

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Coram:

Shri Gireesh B Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S. Bakshi, Member

Petition No. 114/MP/2013

Date of Order : 2nd of November, 2017

In the matter of

Petition under Sections 29 and 79 of the Electricity Act, 2003 seeking direction to WRLDC on applicability of Regulation 21 (4) of the CERC (Terms and Conditions of Tariff) Regulations, 2009

And

In the matter of

NTPC Ltd.
NTPC Bhawan, SCOPE Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110 003

...Petitioner

Vs

1. Western Regional Power Committee
F-3, MIDC Area, Andheri (East)
Mumbai-400093
2. Madhya Pradesh Power Management Company Ltd
Shakti Bhawan, Vidyut Nagar
Jabalpur-482008
3. Maharashtra State Electricity Distribution Company Ltd
Pradashgad, Bandra (East)
Mumbai-400051
4. Gujarat Urja Vikas Nigam Ltd
Sardar Patel Vidyut Bhawan, Race Course Road
Vadodra-390007
5. Chhattisgarh State Electricity Board
P. O. Sundar Nagar, Danganiya



Raipur-492913

6. Electricity Department, Government of Goa
Vidyut Bhawan, Panaji,
Goa-403001
7. Electricity Department
Administration of Daman & Diu – 396210
8. Electricity Department
Administration of Dadra & Nagar Haveli
Silvasa-396230
9. Power System Operation Company Ltd.
(Western Regional Load Despatch Centre)
F-3, MIDC Area, Andheri (East)
Mumbai-400093

...Respondents

Parties Present:

Shri M.G. Ramachandran, Advocate, NTPC
Ms. Anushree Bardhan, Advocate, NTPC
Ms. Poorva Saigal, Advocate, NTPC
Shri Rajesh Jain, NTPC
Shri Suchitra Maggon, NTPC
Shri Rajnish Bhagat, NTPC
Shri Shyam Kumar, NTPC
Ms. Pragya Singh, Advocate, WRLDC
Shri K. Muralikrishnan, WRLDC
Shri Abilia Zaidi, WRLDC
Shri P.J. Jani, GUVNL
Shri Anurag Naik, MPPMCL
Shri Arvind Banerjee, CSPDCL
Shri Samir Malik, Advocate, MSEDCL

ORDER

The Petitioner, NTPC Ltd., has filed this petition challenging the decisions taken by the constituents of the Western Region in the meetings of the Western Regional Power Committee (WRPC) held on 26.2.2013 and 2.4.2013 relating to the interpretation and application of the provisions of the Regulation 21(4) of the Central Electricity



Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter “2009 Tariff Regulations”).

2. The Petitioner has submitted that according to the provisions of Regulation 21(4) of the 2009 Tariff Regulations, 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 fuels during off-peak hours and in such an event, DC will 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. Further, as per Clause 6.4.16 of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (Grid Code), the thermal generating stations during the fuel shortage conditions may specify minimum MW, maximum MW, MWh capability and declaration of fuel shortage and the generating stations shall be scheduled accordingly. The Petitioner has submitted that it had been experiencing the shortage of fuel for its generating stations in the Western Region, namely Korba STPS Stages I & II and Stage III, Vindychal STPS Stages I, II & III and Sipat STPS Stages I and II and accordingly, the Petitioner proposed to deliver higher MW during peak hours by saving fuel during off-peak hours for the months of July 2012 to February 2013. The Petitioner has submitted that the proposal to deliver higher MW was given to Western Regional Load Despatch Centre in accordance with Regulation 21(4) of the 2009 Tariff Regulations read with Regulation 6.4.16 of the Grid Code. The Petitioner has submitted that in response to the higher MW proposed by the Petitioner to WRLDC, the Respondent Beneficiaries (Respondent Nos. 2 to 8) had scheduled power during peak hours as proposed in the DC by communicating the same to the WRLDC as per the procedure specified in the Grid Code. The Petitioner has submitted



that each of the Respondent Beneficiaries who had scheduled power of higher MW during peak load hours in response to the DC given by the Petitioner by communicating or scheduling to WRLDC had duly agreed to take the higher MW during the peak load hours and to the proposal of the Petitioner for saving fuels during off-peak hours. The Petitioner has submitted that in the circumstances, the DC shall be taken to be equal to the maximum peak hour of the plant MW scheduled for the day and all necessary consequences including achievement of availability, calculation of fixed charges payable to the station etc. are to be determined as if the peak load is equivalent to the scheduling and dispatch for the entire day.

3. Respondent No 3, Maharashtra State Electricity Distribution Company Ltd (MSEDCL) vide letter dated 6.12.2012 pointed out to the Petitioner that the scheduled units in respect of the Petitioner's generating stations shown in REA for the month of September 2012 were substantially less than MSEDCL's entitlement. MSEDCL stated that on enquiries it found that the anomaly was on account of declaration by the Petitioner of maximum availability during peak hours under Regulation 21 (4) of 2009 Tariff Regulations. MSEDCL pointed out that in accordance with Regulation 21 (4) the Petitioner was required to obtain consent/concurrence of the beneficiaries before making any change in the operating procedure in case of fuel shortage, but the Petitioner had not approached MSEDCL for an arrangement for declaration/scheduling of the generating stations under fuel shortage conditions. Accordingly, MSEDCL requested the Petitioner for suitable modification of REAs for the months of September 2012 and October 2012 and for revision of the bills duly taking into account the actual availability during peak and off-peak hours by excluding inflated availability considered



by the Petitioner. Subsequently, similar demand for revision of REAs for the months of November 2012 and December 2012 was also made by MSEDCL in its letter dated 31.1.2013. The Petitioner in its reply dated 4.1.2013 to MSEDCL's letter dated 6.12.2012 clarified that DC declarations were made with a view to supporting the grid on available fuel during peak and off-peak hours considering technical limits of the machines. The issue raised by MSEDCL was also raised by Respondent No 4, Gujarat Urja Vikas Nigam Ltd (GUVNL) with the Petitioner vide letter dated 22.1.2013.

4. MSEDCL and GUVNL took up the matter with WRPC. The issue was included as an agenda item for the Commercial Committee meeting held on 7.2.2013. In the said meeting, it was decided that a separate meeting would be convened to further deliberate upon the issue. Thereafter, a special meeting was held on 19.2.2013. As a follow up of the discussions held at the meeting of 19.2.2013, the Petitioner in the letter of 20.2.2013 reiterated that declaration of DC was in line with Regulation 21 (4) of 2009 Tariff Regulations and the agreements reached at RPC forum. In the said letter, the Petitioner pointed out that it was informed at the meeting that declaration of availability in case of fuel shortage was being done by furnishing to WRLDC the details of fuel availability, peak hour MW, minimum MW, day's total MWH energy and ramp rate on day ahead basis as per the methodology finalized at 52nd meeting of the Commercial Committee held on 9.4.2009 which was ratified at 10th meeting of WRPC. The Petitioner stated that its stand was endorsed by the representative of WRLDC present at the meeting.



5. The matter was again discussed at 22nd WRPC meeting held on 26.2.2013. As noticed from the minutes, at this meeting the Petitioner was asked to restrict availability of its generating stations to normative availability during the dispute period even under fuel shortage conditions, which the Petitioner refused to agree and stuck to its stand that it had strictly followed the procedure under Regulation 21 (4) of 2009 Tariff Regulations. The Petitioner subsequently communicated its views to Member Secretary, WRPC in the letter dated 28.2.2013. The minutes of the meeting of the deliberations held on 26.2.2013 reveal that WRPC requested WRLDC to revise DC for the above period for further revision of REAs despite disagreement by the Petitioner. WRPC suggested that the Petitioner could approach the Commission as it was not agreeing to the suggestion.

6. The procedure to be followed in future regarding declaration of availability under fuel shortage situations was discussed at the meeting of WRPC held on 2.4.2013, originally scheduled for 26.3.2013. At the said meeting, Superintending Engineer (Commercial), WRPC informed that the methodology decided in the 10th WRPC meeting for scheduling during declared fuel shortage condition would be discontinued thereafter. As regards the settlement of REAs for the past period, as raised by MSEDCL and GUVNL, Superintending Engineer (Commercial), WRPC stated that REAs for the past period would be settled as per the decision taken in the 22nd WRPC meeting held on 26.2.2013 and according to the said decision, WRLDC would revise the DC for the period from September 2012 for further revision of REAs. Subsequent to the meeting of WRPC held on 2.4.2013, the Petitioner, by its letters dated 6.4.2013 and 22.4.2013, protested against the decisions recorded in the minutes of the meeting.



7. Aggrieved by the decision recorded in the minutes of the meeting of 26.2.2013 and again reiterated at the meeting held on 2.4.2013 that WRLDC would revise the DC for the period from September 2012 onwards for further revision of REA for the concerned months, the Petitioner has filed the present petition. With the following prayers:

- “(a) Declare that the decision purported to have been taken at the meetings of the Western Regional Power Committee held on 26.2.2013 and 2.4.2013 in the aspects of scheduling of NTPC stations under the fuel shortage condition to hold that NTPC is not entitled to consider the maximum of the scheduled generation during the peak load hours as declared capacity for the whole day in terms of Regulation 21(4) of the Tariff Regulations, 2009 is wrong and illegal;*
- (b) Stay the operation of the para 5 of minute of meeting of WRPC held on 26.2.2013 which has been wrongly recorded pending hearing of the petition;*
- (c) Hold that higher MW capacity made available by NTPC during peak hours under fuel shortage condition for the period from July 2012 onwards in terms of Regulation 21 (4) of the Tariff Regulation, 2009 is valid and binds the Respondent Beneficiaries based on the scheduling given by the Western Regional Load Dispatch Centre during the above period and that the Respondent Beneficiaries are liable to pay the charges as per the scheduling done by the Western Regional Load Dispatch Centre; and*
- (d) Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.”*

Submissions of the Petitioner

8. The Petitioner has submitted that there has been shortage of fuel availability for NTPC generating stations in the Western Region. The Petitioner has submitted that in terms of Regulation 21(4) of the 2009 Tariff Regulations, the Petitioner as a generating company proposed to deliver a higher MW during the peak load hours by saving fuel during off-peak hours from the months of July 2012 to February 2013 and accordingly the proposal was given to WRLDC in accordance with Regulation 21(4) of 2009 Tariff



Regulations read with Regulation 6.4 (16) of the Grid Code and Scheduling and Despatch Procedure approved by the Commission. The Petitioner has further submitted that in accordance with Regulation 6.5.(3) of the Grid Code, NTPC as an ISGS is required to declare to the concerned RLDC ex power plant capabilities foreseen for the next day. The capabilities station-wise made known by NTPC and other generating companies operating in the region to RLDC is further advised by RLDC to the beneficiaries to make drawal schedule from such quantum of power as they consider appropriate for delivery next day. The Petitioner has submitted that RLDC conveys ex-power plant dispatch schedule to ISGS in MW for the next day as per Regulation 6.5.(7) of the Grid Code. The Petitioner has submitted that each of the Respondent Beneficiaries who had scheduled power of higher MW during peak load hours in response to the DC given by NTPC by communicating or scheduling to WRLDC had duly agreed to take the higher MW during peak load hours and to the proposal of NTPC of saving fuels during off-peak hours. The Petitioner has submitted that the natural consequence of higher MW made available during peak load hours and electricity being scheduled in accordance with the same by the Respondent Beneficiaries, the DC would be taken as equal to the maximum peak hour of the plant MW scheduled for the day and all necessary consequences thereof including achievement of availability, calculation of fixed charges payable to the station etc. are to be determined as if peak load is equivalent to the scheduling and dispatch for the entire day i.e. the entire peak load should be taken as having been achieved for the day for the purpose of determining availability of the generating station in tariff recovery.



9. The Petitioner has submitted that MSEDCL letters dated 6.12.2012 and 31.1.2013 and GUVNL letters dated 22.1.2013 and 13.1.2013 raised the issue on the application of the higher MW declaration during peak load hours in response to which the Petitioner in its letters dated 4.1.2013, 20.2.2013, 28.2.2013 and vide representations made in the Commercial Committee Meetings held on 19.2.2013, 26.2.2013 and 2.4.2013 had placed the correct legal position and the circumstances under which the declaration of higher MW for peak load hours were made and were accepted by the Respondent Beneficiaries. In view of the objections raised by the Petitioner in the meetings of the Western Regional Power Committee and Commercial Committee, the matter remained unresolved. The Petitioner has submitted that in terms of the provisions of Section 29(4) of the Act read with Regulation 2.4.3 of the Grid Code, the decision in the RPC can be arrived at only if it is unanimously agreed between all the constituents of the RPC and in the absence of an agreement by NTPC, it was not open to the WRPC Secretariat to record wrongly that “WRPC then requested to revise the DC for the above period for further revision of REAs”. The Petitioner has submitted that the Respondent Beneficiaries or WRPC Secretariat are not entitled to unilaterally decide and implement on the above issue contrary to the regulations and the Act adversely affecting the claims of the Petitioner retrospectively. The Petitioner has submitted that after the higher capacity proposed by the Petitioner in terms of Regulation 21(4) of the 2009 Tariff Regulations and provisions of the Grid Code, it was for the WRLDC to declare ex-bus schedules in pursuance to the higher MW capacity proposed and the Petitioner is neither required to nor expected to consult with the Respondent Beneficiaries on the quantum of power to be scheduled in pursuance to the



higher MW capacity proposed by the Petitioner to WRLDC. The Petitioner has submitted that the consent of the Respondent Beneficiaries is reflected in the consultative process of the Respondent Beneficiaries with WRLDC as envisaged in Regulation 21(4) of 2009 Tariff Regulations read with Regulation 6.5 of the Grid Code. The Petitioner has submitted that in case of any difference between any of the Respondent Beneficiaries in the scheduling given by WRLDC, the same need to be sorted out the Respondent Beneficiaries with WRLDC.

10. The Petitioner has submitted that in reply to the CEA's letter dated 1.5.2013 with regard to scheduling in NTPC stations during fuel shortage conditions, WRLDC has confirmed that scheduling has been done as per Regulation 21(4) of 2009 Tariff Regulations and consensus decision of WRPC in this regard. As regards the methodology to be adopted at all times including in future, the Petitioner has submitted that the coordination of declaration by NTPC and schedule to be made available to NTPC against such declaration including the aspect covered under Regulation 21(4) proviso would continue to be done only through WRLDC, and not individually or directly between NTPC and the beneficiaries. The Petitioner has submitted that these aspects cannot be decided by the Respondent Beneficiaries to pre-empt in a manner that is contrary to the regulations and settled procedure of declaration to WRLDC and scheduling to be retaken through WRLDC.

Reply by Beneficiary-Respondents

11. Respondent No 2, Madhya Pradesh Power Management Company Ltd (MPPMCL); Respondent No 3, MSEDCL; Respondent No 4, GUVNL and Respondent



No 5, Chhattisgarh State Power Distribution Company Ltd (CSPDCL) have filed their replies. The majority of the objections raised in these replies are common. Therefore, instead of referring to the individual replies by the Respondent Beneficiaries, the objections are being summed up as under:

- (a) The scheduled units were substantially less than their entitlements. This was for the reason that availability declared during off-peak hours was substantially lower than availability declared during peak hours.
- (b) By considering availability during peak hours with DC of maximum MW as availability for the whole day, not only was the Petitioner able to recover full capacity charges but also became entitled to incentive despite the fact that the Petitioner was not able to generate power equivalent to Normative Plant Availability Factor and was thereby not entitled to recover even full capacity charges.
- (c) The responsibility for arranging fuel was of the generating station, that is, the Petitioner and having failed to meet its obligation, the Petitioner resorted to declarations under Regulation 21 (4) with the aim to maximize recovery.
- (d) The Respondent Beneficiaries have paid interest on working capital which includes cost of primary fuel (coal in the present case) for 1½ / 2 months for maintaining fuel stocks at the normative levels without the Petitioner actually maintaining such stocks in fuel shortage conditions which in itself caused recovery of excess capacity charges.



- (e) The Petitioner did not give any evidence of fuel shortage and the agency to certify fuel shortage conditions was not identified.
- (f) Though Regulation 21 (4) of 2009 Tariff Regulations mandates prior effective consultation with the Respondent Beneficiaries and obtaining their consent/concurrence, neither the Petitioner nor WRLDC at any point of time engaged in consultation with the Respondent Beneficiaries.
- (g) The procedure approved at 10th meeting of WRPC in May 2009 was general procedure in case of fuel shortage. The procedure cannot be treated as blanket approval for the Petitioner to inject higher MW during peak hours and lower MW during off-peak hours.
- (h) The peak hours are not identified under the 2009 Tariff Regulations and there cannot be uniformity in this regard since the peak hours may vary from State to State.
- (i) For making available higher MW during peak hours, extra/additional fuel was not burnt since such higher declaration was based on fuel saved during off-peak hours.
- (j) The generating station was required to declare fuel shortage and also minimum MW, maximum MW, MWh capability and also ramp up/ramp down rates. WRLDC, however, neither communicated the information to the Respondent Beneficiaries nor it uploaded the information on its website. WRLDC forwarded

the entailments of the Respondent Beneficiaries on the basis of availability declared by the Petitioner.

(k) The REAs from the month of July 2012 and onwards are to be revised as per the decision arrived at WRPC meeting on 26.2.2013.

12. The Petitioner has filed rejoinders to the replies by the beneficiary respondents, refuting their allegations/averments. The Petitioner has placed on record sample copies of declaration of availability during fuel shortage conditions. The Petitioner has also filed copies of the correspondence with Coal India Ltd. requesting for replenishment of supply of coal in view of precarious coal stock position at its generating stations.

Reply of WRLDC

13. WRLDC in its reply has submitted that when Regulation 21 (4) came into force with effect from 1.4.2009, WRLDC developed a procedure for arriving at a pragmatic day-ahead schedule in the situation of fuel shortage. The procedure was circulated to the Respondent Beneficiaries vide its letter dated 31.3.2009. WRLDC has submitted that in accordance with the said procedure, it was informing the beneficiaries of the fuel shortage conditions, entitlements of each beneficiary corresponding to total MWH Capability, Maximum MW and Minimum MW declared by the plant for the next day in accordance with clause 6.4.16 of the Grid Code. WRLDC has submitted that in the initial stages of implementation, difficulties were faced in real time as the concept of providing maximum MW, minimum MW, total MWH without any DC was not properly understood by some of the Respondent Beneficiaries and the requirements were being furnished very late which delayed preparation of schedules. Based on the experience



and difficulties in implementing the relevant provisions, the matter was discussed at 52nd Commercial Committee meeting held on 9.4.2009, 398th OCC meeting held on 15.4.2009 and 10th WRPC meeting held on 30.5.2009. At these meetings, the concept of fixing the peak hours during which maximum schedule would be given to the generating stations under coal shortage conditions was deliberated, as different beneficiaries required maximum MW to suit their load curve and there existed possibility of conflicting requirements from the beneficiaries leading to difficulties in making a pragmatic schedule through consultation process. The procedure and methodology for scheduling and computation of DC in case of fuel shortage and peak hours for various seasons was finalized in the 10th WRPC meeting which was consistently followed without any objections from any of the Respondent Beneficiaries till MSEDCL raised the issue in its letter dated 6.12.2012.

14. WRLDC has submitted that the question of review of the methodology approved by at 10th WRPC meeting was deliberated at the 63rd Commercial Committee meeting held on 7.2.2013 but no change in the methodology could be decided for lack of consensus on the revised methodology. It was also felt that change in methodology could be approved only at Board level as earlier decision was at that level. WRLDC under its letter dated 22.2.2013 suggested a procedure for scheduling under fuel shortage conditions under Regulation 21 (4). At the next meeting held on 2.4.2013, WRLDC presented its proposed methodology. At the meeting the concept of flat schedule was also discussed. The final decision on adoption of the flat schedule methodology was taken at 23rd WRPC meeting held on 12.6.2013. Meanwhile, status quo ante continued.



Counter Claim by GUVNL

15. GUVNL has filed a "counter claim" vide affidavit dated 4.8.2014 based on the information received from WRLDC regarding declarations made by the Petitioner since April 2009 under fuel shortage conditions. GUVNL has sought a declaration that certification of Availability or Declared Capacity in monthly REA on account of fuel shortage since April 2009 onwards was contrary to Regulation 21 (4) and has sought a consequential direction to WRPC to revise the certification of Availability and REAs since April 2009. The Petitioner has filed its reply rejecting the counter claim of GUVNL.

Analysis and Decision

16. We heard learned counsel for the parties and considered the rival submissions on record.

17. The dispute between the Petitioner and Respondent Beneficiaries revolves around the interpretation of Regulation 21 (4) of 2009 Tariff Regulation. The said Regulation is extracted as under:

"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 Dispatch 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 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 Dispatch Centre for that day."

18. Regulation 21 (4) envisaged the following, namely –

(a) There exists fuel shortage in a thermal generating station.



(b) In view of fuel shortage, the generating company proposes to deliver higher MW during peak hours by saving fuel during off-peak hours.

(c) Based on the proposal of the generating company, the Regional Load Despatch Centre (RLDC) would specify the “pragmatic” day-ahead schedule of the generating station in consultation with the beneficiaries of the generating station.

(d) The maximum peak-hour ex power plant MW scheduled by RLDC shall be considered as equal to DC for the day in such cases.

19. According to Regulation 21 (4), the responsibility for preparing “pragmatic” day-ahead schedule in fuel shortage conditions rests with RLDC.

20. The detailed scheduling procedure is specified in Part-6 (Scheduling and Despatch Code) of the Grid Code. Clause 6.5 of the Grid Code, to the extent relevant, is extracted below:

6.5 Scheduling and Despatch procedure for long-term access, Medium – term and short-term open access

“1. All inter-State generating stations (ISGS) shall be duly listed on the respective RLDC and SLDC web-sites. The station capacities and allocated/contracted Shares of different beneficiaries shall also be listed out.

2. Each State shall be entitled to a MW despatch up to (foreseen ex power plant MW capability for the day) x (State’s Share in the station’s capacity) for all such stations. In case of hydro-electric stations, there would also be a limit on daily MWh despatch equal to (MWh generation capacity for the day) X (State’s Share in the station’s capacity).

3. By 8 AM every day, the ISGS shall advise the concerned RLDC, the station-wise ex-power plant MW and MWh capabilities foreseen for the next day, i.e., from 0000 hrs to 2400 hrs of the following day.

4. The above information of the foreseen capabilities of the ISGS and the corresponding MW and MWh entitlements of each State, shall be compiled by the RLDC every day for the next day, and advised to all beneficiaries by 10 AM. The SLDCs shall review it vis-à-vis their foreseen load pattern and their own generating capability including bilateral exchanges, if any, and advise the RLDC by 3 PM their drawal schedule for each of the ISGS in which they have Shares, long-term and medium-term bilateral interchanges, approved short term bilateral interchanges.

5.

6. The SLDCs may also give standing instructions to the RLDC such that the RLDC itself may decide the best drawal schedules for the States.

7. By 6 PM each day, the RLDC shall convey:

(i) The ex-power plant “despatch schedule” to each of the ISGS, in MW for different time block, for the next day. The summation of the ex-power plant drawal schedules advised by all beneficiaries shall constitute the ex-power plant station-wise despatch schedule.

(ii) The “net drawal schedule” to each regional entity , in MW for different time block, for the next day. The summation of the station-wise ex-power plant drawal schedules from all ISGS and drawal from /injection to regional grid consequent to other long term access, medium term and short-term open access transactions, after deducting the transmission losses (estimated), shall constitute the regional entity-wise drawal schedule.

8. The SLDCs/ISGS shall inform any modifications/changes to be made in drawal schedule/foreseen capabilities, if any, to RLDC by 10 PM or preferably earlier.

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14. While finalizing the above daily despatch schedules for the ISGS, RLDC shall ensure that the same are operationally reasonable, particularly in terms of ramping-up/ramping-down rates and the ratio between minimum and maximum generation levels. A ramping rate of upto 200 MW per hour should generally be acceptable for an ISGS and for a regional entity (50 MW in NER), except for hydro-electric generating stations which may be able to ramp up/ramp down at a faster rate.



21. From the relevant portions of clause 6.5 of the Grid Code extracted above, it is seen that the generating company is required to convey the station-wise ex-power plant availability and capabilities for the following day starting at 00.00 hours latest by 8.00 AM. On receipt of the information from the generating company, RLDC is to compile the information for the next day and communicate the same to the beneficiaries through the respective State Load Despatch Centre (SLDC) and their share depending upon availability and capabilities declared by the generating company, by 10.00 hours of the day. SLDC is required to inform RLDC of its drawal schedule by 3.00 PM. Based on the drawal schedule indicated by the States, RLDC is to convey to all concerned, by 6.00 PM, the ex-power plant despatch schedule for each generating station for each 15-minute time block and net despatch schedules for each State. It is pertinent to point out that in accordance with clause 6.5.6 extracted above, SLDC can also give standing instructions to RLDC such that RLDC itself may decide the best drawal schedules for the States. In case the generating station or SLDC visualizes any modifications or changes to the despatch or drawal schedules or foreseen capabilities, it has to inform RLDC about such modifications or changes latest by 10.00 PM. The schedules become effective at 00.00 hours. While finalizing the daily despatch schedules for a generating station, RLDC has to ensure that these are operationally reasonable.

22. Clause 6.4.16 of the Grid Code specifies the procedure for scheduling of power during fuel shortage conditions in case of thermal stations. The relevant clause is extracted hereunder:

"The ISGS shall make an advance declaration of ex-power plant MW and MWh capabilities foreseen for the next day, i.e., from (XXX) hrs to 2400 hrs. During fuel



shortage condition, in case of thermal stations, they may specify minimum MW, maximum MW, MWh capability and declaration of fuel shortage. The generating stations shall also declare the possible ramping up/ ramping down in a block. In case of a gas turbine generating station or a combined cycle generating station, the generating station shall declare the capacity for units and modules on APM gas, RLNG and liquid fuel separately, and these shall be scheduled separately."

23. Thus, according to clause 6.4.16, during fuel shortage conditions, the generating company while making advance declaration of availability in respect of coal-based generating stations has to furnish the following information:

- (a) A declaration regarding fuel shortage;
- (b) Minimum and maximum capacity likely to available during the day;
- (c) MWh capability for the day; and
- (d) Possible ramping up/ ramping down in a block.

24. Regulation 21 (4) by itself does not specify the authority to whom the generating company need to intimate its proposal to supply power under fuel shortage conditions. However, Regulation 21 (4) read with the despatch and scheduling procedure specified under Part-6 of the Grid Code makes it clear that the generating company has to indicate its proposal to concerned RLDC responsible for finalization of despatch/drawal schedules. While giving its proposal to RLDC, the generating company is required to furnish the necessary details under clause 6.4.16. The generating company is not expected to interact with the Respondent Beneficiaries of the generating station. Therefore, RLDC is invested under the Grid Code with comprehensive power and responsibility for specifying the schedule on day-ahead basis.

25. The moot point for our consideration is whether the Petitioner has followed the prescribed procedure when it proposed to supply power under fuel shortage conditions from July 2012 to February 2013 by invoking Regulation 21(4) of 2009 Tariff Regulations. The Petitioner has annexed at Annexure B with the petition a copy of its letter dated 20.2.2013 addressed to Member Secretary, WRPC which was sent after the Commercial Committee meeting held on 19.2.2013. The said letter *inter alia* states as under:

“NTPC reiterated that declaration of DC by NTPC stations has been in line with CERC Regulation 21 (4) and agreements at RPC forum in this regard. Further, NTPC explained that the declaration of availability in case of fuel shortage is being done by providing details of fuel availability; peak hour MW, minimum MW, day’s total MW Hr energy and ramp rate as per the methodology finalized in 52nd CCM dated 09th April 2009 which was subsequently ratified in 10th WRPC. NTPC also confirmed that on all occasions whenever they have given DC under fuel shortage scenario, the said details were furnished to WRLDC on day ahead basis. During the meeting WRLDC confirmed that NTPC has been furnishing the required details.” (Emphasis added)

26. The letter dated 20.2.2013 clearly shows that the Petitioner furnished to WRLDC all the details such as fuel availability, peak hour MW, minimum MW, day’s total MWH energy and ramp rate on day ahead basis when it proposed to supply power under fuel shortage conditions. The Respondent Beneficiaries who were participants at the Commercial Committee meeting of 19.2.2013 have not disputed the contents of the said letter dated 20.2.2013. The Petitioner along with its rejoinder has also filed sample copies of the details furnished to WRLDC. All these letters are on similar lines. One such letter dated 5.8.2012 reads as under:

“To:
Shift Charge Engineer
WRLDC, Mumbai



Sub: Fuel Shortage at VIN ST I & II for date: 06-08-2012

*Ref: (1) Clause 21 (4) of the CERC Regulation 2009-14
(2) Letter from WRLDC dated 31/03/09*

Sir,

Due to the Fuel Shortage at our Station VIN I & II for 06-08-12

It is proposed to deliver a higher MW during Peak-Load Hours. The requisite details are as follows

<i>Station</i>	<i>VIN ST I</i>	<i>VIN ST II</i>	
<i>Fuel Available for the Day</i>	100283		
<i>Peak Hrs MW</i>	1120	820	
<i>Minimum MW</i>	874	655	
<i>Day Total MWh</i>	22329	16628	
<i>Ramp Rate</i>	90	70	

The Declared Capacity is also being enclosed. This is for computation of 'Declared Capacity (DCi) as per clause 21 (4) of the CERC (terms and condition of tariff) Regulations 2009-10.'

Along with the above letter, the Petitioner has attached details of declared capacity for each time block of the day.

27. From the evidence available on record, we are of the view that the Petitioner complied with the prescribed requirements of Regulation 21(4) of 2009 Tariff Regulations and the Grid Code while conveying its proposal to WRLDC to deliver higher MW at peak hours by saving fuel at off-peak hours during the fuel shortage conditions.

28. The Respondent Beneficiaries have alleged that WRLDC had not consulted them while scheduling power from the Petitioner's generating stations under fuel shortage conditions. WRLDC in its reply has refuted the allegation and has stated that the beneficiaries were being intimated about the fuel shortage conditions in a generating



station and other necessary details since 1.4.2009 when Regulation 21 (4) of 2009 Tariff Regulations came into effect. The averment made by WRLDC is extracted below:

“7. As per the above quoted clause WRLDC was furnishing since 1st April 2009 to the beneficiaries, the fuel shortage conditions in a particular ISGS thermal station, entitlements of each beneficiary corresponding to total MWh Capability, Maximum MW and Minimum MW declared by the plant for the next day.”

29. The above averment has been reiterated in the additional affidavit dated 12.9.2013 filed by WRLDC. WRLDC is an independent statutory body, without having commercial interest in any of the transactions undertaken through it. Therefore, there is no reason to disbelieve the averments made by WRLDC on affidavit. It can, therefore, be inferred that the Respondent Beneficiaries were communicated that the schedules were prepared by WRLDC considering the fuel shortage conditions.

30. The Petitioner has been furnishing the details of declared capacity for each time block of the day while proposing to deliver higher MW during fuel shortage conditions. It is seen that under the letter dated 5.8.2012, extracted para 25 above, the Petitioner declared capacity of Vindhyachal STPS Stage I and Stage II for 6.8.2012 as under:

Time Block /Time	Declared Capacity (MW)	
	Vindhyachal STPS Stage I	Vindhyachal STPS Stage II
1 to 70 (00.00 hrs–00.15 hrs to 17.15 hrs -17.30 hrs)	874	655
71 (17.30 hrs– 17.45 hrs)	964	725
72 (17.45 hrs– 18.00 hrs)	1054	795
73 to 92	1120	820



(18.00 hrs -18.15 to 22.45 hrs – 23.00 hrs)		
93 (23.00 hrs to 23.15 hrs)	1030	750
94 (23.15 hrs to 23.30 hrs)	940	680
95-96 (23.30 hrs – 23.45 hrs to 23.45 hrs -00.00 hrs)	874	655
Total	22329	16628

31. From the above details, it can be discerned that availability declared by the Petitioner in respect of Vindhyanchal STPS was maximum during the peak hours; 6.00 PM to 11.00 PM; 1120 MW for Vindhyanchal STPS Stage I and 820 MW for Vindhyanchal STPS Stage II. During off-peak hours (00.00 hrs to 17.30 hrs and 23.30 hrs to 00.00 hrs) the availability declared was minimum; 874 MW for Vindhyanchal STPS Stage I and 655 MW for Vindhyanchal STPS Stage II. The position was same in respect of other generating stations for which availability was communicated by the Petitioner under letter dated 5.8.2012. The Respondent Beneficiaries intimated their drawal schedule to WRLDC keeping in view the availability declared by the Petitioner and other generating stations. From the huge variations in DC during peak and off-peak hours, it is self-evident that power was being supplied during peak hours by saving fuel during off-peak hours. The Respondent Beneficiaries had certainly knowledge about the fact of supply being under fuel shortage conditions. WRLDC in its additional affidavit dated 12.9.2013 has stated that in real time after furnishing DC for the next day, there were queries regarding less DC during off-peak hours and SLDCs were made aware of

the reason of fuel shortage. WRLDC has further stated that whenever there were downward revisions sought by GUVNL during off-peak hours from the generating stations operating under fuel shortage conditions, GUVNL used to be informed that revisions were not allowed as per clause 6.5.21 of the Grid Code on account of the fact that the generating stations were operating under fuel shortage conditions. Clause 6.5.21 of the Grid Code is extracted below:

“21. To discourage frivolous revisions, an RLDC may, at its sole discretion, refuse to accept schedule/capability changes of less than two (2) percent of previous schedule/capability. The schedule of thermal generating stations indicating fuel shortage while intimating the Declared Capacity to the RLDC shall not be revised except in case of forced outage of generating unit.

Provided that in case of gas based ISGS, for optimum utilization of gas, this shall be permitted, i.e. in case of tripping of a unit, this gas may be diverted to another unit using the same gas.”

32. In the light of the above discussion, we are of the view that the allegations made by the Respondent Beneficiaries that they were not made aware about the proposal of the Petitioner to deliver higher MW during peak hours by invoking Regulation 21 (4) of 2009 Tariff Regulations are without any merit. The drawal schedules were given by the Respondent Beneficiaries with knowledge about the fuel shortage conditions and declaration during peak hours by saving fuel in off-peak hours by the Petitioner.

33. WRLDC had developed a procedure for arriving at day-ahead schedule in the situations of fuel shortage which was circulated to the Respondent Beneficiaries vide its letter dated 31.3.2009. Based on the past load patterns in Western Region, WRLDC had proposed that peak hours as contemplated in Regulation 21 (4) would be continuous 3 hours from 18.30 hrs to 21.30 hrs and that average schedule during peak



hours would be considered as equal to the DC of the generating station. The issue was deliberated at 52nd meeting of the Commercial Committee of Western Region held on 9.4.2009 and the following decisions were taken:

“Peak Hours would generally be worked out by taking into regional load of previous days or similar day of the previous week.

It would be of continuous 5 Hrs. (20 time blocks of 15 minutes).

The entire year will be divided in two seasons i.e. April to September as summer and October to March as winter season.

Peak hours during the month of April to September – 1800 Hrs to 2300 Hrs.

Peak hours during the month of October to March – 1700 Hrs to 2200 Hrs.

DCI will be taken equal to maximum ex-power plant MW schedule specified by the WRLDC continuously during the above defined peak hours for that day.”

34. The above decisions of the Commercial Committee were brought to the notice of WRPC at 10th meeting held on 30.5.2009. The minutes of the said meeting record as under:

“WRP Committee noted the same.”

35. From the above, it is inferred that the broad methodology for preparation of schedule by WRLDC under the conditions of fuel shortage was agreed to by the beneficiary-respondents. The responsibility for actual implementation of the methodology is vested in WRLDC. WRLDC has also stated in its affidavits that the methodology was being consistently followed since its approval by WRPC at its 10th meeting and the Respondent Beneficiaries were accepting the schedules without demur till MSEDCL took up the matter vide its letter dated 6.12.2012. It needs to be

appreciated that day-to-day prior consultation with the Respondent Beneficiaries of a generating station in such situations is difficult, if not impossible, because of the tight timeframe specified under the Grid Code for preparation of day-ahead schedules. Because of these constraints, WRLDC which is an apex body responsible for real time operations was authorized to prepare the schedules within the framework of the decision taken at 10th WRPC meeting. Therefore, it cannot be argued that WRLDC was not consulting the Respondent Beneficiaries on the question of preparation of pragmatic drawal schedule under fuel shortage conditions. The authorization by Respondent Beneficiaries in favour of WRLDC after due deliberation at Commercial Committee, OCC and WRPC are in the nature of prior consultation of the Respondent Beneficiaries by WRLDC.

36. Respondent Beneficiaries have submitted that procedure agreed at 10th WRPC meeting amounted to blanket approval to the Petitioner to inject higher MW during peak hours and lower MW during off-peak hours. We are unable to concur this view. The Procedure was approved in 2009 and consistently followed by all concerned including the Respondent Beneficiaries. In accordance with the said procedure, the Petitioner was injecting power into the regional grid based on its despatch schedule finalized by WRLDC which is the authority specified under the law for such purposes.

37. The Respondent Beneficiaries have further submitted that the Petitioner did not give any evidence of fuel shortage and the agency to certify fuel shortage conditions was also not identified. We find that Regulation 21 (4) of 2009 Tariff Regulations does not make any express provision on these matters. In our view, the generating company

was required to make declaration to RLDC whenever it proposed to deliver higher MW during peak load hours by saving during off-peak hours under fuel shortage conditions. The responsibility for preparation of schedule is also entrusted to RLDC under Part-6 of the Grid Code. Therefore, it is the responsibility of RLDC to take into account the declaration of fuel shortage condition by the generating company before finalizing the despatch/drawal schedule. In the instant case, WRLDC had been preparing schedules after receiving the availability position from the generating company and the drawal schedules from the respective SLDCs. Therefore, WRLDC has been following the provisions of Regulation 21(4) of 2009 Tariff Regulations and Chapter 6 of the Grid Code while scheduling the power under fuel shortage conditions.

38. The Respondent Beneficiaries have also submitted that allowing maximum availability declared by the Petitioner during peak hours as equal to the availability for the entire day is not justified. There is no merit in the plea. The Respondent Beneficiaries are seeking to challenge the 2009 Tariff Regulations. In our view, the language of Regulation 21(4) is clear and explicit and is meant to meet specific situations arising out of fuel shortage in thermal generating stations.

39. Another objection raised by the Respondent Beneficiaries is that they have been paying interest on working capital which includes cost of coal for maintaining stocks at the normative levels without the Petitioner actually maintaining such stocks. We are of the view that Regulation 21 (4) operates independently of the other provisions of the 2009 Tariff Regulations including the Regulation that entitles the Petitioner to recover interest on working capital.



40. GUVNL has submitted that Regulation 21 (4) of 2009 Tariff Regulations contravenes clause (d) of Section 61 of the Act, which mandates the Appropriate Commission to safeguard consumers' interest while ensuring recovery of cost of electricity in a reasonable manner and if the plea advanced by the Petitioner is accepted, it would result in payment of not only full Annual Fixed Charges but also incentives which will ultimately be borne by consumers at large. GUVNL has submitted that in order to safeguard consumer interest, the Commission is required to exercise its regulatory powers under section 79 of the Act which needs to be exercised on the basis of the principles envisaged under section 61 of the Act. GUVNL has submitted that the power to regulate under section 79 is comprehensive and plenary in nature and cannot be merely confined to 'determine the tariff' under section 62 of tariff but also extends to changing or revision of tariff or matters relating to tariff or correction of tariff which may include restricting the annual fixed cost and incentive recovery under fuel shortage conditions. GUVNL has submitted that the Commission can exercise its power to relax under the 2009 Tariff Regulations to grant relief to the Respondent Beneficiaries. GUVNL has submitted that the Commission has not included any such provision similar to Regulation 21(4) of the 2009 Tariff Regulations in the 2014 Tariff Regulations applicable for the period 2014-19 on the ground that there was absence of consensus amongst the stakeholders.

41. We have considered the submissions of GUVNL. In the present case, Regulation 21(4) of 2009 Tariff Regulations clearly provides that "DCi in such an event shall be taken to be equal to the maximum of peak-hour ex-power plant MW schedule specified



by the concerned Load Despatch Centre for that day”. Once the generating station proposes to deliver a higher MW during peak hours by saving fuel during off-peak hours in fuel shortage conditions and the concerned RLDC draws a pragmatic day-ahead schedule for optimum utilization of the MW and energy capability, the generating station shall be entitled for all benefits available under the 2009 Tariff Regulations including fixed charges and incentives if the generating station delivers the power as per the schedule drawn by the RLDC. The argument that the similar provision was not provided for in the 2014 Tariff Regulations on account of lack of consensus among stakeholders cannot be accepted as a ground for not operating or modifying the statutory provision in the 2009 Tariff Regulations. Once a provision has been specified in the regulations, it has to be complied with. Further, the Commission cannot exercise its regulatory power under section 79 which would result in rendering inoperative a provision in the regulations. It has been clearly held by Hon’ble Supreme Court in PTC India Limited Vs Central Electricity Regulatory Commission {(2010) 4 SCC 603}, that regulatory power can be exercised only when there is no provision in the regulations framed under section 178 of the Act. The relevant observations of the Hon’ble Supreme Court are extracted as under:

“40. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of



electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc.. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178.....”

Since Regulation 21(4) provides for the treatment of DCi of a generating station under the fuel shortage conditions, the said provision cannot be modified in exercise of regulatory power. Therefore, the Petitioner cannot be denied the benefits of Regulation 21(4) if it has otherwise complied with the said regulation as per the pragmatic schedule drawn by RLDC.

42. There may be occasions where the generating station is unable to generate and inject power under fuel shortage condition to the extent of its declared capacity and the schedule of the beneficiaries during peak hours. For example, the NAPAF of the generating station is 85% and the generating station declares the availability of 90% during peak hours whereas the beneficiaries give a schedule of 83%. If the generating station is able to generate and supply power to the extent of 83% and above during peak hour, it shall be entitled for payment of full fixed charge and incentive. If the generating station generates less than 83%, say only 81%, its declared capacity shall be restricted to its actual generation. In such case, the generating station shall get the fixed charges proportionately and shall not be eligible for payment of incentive.

43. For the aforesaid reasons, we hold that the Petitioner as well as WRLDC have acted in accordance with the Regulation 21(4) of 2009 Tariff Regulations. Therefore, the Petitioner is entitled to claim benefit of DC of maximum MW during peak hours for the months of July 2012 to February 2013. The maximum peak-hour ex-power plant MW scheduled by RLDC under these circumstances shall be considered as equal to DCi for the day and shall count towards recovery of capacity charge and incentive, subject to our decision in para 42 above.

44. In view of the above decision, the “counter-claim” of GUVNL cannot be sustained except to the extent decided in para 42 above.

45. Petition No.114/MP/2013 is disposed of in terms of the above.

sd/-
(A. S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

