2022 qua TNPDCCL PPA, wherein the CERC held that the Amendment Rules qualify as a 'Change in Law' event under the TNPDCCL PPA and granted in-principle approval to the base capital cost of De-NOx System of Rs. 12.14 Crore. However, in the instant Petition, DIL has sought approval of the Rs. 13.46 Crores. In view of the same, DIL is required to explain with respect to the following:
- i. The reasons for the increase in total hard capital cost of De-NOx system from the projected cost provisionally approved by the CERC along with Justification and supporting documents thereof;
 - ii. Details of de-capitalized value of the dismantled equipment(s) for the installation of DE-NOx system and the Auxiliaries in Unit 2 of the generating station;
 - iii. The copy of PG test report of the De-NOx system and relevant data showing emission norms achieved in respect of the subject installation of De-NOx system and the Auxiliaries in compliance with notifications issued by MoEFCC;
 - iv. Summary of the data submitted to Central Pollution Control Board (CPCB) for the years 2020-21, 2021-22 and 2022-23, also providing for the number of times NOx value exceeded 450mg/Nm³ limit on an average data of fifteen (15) minutes along with total percentage (%) NOx value exceeding 450 mg/Nm³ limit on an average data of fifteen (15) minutes.
- c) DIL is required to confirm that there is no overlap or duplication in the determination of compensation under the 'Change in Law' events, particularly between the supply of 100 MW Net Contracted Capacity to TNPDCCL under the TNPDCCL PPA and the supply of 187 MW Gross Contracted Capacity to the Respondent/NPCL under the NPCL PPA, or any other distribution company.

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Rejoinder of DIL

21. On 02.04.2025, DIL filed its rejoinder and submitted as under:

- a) The contentions of NPCL are based on an incorrect interpretation of the EC conditions. The Petitioner has submitted that in terms of EC dated 4.12.2009, the allocated fund was limited to 275-meter-high Bi-flue stacks with an online emission monitoring system, High Efficiency Electrostatic Precipitators, dry ash handling systems for fly ash with silos, ash-ponds for unutilized fly ash, dust extraction and suppression system, sewage treatment, Green Belt development, closed cycle cooling systems with cooling towers, etc. The Petitioner does not fall under the exception contained in the MoP letter dated 30.05.2018, as there was no mandate/requirement of installation of the De-NO_x System under the EC granted to the Petitioner.
- b) With regard to increase for hard cost of De-NO_x system, DIL submitted that the CERC vide its Order dated 08.01.2024 had granted an in-principle approval to the provisional Base Capital Cost of ₹ 12.14 Crores, which was exclusive of the taxes and duties of approximately Rs. 2.08 Crores and allowed the Petitioner to claim the Taxes and Duties after the installation of the De-NO_x system.
- c) Regarding De-capitalized value of dismantled items, DIL submitted that the net asset value of the dismantled equipment as on 30.11.2023, i.e., the date of commissioning of the De-NO_x system and the Auxiliaries in Unit 2, was Rs. 0.37 Crores.
- d) PG Test of Unit 2 for commissioning of De-NO_x system and the Auxiliaries has been conducted by GEPIL, wherein the NO_x emission values have been demonstrated against the guaranteed values under the work contract. DIL submitted the copy of the PG Test Report as submitted by GEPIL.
- e) Regarding data pertaining to NO_x Emission Level of DIL Unit 2, DIL submitted that the real time NO_x emission data of Unit 2 are transmitted to the CPCB and submitted NO_x emissions levels of the past 3 years are as below:

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2020-21, 2021-22 and 2022-23	Total No. of times NO_x value exceeded 450 mg/Nm³ limit on 15 min average data
<450	52494
>450	36357
Total	88851
2020-21, 2021-22 and 2022-23	Total % NO_x value exceeded 450 mg/Nm³ limit on 15 min average data
<450	59%
>450	41%

f) DIL submitted following data pertaining to NO_x Emission level of DIL Unit 2 – Pre & Post-Commissioning of De-NO_x System:

DIL Unit 2 -Nox emission (mg/Nm³) for the period					
October 2022 to September 2023 (pre-installation)			January 2024 to December 2024 (Post installation)		
Month	Max	Min	Month	Max	Min
Oct-22	1033	221	Jan-24	640	200
Nov-22	1034	203	Feb-24	411	200
Dec-22	1017	213	Mar-24	428	204
Jan-23	1007	215	Apr-24	409	201
Feb-23	1058	203	May-24	421	200
Mar-23	1124	204	Jun-24	380	201
Apr-23	1040	209	July-24	393	200
May-23	1096	211	Aug-24	393	200
June-23	1036	209	Sep-24	412	201
July-23	1013	202	Oct-24	457	200
Aug-23	946	223	Nov-24	393	201
Sep-23	984	224	Dec-24	436	200

Note:

1. 12 blocks (each of 15 minutes duration) in Jan-2024 have NO_x emission values >450 mg/Nm³, as operation tuning for De-NO_x System was being carried out.
2. The above monthly maximum and minimum NO_x emission values exclude periods of unit shutdown and instrument calibration.

Additional Submission of DIL

22. On 09.06.2025, DIL made following submissions in response to the queries raised by the Commission in its Order dated 25.04.2025:

- a) In response to the Petitioner's request regarding validation of the data of the NO_x emissions levels, CPCB, vide its e-mail dated 16.05.2025, intimated that the data were available in the public domain. The Petitioner has downloaded month wise NO_x emissions data for unit 2 for the same periods pre and post installation of De-NO_x system from CPCB RTDMS website. The data available in the CPCB website are in the form of graphical representation and not in quantitative form.

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b) With regard to NOx Emission values exceeding the prescribed levels during January, 2024 and October, 2024, DIL submitted following reasons for deviation:

- i. The De-Nox system was commissioned on 30.11.2023 and the commissioning team were conducting tuning activities in various load ranges post commissioning to test the operational performance of the newly installed De-Nox System. An excursion of NOx emission during January, 2024 on account of such activities cannot be ruled out.
- ii. Deviation in NOx Emission Level during October 2024 was on account of a technical glitch which was immediately attended and the system was restored to normal maintenance team.

Commission's Analysis and Decision:

23. The Petitioner had earlier filed a Petition bearing Petition No. 1830 of 2022 for approval of the estimated additional capital expenditure towards the installation of the De-NOx System in Unit-2 of the Petitioner's generating station to comply with the revised Environment (Protection) Amendment Rules issued by MoEFCC in respect of NOx. The Commission had kept the matter in abeyance, since the judgement in a related matter was pending before the Hon'ble Supreme Court, while granting liberty to the parties to approach the Commission after Judgement in the related matter by Hon'ble Supreme Court. Subsequently, the Petitioner filed an IA in the matter to withdraw the Petition No. 1830 of 2022 pending before the Commission since it had already incurred the capital expenditure towards the installation of De-NOx system. The Commission had permitted the Petitioner to withdraw the Petition No. 1830 of 2022. The present Petition has been filed for approval of capital cost and tariff determination.
24. The instant petition is for approval of additional capital expenditure (ACE) towards the installation of the De-Nox system in unit-2 of the petition's generating station to meet the revised norms issued by MoEFCC in respect of NOx. The revised NOx emission norm as per the MoEFCC Notification dated 19.10.20 is 450 mg/Nm³ for thermal power plants installed during the period 01.01.2003 to 31.12.2016. The Unit-2 of the Petitioner's generating station was put into commercial operation on 02.08.2014, accordingly, the revised norm in case of Unit-2 of the petitioner has to be 450 mg/Nm³.

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The Petitioner has submitted that Unit-2 of its generating stations does not meet this norm, hence necessitates installation of the De-NOX system to meet the revised ECNs. Accordingly, ACE towards the installation of the DE-NOX system is claimed in the instant petition.

25. NPCL has contended that the MoEFCC notification dated 7.12.2015 is not applicable in the case of petitioner in view of the MOP letter dated 30.5.2018. NPCL has submitted that as per the MOP's letter thermal power projects, which were mandated to provide for environment protection measures under the EC issued before the MoEFCC notification dated 7.12.2015, cannot claim any relief under the 'Change in Law'. NPCL has also contended that EC was granted to the petitioner before the issue of the MoEFCC notification dated 7.12.2015 i.e. on 4.12.2009, as per which the petitioner's was required to include the cost of the pollution control measures in the project cost at the time of bidding. The petitioner cannot claim the same as ACE subsequently under change in law.
26. In response, the petitioner has submitted that it does not fall under paragraph 5.1.(b) of the MOP's letter dated 30.5.2018 as the FGD/De-NOx system was not specified in the EC and no fund was earmarked for the installation of the same. The petitioner has submitted that in terms of EC dated 4.12.09, the allocated fund was limited to 275-meter-high Bi-flue stacks with an online emission monitoring system, high efficiency electrostatic precipitators, dry ash handling system for fly ash with silos, ash-ponds for unutilised fly ash, dust extraction and suppression system, sewage treatment, green belt development, closed cycle cooling stems with cooling towers, etc. and same cannot be considered for the measures related to revised ECNs.
27. The Commission observed that the Petitioner is supplying 187 MW to NPCL and 100 MW to TNPDC from Unit-2 of its generating station. The Petitioner had filed the Petition No. 261/MP/2022 before the CERC for approval of estimated cost for installation of the De-NOx system in Unit 2 of the Petitioner's Generating Station. CERC vide its Order dated 08.01.2024 in the said Petition made following observations regarding installation of the De-NOx System at the time of availing of the EC in the year 2009:

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"24. TANGEDCO's contention is that the EC was issued to the Petitioner by MoEFCC before the issue of revised ECNs, and the EC includes the pollution control system. Therefore, the Petitioner's proposal to install De-NOx in Unit-2 of its generating station to meet the revised ECNs cannot be considered a 'Change in Law' event. According to the Petitioner, the EC issued to the Petitioner specified certain pollution control systems, but it does not include the De-NOx system, which has been proposed by the Petitioner in the instant petition. It is observed that the EC was issued to the Petitioner on 4.12.2009, and according to it, the Petitioner is required to provide funds to meet the expenditure towards the pollution control systems mentioned in the EC. The MoEFCC Notification revising the NOx emission norms was issued much later, on 7.12.2015. Further, the Petitioner is required to provide funds for certain pollution control systems mentioned in the EC, and it does not include the De-NOx systems. Therefore, we are of the view that the Petitioner could not have envisaged the installation of De-NOx systems at the time of availing of the EC in 2009 and, accordingly, could not have provided funds for the same. Therefore, we are not able to agree with TANGEDCO's contention that the De-NOx proposed by the Petitioner is included in the pollution control systems specified in the EC issued to the Petitioner by the Pollution Control Board. Accordingly, TANGEDCO's contention that, as per the EC, the Petitioner was required to provide funds to install the De-NOx systems does not hold good, and accordingly, it is rejected."

28. Considering the above discussion, the Commission is of the view that NPCL has misinterpreted the conditions laid in the EC dated 4.12.2009 granted to DIL and DIL does not fall under the exception contained in the MoP letter dated 30.05.2018, as there was no requirement of installation of the De-NOx System under the EC granted to the Petitioner, hence the petitioner is entitled to claim expenditure incurred towards installation of De-NOx System under UPERC Generation Tariff Regulations, 2019.
29. Petitioner has approached CERC on 27.06.2024 for approval of the final Capital Cost of De-NO_x system and the Auxiliaries of Unit 2 and determination of Compensation/Supplementary Tariff for the supply of 100 MW power to TNPDC, in terms of the Order dated 08.01.2024 passed by the CERC. The above Petition is pending before CERC. The Petitioner is, by way of the present Petition, only seeking

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the approval of the Commission on the final Capital Cost of De-NO_x system and the Auxiliaries of Unit 2 as additional capitalization on account of 'Change in Law' event and the determination of the incremental Tariff for FY 2023-24 in terms of Generation Tariff Regulations 2019 for recovery thereto as supplementary Capacity Charges for supply of 187 MW Gross Contracted Capacity to the Respondent. The incremental annual fixed charges as claimed by the Petitioner are as follows:

Table 3: Summary of Incremental Annual Fixed Charges for De-NO_x System of Unit 2 for FY 2023-24

Summary of Incremental Annual Fixed Charges on account of De-NO _x system for supply to NPCL during FY 2023-24 – Unit 2		
Particulars	UoM	FY 2023-24
Depreciation	₹ Crores	0.19
Interest on Loan	₹ Crores	0.20
Return on Equity	₹ Crores	0.15
Normative O&M Expenses	₹ Crores	0.05
Interest on Working Capital	₹ Crores	0.01
Total Incremental Annual Fixed Charges – Unit2	₹ Crores	0.60
Installed Capacity of Unit – 2	MW	300
Operationalized Gross Contracted Capacity	MW	187
Incremental Annual Fixed Charges for supply to NPCL	₹ Crores	0.37
Ex-bus Generation at NAPLF 85%	Mus	429.34
Ex-bus Incremental Fixed Charge Rate	₹ kWh	0.009

30. The timelines for commissioning of De-NO_x system for Unit (2) of the Petitioner's Generating Station, for the purpose of compliance with the prescribed NO_x emission limits as per the Amendment Rules read with MPCB letter dated 01.10.2021, was 31.12.2023. In compliance to the above, the Petitioner had, on 30.11.2023, commissioned the De-NO_x system and the Auxiliaries in Unit 2. Therefore, the Petitioner has requested the Commission to consider 30.11.2023 as the Date of Operation (OD_e) for the De-NO_x system and its Auxiliaries.
31. The Petitioner has capitalized ₹ 12.22 Crores in FY 2023-24 out of the total Capital Cost of ₹ 13.46 Crores and the balance ₹ 1.24 Crores was carried forward to FY 2024-25 as undischarged liabilities to be capitalized within Q2 FY 2024-25. The Petitioner has discharged the liabilities in Q2 FY 2024-25. Petitioner has submitted a copy of the Auditors' Certificate certifying the actual cash expenditure towards the De-NO_x system and the Auxiliaries in Q2 of FY 2024-25.

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32. The Commission has noted that CERC has reserved its order on 28.04.2025 in the matter related to the approval of final capital cost for the De-NOx system in Unit (2) corresponding to power supplied to TNPDC, as informed by the counsel for the Petitioner during the hearing held on 22.07.2025. The Petitioner has filed a True-up Petition for the period 2019-24 before the Commission.
33. Therefore, in view of above, the Commission has decided to carry out truing-up exercise taking into account CERC approved cost of the De-NOx System under applicable provisions for additional capitalization during FY 2023-24, in terms of UPERC Generation Tariff Regulations, 2019. Further, the petitioner is directed to file an additional affidavit along with the tariff impact of the proportionate cost for the De-NOx system allocated to NPCL as per CERC order, as and when it is issued.

The Petition No. 2130 of 2024 is disposed of with the above directions.


(Sanjay Kumar Singh)
Member




(Arvind Kumar)
Chairman

Place: Lucknow

Dated: 20.08.2025