CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

<u>Petition No: 284/RC/2019</u>

<u>Coram:</u>

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I. S. Jha, Member

<u>Date of Order</u>: 30.12.2019

In the matter of

Petition under Section 79(1)(a) and 79(1)(b) of the Electricity Act, 2003 read with Regulation 8(6) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Regulation 111 to 113 & 115 of CERC (Conduct of Business Regulations) 1999 seeking regulatory compliance of sharing of gains between generating company and the beneficiaries by NTPC in the monthly energy bills of the generating stations.

AND

IN THE MATTER OF

Tamil Nadu Generation and Distribution Corporation Limited,
The Chief Financial Controller / Regulatory Cell,
144, Anna Salai,
Chennai-600 002 **……….…......Petitioner**

VS

1. NTPC Limited
Through its General Manager / Commercial
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110 003

2. Power Company of Karnataka Ltd
5th floor, KPTCL Building, Kaveri Bhavan,
K.G. Road, Bengaluru - 560009

3. Kerala State Electricity Board,
The Deputy Chief Engineer Tariff and Regulatory Affairs Cell,
Vydyuthi Bhawan, Pattom,
Thiruvananthapuram - 695 004

4. Puducherry Electricity Department,
The Superintending Engineer
Beach Road,
Puducherry – 605001

5. Transmission Corporation of Andhra Pradesh,
The Chief Engineer (Commercial)
Vidhyuthi Soudha,
Hyderabad - 500 082

6. Transmission Corporation of Telangana,
The Chief Engineer (Commercial)
Vidhyuthi Soudha,
Hyderabad-500 082 ....**Respondents**

Parties present : Shri S. Vallinayagam, Advocate, TANGEDCO
Shri R. Alamelu, TANGEDCO
Shri R. Kathiravan, TANGEDCO
Shri Venkatesh, Advocate, NTPC
Shri Ashutosh Srivastava, Advocate, NTPC
Shri Rohit Chabra, NTPC
Shri Vinay Garg, NTPC

ORDER

The Petitioner, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) has filed the present Regulatory Compliance application under Section 79 (1) (a) and 79 (1) (c) of the Electricity Act, 2003 (hereinafter referred to as the "Act") read with Regulation 8 (6) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Regulations 111 to 113 and 115 of the Central Electricity Regulatory Commission (Conduct of

Business) Regulations, 1999 seeking compliance with regard to the Sharing of gains between generating company and the beneficiaries in the monthly energy bills of the generating stations.

2. The Petitioner TANGEDCO has filed the application with the following prayers:

(a) Direct the respondent NTPC to comply with the specific provisions of Tariff Regulations 2014 and 2019.

(b) Direct the respondent to furnish the details of actual controllable parameters for sharing of gains for every month along with the bills, viz., Station Heat rate, Auxiliary Energy Consumption and Specific Fuel Oil Consumption for all the thermal stations for the tariff period 2014-19 and recalculate the gains for the entire tariff period 2014-19;

(c) Direct the Respondent 1 to pay the difference so arrived after recalculation of financial gains for the entire tariff period 2014-19 after getting it reconciled as per the Tariff Regulations.

(d) Direct the Respondent to furnish the details of actual controllable parameters to the petitioner for calculating sharing of gains for every month, viz., Station Heat Rate, Auxiliary Energy Consumption and Specific Fuel Oil Consumption for all the thermal stations for the tariff period 2019-24;

(e) Direct the respondent to refund the petition filing fee;

Submissions by the Petitioner

3. The Petitioner in the Regulatory Compliance application has mainly submitted as under:

(a) The Respondent No:1, M/s. NTPC owns and supplies power to beneficiaries from the Central Generating Stations, in which TANGEDCO is one of the beneficiaries having Power Purchase Agreements (PPAs) with various stations. The Petitioner has been availing power based on the allocation from the various generating stations of NTPC as detailed below:

Sl. No.	Name of the Generating Station	Capacity in MW	TANGEDCO's share MW
1	Talcher STPS-Stage-I (2x500 MW)	1000	270
2	Talcher STPS-Stage-II (4x500 MW)	2000	541
3	Farakka STPS	1600	63.04
4	Ramagundam STPS Stage-I & II	2100	470
5	Ramagundam STPS Stage-III	500	118
6	Simhadri STPS Stage-II (2x500 MW)	1000	198
7	Kahalgaon STPS Stage-I	840	32.68
8	Kudgi STPS (3 x 800 MW)	2400	300
9	Vallur Thermal Power Project (NTPC-TNEB Joint Venture) (3 x 500)	1500	1040.60

(b) Bills are raised on monthly basis by the Respondent No.1 NTPC and paid by the Petitioner as per the PPA and Regulations for the power purchased by the Petitioner from the Respondent (1).

(c) Regulation 8(6) of the CERC(Terms and Conditions of Tariff) Regulations 2014 mandates that the Respondent No:1 shall have to share the financial gains on account of performance improvement in controllable parameters of the thermal generating stations resulting in reduction in variable cost on a monthly basis, subject to annual reconciliation.

(d) TANGEDCO is buying power from Central Generating Stations such as NLC and NTPC. M/s. NLC, is sharing the gains on month-to-month basis by considering the operational parameters for the previous month. However, the Respondent No:1, M/s. NTPC is averaging the controllable operational norms for the entire year, taking it as the basis for calculation of sharing of gains and passing on the benefit, if any, by calculating in its own way by not complying with what is stipulated in the Regulation.

(e) M/s. NLC does not pass on the loss due to its adverse performance as per the Regulations and the same could be ascertained in the monthly bills which show the monthly operational parameters. On the contrary, NTPC does not furnish actual parameters on a monthly basis in its bills and only average of the operational parameters is taken for calculation of gains. Consequently, the beneficiaries are deprived of their eligible share of actual gains and the losses are also passed on in the process of averaging the parameters. There is complete lack of transparency on the part of the respondent NTPC and it is not complying with the mandate of Regulations. There is no provision in the Regulations for averaging the operational parameters at the end of the year. The generator is required to share the gains on a monthly basis. The above act of NTPC is causing financial loss to the petitioner.

(f) M/s. NTPC has followed its own methodology of averaging the operational parameters at the end of the financial year and passed on the gains, if and only if arrived after averaging out the operational parameters and calculating the difference month wise. This has been adopted for all the stations for the entire tariff period 2014-2019. For the year 2018-2019, M/s. NTPC has not shared the gains not even for one month for Talcher Station II, Simhadri Station II and Farakka. As the operational parameters are not available on the website and in the bills, the Petitioner is not able to work out the gains/loss and ascertain the actual figures.

(g) TANGEDCO is facing several Audit queries in this regard. Based on the Audit objection, TANGEDCO addressed NTPC in letter dated 21.10.2017 enclosing a copy of the Audit objection and requested NTPC to clarify on the above and send the working sheet for arriving at the gains. In reply, NTPC vide letter dated 07.12.2017 have stated that the financial gains on account of controllable parameters are passed on monthly basis with annual reconciliation and have sent their methodology of calculating without giving monthly details of the operational parameters.

(h) Again, vide letter dated 22.12.2017, NTPC was asked to furnish the month wise data for all the stations and vide dated 17.03.2018, NTPC was requested to send evidential proof with working sheet to finalise the issues mentioned in the audit slips. NTPC vide letter dated 17.04.18 have clarified the queries. However, the clarifications did not answer the specific queries of TANGEDCO raised in its letters.

(i) Further, TANGEDCO vide letters dated 27.04.2018 and 10.07.2018 again reminded NTPC to send evidential proof with working sheet to finalise reply to the audit slips relating to power purchase from NTPC. NTPC vide reply dated 27.07.2018, furnished the data for the stations Ramagundam I and II, Ramagundam III and Talcher Stage II month wise, in which the operational parameters for all the 12 months are one and the same, which means that they have considered the average of the parameters for the 12 months. Further it has been stated that "The operational efficiency norms stipulated by CERC are on annual basis. Hence the operational norms are accounted after normalising for the possible variations throughout the year. Accordingly, actual (up to the yearend) are used for each month to compute the sharing of gains w.r.t the norms during a particular month".

(j) NTPC has not answered the specific query of TANGEDCO requesting it to provide data relating to monthly actual SHR, auxiliary consumption and specific fuel oil consumption at its generating units in the monthly bills/invoices, which it is mandated under Regulation 8 (6) of the Tariff Regulation 2014.

(k) The provision under 8 (6) is given because these parameters vary from time to time and depend upon the efficiency of the generator in operating its generating units. The Act also mandates efficient and economical generation, so that the benefit is passed on to the consumers. The fundamental fact is that all public sector generating stations are established on public funds for the benefit of tax payers and not on commercial lines to earn profit. These parameters are mandated under the above cited Regulation for computation of gains and losses of a generating station on a monthly basis and for the purpose of sharing the gains alone with the beneficiaries.

(l) The issue was also raised in the Commercial Sub-Committee meetings held by SRPC. In the 39th CSC meeting held on 29.10.2018, the issue was discussed and it was recorded that after the new Tariff Regulation is firmed up for 2019-24, the beneficiaries can seek more clarifications. Even as per the Tariff Regulations 2019, the sharing of gains has to be calculated on monthly basis as explained above and has to be shared annually.

(m) As the problem has not resolved even after addressing the issue with the Respondent NTPC and raising the issue in various forums, the Petitioner is forced to file this petition before the Commission in the larger public interest. The respondent is acting against the mandate of the Regulations and the provisions of Electricity Act, 2003. The very purpose of the Regulation 8(6) of Tariff Regulations, 2014 is defeated by the acts of the Respondent NTPC.

(n) NTPC has not followed the Regulations to calculate the energy charge rate on monthly basis during the Tariff period 2014-19. Hence the Commission may direct the respondent to furnish the operational parameters Station-wise for sharing of gains., viz., Station Heat Rate, Auxiliary Consumption and Specific Oil consumption for the entire Tariff period 2014-2019, and recalculate the gains to be shared for the period 2014-19, which will ensure that the beneficiaries have not shared the losses as envisaged in the Statement of Reasons.

4. The matter was heard on 12.12.2019. The Commission heard the arguments of the learned counsel of the Petitioner as well as Respondent in detail.

<u>Analysis and Decision</u>

5. We have considered the submissions of the Petitioner and arguments placed before the Commission by the learned counsels for the Petitioner and the Respondent. The issue involved in the Petition relates to the application of the Regulation 8 (6) of 2014 Tariff Regulations dealing with the sharing of financial gains on account of performance improvement in controllable parameters of the thermal generating stations.

6. 2014 Tariff Regulations, provides the Norms of operation for the thermal generating stations with regard to the following parameters:

a) Normative Annual Plant Availability Factor (NAPAF).
b) Normative Annual Plant Load Factor for incentive (NAPLF).
c) Gross Station Heat Rate (GSHR).
d) Secondary Fuel Oil Consumption.
e) Auxiliary Energy Consumption (AUX).

7. Out of the five parameters above, item (c), (d) and (e) are controllable parameters. The efficient management of these three parameters by the generators results in to financial gains in comparison to energy charges recovered by the generators based on norms of operation.

8. The Petitioner has submitted that it is buying power from Central Generating Stations such as NLC and NTPC. While NLC, is sharing the gains on month-to-month basis by considering the actual operational parameters for the previous month, NTPC is averaging the controllable operational norms for the entire year, taking it as the basis for calculation of sharing of gains and passing on the benefit, if any, by calculating in its own way by not complying with what is stipulated in the Regulation 8(6) of 2014 Tariff Regulations.

9. Regulation 8(6) of the CERC(Terms and Conditions of Tariff) Regulations 2014 provides as under:

"8(6) The financial gains by a generating company or the transmission licensee, as the case may be on account of controllable parameters shall be shared between generating company/transmission licensee and the beneficiaries on monthly basis with annual reconciliation. The financial gains computed as per the following formulae in case of generating station other than hydro generating stations on account of operational parameters as shown in Clause 2 (a) (i) to (iii) of this Regulation shall be shared in the ratio of 60:40 between the generating stations and beneficiaries.

Net Gain = (ECR_N– ECR_A) x Scheduled Generation
Where,

ECR_N – Normative Energy Charge Rate computed on the basis of norms specified for Station Heat Rate, Auxiliary Consumption and Secondary Fuel Oil Consumption.

ECR_A – Actual Energy Charge Rate computed on the basis of actual SHR, Auxiliary Consumption and Secondary Fuel Oil Consumption for the month."

10. As per the definition of ECR_A in the above Regulation, the actual energy charge rate shall be computed on the basis of actual SHR, actual Auxiliary Consumption and actual Secondary Fuel Oil Consumption for the month. The Petitioner has also submitted the operational monthly parameters adopted for sharing of gains by NLC and NTPC during the period October to December as under:

Generator		GSHR kCal/kWhr	Sp. Oil cons. ml/kWhr	Aux %
NLC Station II, Stage I	**Normative**	2900	2	10
	October	2889.43	1.498	9.66
	November	2922	2.658	9.98
	December	2880.57	0.718	9.61
NTPC Ramagundam I	**Normative**	2396.43	0.5	6.68
	October	2367	0.336	6.53
	November	2367	0.336	6.53
	December	2367	0.336	6.53

11. From, the above table it is clear that NLC is considering the operational parameters based on actuals for the month. However, the Respondent, NTPC has considered the same operational parameters for all the months. It appears that NTPC is averaging the controllable operational norms for the entire year and then applying the average so arrived for sharing the gains for the entire year.

12. Statement of Reasons for the 2014,Tariff Regulations, on this issue of Sharing of Gains, provides as under:

> *"10.12 The provisions of the Regulations allow the generating companies operating at the normative performance parameters to pass through all the prudent costs incurred by them. Further, the Commission has specified uniform normative performance parameters throughout the Tariff Period and has not specified any trajectory for performance improvement. It is expected that the generating companies would endeavor to improve their performance during the Tariff Period, which would result in significant cost saving, which should be shared with the beneficiaries. On the other hand, losses would imply that the generating companies have not put in adequate efforts to sustain even at the normative performance parameters specified by the Commission contrary to the expected improvement. Passing on such losses on account of the lapse of the generating companies would not be appropriate and would discourage improvement in efficiency by the generating companies. Hence, no sharing of losses is being considered for the generating companies.*
>
> *10.13 As regards the sharing ratio of gains on account of controllable factors, the Commission is of the view that the sharing ratio needs to be specified considering the fact that operational norms have been specified in the Regulations based on actual performance with some margin. Considering the suggestions of various stakeholders including the discussions held in the meeting of the Forum of Regulators held on 17th January, 2014 at Chandigarh, the Commission has considered it appropriate to modify the sharing ratio to 60:40 between the generating company/transmission licensee and beneficiaries respectively".*

13. It is clear from the above stipulation that, the losses, in case the Generating companies which are not able to maintain normative parameters, are not to be shared with the beneficiaries. The losses would imply that the generating stations have not put in adequate efforts to sustain the normative performance parameters. The Regulation clearly stipulates that only gains on account of better performance of the stations are to be shared on monthly basis and the losses are to be borne by the generating companies themselves.

14. The method of averaging as adopted by NTPC is not in line with S.O.R. and Regulation 8(6) of 2014 Tariff Regulations as averaging takes into account the gains as well as losses which are not

shared. Accordingly, NTPC is liable to calculate the net gain based on actual controllable parameters for the month and share the gain on monthly basis.

15. During the course of hearing, the learned counsel for the Respondent, NTPC submitted that the Respondent has already shared the financial gains on account of controllable parameters with the Petitioner for the 2014-19 periods on the annual basis and further submitted that Regulation 60 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (2019 Tariff Regulations) for the periods 2019-24 provides that gains on account of variation in norms on monthly basis shall be shared on annual basis.

16. In response, the learned counsel for the Petitioner submitted that in terms of Regulation 60 of the 2019 Tariff Regulations, it is clear that gains even for the 2019-24 periods shall be calculated on monthly basis though shared annually. We are in agreement with the submission of learned counsel for the Petitioner. Regulation 60 of 2019 Tariff Regulations though provides that the financial gains by a generating company on account of controllable parameters shall be shared between generating Company and the beneficiaries on annual basis. However, the Actual Energy Charge Rate is to be computed on the basis of actual SHR, actual Auxiliary Consumption and actual Secondary Fuel Oil Consumption for the month.

17. Accordingly, the Respondent, NTPC is directed to furnish the details of Month-wise Actual controllable operational parameters for SHR, Auxiliary Consumption and Secondary Fuel Oil Consumption for all the generating stations to the Petitioner for the period 2014-19. NTPC shall recalculate the gains for the entire tariff period 2014-19, and share the gains as per Regulation 8(6) of 2014 Tariff Regulations on monthly basis within a period of 2 months from the date of this order.

18. Further, for the periods 2019-24, the Respondent NTPC is directed to share the financial gains based on Actual Energy Charge Rate which shall be computed based on actual SHR, actual Auxiliary Consumption and actual Secondary Fuel Oil Consumption for the month as per Regulation 60 of 2019

Tariff Regulations and the monthly details of actual SHR, Auxiliary Consumption and Secondary Fuel Oil Consumption parameters shall be shared with the Petitioner.

19. The Petitioner has sought reimbursement of fee paid by it for filing the petition. In our order dated 11.1.2009 in Petition No. 109/2009, and order dated 31.5.2017 in Petition No. 36/MP/2017 we had decided that filing fee will be reimbursed in the following cases:

> *"85. The Commission after careful consideration has decided that filing fee will be reimbursed in the following cases:*
>
> *(a) Main petitions for determination of tariff;*
>
> *(b) Petitions for revisions of tariff due to additional capital expenditure;*
>
> *(c) Petitions for truing up of expenditure.*
>
> *Filing fees paid for filing the Review Petitions, Interlocutory Applications and other Miscellaneous Applications will not be reimbursed in tariff. The Commission has decided to reimburse the expenses on publication of notices as such expenses are incurred to meet the statutory requirement of transparency in the process of determination of tariff."*

20. This petition being a miscellaneous petition, reimbursement of filing fee is not allowed. Accordingly, the prayer of the Petitioner for reimbursement of the filing fee is rejected.

21. Petition No. 284/RC/2019 is disposed of in terms of the above.

sd/-	**sd/-**	**sd/-**
(I. S. Jha)	**(Dr. M.K. Iyer)**	**(P.K. Pujari)**
Member	**Member**	**Chairperson**