

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.189/2010

Coram:

- 1. Dr. Pramod Deo, Chairperson**
- 2. Shri S. Jayaraman, Member**
- 3. Shri V.S. Verma, Member**
- 4. Shri M. Deena Dayalan, Member**

Date of Hearing: 13.12.2011

Date of Order: 25.4.2012

In the matter of

Petition for revision of Normative Annual Plant Availability Factor in respect of NTPC's Power Stations in Eastern Region, namely Farakka STPS (1600MW), Kahalgaon STPS, Stage-I (840MW) and Kahalgaon STPS, Stage-II (1500MW) on account of acute shortage of coal at all these stations and non-availability of cooling water at Farakka STPS.

AND

In the matter of

NTPC Ltd, New Delhi

.....**Petitioner**

Vs

1. West Bengal State Electricity Distribution Company Ltd, Kolkata
 2. Bihar State Electricity Board, Patna
 3. Jharkhand State Electricity Board, Ranchi
 4. Grid Corporation of Orissa Ltd., Bhubaneswar
 5. Power Department, Government of Sikkim, Gangtok
 6. Electricity Department, Union Territory of Pudhucherry, Puducherry
 7. Tamil Nadu Electricity Board, Chennai
 8. Madhya Pradesh Power Trading Ltd., Jabalpur
 9. Maharashtra State Electricity Distribution Company Ltd., Mumbai
 10. Gujarat Urja Vikas Nigam Limited, Baroda
 11. Uttar Pradesh Power Corporation Ltd, Lucknow
 12. Power Development Department, Government of J&K, Srinagar
 13. Power Department, Union Territory of Chandigarh, Chandigarh
 14. Punjab State Electricity Board, Patiala
 15. Himachal Pradesh State Electricity Board, Shimla
 16. Jaipur Vidyut Vitaran Nigam Ltd., Jaipur
 17. Ajmer Vidyut Vitaran Nigam Ltd., Ajmer
 18. Jodhpur Vidyut Vitaran Nigam Ltd., Jodhpur
 19. Chhattisgarh State Power Trading Co. Ltd., Raipur
 20. Haryana Power Purchase Centre Ltd., Haryana
 21. BSES Rajdhani Power Limited, New Delhi
 22. BSES Yamuna Power Limited, Delhi
 23. North Delhi Power Ltd, New Delhi
 24. Uttarakhand Power Corporation Ltd., Dehradun
 25. Electricity Department, Administration of Dadra and Nagar Haveli, Silvassa
 26. Electricity Department, Administration of Daman & Diu, Daman
-**Respondents**



ORDER

This petition has been filed by the petitioner, NTPC claiming the following reliefs:

- (a) *Revise the Normative Plant Availability Factor (NAPAF) for Farakka Station (1600 MW), Kahalgaon Stage-I (4 x 210 MW) and Kahalgaon Stage-II (3 x 500 MW) for the year 2009-10 for full recovery at the actually achieved NAPAF level.*
- (b) *Revise the Normative Plant Availability Factor for Farakka Station (1600 MW), Kahalgaon Stage-I (4 x 210 MW) and Kahalgaon Stage-II (3 x 500 MW) for the period 2010-11 to 2013-14 at 80% level. In case of improvement, the Hon'ble Commission may be pleased to review.*
- (c) *Pass any other order in this regard as the Hon'ble Commission may find appropriate in the circumstances pleaded above.*

2. Prior to the filing of this petition, the petitioner had filed Petition No.245/2009 for determination of tariff in respect of Kahalgaon STPS, Stage-I for the period 2009-14 and the same is pending. Considering the fact that the prayer in this petition has a bearing in the determination of tariff in Petition No. 245/2009 pertaining to Kahalgaon STPS, Stage-I, both these petitions were clubbed together and the petitioner and the respondent beneficiaries to whom power is supplied from these generating stations, were heard and orders reserved. However, we proceed to examine the submissions of the parties in this petition and dispose of the same 'on merits' by this order, prior to the determination of tariff of Kahalgaon STPS, Stage-I for 2009-14, by a separate order in Petition No. 245/2009.

3. Replies to the petition has been filed by the respondents namely, WBSEDCL (respondent No. 1), BSEB (respondent No.2), JSEB (respondent No.3), GRIDCO (respondent No.4), MPPTCL (respondent No.8), GUVNL (respondent No.10), UPPCL (respondent No.11), BRPL (respondent No.21) and NDPL (respondent No.23). The petitioner has filed its rejoinder to the said replies.



4. The petitioner, in its petition has submitted the details of the Installed capacity and the dates of commercial operation (COD) of each of the units of Farakka STPS, Kahalgaon, Stage-I and Kahalgaon, Stage-II (collectively referred to as "the generating stations") as under:

Generating Stations	Dates of Commercial operation (COD) of Units				
	I	II	III	IV	V
Farakka STPS	1.11.1986	1.10.1987	1.9.1988	1.7.1996	1.4.1995
Kahalgaon STPS, Stage-I	1.1.1995	1.4.1995	1.2.1996	1.8.1996	-
Kahalgaon STPS, Stage-II	1.8.2008	30.12.2008	20.3.2010	-	-

5. Regulation 26 (i) (a) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as 'the 2009 Tariff Regulations') provide for a Normative Annual Plant Availability Factor (NAPAF) of 85% for these generating stations, for recovery of full fixed charges for the period 2009-14.

6. The petitioner, in its petition has submitted as under:

(a) As against the NAPAF of 85%, the actual cumulative Plant Availability Factor achieved during 2009-10 in respect of Farakka STPS was 73.36%, 68.74% for Kahalgaon, Stage-I and 65.08% for Kahalgaon Stage-II. It has also been submitted that Farakka STPS and Kahalgaon Stage-I generating stations have been under commercial operation since 1986 and 1995 respectively, and the coal supply to both these generating stations share a common source. The petitioner has also submitted that the long term linkage for coal supply to these generating stations has been provided from coal mines of Rajmahal coalfields under ECL which is connected to both the generating stations with Merry Go Round (MGR) system for transportation of coal. Subsequently, the linkage for Kahalgaon STPS, Stage-II was accorded from the new coal blocks of Rajmahal expansion, Chuperbhita and Hurra in the same Rajmahal coalfields, which are yet to be developed.

(b) The Standing Linkage Committee (Long Term), Ministry of Coal & Mines, Government of India, had approved a long term linkage of 7.07 Million MT/ year and 3.88 Million MT/ year for Farakka STPS & Kahalgaon Stage-I generating stations respectively. At the time of planning, the above coal requirement was for 62.8% PLF considering average coal GCV of 3050 kcal/kg, at that time which in present days has come down to 2800 kcal/kg (approx) due to deterioration in coal quality.

(c) Consequent to the increased requirement and lesser supply of coal from the linked mines, the matter was pursued and sourcing of coal from alternate mines of ECL and distant mines of MCL, BCCL was started. Further, the coal received from these non-linked coal mines of Coal India Ltd (CIL) were transported to the generating stations through Indian Railways network.

(d) During the period from 1996 to 2000 i.e. prior to the commissioning of Inter-regional transmission links of Eastern Region (ER) with Southern Region (SR), Western Region (WR) and Northern Region (NR), due to low power requirement and poor demand growth in ER, the units operated at part load for most of the time. Thus, even though the coal requirement at these two generating stations was not commensurate with their full capacity level generation, the coal requirement to these stations for the generation to meet the existing demand, could be met from the existing sources and system-wise no major coal supply/transportation constraint was felt.

(e) In the 2001 Tariff Regulations (notified on 26.3.2001) for the period 2001-04, the Commission had enhanced the target availability level for recovery of full fixed charges for NTPC generating stations from 62.78% to 80% and the same was maintained for the tariff period 2004-09. Accordingly, the corresponding combined coal requirement for the two generating stations got enhanced from 10.95 million MT/year to 15.5 Million MT/year (considering GCV of 2800 kcal/kg). As augmentation of coal supply at an enhanced level could not be achieved by both the generating stations during 2002-03, the petitioner could not recover the full fixed charges and had incurred loss on account of disincentive in Farakka STPS and Kahalgaon, STPS, Stage-I. Subsequently, while Kahalgaon STPS, Stage-I could augment the desired coal supply and achieve the target availability during 2003-04 and onwards, Farakka STPS continued to incur loss on account of disincentive till 2004-05. The above difficulties were highlighted during the discussion on finalization of the 2004 Tariff Regulations applicable for the period 2004-09. However, the Commission continued with the target availability norm of 80% for recovery of full fixed charges for coal based stations including Faakka STPS and Kahalgaon STPS, Stage-I. Meanwhile the petitioner undertook the task of importing coal for these stations and as a result, these generating stations could surpass the 80% target availability from 2005-06 to 2007-08 after imported coal was additionally arranged for these stations.

(f) The petitioner continued to vigorously follow with ECL for enhancing coal production from the linked mines of Rajmahal coalfields and also raised this issue in various forums like ERPC, CEA etc. While the total annual coal requirement for Kahalgaon STPS, Stage-I

and Farakka STPS for meeting 80% target availability was 15.58 Million MT/year, the actual coal supply during 2004-08 was average 15.96 Million MT/year (equivalent domestic coal) which included average 0.71 Million MT/ year of imported coal.

(g) Subsequently, Units I and II of Kahalgaon STPS, Stage-II (3x500MW) was put to commercial operation on 1.8.2008 and 30.12.2008 respectively. Kahalgaon STPS, Stage-II was conceived during the period 2001 while the target availability was being enhanced by the Commission from 62.8% to 80%. The long term coal linkage of 8.82 Million MT/year for Kahalgaon STPS, Stage-II, from Chuperbhita, Rajmahal expansion & Hurra mines of ECL was approved by the Standing Linkage Committee, Ministry of Coal & Mines, Govt. of India vide its letter dated 19.9.2001. The above coal quantity in respect of the said generating station corresponds to PLF of about 77% considering average GCV of Rajmahal coal as 2800 kcal/kg. However, for meeting the NAPAF of 85% for Farakka STPS and Kahalgaon STPS, Stages I & II (2340 MW), the approximate coal requirement would be 26 Million MT/year.

(h) As per the Minutes of the Meeting (MoM) dated 26.5.2005 between NTPC and ECL, the ECL had committed to ramp up the coal production capacity at Rajmahal sector from the level of 11.50 MTPA during 2005-06 to 21.50 MTPA during 2010-11. However, the development of identified linked coal mines by ECL has been delayed extensively due to law & order problem etc., leaving the coal supply position of Kahalgaon STPS, Stage-II in complete disarray. In fact, there has been inordinate delay in development of linked mines (Rajmahal Expansion from 10.5 MTPA to 17 MTPA, Chuperbhita 4 MTPA and Hurra-C-3 MTPA). All these expansion/ new mining projects were supposed to commence their planned production by 2006. However, all these development projects are yet to commence production.

(i) Other possible options for arranging coal for these generating stations including coordinating with other CIL subsidiaries (CCL, BCCL etc.) diversion of coal from other CIL fed stations to Farakka STPS, Kahalgaon STPS and SCCL for additional supply were explored. The petitioner also sourced coal from e-auction and high grade coal (equivalent to imported coal) from ECL. Against a requirement of 19 Million MT of equivalent coal for meeting the target availability of 80%, approximately, 14.89 MMT of Indian coal and 1.66 MMT of imported coal (equivalent to 18.2 MMT of Indian coal) could be supplied to these generating stations due to constraints in coal transportation and finalization of supply agreements. The target availability for recovery of full fixed cost for NTPC generating

stations for the period 2009-14 was enhanced from 80% to 85% and the corresponding requirement for meeting 85% target availability would be 26 MMT/year.

(j) Despite measures for arranging the desired quantity of coal, due to production of coal remaining low in Rajmahal mines (MGR mine) and non-development of linked mines for Kahlgaon STPS, Stage-II, the actual receipt of coal remained low. Moreover, the additional requirement of coal for Kahlgaon, STPS, Stage-II further loaded the stretched Railway network. As a result, during 2009-10 all these generating stations suffered on account of lower than normative availability and disincentive loss. Due to major constraints associated with transportation of coal as stated, the augmentation of coal supply through Merry Go Round (MGR) is the only plausible solution to improve availability of these generating stations.

(k) The principal reasons for non achievement of 85% availability by the said generating stations in the ER for recovery of full fixed charges are summarized as (a) the less amount of coal being received through MGR system due to low production at the linked mines (b) delay in development of the linked mines for Kahlgaon, STPS, Stage-II (c) constraints in transportation of coal from other mines (non-linked and imported coal) to the stations using Railway network and (d) in case of Farakka STPS due to non-availability of cooling water during February and May.

(l) The petitioner has explored all possible options to improve coal supply to these generating stations in order to make available higher capacity to the beneficiaries and achieve the Normative Target Availability level as specified by the Commission. However, the petitioner has not been able to achieve the target availability as stipulated in view of the above factors which are beyond the control of the petitioner. Hence, the Commission in exercise of its 'power to relax' under Regulation 44 of the 2009 Tariff Regulations may be pleased to relax the 'Normative Annual Plant Availability Factor' for these generating stations for recovery of full fixed charges.

7. In response to the Commission's letters dated 25.10.2010 and 16.8.2011 and in terms of the proceedings held on 29.3.2011, 6.9.2011, the petitioner has filed additional submissions in the matter vide its affidavits dated 22.11.2010, 24.5.2011, 30.8.2011 and 11.10.2011 respectively. The submissions made by the petitioner in these affidavits are briefly summarized as under:

(a) Imported coal is being fed at Farakka STPS from 2.6.2005 and at Kahalgaon STPS from last week of February 2006. The amount of imported coal received at these stations from 2005-06 to 2010-11 clearly highlights the efforts taken by the petitioner and the details are as under:

(in lakh MT)

	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11
Farakka STPS	6.26	5.41	7.58	9.79	8.71	17.54
Kahalgaon STPS	0.72	2.41	6.01	6.68	9.08	14.74
Total	6.98	7.82	13.59	16.47	17.79	32.28

(b) The month-wise Plant Availability Factor (PAF) of Farakka STPS and Kahalgaon, Stage-I during the period from 2005-06 to 2007-08 before the commissioning of Kahalgaon Stage-II as furnished vide affidavit dated 22.11.2010 are as under:

Table-I

Month	Farakka STPS	Kahalgaon STPS-I	Month	Farakka STPS	Kahalgaon STPS-I	Month	Farakka STPS	Kahalgaon STPS-I
	PAFM	PAFM		PAFM	PAFM		PAFM	PAFM
	%	%		%	%		%	%
April 2005	77.77	91.25	April 2006	43.79	98.19	April 2007	85.95	98.00
May 2005	80.46	81.13	May 2006	94.73	80.60	May 2007	96.79	100.24
June 2005	69.87	77.31	June 2006	80.54	82.35	June 2007	95.58	100.50
July 2005	79.39	79.57	July 2006	76.51	77.99	July 2007	68.99	82.86
August 2005	71.92	92.72	August 2006	78.53	80.97	August 2007	88.63	74.23
September 2005	87.31	87.49	September 2006	87.57	81.38	September 2007	64.49	85.08
October 2005	93.68	100.02	October 2006	85.27	93.35	October 2007	76.95	80.27
November 2005	83.58	96.92	November 2006	80.70	99.87	November 2007	81.95	89.75
December 2005	98.37	99.15	December 2006	97.83	102.40	December 2007	81.01	96.41
January 2006	97.45	97.78	January 2007	98.07	102.41	January 2008	85.83	93.15
February 2006	96.46	98.36	February 2007	99.02	102.00	February 2008	87.88	96.15
March 2006	76.38	98.32	March 2007	96.34	99.68	March 2008	93.89	97.19
Total 2005-06	84.34	91.65	Total 2006-07	84.92	91.70	Total 2007-08	84.00	91.10

(c) The month-wise Plant Availability Factor in respect of Farakka STPS, Kahalgaon Stage-I and Kahalgaon Stage-II after the commissioning of Kahalgaon Stage-II for the period 2008-09 to 2010-11 (up to October, 2011) are as under:

Table-II

Month	Farakka STPS	Kahalgaon STPS-I	Kahalgaon STPS-II	Month	Farakka STPS	Kahalgaon STPS-I	Kahalgaon STPS-II	Month	Farakka STPS	Kahalgaon STPS-I	Kahalgaon STPS-II
	PAFM	PAFM	PAFM		PAFM	PAFM	PAFM		PAFM		
	%	%	%		%	%	%		%		
April 2008	84.37	97.31		Apr-09	68.18	57.84	79.11	Apr-10	50.35	62.83	57.60
May 2008	99.13	95.06		May-09	88.21	51.04	94.02	May-10	86.33	73.29	56.19
June 2008	75.32	95.88		Jun-09	100.86	89.05	68.52	Jun-10	87.82	81.82	49.06
July 2008	61.55	73.73		Jul-09	61.85	73.81	52.15	Jul-10	87.65	80.14	41.56



August 2008	57.48	69.55	54.56	Aug-09	52.58	66.73	39.14	Aug-10	81.59	51.96	65.72
September 2008	59.93	80.37	56.16	Sep-09	50.77	53.69	36.90	Sep-10	88.16	71.88	70.41
October 2008	62.10	67.32	82.38	Oct-09	49.13	61.36	38.52	Oct-10	92.85	76.65	76.82
November 2008	67.47	70.31	78.06	Nov-09	67.03	66.05	40.76				
December 2008	91.40	81.78	91.81	Dec-09	80.05	57.97	78.12				
January 2009	86.01	73.42	77.67	Jan-10	91.87	75.48	83.11				
February 2009	87.97	71.32	74.68	Feb-10	90.24	93.90	91.50				
March 2009	89.45	85.24	93.66	Mar-10	80.94	80.07	78.08				
Total 2008-09	76.81	80.11	77.93	Total 2009-10	73.36	68.74	65.06	Total 2010-11	82.11	71.22	59.62

(d) The Ministry of Coal, Government of India vide its O.M. dated 18.10.2007 had issued "New Coal Distribution Policy" wherein the earlier linkage system was replaced with a bilateral commercial arrangement of Fuel Supply Agreements (FSAs) and all existing customers were required to enter into FSAs with coal companies (Coal India Ltd (CIL)/Subsidiary of CIL). CIL being a monopolistic player for supply of coal in the country, the petitioner was compelled to sign FSA with an Annual Contracted Quantity (ACQ) of 15 MTPA equivalent to 57% PLF. The revised allocation of coal with coal companies are as under:

	ECL	BCCL	CCL	MCL	NEC	TOTAL
Farakka (1600 MW)	4.200	1.213	0.635	0.752	0.200	7.000
Kahalgaon (1840 MW)	8.000	0.00	0.00	0.00	0.00	8.000
Total	12.200	1.213	0.635	0.752	0.200	15.000

(e) To mitigate the shortage, coal was arranged through import, bilateral MoU with coal companies and e-auction and the details of the same are as under:

	Import	MoU	E-auction	Total
2008-09	1.6	0.0	0.0	1.6
2009-10	1.8	1.2	0.3	3.3
2010-11	3.3	1.9	0.8	6.0

(f) The actual coal receipt with respect to the contacted quantity, in respect of Farakka STPS and Kahalgaon STPS are as under:

	2008-09	2009-10	2010-11
Total installed capacity (MW)	3440	3940	3940
Coal Requirement at 85% PLF (MMT)	23.0	27.0	27.0
ACQ/Coal Linkage –SLC(LT) (MMT)	18.4	15.0	15.0
Coal Receipt (MMT)	14.7	14.4	12.9

(g) The reason for less coal receipt than the contracted quantity is due to poor quality of coal consisting of large boulders etc, from some of the coal companies which would have damaged the coal unloading system at these stations and hence was not unloaded. Further, the

transportation of such coal resulted in choking of coal handling system which did not allow unloading of good quality coal, ultimately reducing the coal receipt.

(h) The linked mines of Kahalgaon STPS, Stage-II are yet to commence commercial production. However, as per FSA signed with CIL for supply of 8.0 MMT of coal, is after considering both the Stages of Kahalgaon generating station.

(i) To meet the revised norms of 85% availability for full fixed cost recovery, the petitioner had tried to arrange coal from all other available sources including through imports and transport the same through Indian Railway system. In this regard, the petitioner had for supply of desired quantity of coal, i.e. equivalent domestic coal of 27 Million MT/year, for achieving 85% availability at these stations. However, due to constraint in railway network, the entire coal arranged otherwise could not be transported to the station.

Submissions of the Respondents

8. The submissions of the respondents in their replies are mainly as under:

WBSEDCL

- i. The question of railway linkage has no merit since Farraka STPS in the past had attained more than normative generation.
- ii. The failure of the petitioner should not be passed on to the beneficiaries by penalizing the beneficiaries twice by giving higher energy charge for higher import of coal as well as higher fixed charges by reducing NAPAF.

BSEB, JSEB, BRPL and GRIDCO

- i. The prayer of the petitioner to reduce the norms of NAPAF is in the nature of discreet threat to the beneficiaries to agree to an unreasonable purchase of imported coal. NAPAF has no relationship with supply of coal, whereas PLF has relationship with supply of coal.
- ii. From the observations of the Commission in the Statement of objects and reasons for the 2009 tariff regulations, it is clear that the problem of coal supply cannot be a ground for setting of lower norms.
- iii. Since regulation 21 of the 2009 tariff regulations for computation of Capacity charge is inclusive of incentive, the petitioner does not suffer on account of inadequate coal supply for payment of incentive.
- iv. The petition is premature since nothing on record has been shown indicating that the petitioner has complied with the requirements of Regulation 21(4) of the 2009 tariff

regulation in the event of shortfall of coal.

- v. Relaxation of the Regulation 26 (1) (a) of the 2009 tariff regulations would only result in unreasonable benefit to the petitioner.

MPPTCL

- i. There is no justification for revising the norms now since the problems faced by the petitioner in procuring sufficient quantity and quality of coal were brought to the notice of the Commission by the petitioner at the time of the public hearing and the Commission had finalized the 2009 tariff regulations considering the submissions of the parties.
- ii. The petitioner has failed to arrange coal from other generating stations and has also failed to import coal for achieving target availability and has thus failed to discharge its responsibility. Hence, the prayer for power to relax may not be allowed.

GUVNL

- i. After commissioning of Kahalgaon Stage-II the plant availability factor of Farakka STPS and Kahalgaon Stage-I declined in 2008-09. This indicates that the coal meant for these plants were diverted to Kahalgaon Stage-II thereby penalizing the beneficiaries of other two generating stations.
- ii. The arrangement for fuel procurement with the norms fixed by the Commission is the primary responsibility of the petitioner and the failure to do so resulted in financial burden to the beneficiaries. CEA vide its letter dated 28.1.1998 has decided that after 31.3.1998 the risk arising from non-availability of fuel and transportation is to be borne by petitioner.
- iii. The Commission in its order dated 27.5.2011 in Petition No.245/2010 had rejected the prayer of M/s NSPCL for revision of target availability on account of coal shortage.

UPPCL

- i. The shortage of coal is essentially temporary in nature and for the said loss the petitioner is duly indemnified.
- ii. The petitioner has not quantified the amount of its cost under recovered on account of its inability to achieve NAPAF.
- iii. The beneficiaries of Farraka STPS should not be penalized for the actions of the petitioner in respect of actions in other generating stations.

NDPL

- i. The responsibility and risk for arranging fuel for generating stations lies with the generator. Any short/non-supply of coal to the said station should be dealt with the relevant clauses of FSA and the petitioner would have sought compensation for the same. The cost involved should not be passed on to the beneficiaries.
- ii. Though the petitioner managed to arrange coal through railways, it had resulted in overburdening the beneficiaries by extra transportation and Freight charges, besides paying high energy charges for use of imported coal in these stations.

- iii. The petitioner went ahead with the commissioning of the Kahalgaon Stage-II station in spite of inadequate coal linkage. Since, the commissioning of the station was delayed about two years; the petitioner has sufficient time arranging coal by entering into new FSA. The petitioner has solely relied on linked mines rather than exploring supply of coal from other available sources.

Response by the petitioner

9. The response of the petitioner to the above replies filed by the respondents is summarized as under:

- i. The petitioner had tried to supplement the shortfall in coal supply by entering into bilateral MoUs with other coal companies e-auction and through coal imports and has been able to arrange the required quantum of coal. However, due to bottlenecks in railway system, the full quantity of coal otherwise arranged could not be transported to the stations.
- ii. Had the petitioner not resorted to arranging coal from different sources on its own initiative the respondents would have received very less energy and would have been forced to source energy from other costlier sources. The petitioner has made arrangements for sourcing of coal from available sources but due to reasons beyond its control it could not transport some of this coal to these stations.
- iii. The petitioner has sought relaxation in NAPAF primarily due to inability of linked mines to supply the required quantity of coal and constraints in the railway network to transport the balance coal arranged from other sources.
- iv. Realization of capacity charges as well as incentive/ disincentive is linked to plant availability factor and the petitioner has lost substantially on account of disincentive at this station.
- v. As regards compliance with Regulation 21(4), while the petitioner on occasions did declare higher DC during peak hours, the beneficiaries scheduled lesser generation during peak hours compared to the rest of the day thereby negating the intention of the provisions of the regulations.
- vi. Relaxation if granted would maintain the balance between the petitioner and its beneficiaries.
- vii. In spite of best efforts for arranging coal at these stations, the coal supply situation did not improve. Moreover, the existing mines have not been able to ramp up coal production to match with the increased coal requirement to meet the higher coal availability norms. Hence, the petitioner has asked for relaxation of NAPAF in this petition.
- viii. Till such time the actual situation improves, the petitioner has sought for relief which is subject to review in case of improvement in coal supply situation.
- ix. The letter of CEA referred to by the respondent GUVNL is not available with the petitioner and it reserves the right to the petitioner. In any event the petitioners could not be made to suffer for anything which is beyond its reasonable control.
- x. The petitioner has only sought for relaxation and not for revision of norms considering the problems faced by it.
- xi. Out of the total requirement of 22 MMT (approx.) for these generating stations, CIL had

agreed for only 15 MMT. The balance coal is being arranged through e-auction, imports and tie ups with other coal companies.

- xii. The petitioner has suffered substantial under recovery of fixed charges on account of shortage of coal supply for reasons beyond its control and has sought relief to recover this under recovery.
- xiii. Due to monopolistic approach of both CIL and Railways, it has become impossible for the petitioner to arrange coal at the generating stations.
- xiv. In case Kahalgaon STPS, Stage-II not been commissioned, the expenditure during the construction and IDC cost would have increased considerably, thereby resulting in higher capital cost which would have increased the liability of the beneficiaries for the entire life of the plant.

Analysis

10. Heard the parties. Taking into consideration the submissions of the parties and the documents on record, we examine the prayer of the petitioner in the subsequent paragraphs.

11. The petitioner vide Annexure –A of its affidavit dated 22.11.2010 has submitted a tabular statement containing details of the coal linkage from different sources namely, Merry Go Round, Coal supplied by Railways, imported coal etc vis-à-vis the actual quantum of coal received from different sources and the actual requirement of coal for achieving the normative NAPAF for recovery of full fixed charges in the respective years for the generating stations in the Eastern Region, considered month-wise for the period from 2005-06 to 2010-11 (*upto September, 2010*). From the month-wise tabular statement, it is observed that the problem of inadequate receipt of coal considering the actual coal requirement for achieving target availability for these generating stations had arisen only after the commercial operation of Kahalgaon STPS, Stage-II generating station with effect from 1.8.2008. It is also observed from the details given in the tabular statement in Table-I under paragraph 7(b) above that the availability in respect of Farakka STPS and Kahalgaon STPS, Stage-I were more than 84% and 91% respectively from the period 2005-06 to 2007-08 and the Average availability in respect of Farakka STPS and Kahalgaon STPS, Stage-I taken together was 88% during the said period, which is higher than the NAPAF of 85% specified under Regulation 26(i)(a) of the 2009 Tariff Regulations. Even though the actual availability in respect of Farakka STPS was 84%, the NAPAF of the said generating

station was fixed at 85%, considering the fact that Farakka STPS and Kahalgaon STPS, Stage-I generating stations were linked to a common source viz Rajmahal Coal fields, for coal and the requirement of coal could be adjusted in order to achieve 85% NAPAF for both these generating stations. Thus, the details in Table-I amply demonstrate the fact that there has been no shortage of coal in Farakka STPS and Kahalgaon STPS, Stage-I upto the year 2007-08 and both these generating stations were in a position to achieve 85% NAPAF without any difficulty.

12. From the details given in the tabular statement in Table-II under paragraph 7(c) above it is observed that the availability in respect of Farakka STPS and Kahalgaon STPS, Stage-I has gradually decreased since the year 2008-09. The first unit of Kahalgaon STPS, Stage-II was commissioned during August, 2008 and Unit-II was commissioned during December, 2008. It has been submitted by the petitioner that the coal supply to Kahalgaon STPS, Stage-II was linked to MGR system from Chuperbhita, Rajmal expansion and Hurra mines of ECL, but the development of the identified coal mines has been extensively delayed due to law and order problems etc. This according to the petitioner, has left the coal supply from the linked mines to Kahalgaon STPS, Stage-II in complete disarray.

13. In the light of above, the generation of Kahalgaon stage-II could be sustained by the petitioner through supply of coal from the mines other than linked mines and with the reduction in supply of coal from linked mines to Farakka STPS and Kahalgaon Stage-I as the long term linkage for coal supply to these generating stations has been provided from coal mines of Rajmahal Coalfields under ECL which is connected to both the generating stations with MGR system for transportation of coal.

14. Therefore, it is observed from the documents and the submissions made by the petitioner that the shortage of coal supply is due to non development of linked mines and bottlenecks in the Railway system. However, the question of reasonableness of transferring the cost implication without commensurate benefits to the beneficiaries needs to be seen in the context

that the beneficiaries also do not have any control over coal supplies. It is therefore the responsibility of the generator to arrange the coal and bear the associated risks involved. Since the petitioner as well as the coal supply companies are owned by the Government, it would not be appropriate to pass on the fuel supply risks to the beneficiaries.

15. It is noticed that in a similar prayer made by the NTPC-SAIL in Petition No. 245/2010 for relaxation of Target Availability norms for the period 22.4.2009 to 31.3.2010 for non-supply / shortage of coal to its generating station, the Commission by its order dated 27.5.2011 had disposed of the petition rejecting the prayer of NTPC-SAIL. The relevant portion of the order is extracted as under:

"15.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."

16. It is also observed that the fixed charges in respect of Farakka STPS (Petition No. 222/2009) is (₹565.93 crore per annum) which works out to ₹0.51/kWh and Kahalgaon STPS, Stage-I (Petition No. 245/2009) is (₹498.39 crore per annum) which works out to ₹0.87 per kWh claimed by the petitioner as against the fixed charges of ₹761.60 crore per annum for Kahalgaon STPS, Stage-II (Petition No. 282/2009)) claimed which works out to ₹1.088 per kWh at 85% corresponding target availability. Thus, it is observed that the generators interest would get better served by having more generation at Kahalgaon Stage-II generating station and by sacrificing generation at Farrakka SPS and Kahalgaon Stage-I generating stations, by supplying coal to Kahalgaon Stage-II. As noticed, there was no shortage of coal to Farakka STPS and Kahalgaon Stage-I generating stations till the commercial operation of Kahalgaon STPS, Stage-II generating station. On this consideration, the prayer of the petitioner for relaxation of NAPAF in respect of Farakka STPS and Kahalgaon STPS, Stage-I is not justified.

17. The power of relaxation under the 2009 Tariff Regulations is in general terms and its exercise is discretionary. It is settled law that exercise of discretion must not be arbitrary, must be exercised reasonably and with circumspection, consistent with justice, equity and good conscience, always in keeping with the given facts and circumstances of a case. Based on the above discussions, we are of the view that the prayers of the petitioner for revision of NAPAF by relaxation of Regulation 26(i)(a) of the 2009 Tariff Regulations deserves no merit and is rejected. The petition is disposed of accordingly.

Sd/-
(M.DEENA DAYALAN)
MEMBER

Sd/-
(V.S.VERMA)
MEMBER

Sd/-
(S.JAYARAMAN)
MEMBER

Sd/-
(DR.PRAMOD DEO)
CHAIRPERSON

