

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No 70/MP/2014**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

**Shri M. Deena Dayalan, Member**

**Shri A.K. Singhal, Member**

**Date of Hearing: 22.7.2014**

**Date of order: 30.9.2014**

**In the matter of**

Review petition under Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 and Regulation 54 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014.

**And**

**In the matter of**

North Eastern Electric Power Corporation Ltd.  
Brookeland Compound, Lower New Colony,  
Shillong-793 003

**....Petitioner**

**The following were present:**

Shri Rana Bose, NEEPCO

Shri Paresh Ch. Barman, NEEPCO

Ms.Elizabeth Pyrbot, NEEPCO

**ORDER**

The petitioner, North Eastern Electric Power Corporation Ltd has filed the present petition under Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 2013 and Regulation 54 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (2014 Tariff Regulations) for review of some of the provisions of the 2014 Tariff Regulations. The petitioner has submitted that the Commission vide Notice dated 6.12.2013 issued the draft Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations 2014 seeking comments/ suggestions/



objections of the stakeholders on the draft tariff regulations. In response to the draft notification, the petitioner has submitted its comments/suggestions vide its letter dated 22.1.2014. Subsequently, the Commission has notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereafter 2014 Regulations) on 21.2.2014. The petitioner has submitted that on examination of the 2014 Tariff Regulations, the petitioner has observed that some of its suggestions submitted vide letter dated 22.1.2014 have not been incorporated. The petitioner has requested to review the 2014 Tariff Regulations in respect of the following:

(a) Auxiliary Energy Consumption:- Regulation 3 (3) of the 2014 Tariff Regulations provides that the Auxiliary Energy Consumption shall not include energy consumption for supply of power to housing colonies and other facilities of the generating station and power consumed for construction work at the generating station. The petitioner has submitted that as per the definition of the generating station in Section 2 (30) of the Electricity Act, 2003 read with Electricity (Removal of Difficulties) Fourth Order, 2005, the supply of electricity to the housing colonies should be treated as part of the Auxiliary Energy Consumption.

(b) Renovation of Gas Turbine:- Regulation 15 (3) of the 2014 Regulations provides that the renovation of gas turbine shall be done after 25 years from the date of commercial operation of the gas based thermal power stations. The petitioner has submitted that considering the fast technology change in the sector and the fact that utilization of latest technology results in better

plant performance, the renovation for the power stations (both gas and hydro) is required to be undertaken much before the expiry of their normal useful life. Therefore, renovation of gas turbine should be restored to 15 years as was the case under 2009 Tariff Regulations.

(c) Incentive:- Regulation 30 (4) provides that the incentive to a generating station or unit thereof shall be payable at a flat rate of 50 paisa/kWh for ex-bus scheduled energy corresponding to scheduled generation in excess of ex-bus energy corresponding to Normative Annual Plant Load Factor (NAPLF). The petitioner has submitted that since demand side factor plays a role in PLF, a generator's efficiency should not be measured with reference to PLF. The base for incentive should be Plant Availability Factor (PAF).

(d) Normative Annual Plan Availability Factor (NAPAF):- Regulation 36 (A) (d) of 2014 Tariff Regulations provides for NAPAF of Assam GPS as 72%. The petitioner has submitted that due to non-availability of fuel gas, it is not possible to achieve PAF of more than 70% and therefore, NAPAF of Assam GPS should be specified as 70%.

(e) Normative Annual Plant Load Factor (NAPLF):- Regulation 36 (B) provides for NAPLF of 85% for incentive. The petitioner has submitted that in view of the present availability of the fuel gas, NAPLF for Assam GPS should be considered at par with NAPAF, and not 85%.

(f) Gross Station Heat Rate:- Regulation 36 (C) provides for GSHR of 2500 kCal/kWh for combined cycle and 3440 kCal/kWh for open cycle for AGBPP (Assam) and 3700 kCal/kWh in open cycle for AGTPP (Agartala). The petitioner has submitted that considering the average GSHR achieved by the plants during past five years, the GSHR for Assam GPS should be fixed at 2689 kCal/kWh for combined cycle and for Agartala GPS at 3770 kCal/kWh, for open cycle.

(g) Auxiliary Energy Consumption:- Regulation 36 (E) of the 2014 Tariff Regulations provides for the auxiliary energy consumption for combined cycle generating station at 2.5% and for open cycle at 1.0%. The petitioner has submitted that considering the auxiliary energy consumption at Gas Booster Station, the allowed 2.5% is not sufficient and needs to be revised.

(h) NAPA for Kopili Stage I:- The petitioner has submitted that though it had suggested NAPA of 67% for Kopili Stage I, the Commission has specified NAPA of 79% in case of Kopili Stage I.

2. In view of the above submission, the petitioner has prayed for the review of the provisions of the 2014 Tariff Regulations.

3. The petition was listed for hearing on maintainability on 22.7.2014. The representative of the petitioner submitted that the generating stations of NEEPCO stand on a different footing from that of the generating stations of NTPC and therefore, the norms decided predominantly on the basis of data of NTPC stations

should not be applied in its case. The representative of the petitioner submitted that the operating norms may be relaxed in case of its generating stations.

4. We have considered the submission of the petitioner. The 2014 Tariff Regulations have been specified by the Commission in exercise of the power under Section 178 read with Section 61 of the Act and the Electricity (Procedure for Previous Publication) Rules, 2005. The procedure requires the Commission to publish the draft regulation and invite the comments/suggestions of the stakeholders thereon and to finalize the regulations after considering the comments/suggestions/objections raised. The Commission has consulted the stakeholders including NEEPCO while framing the Regulations. It is not necessary that the Commission shall accept all comments/suggestions/objections made by a stakeholder merely because a stakeholder has participated in the process of consultation while making the regulation. The process of consultation does not vest any right on the stakeholder to claim that its suggestions must be accepted and in case of non-acceptance, the regulations should be reviewed.

5. It has been held by the Hon'ble Supreme Court in the State of U.P. & others Vs. Babu Ram Upadhyaya [(1961) 2SCR 679] that the rules made under the Statute must be treated for all purpose of construction or obligations exactly as if they were in the Act and are to be of the same effect as if contained in the Act and are to be judicially noticed for all purpose of construction and obligations. Therefore, 2014 Regulations which have been made by the Commission in exercise of its power under Section 178 of the Act have become a part of the Act. The Act does not provide for review of any regulation made by the Commission. The Commission's

power of review has been enumerated in Section 94 (1) (f) of the Act which is confined to review of the order, decision or direction of the Commission. Since, the 2014 Tariff Regulations have been enacted by the Commission in exercise of its legislative power, the same is not amenable to review under Section 94 (1) (f) of the Act.

6. In addition to seeking review, the petitioner has filed the petition under Regulation 54 of 2014 Tariff Regulations which pertains to 'power to relax', though the petitioner has not specifically sought relaxation of any of the provisions of the regulations. Regulation 54 provides as under:-

"Power to Relax:- The Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person."

'Power to Relax' cannot be exercised in a vacuum, but in the context of particular facts and circumstances of the case. If the petitioner faces serious difficulty in giving effect to any particular regulation in respect of any generating station, it has liberty to approach the Commission with appropriate data and justification under Regulation 54 of 2014 Tariff Regulations in accordance with law.

7. The petition is not maintainable for the aforesaid reasons and is dismissed.

**sd/-**  
**(A. K. Singhal)**  
**Member**

**sd/-**  
**(M. Deena Dayalan)**  
**Member**

**sd/-**  
**(Gireesh B.Pradhan)**  
**Chairperson**