

**Central Electricity Regulatory Commission
New Delhi**

Petition No. 245/2010

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

Date of Hearing: 21.4.2011

Date of Order: 27.5.2011

IN THE MATTER OF

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.

AND IN THE MATTER OF

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

Vs

1. Electricity Department, Union Territory of Dadra & Nagar Haveli, Silvassa
2. Electricity Department, Union Territory of Daman & Diu, Daman
3. Chhattisgarh State Power Distribution Company Ltd, Raipur
4. Steel Authority of India Ltd, New Delhi**Respondents**

The following present

1. Shri R.N.Sen, NSPCL
2. Shri G.Basu, NSPCL
3. Shri S.D.Jha, NSPCL
4. Shri Sakesh Kumar, Advocate for UT of D& NH and DD

ORDER

This petition has been filed by NTPC-SAIL Power Company Limited (NSPCL), the petitioner herein, for relaxation of Target Availability norms in respect of Bhilai Expansion Power Project (2 x 250 MW) (hereinafter referred to as 'the generating station') 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, in terms of Regulation 44 of the Central Electricity Regulatory Commission (Terms and Conditions) of Tariff Regulations, 2009 ('the 2009 regulations').

Background

2. The petitioner is a joint venture company of NTPC Ltd and Steel Authority of India Ltd (SAIL) having equal equity participation in the project in the ratio of 50:50. The petitioner has acquired certain captive power plants owned by SAIL, which includes the captive power plant at Bhilai with capacity of 74 MW (2x30 MW + 1 x 14 MW), which is expanded by addition of 2 units of 250 MW each. The power generated from the generating station is consumed to the extent of 51% for captive requirements of SAIL and the balance power is supplied to the respondent Nos. 1 to 3 in terms of the Power Purchase Agreements entered into between them.

3. Out of total capacity of 500 MW, only 170 MW of power is utilized for the captive requirements of SAIL and the remaining 330 MW is supplied to beneficiaries as under:

Beneficiaries	Capacity allocated (MW)
UT of Dadra & Nagar Haveli (Respondent No.1)	135
UT of Daman & Diu (Respondent No.2)	95
CSEB(Respondent No.3)	100
SAIL/BSP (Respondent No.4)	170

4. The dates of commercial operation of the units of the generating station is as under:

Units	Original schedule as per MoP / GoI	Actual date of commercial operation
Unit No- I	February, 2008	22.4.2009
Unit No.-II	August, 2008	21.10.2009



5. Petition No. 308/2009 was filed by the petitioner for approval of tariff for Unit-I (250 MW) for the period from 22.4.2009 to 20.10.2009 and for Unit-I and Unit-II (2x 250 MW) for the period from 21.10.2009 to 31.3.2014 of generating station and the Commission by its order dated 29.7.2010 determined the tariff for the generating station, in accordance with the 2009 regulations.

6. The petitioner, in the present petition has submitted that the generating station was setup with a coal linkage corresponding to the Plant Load Factor (PLF) of 80% for recovery of full fixed charges and the coal supplies for different units of the generating station which were commissioned during 2008-09 were largely met by coal companies as per coal linkages. It has also submitted that though the 2009 regulations provide for recovery of full capacity charges at 85% of the Normative Plant Availability Factor (NAPAF), the generating station could not achieve the same during the period from 22.4.2009 to 31.3.2010. Though the Fuel Supply Agreement (FSA) with the South Eastern Coal Fields Ltd (SECL) provided for an annual linkage of 2.4 million MT/annum of coal, there was an unilateral reduction of 50% of the annual coal linkage by the said coal company and the actual supply of coal from SECL was only 75% of the restricted coal linkage. The petitioner has submitted that the erratic and restricted coal supply by SECL in contravention of the provisions of the Fuel Supply Agreement (FSA) and the New Coal Distribution Policy dated 18.10.2007 of the Ministry of Coal, Government of India during the period from 22.4.2009 to 31.10.2009, had adversely affected the Plant Availability Factor (PAF) of the generating station, the details of which are as stated overleaf:



Month	Plant Availability Factor (PAF) achieved
April 2009 (22.4.2009 to 30.4.2009)	67.11%
May,2009	40.16%
June,2009	71.25%
July, 2009	39.57%
August, 2009	73.71%
September, 2009	25.28%
October, 2009	97.62%
Progressive till 31.10.2009	60.57% (provisional as certified by SLDC, Bhilai)

7. Pursuant to the hearing on 11.11.2010, the petitioner by its affidavit dated 3.12.2010 has submitted details of the actual supply of coal by SECL during the period from April, 2009 to October, 2009 as under:

Period	Monthly linkage quantity (MT)	Monthly quantity as per MOU (MT)	Actual supply (MT)	Percentage of linkage supplied quantity
April, 2009	200666	100333	41367.45	20.62
May, 2009	200666	100333	79497.26	39.62
June,2009	200666	100333	85463.38	42.59
July,2009	176586	100333	44794.39	25.37
August,2009	176586	100333	70555.92	39.96
September,2009	176586	100333	61351.31	34.74
October,2009	200666	100333	43843.31	21.85
Total	1332422	702331	426873.02	32.04

8. During the hearing on 21.12.2010, when it was pointed out by the Commission that the issues relating to non-supply/short supply of coal by SECL was guided by the terms of the FSA between the parties and for losses if any, incurred by the petitioner for the non-supply/short supply of coal by SECL could be settled by invocation of the penalty clause in the FSA, the petitioner clarified that the 'penalty clause' in the FSA provided for compensation only in case the supply of coal fell below the 50% of the contracted capacity. On a specific query as to why the petitioner had signed the FSA when it had knowledge that the supply of coal would be restricted to 50% of the contracted capacity and that SECL was not bound to

pay compensation in terms of the FSA, the petitioner clarified that the restriction of supply of coal by Coal India Ltd (CIL) was not known to it at the time of signing of FSA and added that market for supply of coal being monopolistic in nature, it had no other option but to sign the FSA with SECL. Also, in terms of the supply preference of Coal India Ltd, the generating station, being a captive station, fall under category-3 of the coal supply sector and hence supply was restricted to 75% of the coal linkage. In addition, the rakes of coal arrived only after two months from the date of lifting of coal from SECL. The petitioner also submitted that due to unforeseen reduction in the actual supply of coal, it could not make prior arrangement for supply of coal from other sources in order to make up the short supply of coal. Though the possibility of importing coal was explored, the same could not materialize on account of very high energy charges. The petitioner further submitted that only after consistent and regular follow up, a Memorandum of Understanding (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 the generating station could achieve a PLF of 94.99% during the period from November, 2009 to March, 2010. Thus, the petitioner has submitted that the short supply/non-supply of coal by coal companies during the period from 22.4.2009 to 31.10.2009 had adversely affected the operation of the generating station resulting in the reduction of the PAF at 60.57%, for which it could not be held responsible. The petitioner has prayed that the relief prayed for may be granted by the Commission in exercise of its power under Regulation 44 of the 2009 regulations.

9. None appeared on behalf of the respondents. Respondent No.4 (SAIL) has filed reply to the petition and has submitted that the revision of target availability, if allowed, would result in huge loss for it on account of payment for energy not

generated by the petitioner. It has also submitted that the shortfall in generation during the period 22.4.2009 to 31.10.2009 or in the future needs to be considered as unplanned loss in generation and any loss on this count cannot be passed on to the beneficiaries.

10. In the light of the submissions made by the parties and the documents available on record, we now examine the prayer of the petitioner in the subsequent paragraphs.

11. It is observed that the Normative Annual Plant Availability factor for the period from 22.4.2009 to 31.3.2010 is 74.49% and in terms of the order of the Commission dated 29.7.2010 in Petition No.308/2009, the petitioner is to recover 93.82% of the capacity charges in respect of the generating station for the year 2009-10. The details are as under:

Month	No. of days	PAF (%)	Capacity charges recovered (%)	Cumulative PAF (%)
April, 2009	9	67.11	2.34	67.11
May, 2009	31	40.16	6.63	46.22
June, 2009	30	71.25	8.02	56.95
July, 2009	31	39.57	6.60	51.62
August, 2009	31	73.71	8.41	56.80
September, 2009	30	25.28	5.66	50.97
October, 2009	31	97.62	9.68	58.46
November, 2009	30	91.70	9.06	62.93
December, 2009	31	91.65	9.36	66.44
January, 2010	31	93.07	9.44	69.33
February, 2010	28	96.26	8.68	71.74
March, 2010	31	102.27	9.93	74.49
Total	344		93.82	74.49

12. The details of the cost of components of tariff recoverable corresponding to availability of 74.49%, for the period 2009-10 is as stated overleaf:

<i>(₹ in lakh)</i>	
Components	2009-10
Interest on loan	13009.94
Depreciation	12155.7
Operation & Maintenance	8895.45
Interest on Working Capital	3199.54
Cost of Secondary fuel	984.86
Total of cost components	38245.49
Annual fixed charges at normative availability @ 85%	50304.19
Annual fixed charges recovered at actual availability @ 74.49%	44084.22

13. In Petition No.308/2009 filed by the petitioner for determination of tariff of the generating station for the period from 22.4.2009 to 31.3.2014, the issue of delay in the declaration of commercial operation of the generating station due to non supply/ short supply of coal was raised by the petitioner and documents in support of the same were submitted. The Commission after considering the justification submitted by the petitioner came to the conclusion that time and cost over-run involved in the declaration of commercial operation of the project was beyond the control of the petitioner. The relevant portion of the order dated 29.7.2010 is extracted as under:

" 12. Pursuant to the FSA with SECL on 3.1.2009, the commercial operation of Unit-I of the generating station was declared on 22.4.2009, which is within three months from the establishment of coal linkage. This is reasonable. However, it is noted that despite the FSA, SECL had insisted for a separate MOU, under which, SECL unilaterally restricted the coal linkage supply to 50% of FSA. We find that the restriction imposed by SECL was in contravention to the provisions of the FSA and the New Coal Distribution Policy of the Ministry of Coal dated 18.10.2007. In addition, the actual coal supply from SECL was about 75% of the restricted coal linkage, as coal to captive power generating station falls under category-3 of the coal supply sector, as per the supply preference of the Coal India Ltd. With the short quantum of supply of coal, Unit-I of the generating station could only be operated to 60-65% of the full load capacity on regular basis. The petitioner has also been forced to postpone the declaration of the commercial operation of Unit-II of the generating station, till the issue of coal shortage was resolved.

13. In view of the above, we are of the view that the time taken and the costs incurred on account of the delay of 14 months from the original date of commercial operation of both the units of generating station, was on account of circumstances which were beyond the control of the petitioner, for which the petitioner could not be made responsible. Hence, accepted."

14. It is observed that despite the short supply of coal to the generating station by SECL for the said period, no prayer was made for relaxation of normative target availability, in Petition No.308/2009, which was filed on 10.12.2009. The petitioner has now sought indulgence of the Commission to relax the normative target availability on account of the loss in the declared capacity corresponding to 34.42% loss of NPAF during the period 22.4.2009 to 31.10.2009 for the reason that short supply of coal which adversely affected the operation of the generating station, was beyond its control.

15. Consequent upon condonation of time over-run of 14 months in the declaration of commercial operation of the generating station, the Commission had allowed the capitalization of Interest During Construction (IDC) upto the date of commercial operation of the generating station, by its order dated 29.7.2010. Merely because the Commission had condoned the delay in the declaration of commercial operation of the generating station, the petitioner cannot seek relaxation of target availability, on the same ground. The petitioner after having had the benefit of IDC cannot seek relaxation of 'target availability' for recovery of full capacity charges. We are of the view that the petitioner would be entitled to recover the full fixed charges only if the generating station perform to the normative availability and the risk, if any, for non-performance on account of failure to arrange coal after the date of commercial operation, is required to be borne by the petitioner and it would be unreasonable to burden the beneficiaries on this count.

16. The responsibility and the risk for arranging fuel for the generating station lies with the generator. In the instant case, the supply of coal (annual coal linkage of 2.4 million MT) to the generating station is governed by the Fuel Supply Agreement

dated 3.1.2009 between the petitioner and SECL. For the non-supply/short supply of coal to the generating station in violation of the FSA, the petitioner has the recourse to seek appropriate remedy in terms of the relevant clauses in the agreement. Hence, the prayer of the petitioner for relaxation of target availability fails on this count.

17. Based on the above discussions, we hold that the submission of the petitioner for relaxation of target availability in respect of the generating station for fixed cost recovery at 60.57% deserves no merit. Accordingly, the petition is disposed off.

Sd/-
[M.DEENA DAYALAN]
MEMBER

Sd/-
[V.S.VERMA]
MEMBER

Sd/-
[S.JAYARAMAN]
MEMBER

Sd/-
[DR.PRAMOD DEO]
CHAIRPERSON

