

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No: 67/MP/2018

Coram:

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I.S.Jha, Member

Date of Order: 25th April 2019

In the matter of

Petition Under Section 62 and 79 (1) (a) of the Electricity Act, 2003 read with Chapter-V of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and with Regulation 54 of CERC (Terms and Condition of Tariff) Regulation, 2014 for Relaxation of cut -off date of Vallur Thermal Power Station (3X500MW).

And

In the matter of

1. NTECL (NTPC Tamil Nadu Energy Company Ltd.)
NTPC Bhawan
Core-7, Scope Complex
7, Institutional Area, Lodhi Road
New Delhi-110 003

.....Petitioner

Vs

1. A.P. Transmission Corporation Limited
Vidyut Soudha, Khairatabad,
Hyderabad-500082

2. APEPDCL (A.P. Eastern Power Distribution Company Ltd.)
P&T Colony, Seethammadhara,
Vishakapatnam-503013

3. APSPDCL (A.P. Southern Power Distribution Company Ltd)
Beside Srinivassakalyana Mandapam,
Tiruchanur Road, Kesavayana Gunta,
Tirupati- 517501

4. Transmission Corporation of Telangana Ltd.
Vidyut Soudha Khairatabad,
Hyderabad - 500 082



5. TSSPDCL (Telangana State Southern Power Distribution Company Ltd)
Mint Compound, Corporate Office
Hyderabad – 500 063.
6. TSNPDCL (Telangana Northern Power Distribution Company Ltd)
H.No. 2-5-31/2, Vidyut Bhavan
Nakkalagutta, Hanamkonda, Warangal – 506 001
7. Power Company of Karnataka Ltd.
KPTCL complex, KaveriBhawan,
Bengaluru- 560009
8. Bangalore Electricity Supply Company Ltd. (BESCOM)
Krishna Rajendra circle,
Bangalore- 506001
9. Mangalore Electricity Supply Company Ltd.(MESCOM)
MESCOM Bhavana, Corporate Office
Bejai Kevai Cross Road
Mangalore-575004
10. Chamundeshwari Electricity Supply Company Ltd. (CESC)
Corporate Office, No 29, GROUND Floor,
Kaveri Grameena Bank Road
Vijayanagar 2nd Stage,
Mysore – 570017
11. Gulbarga Electricity Supply Company Ltd. (GESCOM)
Main Road, Gulbarga- 585102
12. Hubli Electricity Supply Company Ltd. (HESCOM)
Navanagar, PB Road,
Hubli- 580025
13. Kerala State Electricity Board Ltd.
Vaidyuthibhavanam, Pattom,
Thiruvananthapuram- 695004
14. Tamil Nadu generation & Distribution Corporation Ltd. (TANGEDCO)
NPKRR Maaligai, 144, Anna Salai,
Chennai- 600002
15. Electricity department
Govt. of Puducherry, 137, Netaji Subhash Chandra Bose Salai,
Puducherry- 605001

... Respondents

Parties Present:

Ms. Poorva Saigal, Advocate, NTPC
Ms. Ranjitha Ramachandran, Advocate, NTPC
Shri Arun Nair, NTPC
Shri P. Dixit, NTPC
Ms. S. Amali, Advocate, TANGEDCO



ORDER

The Petitioner, NTPC Tamil Nadu Energy Company Limited, has filed the present petition with the following prayer:-

“The petition may please be admitted and cut off date of Vallur Thermal Power Station (3X500 MW) may be allowed as 31.03.2019 by invoking the Commission’s powers under Regulation 54, Power to Relax.”

2. In support of the above prayer, the Petitioner in this Petition has submitted as under:-

(a) The Petitioner, NTECL (NTPC Tamilnadu Energy Company Limited) is a joint venture of NTPC and TANGEDCO. The Petitioner has set up the Vallur Thermal Power Station, (hereinafter referred to as “the generating station”) with a capacity of 1500 MW comprising of three units of 500 MW each located near Chennai, in the State of Tamil Nadu. Power from the generating station is supplied to the Respondents. The project was implemented in two phases. Phase–I consists of two units of 500 MW each and Phase–II consists of one unit of 500 MW. The dates of commercial operation of the units of the generating station are as under:-

Unit-I	29.11.2012
Unit-II	25.8.2013
Unit-III	26.2.2015

(b) The Commission vide its order dated 11.07.2017 in Petition No. 277/GT/2014 has allowed the projected additional capitalization under original Scope of works in the matter of the generating station as under:-

FY	(Rs. in Lakh)				
	2014-15 (26.02.15 to 31.03.15)	2015-16	2016-17	2017-2018	2018-2019
Add Cap	1551.20	38587.53	36160.0	24559.0	0.0

The capital works totalling Rs. 1008.58 Cr. for Vallur TPS were envisaged to be capitalised during 2014-18 up to the cut off date of the station i.e. 31.03.2018.



(c) The cut-off date of the generating station is 31.03.2018. The capitalisation of approx Rs 386 Cr pertaining to certain works under original scope of work for the generating station are envisaged to get spilled over beyond cut-off date, on account of the various reasons beyond the reasonable control of the petitioner and despite regular monitoring & follow-up by the petitioner. Majority of above works pertaining to SG/TG, CW System, CHP system, Fire fighting system, Main plant & other building, township/colony civil works and land compensation, site development works etc. are in progress and are likely to be completed by FY 2018-19.

Reply of Respondents

3. The respondent TANGEDCO, vide affidavit dated 26.4.2018 has submitted that, since the relaxation of Cut-off date sought for by the Petitioner is devoid of merits and is without proper justification, the request to exercise the 'Power to Relax' Provision is not tenable and hence may be rejected. Further, as per the scheduled COD for Unit III i.e. 27.01.2013, the Cut-off date of the generating station is 31.03.2016. Due to delay, the COD of the generating station is 26.02.2015, and accordingly, the cut-off date of the generating station is 31.03.2018. Hence, there is already an extension of two years w.r.t. Cut-off date, due to delay in Commissioning of the Units.

4. The respondents CESC, BESCO, MESCOM and HESCO, vide affidavit dated 6.2.2019, 12.2.2019, 13.2.2019 and 17.2.2019 respectively, have made similar submissions and have contended as under:-

a) The scheduled COD for Unit III was 27.01.2013. Considering SCOD as 27.01.2013; the Cut-off date falls on 31.03.2016. There has been an abnormal delay of 25 months in Commissioning of the Units leading to extension of COD to 26.02.2015 and the cut-off date to 31.03.2018. Hence, the delay in Commissioning of the Units for more than two years should be considered as the Cut-off date.

b) All reasons cited by the Petitioner in the Petition no. 277/GT/2014 for delay in Commissioning of the Units were considered by the Commission and a period of 11 months had been condoned in the order dated 11.07.2017. Unit III was Commissioned on



26.02.2015 as against the SCOD of 27.01.2013. The delays stated in the above Petition were shortage of Sand and building materials, delay due to flood, Cyclone etc., for achieving COD of the Unit-III.

5. The respondents CESC, BESCOM, MESCOM and HESCOM have further submitted that the request to exercise the 'Power to Relax' Provision is not tenable and hence needs to be rejected as the relaxation of Cut-off date now sought for by the Petitioner is devoid of merits and proper justification.

Rejoinder of the Petitioner

6. The Petitioner, in response to the reply of TANGEDCO, vide its rejoinder dated 14.1.2019 has submitted that the last unit of the Generating Station achieved commercial operation on 26.02.2015 and in accordance with the Regulation 3(13) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the 2014, Tariff Regulations), the cut off date of the Generating Station was 31.03.2018. Hence, the contentions raised by the TANGEDCO are wrong and denied. The reasons for the delay in the commissioning of the generating station are distinct and separate from the reasons for the delay in carrying out the works post COD and the present case is a fit case for this Commission to exercise its powers to relax in terms of the Proviso to Regulation 3(13) as read with Regulation 54 of the 2014 Tariff Regulations. However, the petitioner has not placed on record any rejoinder to the replies filed by the respondents CESC, BESCOM, MESCOM and HESCOM.

7. After going through the submissions and documents available on record, we proceed to deal with the issue of extension of cut-off date as sought by the Petitioner based on the reasoning and justification provided on record.

Analysis and Decision

8. The Petitioner's generating station, Vallur Thermal Power Station comprises of 3 units of 500 MW each. Unit-I achieved COD on 29.11.2012, Unit-II achieved COD on 25.8.2013 and Unit-III on 26.2.2015. Thus, the COD of Vallur Thermal Power Station is 26.2.2015. In terms of Regulation 3(13) of the 2014 Tariff Regulations, the cut-off date of Vallur Thermal Power Station is 31.3.2018.



The tariff of Vallur Thermal Power Station for the period 2014-19 was determined by the Commission vide order dated 11.7.2017 in the Petition No. 277/GT/2014 in accordance with the 2014 Tariff Regulations.

9. Petitioner has submitted that out of the total projected additional capital expenditure of Rs 100857.73 lakh allowed up to the cut-off date (i.e. 31.3.2018) in order dated 11.7.2017, the capitalisation of approx Rs 38600 lakh pertaining to certain works under original scope of work for the instant station are envisaged to get spilled over beyond the cut-off date, on account of the various reasons beyond the reasonable control of the petitioner. Accordingly, the Petitioner has prayed for extension of cut-off date of Vallur TPS for a period of one year i.e. from 31.3.2018 to 31.3.2019 in exercise of Commission's power under Regulations 54 (Power to relax) of the 2014 Tariff Regulations for capitalization of the expenditure in respect of the said works.

10. Regulation, 54 of the 2014 Tariff Regulations provides as under:-

***"54. Power to Relax:** The Commission, for reasons to be recorded in writing, may relax any of the provisions of these regulations on its own motion or on an application made before it by an interested person."*

11. However, the Power to Relax 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.

12. Further, as regards exercise of Power to Relax, the APTEL vide its judgment dated 25.3.2011 in Appeal No. 130/2009 (RGPPL v. CERC & anr.) has observed the following:-

"18.1 The Regulations of the Central Commission and the decision of the Tribunal and the Supreme Court confer the judicial discretion to the Central Commission to exercise power to relax in exceptional case. However, while exercising the power to relax there should be sufficient reason to justify the relaxation and non-exercise of discretion would cause hardship and injustice to a party or lead to unjust result. It has also to be established by the party that the circumstances are not created due to act of omission



or commission attributable to the party claiming relaxation. Further, the reasons justifying relaxation have to be recorded in writing.”

13. Therefore, keeping in view, the provisions of regulation 54 (Power to Relax) in the 2014 Tariff Regulation, observations of the APTEL as specified in its judgment dated 25.3.2011 and the Petitioner’s submission for capitalisation of some of the pending works; we examine the Petitioner’s case.

14. The petitioner has submitted that the works relating to SG/TG, CW System, CHP System, Fire Fighting System, site development, township/colony, Main Plant and other building, Land Compensation etc. have been delayed beyond the Cut Off date. Accordingly, the Petitioner has sought extension of cut-off date for the capitalization of approx. Rs 386 Cr, for the following reasons:-

- (a) Shortage of Sand and building material consequent to the amendment to the Tamil Nadu Minor Mineral Concession (TNMMC) Rules, 1959 on 23.09.2015;
- (b) Excessive/Torrential Rainfall leading to flooding of the Plant and the Township in December, 2015; and
- (c) Cyclone Vardah during December, 2016.

15. The petitioner vide affidavit dated 14.1.2019 has furnished the breakup of the pending works which are within the original scope of work along with details, which is as under:-

(Rs. in lakh)

Sl. No.	Heads of Expenditure	Approved Revised Estimate	Anticipated Capital Expenditure beyond cut-off date (Cash basis)	Reasons for delay
1	Land & Site Development	25,767.00	2,088.82	1. Shortage of sand and building aggregates 2. Land price finalisation by DIPP, GoI 3. Delay due to floods in Dec'15 4. Cyclone Vardah during Dec'16
2	Steam Generator	2,34,096.00	218.00	1. Delay due to floods in Dec'15



	Island			2. Cyclone Vardah during Dec'16
3	Turbine Generator Island	143,134.00	2,550.06	1. Delay due to floods in Dec'15 2. Cyclone Vardah during Dec'16
4	BOP Mechanical	1,23,613.00	2,820.23	1. Delay due to floods in Dec'15 2. Cyclone Vardah during Dec'16
5	BOP Electrical	36,428.00		
6	C&I Package {Incl Instn Cable)	5,868.00	94.30	
7	Initial Spares	7,000.00		
8	Civil Works & Construction Expenses	2,18,695.00	30,805.66	1. Shortage of sand and building aggregates 2. Delay due to floods in Dec'15 3. Cyclone Vardah during Dec'16
9	Overheads	42,594.40		
10	IDC, FC, FERV & Hedging Cost	1,42,789.00		
	Capital cost Including IDC, FC, FERV & hedging Cost	9,79,984.50	38,577.07	

16. Further, in response to the ROP of the hearing dated 6.3.2019, the petitioner vide affidavit dated 28.3.2019 has submitted that out of Rs 38577.07 lakh, which is to be capitalized beyond cut off date, an amount of Rs 30805.66 lakh pertains to civil works and construction expenses of main plant, offsite, administrative building, township building, ash dyke, internal road & drain works and miscellaneous works.

17. The above issues have been dealt in the subsequent paragraphs as under:-

(a) Shortage of sand and building materials

18. The petitioner has submitted that consequent upon the amendment to Tamil Nadu Minor Mineral Concession (TNMMC) Rules, 1959 on 23.11.2015, stringent conditions were imposed on quarrying of sand in the State of Tamil Nadu. As per the said notification quarrying was permitted only in the areas demarcated by PWD/Rural Development and Panchayat Raj Department for



domestic and agriculture purpose. All applications for other purpose for minor mineral mining were required to be submitted before a special Committee constituted by District Collector. Further, for available quantities exceeding 30 cum, the Committee was required to fix the cost of minerals apart from the seigniorage fee. Earlier, there was no cost of minerals and only the seigniorage fee was applicable. The period of permission was restricted to three months only. The petitioner has further submitted that the non availability of sand severely slowed down the progress of Land & site development as the amendment to TNMMC Rule, 1959 on 23.11.2015 imposed restriction in quarrying of sand. All civil works like RCC building works, concreting, drains, flooring and paving etc. were affected which further hampered the progress of other related works.

19. The respondents CESC, BESCO, MESCOM and HESCO, vide affidavit dated 6.2.2019, 12.2.2019, 13.2.2019 and 17.2.2019 respectively, have submitted that all reasons cited by the Petitioner in the Petition no. 277/GT/2014 for delay in Commissioning of the Units were considered by the Commission and a period of 11 months had been condoned in the order dated 11.07.2017. Further, the respondents have requested the Commission to direct the Petitioner to submit the list of works that are yet to be Capitalized after the actual Cut-off date i.e., 31.03.2018.

20. We have considered the submission of the petitioner and respondents. The petitioner vide affidavit dated 14.1.2019 has furnished the breakup of the pending works that are within the original scope of work. The petitioner in Petition No. 277/GT/2014 had submitted that the stoppage of earth quarrying has caused delay of 8 months and same was beyond the control of the petitioner. However, the Commission had not allowed the delay due to the fact that the order of NGT banning earth quarrying had actually coincided with the delay due to non completion of CHP work, failure of CW pump and excessive turbine shaft vibration etc. The Commission in the order dated 11.7.2017 in Petition No. 277/GT/2014, had noted that even if there would have been no ban order of NGT on earth quarrying the petitioner was not in a position to declare COD of Unit-III. Therefore, the finding of the Commission in this regard in Petition No. 277/GT/2014 has not in any way decided this issue. In present Petition, the petitioner has also furnished the News paper clipping dated 26 May'17 from "The Hindu" and dated 31st May'17 from "Deccan Chronicle" which describes the Shortage of sand. Considering the entire scenario, we are in agreement with the submission of the petitioner that the



restriction for quarrying the sand had caused shortage of sand. Accordingly, we are of the considered view that the delay due to shortage of sand and building material was not under the control of the petitioner.

(b) Delay due to floods in Dec'15

21. The petitioner has submitted that, Kosasthalaiar River is flowing close to the plant area within a distance of 1 km. during the period from Nov'15 - Dec'15. Heavy rainfall of 39 cm occurred in Tiruvallur, Chennai, Kancheepuram districts. Due to the rainfall, the water reservoirs around Chennai got filled up suddenly and the flood gates of various dams & ponds were opened as a safety measure. The water in Kosasthalaiyar River overflowed its banks and flooded the surrounding areas like Kuruvimedu, Kondakarai, Athipattu and Vallur and NTECL Township also got submerged. The material supply was affected due to damage caused to the approach road and the manpower was completely de-mobilized due to floods. The floods caused severe damages to the temporary sheds of contractors & the labour colony. The heavy rainfall resulted in flooding of labour colony necessitating the labourers to be shifted to safe locations. There was collapse of electrical poles carrying HT lines and power supply was affected. The heavy rainfall washed away the approach road affecting the movement of trucks and the temporary sheds of contracts & the labour colony were also damaged. Due to the panic created, lot of labourers left to their home towns. The impact on the infrastructure, reconstruction of approach road and re-mobilization of the work force at the site and back to work etc. has taken considerable time.

22. The respondents CESC, BESCOM, MESCOM and HESCOM, vide affidavit dated 6.2.2019, 12.2.2019, 13.2.2019 and 17.2.2019 respectively, have submitted that all reasons cited by the Petitioner in the Petition no. 277/GT/2014 for delay in Commissioning of the Units were considered by the Commission and a period of 11 months had been condoned in the order dated 11.07.2017. Further the respondents have requested the Commission to direct the Petitioner to submit the list of works that are yet to be Capitalized after the actual Cut-off date i.e., 31.03.2018.

23. We have examined the matter. The petitioner vide affidavit dated 14.1.2019 has furnished the breakup of the pending works that are within the original scope of work. The floods in December, 2015 have hampered the progress of the project. The petitioner has furnished the Copy of the



Chennai floods assessment report by IISC, Bangalore which clearly shows that there was very heavy rainfall on November 8, 9, 12,13,15, 23 and December. The city of Chennai and its suburb areas recorded multiple torrential rainfall events during November-December 2015 and affected more than 4 million people. The petitioner has submitted the newspaper clippings showing the damage caused by the floods in the surrounding area. Considering the entire scenario, we are of the considered view that the delay due to heavy rainfall and consequent floods was not under the control of the petitioner.

(c) Cyclone Vardah during Dec'16

24. The petitioner has submitted that, a cyclonic storm VARDAH crossed North Tamilnadu coast on 12th Dec'16 with maximum sustained wind speed of 100-110 kmph gusting to 120 kmph. The cyclone affected the plant areas and work sites and caused damage to the plant facilities and buildings, roofs, claddings and windows, contractors' site offices, stores and establishments. The effects of cyclone were similar to the floods of Dec'15, though for a smaller duration. The cyclone also caused problems in movement of trucks and machinery causing delays in delivery of material to the site. Contractors' labour colony sheds were damaged and also there was disruption in power supply, which demobilised Construction labour on account of panic that was caused during the time. The cyclone VARDAH during December, 2016 caused damages to the plant facilities under construction. Conveyer galleries, main plant cladding, dozer shed, labour colonies etc. were affected and contractors had to restore their site office and establishment.

25. The respondents CESC, BESCOM, MESCOM and HESCOM, vide affidavit dated 6.2.2019, 12.2.2019, 13.2.2019 and 17.2.2019 respectively, have submitted that all reasons cited by the Petitioner in the Petition no. 277/GT/2014 for delay in Commissioning of the Units were considered by the Commission and a period of 11 months had been condoned in the order dated 11.07.2017.

26. We have considered the submission of the petitioner. The petitioner in its justification has also furnished the report on Northeast Monsoon-2016 by India Meteorological Department which shows that during October- December 2016, four low pressure systems formed over the Bay Of Bengal which included a very Severe Cyclonic Storm 'VARDAH' over the Bay Of Bengal during



December, 2016. Considering the entire scenario, we are of the concerned view that the delay due to Cyclone Vardah was not under the control of the petitioner.

27. Based on the above discussions, we are inclined to consider the capitalization of the expenditure of Rs 38,577.07 lakh for the listed works within the original scope of work as these works were already allowed by the Commission in its order dated 11.07.2017 in Petition No. 277/GT/2014, subject to making these expenditure and its capitalization during 2018-19. The Power to Relax under Regulation 54 of the 2014 Tariff Regulation is invoked to this extent only, without relaxing the cut off date in general.

28. Petition No. 67/MP/2018 is disposed of in terms of above.

Sd/-
(I. S. Jha)
Member

Sd/-
(Dr. M.K. Iyer)
Member

Sd/-
(P.K. Pujari)
Chairperson

