

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 33/MP/2014**

**&**

**I. A. No. 62/2014**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

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

**Shri A.S. Bakshi, Member**

**Date of Hearing: 27.02.2015**

**Date of Order : 19.02.2016**

**In the matter of**

Dispute arising as a result of non-furnishing of details by NTPC and DVC in terms of Regulation 21 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009

**And**

**In the matter of**

Tata Power Delhi Distribution Limited  
Sub-station Building, Hudson Lines,  
Kingsway Camp, Delhi-110 009

**...Petitioner**

**Vs**

1. NTPC Limited  
NTPC Bhawan, Scope Complex,  
7 Institutional Area, Lodhi Road,  
New Delhi-110 003

2. Damodar Valley Corporation  
DVC Tower, 1<sup>st</sup> Floor,  
VIP Road, Kolkata-700 054

**.....Respondents**

**Following were present:**

Shri Alok Shankar, Advocate, TPDDL

Ms. Shimpny Mishra, TPDDL

Shri Ashis Kumar Dutta, TPDDL



Shri Lokesh Sahitya, TPDDL  
Shri Uttam Kumar, TPDDL  
Shri Sumit Saihder, TPDDL  
Shri M.G. Ramachandran, Advocate, NTPC and DVC  
Ms. Poorva Saigal, Advocate, NTPC and DVC  
Shri Shyam Kumar, NTPC  
Shri Vivek Kumar, NTPC  
Shri A.K. Bishoi, NTPC  
Shri A.K. Sil, DVC

### **ORDER**

This petition has been filed by the petitioner, Tata Power Delhi Distribution Limited (TPDDL), seeking appropriate directions to NTPC Limited and Damodar Valley Corporation Limited to provide supporting documents and break-up of the details mentioned in Form 15 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 as amended from time to time (hereinafter “2009 Tariff Regulations”) for the purpose of ensuring transparency in determination of energy charges.

2. The petitioner, a joint venture company of Tata Power Company Limited. (TPCL) and the Government of National Capital Territory of Delhi (GNCTD), is a distribution licensee in Delhi in terms of Section 14 of the Electricity Act, 2003 (the Act) read with the Delhi Electricity Reforms Act and the Distribution and Retail Tariff Supply Licence issued by the Delhi Electricity Regulatory Commission (DERC).

3. The petitioner has submitted that the Commission through the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (Third Amendment)



Regulations, 2009 notified on 31.3.2012 (hereinafter "Amendment Regulations") has introduced the following provisos under clause (6) of Regulation 21 for the purpose of ensuring transparency in computation of variable charges:

"Provided that generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel etc., as per the form 15 of the Part-I of Appendix I to these regulations:

Provided further that the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and the weighted average GCV of the fuels as received shall also be provided separately, along with the bills of the respective month:

Provided further that copies of the bills and details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel etc., details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall also be displayed on the website of the generating company. The details should be available on its website on monthly basis for a period of three months."

4. The petitioner has submitted that the above provisions provide for an oversight mechanism under which the generating companies are required to furnish the parameters of GCV and price of fuel (domestic, imported and e-auction coal) to the beneficiaries whereby the beneficiaries have detailed predictability into the computation of variable charges billed by the generating companies. The grievances of the petitioner are that the central sector generating stations are complying with these regulations as a matter of routine and are unwilling to share details and/or break-up of each item mentioned in Form 15 to the beneficiaries and in the absence of such details/breakup, the petitioner is not in a position to determine any details mentioned in the Form 15 furnished by the generating companies.



5. The petitioner has submitted that it wrote letters to NTPC and DVC on 15.1.2014 requesting them to clarify the pricing methodology being used for charging the landed cost of primary fuel including details of charges in addition to the notified price if any being given by them to coal companies and other factors pertaining to determination of variable cost. The petitioner has further submitted that considering an increase in variable cost by 43 paisa/unit in one quarter (Q3 vs Q2 of 2013-14), it again wrote to NTPC and DVC vide letters dated 30.1.2014 requesting for information on details of price paid to coal companies, details of coal sourced from various sources, landed cost of coal sourced and its corresponding GCV, freight charges for transporting coal from domestic sources and imported sources. However, no response was received from the respondents in this regard. The petitioner again wrote to NTPC vide letter dated 12.2.2014 requesting it to clarify the reasons for increase in variable cost of power from Badarpur TPS by 45% i.e. from Rs. 3.25/unit in May, 2013 to Rs. 4.74/unit in January, 2014. In the said letter, the petitioner has pointed out that NTPC is charging Rs.3400/tonne for quality of coal having GCV of 3100 to 3400 kcal/kg whereas the cost of this quality of coal as per the information available from the website of Coal Company should have been Rs. 670/tonne. The petitioner has submitted that no specific reply has been received from NTPC to its letter.

6. Relying on Form 15 furnished by the petitioner in respect of BPTS and NCPS Dadri Thermal (Annexure 5 & 6 of the petition), the petitioner has submitted that the cost incurred by the generating companies on transportation of coal, incentives paid to coal companies and handling charges etc. are neither elaborated in the form provided



by the generating companies nor the details thereof were shared by the generating companies in response to the request by the petitioner. The petitioner has submitted that the cost of coal declared by the generating companies to be paid is at times three times higher than that indicated by Coal India Limited in its website as per its New Coal Distribution Policy (NCDP).

7. The petitioner has submitted that NTPC vide its letter dated 14.2.2014 replied to the queries of the petitioner which was vague and did not disclose specific information as requested by the petitioner. The petitioner has submitted that DVC has not responded to the letter of the petitioner at all. The petitioner has submitted that despite the best efforts by this Commission to ensure transparency and predictability in determination of variable charges, the desired results are far from being achieved and the beneficiaries are not provided with the information to which they are entitled to in accordance with the provisions of Amendment Regulations. The petitioner has submitted that the petitioner being a regulated entity, all claims made by it undergoes stringent prudence check before the same is allowed to be recovered through retail tariff and any cost of fuel which has no basis and can be rebutted merely by showing the prices notified by CIL runs into the category of imprudent cost and is likely to be disallowed by Delhi Electricity Regulatory Commission (DERC). Under the facts of the case as narrated above, the petitioner has sought appropriate directions to NTPC and DVC: (a) to provide documentary proof of the basis of variable charges for calculating landed cost of coal and (b) to give details with justification on the huge difference



between the cost of coal mentioned on CIL website and that claimed by the respondents in Form 15 of 2009 Tariff Regulations.

8. During the hearing of the matter on 27.3.2014, learned counsel for the petitioner submitted that the petitioner and NTPC were in the process of reconciliation of the disputes raised in the petition and sought four weeks' time which was allowed with direction to the petitioner to submit a report by 13.5.2014. The petitioner has submitted that in furtherance of the above directions, the petitioner vide its letter dated 17.4.2014 requested NTPC to provide the details relating to coal supply which included GCV of coal, break up of coal cost, coal transportation cost, Fuel Supply Agreement and minimum technical limits of the plants. The petitioner has submitted that in response to its letter, NTPC vide its letter dated 9.5.2014 furnished details with regard to coal for Badarpur and Dadri TPS. The petitioner is stated to have carried out an analysis of the data provided by NTPC and noticed that only GCV of coal on fired basis had been furnished which was not adequate to carry out the requisite analysis. The petitioner has submitted that it requires month wise details of GCV of coal as billed (at the loading point as per FSA) by CIL to NTPC and GCV of coal as received by NTPC for carrying out requisite analysis and accordingly, vide its letter dated 19.5.2014 wrote to NTPC for sharing the remaining data.

9. The petitioner has submitted that based on the coal data provided by NTPC vide its letter dated 9.5.2014, the petitioner has prepared an interim report as under:



(a) Increase in Variable cost from October 2013: The petitioner has submitted that according to NTPC, the considerable difference in cost of coal supply before and after October 2013 was due to provisional bills raised by NTPC on its procurers on account of the dispute between NTPC and Coal India Limited (CIL). NTPC has indicated that it would raise additional bills for the period from September 2012 to September 2013 on its beneficiaries as the new rates would be higher than the billed rates and would be at par with rates for the period after October 2013. The petitioner was yet to receive the details of the same from NTPC.

(b) High Variable Cost: The petitioner has submitted that the GCV of fuel supplied appeared to have been recorded and billed at much higher grades when compared to GCV of coal as fired due to different approaches taken to calculate GCV. According to the petitioner, GCV at loading point used for billing is calculated on equilibrated basis (where moisture content is taken as 4%) whereas GCV as fired is calculated based on total moisture. Currently coal cost is billed considering grade to be of G9 (GCV ranges from 4601 to 4900 Kcal/Kg and above) whereas it is a general understanding that such high grade coal is not available to thermal power stations. The petitioner has submitted that NTPC should seek clarification on the variation from CIL.

(c) The petitioner referred to the order dated 8.10.2012 in Petition No.42 of 2012 passed by Punjab State Electricity Regulatory Commission and has submitted that a uniform method of GCV measurement be adopted to bring down



the drop in GCV between the received coal and bunkered coal within 150 Kcal/kg.

**Reply of the Respondents:**

10. NTPC Limited (NTPC) in its reply dated 2.7.2014 has submitted that NTPC arranged a plant visit of the Petitioner's team to Badarpur TPS on 16.4.2014 and Dadri TPS on 29.4.2014 in which detailed presentations were made and discussions were held on various aspects of coal cost and GCV. Thereafter, the petitioner sought various other coal data in respect of these stations which were supplied. NTPC has submitted that as per the Amendment Regulations, the generating companies are required to provide information relating to coal as per Form 15 and also the information regarding the details of blending ratio and weighted average GCV of fuel as received. NTPC has submitted that the information sought by the petitioner is beyond the scope of the Regulations. NTPC has submitted that it has given the following information/data in respect of Badarpur and Dadri TPS for the period from October 2013 to March 2014:

- (i) Source wise coal quantity received from various mines like CCL, ECL, imported, e-auction etc. for Badarpur and Dadri TPS and amount paid to coal companies;
- (ii) Break-up of landed cost of coal source-wise which includes coal cost paid to CIL and Freight Charges paid to Railways during this period;
- (iii) Date-wise and month-wise details of GCV on fired basis for the given period containing such details as percentage of moisture content, percentage of ash content, percentage of volatile matter, percentage of fixed carbon in coal;





- (iv) Source and mine-wise sample coal bills for Badarpur and Dadri indicating various elements of coal cost viz. base cost, breaking charges, loading cost, excise duty, education cess, royalty, S.E. duty, clean energy charges, CST, VAT etc.
- (v) Explained various methods of GCV measurement like equilibrated basis (for payment to coal companies) and on total moisture basis (to arrive at fired basis) as per various BIS standards;
- (vi) Details of reasons for loss of GCV attributable to stacking/storing of coal/spontaneous combustion/auto ignition, control of fugitive dust emission through water spraying at various points like on conveyor belts/tipler/at unloading points, multiple handling in transfer points and tiplers, crushing of coal etc.;
- (vii) Details of evolution and procedures of Third Party Sampling at mine end.

11. In response to the issues raised by the petitioner vide its affidavit dated 23.5.2014, NTPC has submitted as under:

(a) With regard to reason for increase in variable cost from October 2013, NTPC has submitted that since October 2012, NTPC disputed the coal bills because of issues concerning coal quality and started deducting amounts from coal bills. NTPC was raising bills on its beneficiaries on provisional basis based on the amounts paid to Coal India. NTPC had informed all beneficiaries that as and when the issue was settled with Coal India, NTPC would adjust its claims with the beneficiaries. Some of the disputed issues have been settled and earlier



payments withheld by NTPC have been released to CIL. NTPC has submitted that by raising the disputes and withholding part payments, NTPC has been instrumental in enforcing third party audit at mine's end. With effect from October, 2013, Coal companies have agreed that coal grade/GCV would be decided based on third party sampling done at the mine end and Coal Supply Agreements have been amended to that effect and payments from October 2013 are being made on the basis of coal grade/GCV decided by third party sampling. NTPC is stated to have explained the petitioner that variable cost calculations for the months upto September 2013 and with effect from October 2013 are not comparable and as per tentative settlement reached with coal companies, there would be an increase of Rs. 800/MT for Badarpur TPS for the period up to September, 2013 and would be billed to beneficiaries as and when paid to coal companies. NTPC has further submitted that it was explained to the petitioner that supply from CCL accounts for about 90% of the coal requirement of Badarpur TPS, and NTPC and CCL have reached a tentative settlement for the disputed period from October 2012 to September 2013. Once a final settlement is reached with CCL, NTPC would be in a position to confirm the revised coal prices for the period upto September, 2013.

(b) As regards the issue raised by the petitioner urging NTPC to seek clarification from CIL regarding availability of high grade coal, NTPC has submitted that FSA signed with CIL for supply of coal from CCL mines to Badarpur envisages coal grades in the range of G4 to G10/W-IV/ benefited



coal and for Dadri from G7–G10 grades. On account of short supply of domestic coal, NTPC has no choice but to accept the mines as decided by CIL. Therefore, FSA signed by NTPC with CIL envisages that coal supply to NTPC stations is based on declared grades of coal from respective mines.

(c) As regards the request of the petitioner for adoption of the PSERC order to bring down the difference between as received coal and bunkered coal, NTPC has submitted that loss of GCV between as received basis and as fired basis is inevitable because of various factors such as stacking loss, blending coal from various sources, presence of high volatile matter in coal, presence of sand, soil, stones of varying sizes in the received coal which are otherwise removed before coal is fed to the bunker. According to NTPC, due to different sizes of coal lumps, the samples collected from the top of the wagons do not represent the realistic sample as ash distribution is different in different fractions of coal whereas the coal fed to the bunker is homogeneous mixture and sampling of coal is much easier. NTPC has submitted that all these factors contribute to variation in GCV between as received basis and as fired basis. NTPC has submitted there are various aspects in the procurement of coal which should be considered in a realistic and pragmatic manner and not in a theoretical way.

12. Damodar Valley Corporation (DVC) in its reply filed vide affidavit dated 4.7.2014 has explained the methodology for computation of energy charges, methodology for determining the quantum of coal and basic features of coal purchases and coal



utilisation and procedure for billing to the procurers. DVC has further submitted as under:

(a) DVC is publishing regularly relevant data of the Form 15 on its website in terms of the 2009 Tariff Regulations and thus has complied with the Regulations.

(b) DVC is acting transparently and furnishing the requisite details regarding computation of variable charges from time to time in terms of the Amendment Regulations. Accordingly, the petitioner should not be allowed to continuously demand various other information and documents.

(c) The following salient aspects in relation to the coal consumed by DVC in its various generating stations are relevant: -

(i) The coal for each of the generating stations is sourced by DVC from more than one coal suppliers. These suppliers include Bharat Coking Coal Ltd, Central Coalfields Ltd, Mahanadi Coalfields Ltd, Eastern Coalfields Ltd, imported coal and coal that may be purchased from other sources depending on exigencies.

(ii) The prices at which coal is available from different sources vary widely. The prices also vary based on whether the quantum is procured under the firm fuel supply agreement which DVC has or it is under only a Memorandum of Understanding or it is purchased on the basis of short



term requirement without any FSA/MOU or it is imported or purchased under FSA by paying performance incentive.

(iii) When the coking coal is supplied as a washery coal, additional charges have to be paid to some coal companies. In this regard, DVC has enclosed copy of bill of BCCL regarding additional payment of Rs.753/MT for washery grade coal.

(iv) The coal procured from the same coal supplier to the extent of 90% of the quantum covered by the FSA is charged at the notified rate of the coal company except BCCL who charges additional amount as WRC (Wash Recovery Charge). Any excess quantum of 90% of ACQ (Annual Contract Quantity) is supplied by the coal company, DVC has to pay performance incentive up to 40% of coal value.

(d) It is therefore illogical and inappropriate on the part of the petitioner to proceed on the basis that the published price of the coal supplier should be applied for the entire quantum.

(e) It is wrong on the part of the petitioner to proceed on the basis that price payable based on the GCV at the time of the coal being fed into the bunker should be the price allowed for coal purchases instead of the GCV at the colliery end. Firstly, the coal is being priced based on the sample testing at the laboratory of the coal company of that specific quantum loaded into the container for



transportation on 'said to contain' basis. Secondly, this coal after transportation gets mixed with other coals obtained from different sources or different grades. Thirdly, when the coal is crushed before being loaded into the bunker, elements such as stones and shales get mixed up and most of the volatile materials evaporate. Fourthly, there is the element of total moisture content which is considered during determination of GCV at bunker whereas GCV for billing is determined on dry air basis i.e. by removing surface moisture by drying coal sample at 40<sup>0</sup> C and 60 % relative humidity till its constant weight. There is a fundamental disconnect in the understanding of the petitioner in regard to the above aspects when the petitioner contends that DVC should be allowed a lower price applicable to a lower GCV of coal notwithstanding that DVC purchased higher GCV coal at a higher price and washery coal where GCV is not being determined at washery end.

(f) The billing to the procurers including the petitioner is done within 10 days after the billing month of the supply of electricity. DVC pays to the coal company within 45 days of the month during which the supply is made. The payment/adjustment of the price with coal suppliers cannot be immediately factored in the monthly bill raised on the consumers under Fuel Price Adjustment. Accordingly, DVC raises the power supply bills on the actual price of few preceding months and adjusts the fuel price progressively as and when the actual data is received.

(g) The petitioner has impleaded only NTPC and DVC as parties to the



petition but has consciously omitted to implead Maithon Power Limited which is a group company of the petitioner. Maithon Power Limited (MPL) is not even furnishing requisite information in Form 15. DVC has placed on record a copy of the letter dated 21.5.2013 written by DVC to MPL requesting the latter to upload the required information as per Form 15 of Part-I of Appendix I of the 2009 Tariff Regulations on its website.

13. The petitioner in its rejoinder to the reply of DVC has submitted that the generating company should justify any drastic difference between cost of coal mentioned on CIL website for the grade of coal as fired into the generating station and that claimed by the Generating Companies as provided in Form 15. The drastic reduction in GCV of coal between as loaded and as fired at the generating station frustrate the very purpose of Form 15, which has been incorporated to ensure predictability and transparency in determination of variable charge. Therefore, it is essential that the documents evidencing the GCV at the loading point, unloading point and firing point are all provided to the beneficiaries on demand so that true purpose of Form 15 can be achieved. The petitioner has further submitted that break-up of the cost incurred by the generating companies like coal transportation, incentive paid, handling charges etc. will go a long way in making the billing methodology more transparent and predictable thus enabling merit order dispatch.



## **IA No.62/2014**

14. The petitioner has filed IA. No. 62/2014 on 21.11.2014 for restraining the respondents from recovering any increase in variable cost with immediate effect and allow the petitioner to adjust in the subsequent bills the amounts already paid by the petitioner with effect from 1.4.2014 on account of variable charges till the respondents show compliance with the requirement of furnishing details of fuel invoices to the satisfaction of the Commission as per the extant regulations. The petitioner has submitted that though the Commission in Petition No.14/SM/2014 has taken suo motu cognizance of the non-compliance of clause (7) of Regulation 30 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (2014 Tariff Regulations) and has directed the respondents to provide the details of fuel cost including GCV details, the respondents are still not giving details and break-up of the fuel bills. The petitioner has submitted that the respondents have provided no information regarding fuel cost details for the period April to June 2014 besides having provided highly inadequate information for the period July 2014 to September 2014. The petitioner has submitted that in accordance with the directions of Appellate Tribunal for Electricity, Delhi Electricity Regulatory Commission (DERC) has instituted a mechanism of Power Purchase Cost Adjustment Charges (PPAC) which is being implemented on quarterly basis. DERC vide its letter dated 13.11.2014 allowed the PPAC charges to the distribution companies of Delhi to be levied only on the basis of energy consumption from 15.11.2014 for a period of three months upto 14.2.2015 or until further orders. The petitioner has submitted that the PPAC allowed by DERC vide its letter dated 13.11.2014 has been withdrawn vide letter dated 14.11.2014 on the ground that





“information regarding pricing of fuel and billing of power generated at their stations” have not been furnished in full. The petitioner has submitted that since PPAC has been denied to the petitioner purely due to non-compliance by the respondents of the regulations framed by this Commission in relation to fuel details to be provided to the beneficiaries including the petitioner, the respondents should not be permitted to recover the fuel costs without furnishing adequate details which may entitle the petitioner to recover such cost in the form of PPAC from its consumers.

15. NTPC in its reply to the IA vide affidavit dated 14.1.2015 has submitted as under:

(a) The attempt made by the petitioner purporting to act on the directions given by DERC and seeking particulars is contrary to the scheme and provisions of the Act. The tariff of the generating stations of NTPC are being regulated by this Commission under section 79(1)(a) of the Act and in terms of Rule 8 of the Electricity Rules, the same is binding and cannot be reopened either directly or indirectly at the instance of any of the State Electricity Regulatory Commissions.

(b) NTPC has furnished the fuel cost details for the period April 2014 to October 2014 of all its generating stations to the petitioner as per the Tariff Regulations. NTPC has further submitted that pending determination of tariff under 2014 Tariff Regulations, billing at present for the generation and sale of electricity by NTPC is being done as was prevalent on 31.3.2014 in terms of proviso(i) under clause (8) of Regulation 7 of the 2014 Tariff Regulations.



(c) NTPC is stated to have given the requisite particulars, namely, the GCV of coal on “as received basis” as per 2014 Tariff Regulations as interpreted and applied by the Commission and has also given the details of the actual amount paid to the coal companies for the quantum of coal purchased on monthly basis.

(d) GCV of coal as loaded by the Coal Companies based on which the bills are raised are widely different from the GCV as measured on “as received basis” which is faced by all generating companies in the country. This aspect of grade slippage from the time of loading till the measurement on “as received” basis has been a subject matter of representation to Government of India and Competition Commission and till an acceptable and satisfactory resolution of the above aspects, there is no option but to proceed on the basis that there is grade slippage in regard to the GCV measured at the time of loading and measured at the time on “as received basis”.

(e) The amount paid by NTPC to the coal companies for the quantum of coal purchased is a subject matter of an enquiry by the Commission whenever so desired in case there is any specific allegation of the generating company claiming any amount in excess of what has been paid to the coal companies. In the absence of any issue of fabrication of payment made to coal companies, the procurers of electricity cannot be allowed to make roving and fishing inquiry into such voluminous details of each bill paid by NTPC to the coal companies and the GCV of the billed quantum by the coal companies.

16. DVC in its reply to the IA filed vide affidavit dated 19.12.2014 has made similar submissions as NTPC. In addition, DVC has submitted that Tata Group of which the petitioner is a part holds 74% of the equity shares in Maithon Power Ltd (MPL). Tata



Group has given information on GCV of coal on 'as fired basis' and not even 'as received' basis, though the statements filed represents that the computation has been made as per 2009 Tariff Regulations. DVC has further submitted that a comparison of the price paid for the coal and GCV of the coal fired indicates wide difference in terms of money paid for the coal. DVC has placed on record the following:

- (a) Form 15 in regard to the generating units of MPL hosted on the website of MPL for the period from April 2014 to July 2014;
- (b) Form 15 in regard to the generating units of Units 6,7,8 of CTPS hosted on the website of DVC for the period from April 2014 to July 2014;
- (c) A comparison statement between MPL and DVC in regard to Form 15.

DVC has submitted that as per the statement, the price paid by MPL to the coal companies is more than double of the price of coal as per the notification of CIL corresponding to the GCV of coal (Rs/MT). It has been further submitted that MPL is billing the procurers based on the quantum of coal billed by CIL and its subsidiaries and on the basis of the quantum of coal on "as fired" basis.

17. The petitioner in its rejoinder to the reply of NTPC has submitted that 2014 Tariff Regulations directs the generating companies to provide Form 15 alongwith the bills which NTPC has not furnished. The petitioner has compiled the details furnished by NTPC and has submitted that not only NTPC has furnished the details partially but the details have been submitted late which have resulted in non-grant of PPAC to the petitioner. In response to NTPC's contention that proviso to clause (8) of Regulation 7



provides for billing the beneficiaries at the tariff approved by the Commission and applicable as on 31.3.2014, the petitioner has submitted that the Commission approves the Annual Fixed Cost of the generating stations and not the Energy Charge Rate (ECR) and therefore, the generating stations should bill ECR as calculated by the formula provided in the 2014 Tariff Regulations which came into force with effect from 1.4.2014. The petitioner has submitted that NTPC should bill on the basis of the current regulations and furnish complete information as mandated in the said regulations.

**Submissions during the hearings:**

18. During the hearing on 20.1.2015, learned counsel for the respondents submitted that a meeting was proposed to be held between the technical officers of the respondents and petitioner to amicably resolve the issues. During the hearing on 12.2.2015, it was informed that in the meeting, the representatives of NTPC only attended but it did not yield any result. Learned counsel for the respondents submitted that the respondents have furnished all requisite information in respect of all generating stations regarding the fuel cost details for the period April 2014 to October 2014. Learned counsel for the petitioner submitted that the petitioner is making payments to the generating companies for the energy received but the fuel surcharge is not being allowed by DERC. Learned counsel further submitted that a mandatory injunction may be granted under section 39 of the Specific Relief Act, 1963 directing the generating companies recover energy charge only when the claims are supported by necessary details as per the regulations.



19. During the course of hearing on 27.2.2015, the learned counsel for the petitioner submitted that main issue is that the Respondents are not furnishing all the information in Form 15 of the Tariff Regulation 2014. He further submitted that the information at serial No. 23 of Form 15 regarding as received GCVs of domestic coal, imported coal and e-auction coal has not been furnished separately. Learned counsel submitted that its group company, MPL has also not furnished the above information which needs to be furnished by it. In response, learned counsel for the Respondents submitted that present petition has been filed by the petitioner seeking directions to the Respondents to furnish the information as per the provisions of 2009 Tariff Regulations and all the relevant information has been furnished to the petitioner as per the 2009 Tariff Regulations. However, the petitioner is raising the issue regarding non-furnishing the information by the Respondents as per 2014 Tariff Regulations and in this regard the petitioner should file a separate petition before this Commission.

20. In response to the Commission's query regarding non-furnishing of the information by Maithon Power Limited, the learned counsel for the petitioner submitted that MPL is a separate company and the petitioner has no control over it. Learned counsel further submitted that whatever directions are issued by the Commission in respect of NTPC and DVC, the same would also be applicable to MPL.

**Analysis and decision:**

21. We have considered the rival submissions and contentions of the petitioner and the respondents and perused the documents on record. The primary grievance of the petitioner in the main petition is that the respondents are not furnishing complete



information as per the provisions of the 2009 Tariff Regulations. In the IA, the petitioner has alleged that the required information is not furnished by the respondents in accordance with 2014 Tariff Regulations. The petitioner has further alleged that there is substantial increase in energy charges from April 2013 to January 2014 and the cost being charged for the coal are on much higher side vis a vis GCV of coal being used, specifically in case of Badarpur and Dadri. As a result, the energy charges billed by the respondents are not being allowed in PPAC by DERC. On the other hand, the respondents have submitted that they have been furnishing all required information as per the 2009 Tariff Regulations and 2014 Tariff Regulations. However, the respondents have contended that the information sought by the petitioner are in the nature of roving and fishing queries and cannot be provided as they are outside the scope of the regulations. The respondents have argued that since the required information has been furnished to the petitioner, there is no merit in the petition and it should be dismissed

22. In the light of the above, the following issues arise for our consideration:

**Issue No.1:** What is the scope of the provisos under Clause (6) of Regulation 21 of the 2009 Tariff Regulations which was introduced through the third amendment on 31.12.2012?

**Issue No.2:** Whether the respondents (NTPC and DVC) have complied with the provisos to clause (6) of Regulation 21 of 2009 Tariff Regulations?



**Issue No.3:** Whether the petitioner is selectively seeking the information from DVC and NTPC while ignoring the lapse on the part of its Group Company, MPL to furnish the information as per the Regulations?

**Issue No.4:** Whether the issues raised in the IA No. 62/2014 are beyond the scope of the present petition?

**Issue No.5:** Reliefs to be granted to the petitioner?

**Issue No.1: What is the scope of the 'provisos' under Clause (6) of Regulation 21 of the 2009 Tariff Regulations which was introduced through the third amendment on 31.12.2012?**

23. At the time of framing of the 2009 Tariff Regulations, the coal supply companies used to bill the coal based on UHV of coal and not on the basis of GCV of coal. The 2009 Tariff Regulations provided for computation of energy charges based on GCV of coal as fired. With effect from January 2012, the coal supply companies started billing according to the grade of coal based on range of GCV measured at the loading end. By this time, the existing generating stations in order to tide over the shortage of domestic coal started using imported coal by blending with domestic coal. As a result, there were instances of increase in energy charges as high as 30% due to blending of imported coal. In this background, the Commission, after due consultations with the stakeholders, amended the 2009 Tariff Regulations through the Amendment Regulations on 31.12.2012 and introduced the following provisos under clause 6 of Regulation 21 of the 2009 Tariff Regulations:

“Provided that generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel etc., as per the form 15 of the part-I of Appendix I to these regulations:

Provided further that the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and the weighted average GCV of the fuels as received shall also be provided separately, along with the bills of the respective month:

Provided further that copies of the bills and details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel etc., details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall also be displayed on the website of the generating company. The details should be available on its website on monthly basis for a period of three months."

24. Form 15 requires the generating companies to give information on monthly basis in respect of each of their generating stations as under:

<b>PART-I FORM-15</b>				
<b><u>Details/Information to be submitted in respect of Fuel for Computation of Energy Charges<sup>1</sup></u></b>				
<b>Name of the Company:</b>				
<b>Name of the Power Station:</b>				
Month	Unit	For preceding 3 <sup>rd</sup> month	For preceding 2 <sup>nd</sup> month	For preceding 1 <sup>st</sup> month
Quantity of Coal/Lignite supplied by Coal/Lignite Company	(MMT)			
Adjustment (+/-) in quantity supplied made by Coal/Lignite Company	(MMT)			
Coal supplied by Coal/Lignite Company (1+2)	(MMT)			
Normative Transit & Handling Losses (For coal/lignite based projects)	(MMT)			
Net coal/ Lignite supplied (3-4)	(MMT)			
Amount charged by the Coal/Lignite Company	(₹)			
Adjustment (+/-) in amount	(₹)			





charged made by Coal/Lignite Company				
Total amount charged (6+7)	(₹)			
Transportation charges by rail/ship/road transport	(₹)			
Adjustment (+/-) in amount charged made by Railways/Transport Company	(₹)			
Demurrage Charges, if any	(₹)			
Cost of diesel in transporting coal through MGR system, if applicable	(₹)			
Total Transportation Charges (9 +/- 10-11+12)	(₹)			
Total amount charged for coal/lignite supplied including transportation (8+13)	(₹)			
Weighted average GCV of coal/lignite as fired	(kCal/kg)			
Note:				
<sup>1</sup> Similar details to be furnished for natural gas/liquid fuel for CCGT station and secondary fuel oil for coal/lignite based thermal plants				
<b>PETITIONER</b>				

25. Thus as per the above provisions, the generating companies are bound to provide the following information:

- (a) Details of parameters of GCV and price of fuel (domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel etc.) as per Form 15 of Part I of Appendix I to the 2009 Tariff Regulations;
- (b) Details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and weighted average GCV of the fuels as received to be provided separately, alongwith the bills for the respective month;
- (c) Copies of the bills and details of parameters of GCV and price of fuel, details of blending ratio of the imported coal with domestic coal and proportion of e-

auction coal to be displayed on the website of the generating companies on monthly basis for a period of three months.

26. Therefore, the generating companies including respondents are required to strictly comply with the above provisions and faithfully disclose the relevant information available with them. If there are any genuine doubts of the beneficiaries, it is incumbent on the generating companies including the respondents to clarify the doubts. Without the cooperation of the generating companies, the desired purpose of bringing about transparency in the energy billing and energy accounting cannot be achieved. In this connection, the observations of the Commission in the Statement of Reasons to the Amendment Regulations are relevant and are extracted as under:

“12. With regard to the above proposed amendment for furnishing details of GCV and price of fuel, Tata Power Delhi Distribution Ltd, GRIDCO, UPPCL, PTC, NLC, BRPL and Punjab Power Corporation have welcomed the proposal as it will bring much needed transparency. The generators have also not objected to the proposal. NTPC has submitted that the Commission may prescribe a format for furnishing the information. Torrent Power has submitted that information may be provided to the beneficiaries but should not be asked to be put on the website as it may not be possible to disclose the information due to confidentiality clause in the FSA and it may also be business sensitive and may be harmful to the interest of the generator against the supplier. We are of the view that in the interest of transparency, all information relating to the fuel including imported fuel should also be made available to the beneficiaries as well as posted on the web sites of the generators.

13. It has been submitted by the beneficiaries like GRIDCO, Tata Power Delhi Distribution Ltd, BSES and UPPCL that the information on price and GCV of coal from different sources on monthly basis should be compiled at the end of the financial year duly certified by the auditors. They have suggested for issue of directions to the generators to share with the beneficiaries the station wise fuel procurement plan for the coming quarter/half year so that the beneficiaries can take a well informed decision on scheduling of power based on merit order principle. They have also requested to restrict the generators to declare their availability beyond the NAPAF by using imported/e-auction coal and to decide the blending ratio of imported coal in consultation with beneficiaries.



14. The Commission has in the Explanatory Memorandum observed on the issue of sharing of information regarding fuel as under:

“20. Since many of the stations are getting coal from sources other than the linked mine, the fuel charges vary due to the variation in transportation cost depending upon quantity to be transported from the non-linked coal mines. Many of the generating stations have resorted to blending with imported coal to tide over the problem of fuel shortages and accordingly, the energy charges vary depending upon the proportion of blending of imported coal. The proportion of blending of imported coal in general can be of the order of 10-15% for the existing station using Run of Mine (ROM) coal. The implication of such blending on the energy charge of the station could be of the order of 15 to 40 Paise/kWh for the coastal and non-pit head stations as per the report of the Central Electricity Authority. Some of the stations use auctioned coal also.

21. The Commission is of the view that significant variation in energy charge rate needs to be explained in clear terms. Variation in energy charges rate of the order of 30% puzzles the beneficiaries and they look for justification. There appears to be need for greater transparency on the part of generators in claiming the energy charges. Moreover, such increase in energy charges has to be recovered by the beneficiaries from their customers as fuel surcharge. Large variation in the energy charge rate may give rise to tariff shock for the beneficiaries/consumers. In view of the above, it should be the duty of the generators to provide details of parameters of GCV and price of fuel (i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG or liquid fuel) and blending ratio of imported and domestic coal, proportion of e-auction coal etc. justifying the variation in energy charges billed to the beneficiaries along with each bill/ supplementary bill. The billing information should also be available on the website of the generating company on monthly basis for period of at least 3 months.”

It can be seen from the above that the purpose is to provide for total transparency with regard to the energy charges which would help the beneficiaries in taking informed decisions regarding scheduling of the power from the thermal generating stations. Further consultation with the generator on any operational issue is not barred and the beneficiaries and the generators are free to have mutual consultations. Regulation 21(4) of 2009 Tariff Regulations provide for mutual consultation between generators and beneficiaries under fuel shortage condition as follows:

“(4) In case of fuel shortage in a thermal generating station, the generating company may propose to deliver a higher MW during peak-load hours by saving fuel during off-peak hours. The concerned Load Despatch Centre may then specify a pragmatic day-ahead schedule for the generating station to optimally utilize its MW and energy capability, in consultation with the beneficiaries. DC<sub>i</sub> in such an event shall be taken to be equal to the maximum



peak-hour ex-power plant MW schedule specified by the concerned Load Despatch Centre for that day.”

As regards obtaining the prior consent of the beneficiaries to decide the blending ratio of imported coal with domestic coal, we are of the view that this suggestion is not practicable as there may not be unanimity among the beneficiaries regarding blending ratio and different beneficiaries may give consent for different blending ratios. We are of the view that blending ratio is decided on technical considerations and the generator is in the best position to take a call in this regard. However, the generator should share the information with the beneficiaries.”

27. Thus, the intention behind the Amendment Regulations was to ensure transparency by making the generators provide information relating to the fuel including imported fuel to the beneficiaries as well as to post the said information on their web sites which would help the beneficiaries in taking informed decisions regarding scheduling of the power from the thermal generating stations. The failure to furnish the information as per the provisions of the regulations is to be viewed as non-compliance of the 2009 Tariff Regulations and would attract appropriate action under the Electricity Act 2003.

**Issue No.2: Whether the respondents (NTPC and DVC) have been furnishing the information in compliance with the regulations?**

28. The case of the petitioner is that both NTPC and DVC are providing the information on Form 15 in a routine manner which does not meet the true spirit of the regulations. According to the petitioner, the variable costs from NTPC plants during the quarter October to December 2013 had increased by 43 paise over the previous quarter i.e. July to September 2013. The petitioner vide its letters dated 30.1.2014 addressed to NTPC and DVC sought information regarding the steep rise in variable cost as the same were not available in Form 15 provided by NTPC. The information



sought included annual contracted quantity of coal from domestic sources, details of incentives paid/payable to domestic coal supplies company under FSA, coal sourced from imported sources and incentives paid, if any, landed cost of coal sourced and used from domestic sources and imported sources, GCV of coal sourced from domestic sources and imported sources, freight charges etc. Further vide its letter dated 12.2.2014, the petitioner highlighted that the variable cost of power from Badarpur TPS has been increasing continuously from April 2013 till January 2014 from Rs.3.25/- per unit to Rs.4.74/ per unit. According to the petitioner, though GCV of the coal supplied during the period remained the same i.e. in the range of 3100 to 3400 kCal/kg, the landed price of primary fuel has increased substantially during the period. According to the petitioner, in Form 15, the transportation cost has not increased but the increase is due the coal cost being charged. As an example, the petitioner has explained in the said letter that as per Coal India Notification, the price of non-coking coal having GCV in the range of 3100 to 3400 kcal/kg is Rs.670/tonne whereas the price being charged is in the range of Rs.1500/- to Rs. 3400/- per tonne. The petitioner sought clarifications regarding the reasons for increase in the variable cost of power from BPTS, difference in coal cost notified by CIL and those being claimed in Form 15 against the GCV of coal, loss of GCV from mines to generator, any incentive claimed etc. NTPC has replied to the letters of the petitioner vide its letter dated 14.2.2015 as under:

- (a) On account of coal shortage, NTPC is not able to secure full domestic coal linkage from Coal India for its stations. The Fuel Supply Agreement signed by



NTPC with coal companies on an average provide for Annual Contracted Capacity of coal equivalent to 75% PLF and incentive is payable for coal supplies above 90% of ACQ and penalty is applicable for short supply of coal below 90/80% of ACQ in the Coal Supply Agreement of 2009 and 2012 respectively.

(b) Since the generating company is responsible for arranging the fuel for its generating stations, in case coal supply is restricted to 90% of ACQ, then NTPC has to procure imported/e-auction coal.

(c) The Tariff Regulations of CERC provides for calculation of Energy Charge Rate based on landed price of fuel for the month which inter alia includes base price, coal incentives/penalties, royalty, breaking charges, excise duty, education cess, SED, clean energy charges, CST, VAT etc. Accordingly NTPC has been furnishing to all the beneficiaries the landed cost of various types of coal like domestic, imported, e-auction coal etc. in Form 15 which takes into account all the elements of coal cost.

29. According to the petitioner, DVC did not provide the required information and the information supplied by NTPC was insufficient. The petitioner has sought a direction to NTPC and DVC to provide documentary proof of the basis of variable charges for calculating the landed cost of coal and to supply the details of expenditure with justification on the huge difference between the coal mentioned in CIL website and that claimed by the respondents.



30. As per the directions of the Commission to the petitioner and respondents to sort out the matter amicably, the petitioner made a request to NTPC vide its letter dated 17.4.2014 to provide the details such as break-up of coal cost, coal transportation cost, Fuel Supply Agreement, and minimum technical limits of the plants. NTPC vide its letter dated 9.5.2014 furnished the details with regard to the cost of coal for Badarpur TPS and Dadri TPS. NTPC also arranged plant visit by the petitioner's team to Badarpur on 16.4.2014 and to Dadri on 29.4.2014 and made detailed discussion and presentation. Based on the material supplied, the petitioner has made an interim report which has been placed at Annexure D of the petitioner's affidavit dated 23.5.2014. The summary and conclusion of the petitioner in its Interim Report prepared by it are as under:

(a) The variable cost of BPTS and Dadri has increased due to high cost of coal.

(b) The payments made to CIL are accounted at actual in the billing to the beneficiaries. Under this, the cost of coal paid to CIL corresponds to cost of much higher grades of coal than the published rate of coal corresponding to quality of coal fired. This is because of the different methodologies of measuring the coal at the loading point and at the plant. This needs to be taken up by NTPC with MoP/CIL to adopt a common methodology of GCV of coal at both points.

(c) At present there is no facility to take samples and inspect "as received" coal at BPTS and Dadri which needs to be established.



(d) Part of data has been received from NTPC subsequent to the meeting and data from NTPC with reference to analysis of coal at loading point and as receiving coal at plant unloading point is necessary for understanding the high variable cost for which the petitioner has requested NTPC vide its letter dated 19.5.2014.

It is evident from the report prepared by the petitioner that NTPC has supplied the data required by the petitioner and has explained the position with regard to high cost of coal. The petitioner has acknowledged that high variable cost of BPTS and Dadri TPS is on account of the high cost of coal, the case needs to be taken up with MoP and CIL for a common testing methodology both at the loading and unloading points; there is absence of facilities for taking and testing samples on as received basis which needs to be established. The petitioner has asked further data from the respondents with regard to the GCV of coal at the loading point and unloading point.

31. The petitioner in its affidavit dated 23.5.2014 has raised the following specific observations with regard to coal data provided by NTPC:

(a) There is considerable difference in the cost of coal supply before and after October 2013 due to provisional bills raised by NTPC to the procurers on account of dispute between NTPC and CIL.

(b) The GCV of fuel supplied appears to have been recorded and billed at much higher grades when compared to GCV of coal as fired due to different approaches taken to calculate GCV. GCV at loading point used for billing





uses equilibrated basis (where moisture content is taken as 4%) whereas GCV as fired is calculated based on total moisture. Currently coal is billed considering grade to be of G9 (GCV ranges from 4601 to 4900 Kcal/kg and above) whereas it is a general understanding that such high grade coal is not available to the thermal generating station. NTPC may seek clarification on the same from CIL.

32. With regard to first query of the petitioner, NTPC has explained that there is a difference between the variable cost calculation for the months upto September 2013 and from October 2013, since with effect from October 2013, coal companies have agreed that coal grade and GCV would be decided based on the third party sampling at the mines end. NTPC has further submitted that Coal Supply Agreements have been amended to this effect and payments from October 2013 onwards are made accordingly. From October 2012 to September 2013, NTPC had disputed the coal bills on account of issues concerning coal quality and started deducting the amounts from the coal bills. After introduction of third party sampling, the payments earlier withheld have been released to the coal companies. As per the tentative settlement raised with coal companies, the landed cost of coal for Badarpur for the disputed period from October 2012 to September 2013 would increase by Rs.800/MT and would be billed to the beneficiaries of the generating station.

33. With regard to the second query of the petitioner, NTPC has explained that FSA signed by NTPC with CIL for supply of coal from CIL mines to Badarpur envisages coal grades of G4 to G10/W-IV/beneficiated coal and FSA signed in



respect of supply of coal to Dadri envisages the range of G7-G10 grades/beneficiated coal. Therefore, the FSAs signed by NTPC with CIL envisage that coal supply to NTPC stations is based on declared grades of the respective mines.

34. In our view, NTPC has given reasonable explanation to the queries of the petitioner. We however observe that NTPC has been instrumental in enforcing third party sampling of GCV at mines end since October 2013. NTPC is directed to place on affidavit the benefits that have accrued on account of third party sampling in terms of GCV in respect of its thermal generating stations with effect from 1.10.2013 till 31.3.2014. Since other thermal generating companies such as DVC, NEEPCO, MPL etc. who are receiving coal from CIL or its subsidiaries are also beneficiaries of third party sampling, the similar data shall be placed on record by these companies. The data shall also be posted on the website for the information of the beneficiaries and data in respect of a particular month shall be displayed for a period of at least three months.

35. Another concern of the petitioner is that GCV at loading point used for billing uses equilibrated basis (where moisture content is taken as 4%) whereas GCV as fired is calculated based on total moisture. The petitioner has requested that in the light of the decision of Punjab State Electricity Regulatory Commission order dated 8.10.2012 in Petition No.42 of 2012, a uniform method for GCV measurement may be adopted to bring down the drop in GCV between the received coal and bunkered coal within 150 kCal/kg. NTPC has submitted that loss of GCV between received basis and fired basis is inevitable because of various factors such as stacking loss,



blending coal from various sources, presence of high volatile matter in the coal, presence of sand, soil, stones of varying sizes in the received coal which are removed before coal is fed into the bunker. We have considered this submission of the petitioner and NTPC. With effect from 1.4.2014, all thermal generating stations are required to bill the energy charges on the basis of the GCV determined on as received basis. The difference between the GCV of coal between as received and as fired will be to the account of the generators as there is negligible loss in GCV between as received and as fired which have been made good by allowing margin in the Station Heat Rate. We direct that the thermal generating stations regulated by this Commission shall share the data regarding as billed and as received GCV with the beneficiaries in accordance with Form 15 to the 2014 Tariff Regulations and strictly bill the energy charges on the basis of GCV as received.

36. During the hearing, learned senior counsel for the petitioner submitted that at Annexure 5 of the petition, NTPC has submitted the Form 15 in respect of BPTS and at ser 15 of the Form, NTPC has shown the weighted average GCV of coal as fired (on total moisture basis) whereas what is required in terms of Regulation 30 is to provide information on as received basis. Learned senior counsel further submitted that the respondent's contention that there is a drop in GCV from as billed to as received is possible, but the respondents are required to support the same through data. Learned counsel for NTPC submitted that NTPC vide its affidavit dated 23.5.2014 has explained the position with regard to the petition which was filed under 2009 Tariff Regulations whereas the queries of the petitioner pertain to the period



2014-19 for which separate petition needs to be filed under 2014 Tariff Regulations. We have considered the submission of the petitioner and NTPC. We agree with the learned counsel for NTPC that the Annexure referred to by the learned senior counsel pertains to 2009 Tariff Regulations and in the said form, there was no information sought with regard to GCV as received. However, we do not agree with the learned counsel for NTPC that the generators are not required to give information regarding GCV as received. In this connection, reference is made to second proviso to clause (6) of Regulation 21 of 2009 Tariff Regulations which is extracted as under:

“Provided further that the details of blending ratio of imported coal with domestic coal, proportion of e-auction coal and weighted average GCV of the fuels as received shall also be provided separately, alongwith the bills for the respective months.”

Therefore, even under the 2009 Tariff Regulations, the generating companies regulated by this Commission and having thermal generations are bound to provide data as regards GCV as received in addition to the data furnished in Form 15. The petitioner in its interim report has mentioned that the generating stations at Badarpur and dadri do not have any facility for taking and testing samples on as received basis which needs to be provided. In our view, since the second proviso to clause (6) of Regulation 30 of the amendment Regulations provide for sharing of the weighted average GCV of coal on sharing basis, the respondents including NTPC were under a statutory obligations to make necessary arrangement for taking and testing of samples on as received basis. Therefore, we hold that NTPC has not supplied the information on GCV as received in accordance with the 2009 Tariff Regulations.



37. As regards DVC, learned senior counsel for the petitioner submitted that the contention and averments made by DVC are wrong and are unrelated to the present petition. We have gone through the reply filed by DVC. It is noticed that DVC has attached a copy of the Form 15 in respect of Chandrapura TPS for the period October 2013 to March 2014 at Annexure B to its reply dated 4.7.2014. The Annexure gives the information as required under Form 15 of Part A of 2009 Tariff Regulations. However, DVC has not furnished the other information requested by the petitioner including the information sought to be provided under second proviso to clause (6) of Regulation 21 of 2009 Tariff Regulations. We direct DVC to share all information with the petitioner strictly in accordance with the provisos under clause (6) of the Regulation 21 of the 2009 Tariff Regulations.

38. The generating companies, whose tariff are determined by the Central Commission in exercise of its power under Section 79 (1)(a) and (b) of the Act read with Section 62(1)(a) of the Act for supply of power to the distribution licensees, based on the provisions of 2009 Tariff Regulations notified by it, are required to provide to the beneficiaries the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and the weighted average GCV of the fuels 'as received' separately along with the bills of the respective month. When seen in the light of intent and perspective of transparency and sharing of information with which the Commission had introduced the provision, it implies that all necessary information has to be provided by the generating station to the beneficiaries of the



generating station, meaning thereby that “as received GCV” of domestic coal, imported coal and e-auction coal has to be provided separately and providing only one value for all the three types of coal would not serve the intended purpose. It is an admitted fact that weighted average ‘as received’ GCV cannot be worked out in the absence of separate values of ‘as received GCV’ of these three sources of coal. Since these values are available separately, the respondents should provide their details to the beneficiaries of the generating stations in their own interest. The beneficiaries have right to satisfy themselves that what they are paying for is what they are getting. With the same intent only, NTPC had taken up the issue of difference between GCV as billed and as received with Coal India Limited and was able to persuade them for agreeing to third party sampling. In the same spirit, the respondents should ensure that beneficiaries are fully convinced that they are paying the reasonable and correct price for the coal.

**Issue No.3: Whether the petitioner is selectively targeting DVC and NTPC while ignoring the lapse on the part of its Group Company, MPL to furnish the information as per the Regulations?**

39. DVC in its reply has submitted that MPL, the group company of the petitioner has not been furnishing and displaying the required information on its website. However, the petitioner has not made MPL as a party to the petition. Learned senior counsel appearing for the petitioner conceded that whatever decision is taken by the Commission with regard to the respondents shall also be applicable to MPL. We have considered the submission of DVC and MPL. In our view, the petitioner is receiving power from various thermal coal based generating companies regulated by this Commission including MPL. Since the petitioner must be facing similar problems in



respect of the generating companies other than the respondents, the petitioner should have impleaded those generating companies as parties to the petition also. It is not the case of the petitioner that MPL is faithfully and strictly complying with the regulations. After DVC raised the objections regarding MPL in its reply, the petitioner on its own should have sought impleadment of MPL and other generating companies, if any, and sought directions for submission of the required information before the Commission with regard to the status of their compliance with the regulations. The regulations are equally applicable to all generating companies who are under statutory obligation to comply with the same. However, the Commission is not inclined to accept that the respondents are absolved from furnishing the information as per the regulations since MPL is not furnishing the same.

40. We also feel it necessary to emphasize that the generating companies are statutorily bound to give the required information as per the regulations and in case information with reference to any particular item has not been furnished, the same should be supported by cogent and rational explanation. As far as practicable, all documents required to be provided under the regulation should be furnished to the beneficiaries. The generating companies should institute special desks armed with all relevant information regarding the energy charges to reply to the queries of the beneficiaries. In the event of any contentious issue arising with regard to the energy charges, the same should be sorted out by the generating companies at senior management level, preferably at the level of Executive Director of the company through mutual discussion with their counterpart in the distribution companies.



**Issue No.4: Whether the issues raised in the IA No. 62/2014 are beyond the scope of the present petition?**

41. The petitioner in the IA filed on 21.11.2014 has sought a direction restraining the respondents from recovering any increase in variable cost with immediate effect and allow the petitioner to adjust in the subsequent bills the amounts already paid by the petitioner on account of variable cost increase since 1.4.2014 until September 2015 or till the period the respondents show compliance with the requirement of furnishing the details of fuel invoices to the satisfaction of the Commission as per extant regulations. The main reason for seeking such direction is that the PPAC allowed to the petitioner vide order dated 13.11.2014 for the quarter July-September 2014 has been subsequently disallowed by DERC vide order dated 14.11.2014 on the ground that “information regarding pricing of fuel and billing of power generated at their stations” have not been furnished in full.

42. Both NTPC and DVC have taken the objection that in terms of section 79(1)(a) of the Act read with Rule 8 of the Electricity Rules, the tariff determined by the Central Commission cannot be re-opened directly or indirectly at the instance of the State Commission and therefore, the IA filed by the petitioner seeking directions against the respondents is misconceived. During the hearing of the petition, learned counsel for the respondents raised the objection that in the IA, the petitioner seeks directions with regard to the 2014 Tariff Regulations whereas the original petition pertains to 2009 Tariff Regulations and therefore, the IA falls beyond the scope of the original petition. In our view, the respondents may be technically correct when they say that non-compliance of 2009 Tariff Regulation is the issue involved in the original petition





whereas the petitioner is alleging non-compliance with the 2014 Tariff Regulations which is a fresh cause of action. However, the issue involved in both the main petition and IA is the same i.e. transparency in calculation of energy charges while raising the bills on the beneficiaries. As regards the submission of the respondents that the tariff determined by the Central Commission cannot be directly or indirectly reopened at the instance of the State Commission, we are of the view that the legal position is clear that the tariff determined by the Central Commission is not subject to re-determination by the State Commission, though the State Commission has the liberty to determine whether the distribution licensee should enter into power procurement process based on the tariff determined by the Central Commission. It is noticed that DERC has disallowed the PPAC to the petitioner on the ground of insufficient information shared by the generating companies like NTPC and DVC regarding price of coal. We refrain from commenting on the decision of DERC as it falls within the domain of appeal. This Commission can certainly look into the allegation of the petitioner that the information as required to be furnished by the generating companies to the distribution licensees under 2014 Tariff Regulations are actually being furnished. Therefore, we do not find any infirmity with the action of the petitioner to seek directions from the Commission to the respondents to share the relevant information as per the regulations.

43. Both NTPC and DVC have submitted that pending determination of tariff under 2014 Tariff Regulations, the respondents are raising the bills on the basis of the terms and conditions as was applicable on 31.3.2014 in case of existing stations in



terms of proviso (i) to clause (8) of Regulation 7 of 2014 Tariff Regulations. Both NTPC and DVC have submitted that they have furnished the requisite particulars namely, the GCV of coal on 'as received' basis as per the 2014 Tariff Regulations as interpreted and applied by the Commission and also giving the details of actual amount paid to the coal companies for the quantum of coal purchased on monthly basis. The respondents have submitted that the GCV of coal as loaded by the Coal companies based on which the bills are raised by coal companies on the purchaser of coal is widely different from the GCV as measured on as received basis. The aspect of grade slippage from the time of loading till the measurement on 'as received' basis has been a subject matter of representation to the Government of India and has also been a subject matter of proceedings before the Competition Commission of India. The respondents have submitted that till an acceptable and satisfactory resolution of the above aspects, there is no option but to proceed on the basis that there is a grade slippage in regard to the GCV measured at the time of loading and measured at the time on as received basis.

44. In our view, three areas of concern emerge from the petition, namely, the grade slippage between the coal as billed and coal as received, measurement of GCV on as received basis and furnishing information to the beneficiaries, and sharing of information as per the regulations with the beneficiaries. Regarding the grade slippage, the respondents are stated to have taken up the matter with Government of India and Competition Commission of India. CIL has already introduced third party sampling at mines end. There is a requirement to introduce third party sampling also



at the generation end to find out the exact magnitude of grade slippage. The respondents and the beneficiaries should pursue the matter with right earnest with Government of India and coal companies to ensure that grade slippage does not go beyond permissible limits. As regards measurement of GCV on as received basis and sharing the information regarding that, the generating companies are required to measure the GCV on as received basis as per the Manual of Indian Standards and share the information with their beneficiaries. In this connection, it is pertinent to mention that NTPC, Association of Power Producers, LANCO have challenged clause (6) of Regulation 30 of 2014 Tariff regulations before Hon'ble High Court of Delhi which provide for computation of GCV of coal on as received basis. During the course of the proceedings before the Hon'ble high Court, an issue arose as to the stage at which the GCV of coal on 'as received basis' has to be measured i.e. whether from the wagons on its arrival at the generating station or at the stage after the crusher installed in the premises of the generating station. The Hon'ble High Court in their order dated 7.9.2015 directed the Commission to decide the issue i.e. at what stage the GCV of coal on 'as received basis' should be measured and pass appropriate order. The Commission after hearing NTPC and others decided the issue in para 58(b) of the order dated 25.1.2016 as under:

“The samples for the purpose of measurement of coal on as received basis should be collected from the loaded wagons at the generating stations either manually or through the Hydraulic Auger in accordance with provisions of IS 436(Part1/Section1)-1964 before the coal is unloaded. While collecting the samples, the safety of personnel and equipment as discussed in this order should be ensured. After collection of samples, the sample preparation and testing shall be carried out in the laboratory in accordance with the procedure prescribed in IS 436(Part1/Section1)-1964 which has been elaborated in the CPRI Report to PSERC.”



Therefore, subject to the final decision of the Hon'ble high Court, the law on the issue is pretty clear that samples shall be taken by the generating stations from the loaded wagons either annually or through the Hydraulic Auger and tested in the laboratory in accordance with the provisions of IS 436(Part1/Section1)-1964. All generating stations whose tariff is determined by this Commission in accordance with 2014 Tariff Regulations shall install the facilities for taking the samples and testing them in the laboratories in order to determine the GCV on as received basis. As regards the furnishing of the documents including Bills and Invoices, we are of the view that the respondents should strictly go by the regulations and furnish all relevant documents based on the relevant regulations to the beneficiaries. Accordingly, the Respondents are directed to provide all information in support of energy charges billed to the beneficiaries in terms of provisions of 2014 Tariff Regulations without fail which shall be properly qualified and specifically described in support of their claim in energy charges.

### **Directions to the Generating Companies**

45. In the light of the various issues discussed in this order, the following directions are issued for compliance by all generating companies whose tariff is determined by the Commission for strict compliance:

- (a) The generating companies shall provide the required information to their respective beneficiaries in accordance with Regulation 30(7) of the 2014 Tariff Regulations and the first proviso thereunder.



(b) The details as required in terms of second proviso under Regulation 30(7) of 2014 Tariff Regulations shall be displayed on the website of the concerned generating companies for a period of three months.

(c) In case any of the information as required under the Regulation 30(7) is not provided, the reasons for not furnishing the information, if any, shall be furnished and posted on the website by the generating companies.

(d) The benefits of third party sampling at the loading end shall be furnished to the Commission by the generating companies and the same shall be posted on their website.

(e) The generating companies are advised to take up the matter with Ministry of Power/Ministry of Coal and CIL to address the issue of grade slippage in GCV of coal between the loading point at the mine's end and unloading point at the generating station. The outcome of the decision of the Government of India and coal companies with regard to wide variation between coal as billed and coal as received on account of grade slippage be placed on record of the Commission.

(f) Efforts may be made by the generating companies with the Ministry of Coal / CIL or its subsidiaries to introduce third party sampling of coal on as received basis at the unloading point in the generating stations in order to minimise the effect of loss of GCV on account of grade slippage.

(g) As per the 2014 Tariff Regulations, energy charge shall be charged by the generating companies from the beneficiaries based on the computation of GCV at the unloading point at the generating station. Therefore, as per the extant

regulations, the grade slippage between the loading point at the mines' end and unloading point at the generating stations is passed on through tariff. The beneficiaries are required to pay on the basis of the GCV of coal on as received basis. All generating companies shall institute the mechanism and install the facilities for measurement of GCV of coal on as received basis if not already done and take measurement of GCV on as received basis and share the same with the beneficiaries in terms of Regulation 30(7) of 2014 Tariff Regulations.

(h) Billing to the beneficiaries shall be done strictly in accordance with GCV on as received basis. This is subject to the outcome of the writ petitions pending in the High Court of Delhi.

(i) The respondents shall introduce help desk to attend to the queries and concerns of the beneficiaries with regard to the energy charges. The contentious issues regarding the energy charges should be sorted out with the beneficiaries at the senior management level, preferably at the level of Executive Directors.

(j) The beneficiaries are directed to strictly confine their queries within the parameters of the regulations.

(k) The above procedure shall be applicable to all thermal generating stations regulated by this Commission and their beneficiaries.

(l) Non-compliance of the above directions by any party shall be viewed seriously and the contravening party will be proceeded against accordingly.



### **Relief to be granted to the petitioner**

46. The petitioner in the main petition has prayed for directions to NTPC and DVC to provide documentary proof of the basis of charges for calculating landed cost of coal and to give the details of expenditure with justifications on the huge difference between the cost of coal mentioned on CIL website and that claimed by the generating companies. In IA No. 62/2014, the petitioner has prayed for directions for restraining the respondents from recovering any increase in the variable cost from 1.4.2014 till September 2015 or till the respondents show compliance with the requirement of furnishing details of fuel invoices to the satisfaction of the Commission as per the extant regulations. The Commission has issued directions to the generating companies in para 45 of this order for ensuring compliance with the provisions of the Regulation 30(7) of the 2014 Tariff Regulations. However, we are not inclined to issue any direction with regard to non-payment of increase in fuel energy charge to the respondents by the petitioner as the purpose of Regulation 30(7) of 2014 Tariff Regulations is to bring transparency in handling the energy charges. On receipt of the relevant information from the respondents, if the petitioner has still some grievance, it is at liberty to approach the commission in accordance with law for appropriate directions.

47. Petition No. 33/MP/2014 alongwith IA No.62/2014 are disposed of in terms of the above.

sd/-  
**(A.S. Bakshi)**  
Member

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

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

