CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 292/MP/2015

Subject	:	Petition under Section 79 (1)(f) of the Electricity Act, 2003 seeking recovery of excess amount vis-à-vis interest on working capital after taking consideration lack of stock of coal maintained by NTPC for Farakka Super Thermal Power Station (FSTPS).
Petitioner	:	West Bengal State Electricity Distribution Company Limited.
Respondents	:	NTPC Limited and Others.
Date of hearing	:	27.7.2017
Coram	:	Shri Gireesh B. Pradhan, Chairperson Shri A.K. Singhal, Member Shri A.S. Bakshi, Member Dr. M.K. Iyer, Member
Parties present	:	Shri Hemant Sahai, Advocate, WBSEDCL Shri Aniket Prasoon, Advocate, WBSEDCL Shri R.B. Sharma, Advocate, BRPL & GRIDCO Shri Ajay Dua, NTPC Shri Prashant Chaturvedi, NTPC Shri Manish Garg, BYPL

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that the present petition has been filed seeking direction to the respondent to reimburse the additional amount collected from the petitioner on account of difference in actual stock maintained qua normative coal block. Learned counsel further submitted as under:

a. As per the 2009 Tariff Regulations and 2014 Tariff Regulations, the generating station is required to maintain a minimum stock of coal for 15 days for pit head stations and 30 days for a non-pit head station. However, Farakka Super Thermal Power Station (FSTPS) has failed to maintain the stock of coal in terms of 2009 Tariff Regulations and 2014 Tariff Regulations. Therefore, the maintaining of inadequate stock results into unjust enrichment to the petitioner and unavoidable and unnecessary high tariff for the consumers which is against the spirit of the Electricity Act and National Electricity Policy.

b. The interest on working capital is worked out on normative parameters on the assumption that the generating station will comply with the normative requirements and in doing so, will require the requisite fund worked out under the applicable tariff. NTPC is not complying with the normative parameters and is therefore, not entitled to the benefit of the approved amount and has to refund the excess amount unutilized towards maintaining the normative level of coal stock to the petitioner.

c. The computation of working capital based on provision of coal stock is nothing but mere unjust enrichment on the part of NTPC. As such NTPC is not maintaining the coal stocks for even 7 days out of mandatory period of 15/30 days but are overcharging the distribution companies for the same, hence it is a burden on the consumers.

d. While computing the interest on working capital under the 2014 Tariff Regulations, a large part of the working capital comprises of the normative requirement of maintaining 1.5 months of coal stock, whereas the actual position is that a much lower level coal stock is maintained by NTPC. It is therefore, unethical for NTPC to recover and retain interest on capital based on the normative coal stock when normative coal stock is not even maintained by it.

e. NTPC should submit the average monthly stock position for the Farakka-I, II and III before the Commission/beneficiaries so that the actual picture in relation to availability of stock can be ascertained. The coal stock for Farakka-I, II and III are kept as combined stock, but the stock for 15 days and 30 days as per the regulation has to be maintained separately for Farakka-I & II and III and therefore, in the absence of clear information regarding monthly stock position, it would be difficult to ascertain the true picture regarding the fuel stock as per the 2009 Tariff Regulations and 2014 Tariff Regulations.

f. The calculation of NAPAF is done as per the formula given in clause 30 (2) of 2014 Tariff Regulations and it is clear from the formula given that any reduction in value of NAPAF will lead to increase in the value of multiplying factor and thereby leading to an increase in the capacity charge. Therefore, due to decrease in NAPAF from 85% to 83%, the additional cost burden incurred will be borne by the beneficiaries and ultimately to the consumer.

g. The petitioner as a beneficiary of FSTPS has paid tariff as determined by the Commission. However, NTPC has not complied with the regulations of the Commission regarding maintaining of specified coal stock even though it has recovered the interest on working capital awarded for maintaining the coal stock. Therefore, the excess amount charged by NTPC towards interest on working capital should be refunded.

h. The norms prescribed under the Regulations have to be adhered by NTPC and any shortfall on account of various reasons cannot be basis for not complying with the 2009 Tariff Regulations and 2014 Tariff Regulations.

2. The representative of BYPL supported the contentions of the petitioner and submitted that the Central Electricity Authority (CEA) monitors daily coal stock position of various generating stations in the country. As per CEA Report dated 31.10.2016 for

FSTPS, the normative stock required to be maintained is 15 days and the average coal availability is 12 days. As per the 2014 Tariff Regulations, NTPC is entitled to recover interest of coal stock for 45 days and it has recovered interest on 45 days whereas actual stock maintained is for 15 days. The representative of BYPL further submitted that this has resulted in unjust enrichment for NTPC and is in violation of principles for tariff determination. The representative of BYPL submitted that the consumption of imported coal as per bills is 1391899 MT for 2014-15 whereas procurement of imported coal is 1286630 MT, probably the shortfall is met from stock, therefore, NTPC may be directed to provide details of imported coal consumption and procurement for last 5 years.

3. Learned counsel for GRIDCO and BRPL supported the petitioner and submitted as under:

a. Farakka STPS is a pit head generating station and as per Regulation 18(1) (i) of the 2009 Tariff Regulations, stock for a period of one and a half months is required to be maintained. By not maintaining the stock for a period of one and a half months, NTPC has exposed the beneficiaries to a huge risk especially in the event of lack or loss of supply of coal from the pit head Coal Company. NTPC had also resorted to the import of coal for this generating station.

b. Maintaining less than the stock prescribed and then suddenly resorting to the import of coal means sharp increase in the variable charges from this generating station. Lack of coal stock plays heavily on the beneficiaries but at the same time NTPC is able to enrich unjustly by claiming the interest on working capital for a period of one and half months.

c. Although the normative stock required for a pit head generating station is 15 days, the Commission, in 2009 Tariff Regulations, permitted a stock of one and a half months to protect the beneficiaries from the high risk especially in the event of lack or loss of supply of coal from the pit head coal company. NTPC could not maintain the stock necessary for operating this generating station, they cannot claim working capital which is unjust and unreasonable.

d. In response to the petitioner's RTI Application, NTPC has merely submitted the details of monthly coal consumption at the generating station and their prices. The information does not disclose the stock maintained by NTPC although the applicant has sought day-to-day coal stock. The day-to-day coal stock maintained by the generating station requires the coal stock available at the beginning of the day, coal received during the day from various sources, coal consumed during the day by the generating plant and coal stock at the end of the day.

e. The Commission may call for necessary records of the FSTPS and compute the differential amount from the beneficiaries towards interest on working capital.

4. In their rebuttal, the representative of NTPC submitted as under:

a. The petitioner has misinterpreted Regulation 18(1)(i) of the 2009 Tariff Regulations. One month's cost of the coal/fuel is allowed in working capital towards generation and 15 days cost of coal/fuel is allowed in working capital towards coal stock at pit head stations. This has been further clarified by the Commission in Statement of Reasons (SoR) for 2014 Tariff Regulations. The petitioner has wrongly concluded that the total cost of fuel allowed for computing IWC is only towards stock.

b. The Commission allows cost of coal/fuel for 45 days in computing IWC for tariff period of 2009-2014 on normative basis by considering weighted average landed price of coal at the generating station for the preceding three months at the beginning of tariff period i.e. January 2009, February 2009 and March, 2009. For FSTPS, the Commission vide tariff order dated 14.6.2012 has considered Rs. 30205.93 lakhs as cost of coal for 1.5 months (30 days towards generation and 15 days towards stock), normative basis, for computing IWC for all the years of tariff block by taking weighted average cost of coal (as Rs. 2557 per MT) based on landed cost of coal for the period from January 2009 to March 2009.

c. The petitioner, through RTI application, has sought day to day stock maintained at FSTPS for the year 2014-15. Depending upon the various operational issues, the coal is fed to different units sometimes directly from the coal unloading points and sometimes from the coal stockyard. In view of the same, figures of coal stock on day to day basis may not represent the true picture of coal stock maintained. Therefore, NTPC has provided opening coal stock on the first day of the month instead.

d. The coal stock maintained at FSTPS has depleted during the monsoon period of 2014-15 due to less supplies from the coal companies and has regained slowly after the supplies were restored to full by the coal companies. As per the SoR for the 2014 Tariff Regulations, the cost of coal towards stock in computation of IWC is necessary to meet exigencies such as less supplies due to heavy rainfall, so that the supply of electricity to the customers/consumers remains uninterrupted.

e. It is not NTPC's intention to maintain less stock at FSTPS but was not able to maintain desired stock for reasons beyond the reasonable control of NTPC as any loss of generation/DC due to less stock maintained at the FSTPS results in penalty in form of under recovery of capacity charges. Due to less coal supplies at FSTPS Stage-I, NTPC has incurred a huge dis-incentive and there was under recovery of capacity charges to the tune of Rs. 245 crore for the tariff period 2009-2014. There is no unjust enrichment by NTPC as it is making recoveries from its customers for the energy supplied from FSTPS in line with the applicable Tariff Regulations and the Commission's orders.

f. The problem of coal supply/stock at FSTPS was known and the Commission has fixed the norms on normative basis for the period 2009-2014 through consultation process to which the petitioner was also a party. Now, the petitioner is trying to re-open the issues which were settled during the process of fixation of norms/framing of 2009 Tariff Regulations. The petitioner is trying to challenge the regulations in the garb of this petition which is not allowed.

5. After hearing the learned counsels and representatives of the parties at length, the Commission directed NTPC to provide the petitioner and the respondents by 16.8.2017, the details of day-to-day coal stock maintained by it for FSTPS comprising the following :

i. Coal stock available at the beginning of the day

ii. Coal received during the day from various sources;

iii. Coal consumed during the day by the generating plant; and

iv. Coal stock at the end of the day.

6. Subject to the above, the Commission reserved the order in the petition.

By order of the Commission

Sd/-
(T. Rout)
Chief (Legal)