CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No: 46/MP/2018

Coram:

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I. S. Jha, Member

Date of Order: 28th August, 2019

In the matter of

Petition under section 79 (1) (a) read with section 62 and 64 of the Electricity Act, 2003 and Regulations 36 (a) and 54 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for relaxation of the Normative Annual Plant Availability Factor (NAPAF) for specific NTPC thermal generating stations on account of non-availability of coal.

AND

IN THE MATTER OF

NTPC Limited,
NTPC Bhawan,
Core-7, 7 Institutional Area,
SCOPE Complex, Lodhi Road
New Delhi – 110 003 **……. ….....Petitioner**

VS

1. CSPDCL
P.O.-Sundernagar
Danganiya, Raipur-492013

2. MPPMCL, Shakti Bhawan
Vidyut Nagar, Rampur
Jabalpur-110003

3. MSEDCL, Prakashgad,
Bandra (East),
Mumbai-400051

4. GUVNL,
Sardar Patel Vidyut Bhawan
Race Course, Vadodara
Gujarat-390007

5. Chief Electrical Engineer
Electricity Department,
Govt. of Goa,
Vidyut Bhawan,
Panaji, Goa-403001

6. Executive Engineer
Electricity Department,
Administration of Daman & Diu,
Daman-396210

7. Chief Engineer
Electricity Department,
Administration of Dadra & Nagar Haveli,
Silvasa-396230

8. AP Eastern Power Distribution Company Ltd. (APEPDCL)
Corporate Office
P&T Colony, Seethammadhara,
Visakhapatnam – 530 013 - (AP)

9. AP Southern Power Distribution Company Ltd. (APSPDCL)
Corporate Office
Back Side Srinivasa Kalyana Mandapam
Tiruchhanur Road, Kesavayana Gunta,
Tirupathi – 517 503 (AP)

10. Telangana State Northern Power Distribution Company Ltd. (TSNPDCL)
H.No. 2-5-31/2, Vidyut Bhavan
Nakkalagutta, Hanamkonda
Warangal – 506 001

11. Telangana State Southern Power Distribution Company Ltd. (TSPDCL)
Mint Compound, Corporate Office
Hyderabad – 500 063.

12. Tamil Nadu Generation & Distribution Corporation Ltd. (TANGEDCO) (formerly TNEB)
144, Anna Salai
Chennai – 600 002

13. Bangalore Electricity Supply Company Ltd. (BESCOM)
Krishna Rajendra Circle
Bangalore - 560 001.

14. Mangalore Electricity Supply Company Ltd (MESCOM)
MESCOM bhavana,
Corporate Office,
Bejai, kavoor cross road,mangaluru,
575004, Karnataka

15.CESC Mysore (Chamundeshwari Electricity Supply Corp. Ltd.)
Corporate Office, No. 29,
Vijayanagar, 2nd stage, Hinkal,
Mysore – 570 017.

16. Gulbarga Electricity Supply Company Ltd. (GESCOM)
Main road, Gulbarga, Karnataka.
Gulbarga – 585 102.

17. Hubli Electricity Supply Company Ltd. (HESCOM)
Corporate office, P.B.Road, Navanagar
Hubli – 580 025.

18.Tariff & Regulatory Cell
Kerala State Electricity Board Ltd. (KSEBL)
Vaidyuthi Bhavanam, Pattom
Thiruvananthapuram – 695 004. .....**Respondents**

Parties present:

Shri M.G.Ramachandran, Advocate, NTPC
Ms. Poorva Saigal, Advocate, NTPC
Ms. Tanya Sareen, Advocate, NTPC
Shri Shubham Arya, Advocate, NTPC
Shri Umesh Ambati, NTPC
Shri PB.Venkatesh, NTPC
Shri Ajay Dua, NTPC
Shri Manoj Kr. Sharma, NTPC
Shri Ravi Sharma, Advocate, MPPMCL
Ms. Swapna Seshadri, Advocate, GUVNL
Shri S.Vallinayagam, Advocate, TANGEDCO
Ms. S.Amali, Advocate, TANGEDCO

ORDER

The Petitioner, National Thermal Power Corporation Ltd. (NTPC) has filed the present petition for revision of the Normative Annual Plant Availability Factor in respect of NTPC's Power Stations on account of shortage of coal availability, with the following prayers.

a) *Consider the difference between NAPAF of 85% and the availability declared by the NTPC Generating Stations (to the extent of coal actually available) as deemed generation for the purpose of computing fixed charges payable to NTPC;*

b) *Consider provision similar to Regulation 21 (4) of Tariff Regulations 2009 to enable the coal generation maximize their availability during the peak hours so as to support the grid demand; and*

c) *Pass such further order or orders as this Hon'ble Commission may deem just and proper in the circumstances of the case.*

2. NTPC is a 'Generating Company' within the meaning of Section 2(28) of the Electricity Act, 2003 (hereinafter referred to as the "Act"). Being a Central Government owned and controlled Generating Company, the terms and conditions of tariff in respect of NTPC is regulated by this Commission in terms of Section 79 (1) (a) of the Act.

3. The Commission had notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the `Tariff Regulations, 2014') governing the norms and parameters including that for normative availability applicable for the generating stations such as those owned by NTPC for the control period 1.4.2014 to 31.3.2019.

4. Tariff for various generating stations of NTPC for the tariff period 2014-19 has been determined by the Commission vide orders in respective tariff petitions. The Normative Annual Plant Availability Factor (NAPAF) for the generating stations of NTPC were fixed at 83% during the period from 1.4.2014 till 31.3.2017 for reasons of shortage of coal with a provision that the same '*shall be reviewed based on actual feedback after 3 years from 01.04.2014*'. Through tariff orders passed from time to time relating to the period from 1.4.2017 onwards, the Commission has considered the NAPAF for NTPC's generating stations at 85%.

Submissions of the Petitioner

5. There has been significant shortage in availability of coal and there is uncertainty of assured coal supply on a sustained basis within the scope of Regulation 36 for the period from 01.04.2017. In fact, such unavailability and uncertainty of coal has been more predominant and severe from 01.04.2017 onwards. As a result of the fuel (coal) shortage, the plant availability (PAF) of many generating stations of NTPC has been below 85% and in many others, it is even below 83%. The details of the actual availability of various generating stations of NTPC in respect of which fuel shortage has been severely faced are as under:

Sl. No.	Station	Cumulative Availability as on 31.12.2017 (2017-18)	ACQ (MMT)	Annual Requirement of Coal (MMT) at normative levels (Specific coal consumption considered)	Coal Tie-up as % of reqd. for operation at normative levels	% Materialization of ACQ (prop.) as on 31.12.2017
1	Mouda-I	76.14	SECL – 1.92 WCL – 0.6* MCL – 5.09	12.09 (0.7)	67%	SECL-41% WCL-48% MCL-32%
2	Mouda-II	44.62				
3	Solapur	39.07	MCL-2.55	3.19 (0.65)	80%	MCL – 16%
4	Simhadri-I	79.14	MCL-8.32 ECL-1.50	11.17 (0.75)	88%	MCL – 68% ECL-73%
5	Simhadri-II	83.02				
6	Kudgi – Unit I & II	84.58	SCCL-5.244**	7.74 (0.65)	68%	SCCL-64%

*ACQ from WCL 0.8993 MMT from 2018-19

**Bridge linkage till 31.03.2018

6. The shortage of coal mentioned above, is on account of the non-availability of the coal itself for reasons beyond the control of NTPC and for factors not attributable to NTPC. There has been uncertainty in coal supply on sustained basis being experienced by the generating stations of NTPC mentioned above, within the scope of the proviso to Regulation 36(A) of the Tariff Regulations, 2014. As mentioned above, the uncertainty of coal supply is much more severe than what was envisaged at the time of the notification of the Tariff Regulations, 2014 on 21.2.2014.

7. Primary reason for the Commission to relax the Normative Plant Availability at the time of notification of the Tariff Regulations, 2014 for Thermal Generating Stations from 85% to 83% was shortage of coal and uncertainty of assured coal supply. The same has been enumerated in the Statement of Reasons notified by the Central Commission along with the Tariff Regulations, 2014.

8. Reasons for shortage and uncertainty of assured coal supply are as under:

(a) The Ministry of Coal, Government of India (MOC) vide Office Memorandum dated 26.07.2013 issued the modified New Coal Distribution Policy (NCDP 2013). In terms of NCDP 2013, the assured domestic coal supply has been restricted to 65% of the annual contracted quantum (i.e. equivalent to requirement for 85% generation level) for FY 2014-15, 67% for FY 2015-16 and 75% for FY 2016- 17 (As per FSA-2012, 75% for remaining period). The above works out to equivalent to 55.25%, 56.95% and 63.75% requirement corresponding to the installed capacity of the generating station.

(b) SHAKTI Policy: MOC vide communication dated 22.05.2017 has issued the policy guidelines for signing of FSAs with Letter of Assurance (LoA) holders and has introduced New Coal Allocation Policy for Power Sector, 2017-SHAKTI as per which coal supply to the stations beyond 31.03.2017 will be 75% of ACQ i.e. a 85x.90x.75 = 57% PLF.

The above assured quantum was to be supplied by the domestic coal companies (Coal India Limited and/or its subsidiaries) from the identified sources with a provision for supply of any shortfall in such quantum through import of coal and/or alternate sources. In this regard, Clause 3.3 of the Fuel Supply Agreement dated 17.07.2013 entered into between NTPC and Mahanadi Coal Fields Limited for Simhadri Super Thermal Power Station Stage-II (similar FSA exists with other Coal Suppliers) reads as under:

"3.3 Sources of Supply

3.3.1 The Seller shall endeavour to supply Coal from own sources as mentioned in Schedule I. In case the Seller is not in a position to supply the Scheduled Quantity (SQ) of Coal from such sources as indicated in Schedule I, the Seller shall have the option to supply the balance quantity of Coal through import which shall not, unless otherwise agreed between the parties, exceed 15% of the ACQ in the year 2012-13, 13-14 and 14-15, 10% of ACQ in the year 2015-16 and 5% ACQ for the year 2016-17 and onwards. Seller may at its discretion, make such arrangement for supply of imported coal through,

CIL and/ or other enterprises. Accordingly, the purchase has to enter into a "Side Agreement" with CIL and / or the seller, as the case may be, in the addition to this agreement. The Side Agreement dealing with the terms and conditions for supply of imported coal would be an integral part of this agreement.

3.3.2 For the supply of coal through import as stated in Clause 3.3.1 above, the purchaser shall agree to have back to back arrangements, if so required, with the importing agency (ies) to be notified by the Seller/ CIL and deposit 100% of payable amount in advance. The commercial terms and conditions for such supply shall be regulated as per the Side Agreement."

(c) MOC has prohibited the supply/ use of imported coal in the case of Central Public Sector Thermal Power Plants including the Generating Stations of NTPC. In the minutes of meeting dated 20th October 2015 pertaining to performance review of NTPC by the Ministry of Power, Government of India (MOP), NTPC was directed to minimize import of coal as far as possible. In line with the above directions, NTPC has reduced import of coal and has not placed any orders for import of coal post August 2015. Similarly, in the Minutes of Conference of Power, RE and Mines Ministers of States and UTs dated 3rd/4th May 2017 dealing with the coal related issues, it was decided as under:

"COAL RELATED ISSUES

45.Coal Import by Public Sector TPP based on domestic coal shall be reduced to zero. States shall also endeavour to reduce coal import by Independent Power Producers (IPPs) based on domestic coal."

(d) The coal supplied by the coal companies i.e. the percentage materialization against the Annual Contracted Quantity is much less as indicated in the table. The less coal supply by the coal companies is primarily due to less production at the domestic coal mines. There have also been constrains faced by NTPC in transportation of the coal to these stations, due to rail congestion and placement of coal rakes at the mines. NTPC has taken up the above with the various authorities/ forums.

9. Though NTPC had attempted to mitigate the shortage in the availability of coal, it is not possible for NTPC to undertake generation to reach the NAPAF level specified in the Tariff Regulations, 2014. There has been a significant reduction in the ability of NTPC to declare availability of the quantum of electricity on account of the non-availability of coal. The efforts made by NTPC, broadly stated, are as under:

(a) All NTPC stations have requisitioned far more quantities than ACQ, the allocation and actual dispatches. NTPC has consistently and rigorously followed up with the Coal India Limited and its subsidiaries for augmentation of coal supply.

Further, NTPC has been continuously taking up the matter of fuel shortage with the MOC, MOP and has been requesting for enhancement of the Annual Contracted Quantity to meet the generation requirement. NTPC has made various communications to MoP, MoC and coal companies.

(b) In the meanwhile, under Government policy of flexible utilization of coal, NTPC has explored diversion of coal from other CIL fed stations of NTPC to these stations/ units with generation loss/ less availability. Efforts for diversion of coal include coordinating with CIL and Railways so that additional supply may be made available to these units. The details of coal diversion for these stations are as below:

Name of Station	Request for Diversion of Coal from 01.05.2017 to 31.12.2017 (LMT)	Coal Diverted from 01.05.2017 to 31.12.2017 (LMT)
Solapur	3.8	0.15
Mouda Stage-I&II	13.7	4.59
Simhadri-I&II	8.3	0.95
Bongaigaon	4.5	0.59

It is clear from above that the diversion of coal from various possible stations of NTPC were planned so as to ensure that coal at those stations are at optimal level in order to keep the generation levels at stations to meet the demand of the beneficiaries. However, coal diversion as planned did not materialize due to non-availability of coal at coal mines and/or logistical constrains of Railways. The transportation for diversion of coal became more difficult in the last two months due to the “FOG Effect".

(c) NTPC has also explored to source coal through e-auction. The coal availability to NTPC from the open auction conducted by the coal companies has not been feasible. The price of coal for a given quality discovered through the bidding process is much higher than the notified prices in most of the cases. Procuring coal at such high prices results in higher cost of energy. NTPC has participated in the bidding process on many occasions and was successful at the following e-auctions conducted by CIL Subsidiaries/ SECL for supply of coal to NTPC stations in the years 2016-17 and 2017-18 (till 17.01.2018). The details are as under:

Sl No	NTPC Stations	Coal Co.	Quantity Allotted (LMT)	Average Allotted Price (Rs/MT)	Average Notified Price (Rs/MT)
1	Vindhyachal	NCL	3.04	1263	980
2	Mouda	WCL	19.84	1828	1220
3	Unchahar	CCL	9.32	1119	927
4	Solapur	SECL, NCL, WCL	2.14	2608	1367

10. NTPC has not been able to operate its coal-based generating stations to the extent of the NAPAF specified in the tariff orders of this Commission for the period from 01.04.2017 onwards at 85% target availability, for reasons beyond its control. At the same time, NTPC is required to service its fixed charges. In view of the above, even though NTPC's generating stations have been in a position to generate and make available the electricity to the Respondent Beneficiaries (machine availability) but it has not been able to undertake generation up to the NAPAF of 85%, solely for reasons of non-availability of the requisite quantum of coal.

11. The less availability of coal at thermal power stations was also brought to the notice of the Commission by POSOCO vide its letter dated 18.10.2017 as under:

> *"It is observed that the supply side is constrained due to less availability of coal and as on 15th Oct 2017, more than 31 GW thermal capacity is out due to less availability of coal."*

From the above, it may be seen that availability of coal is a matter of concern for all thermal station including that of NTPC Stations.

12. In the above-mentioned letter, POSOCO has also observed as follows:

> *"As a consequence of reduced generation availability, the frequency during the peak hours remain low and has even gone to around 49.65 Hz. Considering the ongoing high demand period and the festival season, in order to maintain secure grid operation, all residual generation available (including gas, RLNG, liquid) is being dispatched under Ancillary from September 2017 onwards."*

In the above letter, concern has been raised in respect of availability of coal generation during peak hours. It is pertinent to mention here that peak requirement of power these days is after 06:00 PM. The contribution of solar generation stations is increasing and such solar

capacity is not available in the evening hours and the grid is primarily dependent on coal generation for meeting the peak hour requirement. From the grid point of view, it is essential that coal stations are available during the peaking hours and contribute maximum to the grid.

13. To address similar situations, Regulation 21(4) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as the Tariff Regulations, 2009) provided as below:

> *"21 (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. DCi 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."*

It is likely that high demand will continue due to various Government of India initiatives such as 24X7 powers for all, Make in India etc. Further, it may be that coal shortage may continue. In view of the grid stability and fuel shortage, similar provisions may be introduced in the current Tariff Regulations for benefit of the sector as a whole. This will enable the coal stations to make available their generation during the times when most needed by the grid.

14. In the facts and circumstances of the case, the inability of NTPC's Generating Stations mentioned above due to non-availability of the coal, namely, the difference between NAPAF of 85% and availability possible to the extent of the coal actually available to NTPC, should be treated as deemed generation for the purpose of computing fixed charges payable by the Respondent Beneficiaries to NTPC. NTPC, however, submits that it is not claiming deemed generation for non-generation of electricity for reasons other than coal non-availability.

15. It will suffer irreparably if the relief prayed for herein, namely, to consider the difference between NAPAF and availability for which domestic coal is available from the coal companies, is not granted as deemed generation. Further, the shortfall in the availability of domestic coal on account of changes in the New Coal Distribution Policy notified by the

Central Government has been held to be Change in Law entitling the generator to appropriate relief in the decision of the Hon'ble Supreme Court in Energy Watchdog v Central Electricity Regulatory Commission [(2017) 4 SCALE 580].

Submissions of the Respondents

16. The Respondent No. 4, GUVNL vide its reply dated 26.6.2018 and 29.4.2019 has submitted that:

(a) The contentions raised in the Petition filed by NTPC seeking relaxation of provisions of the Tariff Regulations, 2014 are misconceived, devoid of any merit and the Petition is liable to be dismissed.

(b) The Petitioner has shown the status of coal availability only for 6 generating stations, namely Mouda I & II, Sholapur, Simhadri I & II and Kudgi I & II. All these generating stations are new and got commissioned in the last few years. It is not clear as to what was the fuel arrangement tied up by NTPC for these generating stations. There is no pleading of there being any shortage of coal in so far as the older generating stations are concerned. This indicates that for these new generating stations, NTPC has not entered into proper contracting arrangements to source coal and is seeking to pass on its contractual liabilities on the beneficiaries by way of higher tariff burden.

(c) In a regulatory regime, risk allocation is an important aspect. While the generator has to bear some risks, the beneficiaries undertake certain other risks. The Tariff Regulations, 2014 duly recognises these risks and thereafter, gives the broad outline of how the tariff should be worked out. The risk of fuel arrangement is to be borne by the generating companies only. The Appellate Tribunal has settled the position that the tariff regulations provide that arrangement of coal/ fuel is the responsibility of the generating company and this responsibility cannot be shifted to the beneficiaries.

(d) It is impossible for GUVNL to factually verify the details given by NTPC since very limited details have been given and that too only for new generating stations. Under the garb of these newer generating stations, NTPC is seeking a wholesale relaxation of NAPAF across all generating stations.

(e) New Coal Distribution Policy and SHAKTI Scheme by MOC read with the Fuel Supply Agreements signed by NTPC with Coal India Limited & its subsidiaries clearly indicate the attempt on the part of NTPC to pass on the risk arising out of a contractual issue with its coal suppliers to the beneficiaries.

(f) Merely writing letters to the coal companies or to MOP and MOC cannot be termed as efforts made by NTPC in making coal available for its generating stations. If the coal companies or MOC is not in a position to supply coal, NTPC has to appropriately arrange coal through alternate sources instead of taking the easy way out and praying for a relaxation in NAPAF norms.

(g) Any relaxation in norms by the Commission shall have significant implication on consumer at large by way of fixed cost burden without getting generation at normative level and further Distribution Companies are required to arrange for this shortfall energy by purchasing power at higher rates from alternate sources which will have additional financial burden and would be double jeopardy to them. Therefore, Commission is requested not to relax the norms in the larger public interest.

17. The Respondent No. 12, TANGEDCO vide its reply dated 29.6.2018 has prayed to reject the prayer of the Petitioner and submitted that:

(a) The Petitioner has not furnished the daily declared capacity of the thermal generating stations, monthly plant availability factor of each power stations, month-wise opening stock of coal, coal received during the month, closing stock of the coal for the year 2017-18 and, therefore, the prayer made by the Petitioner is without justification.

(b) The responsibility for maintenance of less coal stock and the consequent failure on the part of the generating station to declare availability up to normative value rests with the generator and the risk for such less coal stock maintained has to be borne by the generator. The associated risks involved in arranging coal lies with the generator and the burden should not be passed on to the beneficiaries.

(c) Due to forced shutdowns of many generating stations on account of high penetration of renewable energy and seasonal low demand, the generator should have

taken steps to divert the coal already allocated from its backed down plants to its operating stations to mitigate the coal shortage issues.

(d) There are other options available like procurement of imported coal and swapping of coal to efficient thermal generating stations. Therefore, the issue of non-receipt of coal cannot be considered as an event beyond the control of NTPC.

(e) The declaration of the availability depends upon various factors such as availability of fuel, water and capability of machine factoring the annual overhaul etc. Also, the responsibility for arranging fuel or keeping the requisite stock of fuel to declare capacity on a day to day basis to maintain annual average availability at 85% lies with the generator. Therefore, the prayer of the Petitioner will dilute the sole purpose of keeping the NAPAF in the tariff regulations and sanctity of specifying the norms for performance parameters.

18. The Respondent No. 2, MPPMCL vide its reply dated 14.09.2018 has prayed to reject the petition stating that the prayer of the Petitioner is highly arbitrary, misconceived and without any legal basis and submitted that:

(a) The content of the table provided by the Petitioner is not clear and is rather confusing. The cumulative availability of Mouda I & II for the year 2017-18 (up to 31.12.2017) has been shown to be 76.14% and 44.62% respectively. The ACQ (MMT) for these generating stations has been shown to be 7.61 MMT up to 31.03.2018 and 7.909 MMT from 2018-19 which is only 62.94% and 65.42% respectively of the annual requirement of coal of 12.09 MMT at normative level. Coal and water are the basic raw material for generation of electricity from a coal based thermal generating station. Whenever a new project is envisaged, availability of its basic raw material is ensured in abundance so that the project can be operated smoothly. It appears that the Petitioner has failed in assessing the availability of basic raw material of coal before making such a huge capital investment in installing Mouda Super Thermal Power Station and about 41% of the installed capacity of Mouda STPS-II is standing idle for want of availability of coal. Arrangement of fuel is the responsibility of the generator. The Petitioner has not been able to fulfil its primary responsibility of arranging fuel for its generating station and is seeking to skirt its improper and inefficient management of the coal to the ultimate consumers of the electricity.

(b) The information of cumulative availability up to the March of the respective year as available on the website of WRPC clearly shows that there are in all 11 thermal generating station of the petitioner in WR, out of which 9 thermal generating stations have always achieved the normative availability factor and they are conclusively above normative level of 85%.

(c) The prayer of NTPC for inclusion of a regulation similar to regulation 21(4) of Tariff Regulations, 2009 is highly objectionable as the plant utilization factor of thermal generating station is decreasing gradually over the period of last few years with the addition of other source of generation into the power system. Further, it is highly illogical and arbitrary on the part of the Petitioner to pray for introduction of similar Regulation as the same has been against the overall interest of the beneficiaries.

19. Tata Power Delhi Distribution Limited (TPDDL), vide its application dated 7.9.2018 has submitted that it is one of the procurers of the electricity from Farakka Super Thermal Power Project Stage-I&II of NTPC and has requested the Commission to allow itself to implead as a Respondent in the present petition. However, the Petitioner vide letter dated 4.12.2018 has submitted that the instant petition has been filed by NTPC, seeking relief of four stations viz. Mouda STPS Stage-I, Mouda STPS Stage-II, Solapur STPS Stage-I and Simhadri STPS Stage-I. Since no relief has been sought in respect of Farakka I&II, TPDDL has not been impleaded as a Respondent in the present Petition.

Rejoinder of the Petitioner to the replies of Respondents

20. The Petitioner in its rejoinder dated 5.9.2018 to the reply filed by the Respondent GUVNL has reiterated its submissions made in the main Petition and further submitted that:

(a) It has given the data relevant for certain generating stations because the relief sought for is confined to selective stations of NTPC. The scope of the proceedings is confined to specific stations of NTPC in the Western Region, namely Mouda Thermal Power Station, Stage I and Stage-II, Solapur Thermal Power Station and Simhadri Super Thermal Power Station, Stage I.

(b) Fuel arrangement for the aforementioned stations is through the same mechanism, as followed for the other older stations of NTPC. There has been no shortcoming in the fuel arrangement entered into by NTPC with Coal India Company and its various subsidiaries. The Tariff Regulations, 2014, in contrast to the earlier Regulations, have specifically recognized fuel un-availability as a ground for relaxation of Normative Availability and did in fact relax it in terms of Regulation 36(A). Therefore, there is no question of risk allocation between the generator and the beneficiaries when the Regulations itself acknowledges shortage of coal as a ground for NAPAF relaxation.

(c) There is no question of NTPC attempting to do anything indirectly which it cannot do directly. NTPC has proceeded under the specific dispensation provided under the Tariff Regulations, 2014, namely that Regulation 36(A) 'shall be reviewed based on actual feedback after 3 years from 01.04.2014. There is, therefore, no question of risk allocation between the generator and the beneficiaries.

(d) The claim of NTPC is restricted to Mouda Thermal Power Station, Stage I and Stage-II, Solapur Thermal Power Station and Simhadri Super Thermal Power Station, Stage I. NTPC is not seeking a NAPAF relaxation in respect of all generating stations.

(e) The implications of the SHAKTI Scheme and MOP/ MOC decision of preventing NTPC from importing coal could not have been factored in by this Commission at the time of notification of the Tariff Regulations, 2014. In light of the above, the present case is a fit case for this Commission to exercise its power to relax.

21. The Petitioner in its rejoinder dated 5.9.2018 to the reply filed by the Respondent TANGEDCO has reiterated its submissions made in the main Petition and further submitted that:

(a) Monthly plant availability factor of various power stations is available in the Regional Energy Accounts issued by respective RPCs and the same is used for billing purposes. The fuel details (Form-15) are being provided to the respective beneficiaries as prescribed on monthly basis.

(b) It is not denied that the responsibility of arranging fuel rests with the generator i.e. NTPC. However, the present coal scenario in the entire country is that there is

sustained coal shortage. NTPC has made all efforts to arrange coal (as more fully set out in the Petition); and this Commission itself having recognised the coal shortage in the country, has relaxed the normative availability to 83% and has provided a liberty to various stakeholders including NTPC to approach this Commission after 3 years with actual data for reviewing Regulation 36(A) of the Tariff Regulations, 2014.

(c) It has given detailed and proper justification to consider the difference between the normative availability of 85% and the availability of the generating station as deemed generation for the purpose of computing fixed charges. In the facts and circumstances of the case and especially when NTPC has explored all possible avenues for procurement of coal, the non-receipt of coal is beyond the control of NTPC.

22. The Respondent No.12, TANGEDCO vide its counter affidavit dated 15.9.2018 has submitted that:

(a) The Petitioner is seeking for relaxation of NAPAF just because there is a provision in the Regulations, without justifying the need for the relaxation. A Monthly Coal Report for thermal power stations issued by Central Electricity Authority for the month of July 2018 reveals the following:

(In thousand tonnes)

Sl. No	TPS	Installed Capacity	Allocation	Receipt	% receipt w.r.to allocation	Consumption	Closing stock
1	Mauda TPS	2320 MW	644.46	750	116.38	712	84
2	Solapur	660 MW	186.78	247	132.24	161	128
3	Simhadri (Combined)	2000 MW	720.13	609	84.57	790	112

The above report of CEA reveals that the receipt of coal for the above stations and the stock position is comfortable.

(b) The Tariff Regulations, 2014 has been clearly formulated duly appreciating the risks to be taken care of by the generators and beneficiaries and leverages, if any, cannot be treated as a privilege. The risk of fuel arrangement is to be borne by the generating companies only and cannot be passed on to the beneficiaries. The Petitioner and the Respondent are both Public Sector Enterprises and any expenditure should be analysed thoroughly before passing the same to the end consumer.

23. The Petitioner has not submitted any rejoinder to the counter reply filed by the Respondent TANGEDCO.

Analysis and Decision

24. We have considered the available documents, replies and rejoinders filed by the Petitioner and Respondents. NTPC has requested to consider the difference between normative NAPAF (as per Tariff Regulations, 2014) and the availability declared by the NTPC Generating Stations (to the extent of coal actually available) as deemed generation for the purpose of computing fixed charges payable to NTPC for the years 2017-18 and 2018-19. NTPC has based its request in terms of Regulation 36(A) of the Tariff Regulations, 2014 that provides that NAPAF 'shall be reviewed based on actual feedback after 3 years from 01.04.2014'.

25. Therefore, the issue to be considered by us is whether receipt of reduced coal supply during the years 2017-18 and 2018-19 at listed stations (only four) of the petitioner, entitles the Petitioner for revision of the Normative Annual Plant Availability Factor.

26. NTPC has submitted that lesser achievement of NAPAF was on account of shortage of coal for reasons beyond the control of NTPC. It has submitted that uncertainty of coal supply during the years 2017-18 and 2018-19 was much more severe than what was envisaged at the time of the notification of the Tariff Regulations, 2014. NTPC has submitted that MOC itself through NCDP 2013 recognised that there was shortage of assured coal supply. It has submitted that by notifying SHAKTI Policy on 22.05.2017, MOC has further recognised that the availability of coal would be 75% of ACQ. NTPC has argued that the primary reason for the Commission to relax NAPAF at the time of notification of the Tariff Regulations, 2014 for Thermal Generating Stations from 85% to 83% was shortage of coal

and uncertainty of assured coal supply and that the same has been enumerated in the Statement of Reasons notified by the Commission along with the Tariff Regulations, 2014. It has, therefore, submitted that it is entitled to relaxation in NAPAF on account of unavailability of coal. It has submitted that even though its generating stations have been in a position to generate and make available the electricity to the Respondent Beneficiaries, it has not been able to declare availably to the extent of NAPAF solely for reasons of non-availability of the requisite quantum of coal. Less availability of coal at thermal power stations was also brought to the notice of the Commission by POSOCO vide its letter dated 18.10.2017.

27. Reliance has been placed by the Petitioner on directions of Ministry of Coal and Ministry of Power. It has submitted that MOC prohibited the supply/ use of imported coal in the case of Central Public Sector Thermal Power Plants including the generating stations of NTPC. It has also stated that MOP through minutes of meeting dated 20.10.2015 directed NTPC to minimize import of coal as far as possible and that in line with these directions, NTPC has reduced import of coal and has not placed any orders for import of coal post August 2015. NTPC has further submitted that the issue of coal import was discussed in the Conference of Power, RE and Mines Ministers of States and UTs on 3rd/4th May 2017 and decided to reduce coal import to zero in respect of public sector thermal power plants.

28. The Petitioner has submitted that lesser supply of coal by the coal companies is primarily due to less production at the domestic coal mines. There have also been constraints faced by NTPC in transportation of the coal to these stations, due to rail congestion and placement of coal rakes at the mines.

29. NTPC has submitted that it has attempted to mitigate the shortage in the availability of coal through various steps such as following up with Coal India Ltd. and its subsidiaries; taking up the issue with MOP and MOC; diverting coal under flexible utilization policy of the

Government; sourcing coal through e-auction etc. But its efforts have not borne much fruit and that the subject generating stations of NTPC have not been able to achieve NAPAF as required under the Tariff Regulations, 2014.

30. NTPC has referred to Regulation 21(4) of the Tariff Regulations, 2009 and suggested that similar provision may be incorporated in the current tariff regulations since coal shortage is likely to continue.

31. Per contra, the Respondents have submitted that the Petitioner has shortage of coal only for 6 generating stations (that are relatively new compared to other generating stations of NTPC) and have raised an apprehension that NTPC may not have proper fuel arrangement for these newer plants.

32. Respondents have further submitted that the Tariff Regulations, 2014 recognises risks to be borne by the generator and the beneficiaries. As per this risk allocation, fuel arrangement and associated risk is upon the generator. New Coal Distribution Policy and SHAKTI Scheme by MOC read with the Fuel Supply Agreements signed by NTPC with Coal India Limited & its subsidiaries are contractual arrangement of the generator and that it cannot pass on the risk of unavailability of coal upon the beneficiaries. Merely writing letters to the coal companies or to MOP and MOC cannot be termed as efforts made by NTPC in making coal available for its generating stations. If the coal companies or MOC was not in a position to supply coal, NTPC has to appropriately arrange coal through alternate sources like procurement of imported coal and swapping of coal to efficient thermal generating stations. Therefore, the issue of non-receipt of coal cannot be considered as an event beyond the control of NTPC.

33. The Respondents have submitted that any relaxation in norms by the Commission shall have significant implication on consumer at large. On one hand, the Discoms will have to bear higher fixed cost burden without getting generation at normative level while on other hand, they are required to arrange for this shortfall in energy by purchasing power at higher rates from alternate sources. It would be double jeopardy to them.

34. The Respondents have submitted that inclusion of a regulation similar to regulation 21(4) of Tariff Regulations, 2009 is highly objectionable as the plant utilization factor of thermal generating station is decreasing gradually over the period of last few years with the addition of other source of generation into the power system. Further, it is highly illogical and arbitrary on the part of the Petitioner to pray for introduction of similar Regulation as the same has been against the overall interest of the beneficiaries.

35. As regards fuel arrangement for the instant generating stations is concerned, NTPC has submitted that it is following the same mechanism as in case of older stations of NTPC and that there is no shortcoming in the fuel arrangement entered into by NTPC with Coal India Company and its various subsidiaries.

36. We have considered the submission of the Petitioner and the Respondents..

37. NAPAF is fixed by the Commission with due consideration of planned outages, certain forced outages along with some margin for generating stations. NAPAF is fixed at a uniform level for all the generating stations (with exception for old generating stations), without getting into specifics of individual generating stations. While framing the Tariff Regulations, 2014, the Commission fixed NAPAF of 83% for first three years of tariff setting 2014-19, recognizing the prevailing coal shortage scenario in the sector.

38. It is observed that as per modified New Coal Distribution Policy notified by MoC vide memorandum dated 26.07.2013, the assured domestic coal supply from the linked mines was restricted to 65%, 67% and 75% for 2014-15, 2015-16 and 2016-17 respectively of annual contracted quantum (ACQ). As such, petitioner was aware right from the beginning that for declaring availability of 83%, it would have to arrange additional coal to meet required NAPAF to claim full capacity charge during these years. Moreover, the cost of arranging the coal from alternative sources to the extent of shortfall is a pass through in tariff. There was, therefore, no embargo on the Petitioner to procure coal from alternative sources such as imported coal or e-auction and accordingly give declaration based on coal stock.

39. NTPC has placed reliance upon provisions of the Regulation 36(A)(a) of the Tariff Regulations, 2014. Commission vide Regulation 36 (A) (a) fixed the NAPAF of 85% in general for coal based thermal generating stations. However, considering the shortage of coal supply from linked mines the following proviso was also added to the above Regulation:

> *"Provided that in view of shortage of coal and uncertainty of assured coal supply on sustained basis experienced by the generating stations, NAPAF for recovery of fixed charges shall be 83% till the same is reviewed. The above provision shall be reviewed based on actual feedback after 3 years from 01.04.2014."*

40. The uniform NAPAF of 83% was fixed for all generating stations without getting into the details of coal supplies received by individual generating stations.

41. Regarding review of the NAPAF based on actual feedback after 3 years, the following table indicates the Plant Availability data provided by NTPC for its generating stations for the period from 2014-15 to 2016-17 in response to operational data sought by the Commission for formulation of Tariff Regulations for the period 2019-24:

(%)

Sl. No.	Name of the Power Station	2014-15	2015-16	2016-17
1	Badarpur Thermal Power Station	87.03	93.27	93.79
2	Barh Super Thermal Power Station	83.00	90.20	82.13
3	Bongaigaon Thermal Power Station	-	-	98.07
4	National Capital Thermal Power Station Stage-I (Dadri-Coal)	99.88	98.41	105.40
5	Farakka STPS Stage-III	84.64	81.64	98.04
6	Kahalgaon STPS Stage-II	87.60	93.72	93.01
7	Korba STPS Stage-III	89.62	88.66	99.73
8	Mouda STPS Stage-I	83.45	97.42	94.98
9	Ramagundam STPS Stage-III	94.16	100.68	91.62
10	Rihand STPS Stage-III	83.42	85.74	94.18
11	Simhadri STPS, Stage-I	93.73	94.05	94.69
12	Simhadri STPS Stage-II	90.50	95.86	96.22
13	Singrauli STPS Stage- I&II	83.73	94.62	89.44
14	Sipat STPS Stage-II	90.55	96.13	96.18
15	Talcher STPS Stage- II	92.95	93.30	90.10
16	Talcher TPS	93.29	92.79	93.05
17	Tanda TPS	89.56	94.63	94.60
18	Feroz Gandhi Unchahar Thermal Power Station Stage-III	102.56	95.61	105.12
19	Vindhyachal STPS Stage-V		94.40	90.88
Average PAF		**89.98**	**93.39**	**94.80**

42. From the perusal of the above data, it is observed that PAFs of NTPC generating stations during the period 1.4.2014 to 31.3.2017 were consistently above the specified limits of NAPAF of 83% (FY 2014-15 to FY 2016-17) and ranged from 83% to 105%. As such, petitioner, in spite of shortage of coal from linked mines was able to declare availability above the NAPAF of 83% thus recovering full AFC along with the incentive for all its stations by arranging coal from the alternative sources. In view of the above position i.e. PAF being more than 85% for almost all the stations, the case of the petitioner for relaxation of NAPAF norms of 85% for the years 2016-17 and 2017-18 is not sustainable.

43. Further, from the table in respect of cumulative availability of different generating stations of NTPC situated in Western Region as submitted by the Respondent, MPPMCL vide affidavit dated 14.9.2018 and as available on the website of WRPC, it is clearly seen that there are 11 thermal generating station of the petitioner in WR, out of which 9 thermal generating station have always achieved the normative availability factor of 85% during the year 2017-18. The table of cumulative availability of different generating station of NTPC in Western Region is as under:

(%)

S.No.	Name of Station	FY 2017-18
1.	Korba	90.30
2.	VSPTS-I	91.81
3.	VSPTS-II	91.85
4.	VSTPS-III	93.30
5.	SSTPS-II	89.78
6.	KSTPS-III	90.39
7.	Sipat-I	88.49
8.	VSTPS-IV	90.96
9.	Mouda	76.75
10.	VSTPS-V	99.06
11.	Mouda-II	43.89

44. Further, considering the fact that petitioner has claimed relaxation for only four of its stations, it is understood that petitioner has been able to meet the NAPAF norm of 85% for rest of its station for the years 2017-18 and 2018-19 in spite of all the prevailing conditions/restrictions with respect to coal availability which have been cited for claiming the relaxation for four stations.

45. As such, based on the review of data for the year 2017-18 as submitted by MPPMCL and the fact that petitioner has been able to meet the norms on overall basis at all of its stations (except four) during the years 2017-18 and 2018-19, the case of Petitioner for

relaxation of NAPAF based on coal shortage at its four stations is not sustainable. In our considered view, NAPAF norm would lose its sanctity if relaxed for certain stations in spite of the same prevailing conditions/restrictions with respect to availability of coal for all other stations which have been able to meet the norm by arranging the coal from the alternative sources.

46. Now let us analyse the efforts made by the petitioner to mitigate the shortage of coal during 2017-18 and 2018-19. The Petitioner was aware right from 2015-16 vide minutes of meeting dated 20.10.2015 that there is a direction from MOP to minimize the procurement of imported coal and that low realization of coal from linked mines together with reduction in allowed quantum of imported coal may affect it commercially. However, there is nothing on record to show that during this period starting from August 2015 to 31.03.2017, it tried to impress upon MOP/ MOC to allow import of coal or to increase supply of coal from linked mines.

47. Similarly, regarding the resolution taken in Conference dated 3.5.2017/4.5.2017 of Ministers of State to stop import of coal altogether, there is nothing on record which shows that the petitioner tried to impress upon the Ministry of Power that without import of coal, it would be commercially hit in terms of declaring capability (DC) of the station as the linked mines are already supplying less coal in terms of NCDP.

48. Petitioner admittedly acknowledges that the arrangement of fuel is the responsibility of the project developer. Now, the question before us is whether risk of arranging fuel which lies with the Petitioner could be passed on to the beneficiaries of the generating stations in the circumstances of the case.

49. In a similar case w.r.t. Assam GPS, the Commission in Petition No 225/MP/2017 vide order dated 5.11.2018 has held as under:

"25 The Commission, while relaxing the NAPAF norms in case of Assam GPS to 72% for the tariff period 2009-14 and 2014-19 had recognized the fact that with the committed gas supply of 1.4 MCMD by OIL, the maximum target availability that can be achieved is 72% and had also noted the fact that there was no alternative source from where the petitioner can arrange gas and under these circumstances the onus was on the Petitioner to ensure that Minimum Guaranteed Quantity of gas should be 1.4 MCMD. Having failed to do that there was always possibilities to less declaration of availability in case of short supply of gas anything less than 1.4 MCMD.

26. Respondent APDCL has submitted that to arrange adequate fuel supply is the sole responsibility of the Petitioner. It has submitted that the fuel supply is being governed by a separate bilateral Fuel Purchase Agreement (FPA) signed between the Petitioner and Oil India Limited (OIL) and beneficiaries are not a party to it.

27. The Commission in the Tariff Period 2009-14 and 2014-19, has relaxed NAPAF to 72% from 80 % and 85% respectively for short supply of gas and accordingly risk for short fall in gas supplies was passed on to the beneficiaries. Now, the question arises as to what extent such risk of short supply of gas should be allowed to be passed on to the beneficiaries. Should the entire business risk of the generator with regard to supply of gas be passed on to the beneficiaries? In this context we are of the view that the responsibility for arranging the gas for declaration up to 72% squarely lies on the generating company.

28. It is true that the beneficiaries have no control over the supply of gas. Accordingly, further relaxation of NAPAF due to short supply of gas by the gas supplier would load the beneficiaries extra burden of higher tariff.

29. Based on the above discussions, it is observed that the shortfall in Target Availability is not due to any operational problems and could only be attributed to inadequate gas supply by the gas supplier. We are of the view that risk of non supply of gas up to the requirement of 1.4 MCMD may have to be borne by the petitioner. The generating company and the Gas supplier both are the Government Companies and they should settle the gas supply issues among themselves. Accordingly, we are not inclined to relax the target availability any further to the level of actual availability."

50. The Commission in Petition No 89/MP/2018 w.r.t. Aravali Power Company Private Limited vs Haryana Power Purchase centre and 3 others, vide order dated 21.2.2019 while quoting the order in Petition No 225/MP/2017 has also disallowed the prayer of the petitioner to consider the difference between NAPAF of 85% and the availability declared by the APCPL generating station (to the extent of coal actually available) as deemed availability for the purpose of computing fixed charges payable to APCPL.

51. Further, the Commission in Petition No 68/MP/2018 w.r.t. NTECL vs APTRANSCO & 14 others, vide order dated 26.6.2019 has rejected the revision of NAPAF for Vallur Thermal

Power Station (3X500MW) for the period from 01.04.2017 to 31.03.2019 with the following observations:-

> *"19. Further, the Commission in a similar prayer made by the NTPC-SAIL in Petition No. 245/2010 for relaxation of Target Availability norms for the period 22.4.2009 to 31.3.2010 for non supply/shortage of coal to its generating station, by its order dated 27.5.2011 had disposed of the petition rejecting the prayer of NTPC-SAIL with the following observations:*
>
> > *"15. ……..We are of the view that the petitioner would be entitled to recover the full fixed charges only if the generating station perform to the normative availability and the risk, if any, for non-performance on account of failure to arrange coal after the date of commercial operation, is required to be borne by the petitioner and it would be unreasonable to burden the beneficiaries on this count.*
> >
> > *16. The responsibility and the risk for arranging fuel for the generating station lies with the generator. In the instant case, the supply of coal (annual coal linkage of 2.4 million MT) to the generating station is governed by the Fuel Supply Agreement dated 3.1.2009 between the petitioner and SECL. For the non supply/ short supply of coal to the generating station in violation of the FSA, the petitioner has the recourse to seek appropriate remedy in terms of the relevant clauses in the agreement. Hence, the prayer of the petitioner for relaxation of target availability fails on this count."*
>
> *20. From the above discussions and observations it is clear that the question of reasonableness of transferring the cost implication without commensurate benefits due to shortage of coal to the beneficiaries needs to be seen in the context of the fact that the beneficiaries also do not have any control over coal supplies. It is the responsibility of the generator to arrange the coal and bear the associated risks involved. Further, since the petitioner as well as the coal supply companies are owned by the Government, it would not be appropriate to pass on the fuel supply risks to the beneficiaries.*
> *21. The power of relaxation under the 2014 Tariff Regulations is in general terms and its exercise is discretionary. It is settled law that exercise of discretion must not be arbitrary, must be exercised reasonably and with circumspection, consistent with justice, equity and good conscience, always in keeping with the given facts and circumstances of a case. Based on the above discussions, we hold that the submission of the petitioner for relaxation of Normative Annual Plant Availability Factor (NAPAF) for 2017-19 period by invoking Commission's powers under Regulation 36 and Regulation 54 "Power to Relax" under CERC Tariff Regulations, 2014 has no merit and therefore is rejected.*

52. From the above decisions of the Commission, it is clear that the Commission has consistently taken the view that the consequences of failure to arrange fuel by the petitioner cannot be passed on to the beneficiaries, especially when the Petitioner does not appear to have taken timely action to ensure enough supply of fuel so as to achieve the target PAF. The reasonableness of transferring the cost implication without commensurate benefits to the beneficiaries needs to be seen in the context that the beneficiaries also do not have any control over coal supplies. It is the responsibility of the generator to arrange the coal and bear

the associated risks involved. Further, since the Petitioner as well as the coal supply companies are both owned / controlled by the Government, it would not be appropriate to pass on the fuel supply risks to the beneficiaries.

53. In the light of the above, the prayer of the Petitioner to consider the difference between NAPAF of 85% and the availability declared by the NTPC generating stations (to the extent of coal actually available) as deemed availability for the purpose of computing fixed charges payable to NTPC is not admissible and hence not allowed.

54. The second prayer of the petitioner to consider provision similar to Regulation 21 (4) of Tariff Regulations 2009 to enable the coal generation to maximize their availability during the peak hours so as to support the grid demand is beyond the scope of Tariff Regulations, 2014 and as, such cannot be considered in the instant petition.

55. Petition No. 46/MP/2018 is disposed of in terms of the above.

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