

**Central Electricity Regulatory Commission  
New Delhi**

**RECORD OF PROCEEDINGS**

**Petition No. 245/2010**

Subject: Revision of norms for Target Availability in respect of Bhilai Expansion Power Project (2 x 250 MW) for recovery of annual capacity charges for the period 22.4.2009 to 31.3.2010 on account of acute coal shortage during the period 22.4.2009 to 31.10.2009.

Date of Hearing: 21.12.2010

Coram: Dr. Pramod Deo, Chairperson  
Shri S.Jayaraman, Member  
Shri V.S.Verma, Member  
Shri Deena Dayalan, Member

Petitioner: NTPC-SAIL Power Company Private Ltd (NSPCL), New Delhi

Respondents: ED, UT of Dadra & Nager Haveli, ED, UT of Daman & Diu, CSPDCL and SAIL.

Parties present: Shri G.Basu, NSPCL  
Shri R.N.Sen, NSPCL  
Shri S.D.Jha, NSPCL

During the hearing, the representative of the petitioner submitted as under:

- (a) The long-term coal linkage and the fuel supply agreement (FSA) signed with the South Eastern Coalfields Ltd (SECL) provides for an annual coal linkage of 2.4 million MT. However, SECL had revised the coal linkage to 50% of the FSA which was in contravention to the provisions of the FSA and the New Coal Distribution Policy dated 18.10.2007 of the Ministry of Coal, Govt. of India.
- (b) Due to the non-supply/restricted supply of coal during the period 22.4.2009 to 31.10.2009, by SECL, the generating station could only achieve a cumulative PLF of 60.57 % during this period.

2. On being pointed out by the Commission that non-supply/short supply of coal as per agreement was a contractual matter, under which losses if any, suffered by the petitioner for short supply of coal by SECL could be settled in terms of the penalty clause under the FSA, the representative of the petitioner clarified that the penalty clause provided for compensation only if the supply of coal fell below 50% of the contracted capacity and for supply of coal above 50% of the contracted quantity, no compensation was provided.

3. On a specific query by the Commission as to why the petitioner had signed the agreement when it was known that the supply of coal would be restricted to 50% of the contracted capacity and that SECL would not pay compensation, the representative of the petitioner clarified that it had no other alternative except to sign

the agreement as the market for supply of coal was monopolistic in nature. The representative submitted that being a captive generating station, it was third in priority for supply of coal as per supply preference of coal companies and the rakes of coal arrived only after 2 months from the date of lifting of coal from the coal companies.

4. On an observation by the Commission that the petitioner was entitled to obtain 100% quantity of coal as per the normative requirement of the consumers in terms of the new coal distribution policy of Govt. of India, the petitioner clarified that though the Memorandum of Understanding (MOU) signed with SECL was for 85 % PLF, the actual supply was cut down to 60%.The representative further submitted that only after consistent and regular follow up, an (MOU) was entered into with Singareni Collieries Co. Ltd. (SCCL) for 1.0 Million MT of coal supply from October, 2009 onwards, as a result of which it could achieve a PLF of 94.99 % during the period from November, 2009 to March, 2010.

5. The representative of the petitioner submitted that with the above background, the commercial operation of Unit-II of the generating station was declared on 21.10.2009 and the matter for augmentation of coal supply was still being pursued with various authorities including the CEA, Coal India Ltd (CIL), Ministry of Power and the Ministry of Coal.

6. The representative of the petitioner brought to the notice of the Commission of the fact that it was extremely difficult for the power generating companies including the petitioner to obtain coal on sustainable basis and that the situation would get aggravated in future.

7. On a further query by the Commission as to the provision under which the present petition was filed, the representative of the petitioner clarified that in terms of Regulation 44 of the 2009 Tariff Regulations, the present petition has been filed.

8. The Commission admitted the petition and directed issuance of notice to the respondents. The petitioner is directed to serve copy of the petition, latest by 7.1.2011 on the respondents, who may file their replies, with copy to the petitioner on or before 18.1.2011. Rejoinder, if any, by 25.1.2011.

9. Matter shall be listed for hearing on 3.2.2011.

Sd/-  
(Dr. N.C.Mahapatra)  
Chief Advisor (Law)