**CENTRAL ELECTRICITY REGULATORY COMMISSION**
**NEW DELHI**

**Petition No: 68/MP/2018**

**Coram:**
**Shri P.K. Pujari, Chairperson**
**Dr. M.K. Iyer, Member**
**Shri I.S.Jha, Member**

**Date of Order: 26.06.2019**

**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 Regulations 36 & 54 of CERC (Terms and Condition of Tariff) Regulation, 2014 for Revision of NAPAF for Vallur Thermal Power Station (3X500MW) for the period from 01.04.2017 to 31.03.2019.

**And**

**In the matter of**

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:**

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, NTPC Tamil Nadu Energy Company Limited (NTECL), has filed the present petition with the following prayer:-

> "In view of the facts and circumstances mentioned, it is prayed that the petition may please be admitted and Vallur Thermal Power Station (3X500 MW) may be allowed revision in Normative Annual Plant Availabilty Factor (NAPAF) for 2017-19 period by invoking powers under Regulation 36 and Regulation 54 'Power to Relax of CERC Tariff Regulations, 2014."

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

**(a)** The Commission in the order dated 11.07.2017 in Petition No. 277/GT/2014 has considered the Target Availability of 83% for the period 2014-17 and 85% for the period 2017-19. The Commission, due to shortage of domestic coal supply has relaxed the norm of Target Availability to 83% for first 3 years from 1.4.2014, for all coal based stations including instant station of the petitioner.

**(b)** The present contracted quantity of coal of the station is 62.4 LMT. The quantity of coal required to achieve 85% PLF is 81.5 LMT which is much higher than the contracted quantity of the station. The achievable PLF with this contracted quantity is only 65.05% with 100% of coal realization. The Vallur Thermal Power Project has suffered a significant loss in availability due to problem of coal shortage for the period (Apr'14 to Oct'17). The year wise coal realization details from different sources during FY 2014 to Oct'17 is as under-

| Financial Year | Contract Qty (In LMT) | Qty. received (In LMT) | % of coal realized |
|---|---|---|---|
| **2014-15** | 48.61 | 23.99 | 49.35 |
| **2015-16** | 63.88 | 33.51 | 52.46 |
| **2016-17** | 68.57 | 45.15 | 65.85 |
| **2017-18 (up to Oct'17)** | 41.82 | 26.74 | 63.94 |

**(c)** The present contracted quantity of coal for Vallur Thermal Power Project (3X500 MW) is only 62.4 LMT/annum. With this quantity, the station can meet only 65% of the PLF with 100% coal realization. The actual supply by the coal company in FY 2017-18 (up to Oct'17) was only 64% of the contracted quantity, which corresponds to only 47% of the coal requirement for full generation.

**(d)** NTECL had to procure imported coal as well to meet the demand of the beneficiaries of the station. In spite of the augmentation of domestic coal with the import coal, NTECL had to suffer significant losses in availability. NTECL has made correspondence numerous times with domestic coal company for augmentation of coal supplies to meet the contracted quantity as per Fuel Supply Agreement (FSA) and the matter was also deliberated in SRPC.

**Reply of Respondents**

3. The respondent TANGEDCO, MESCOM, CESC & HESCOM vide affidavit dated 26.4.2018, 29.1.2019, 6.2.2019 & 20.2.2019 respectively had made similar submissions that, due to shortage of domestic coal supply, the Commission has relaxed the Target Availability norms to 83% for the first three years i.e., from 2014-17. From the year wise coal realization details from different sources furnished it can be concluded that the coal received is on the increasing trend and as such there is no necessity to decrease the NAPAF. Further, the Petitioner has stated that the specific coal consumption taken for FSA purpose is 0.64 kg/kWh as against actual specific coal consumption of 0.75 – 0.80 kg/kWhr. The Petitioner has not stated the design value of specific coal consumption of the Units and also has not furnished the actual PLF of station for the said period. There are no

reasons to exercise the power of relaxation in the present Petition. Hence, NTECL's plea to consider NAPAF relief for the period from 01.04.2017 to 31.03.2019 citing the power to relax norms is liable to be rejected.

4. The respondents KSEB Ltd., vide affidavit dated 26.3.2019 have submitted that the regulation provides relaxation of NAPAF only for the first three years of control period 2014-19, which is subject to revision based on actual feedback after three years. However, as per analysis carried out by the Commission in explanatory memorandum it was observed that most of the coal based generating stations had achieved availability of 90% and there were no coal shortage issues. The relaxation sought by the petitioner for two years i.e. 2017-19 is not allowed as per Regulation, 36. The case of the petitioner is not due to coal shortage scenario that existed in the country and it is due to the reasons which are purely attributed to the petitioner for which beneficiaries are not responsible. The respondent has submitted that the petitioner has not taken due care and diligence in planning the contracted quantum while signing FSA to ensure 85% availability as mandated by the regulation. The petitioner has himself admitted that while entering the FSA they have understated the specific coal consumption. The respondent has further submitted that the petitioner is actually getting enriched as beneficiaries are providing interest on working capital for the station for 60 days based on normative NAPAF. Thus the reasons cited by the petitioner are purely attributable to the petitioner in handling the coal supply agreement and if any compensation is required has to be through compensation clause in the FSA rather than loading to the beneficiaries. Considering all the above, there is no reason to exercise the power to relax in the present petition. Hence, the same may be rejected.

**Rejoinder of the Petitioner**

5. The Petitioner, in response to the reply of TANGEDCO, vide its rejoinder dated 14.1.2019 has submitted that the Order dated 11.07.2017 in Petition No. 277/GT/2014 was passed by the Commission after the expiry of the three years period provided under Regulation 36(A) i.e. 1.04.2017. Therefore, this Commission had no occasion to examine the actual feedback/actual data for three years in terms of the proviso to Regulation 36(A) and the Commission has to consider the

actual availability of coal in a particular year and determine whether the shortfall was for any reason attributable to the Petitioner or not. The petitioner has further, submitted that the specific coal norm of 0.64kg/kWh for Fuel Supply Agreement (FSA) purpose, is as per norms specified by the CEA and the design value of specific coal consumption of the units of Vallur Station is 0.70 kg/kWh. The Petitioner has submitted that it did everything within its means to mitigate the shortfall of domestic coal and further reiterated its contention and submitted that the present case is a fit case for the Commission to exercise its powers of relaxation in respect of the generating stations, particularly in light of the provision to Regulation 36(A) that the normative availability shall be reviewed subject to actual feedback.

6. After going through the submissions, replies and rejoinder made by the respondents/ petitioner and documents available on record, we proceed to deal with the issue of relaxation of Normative Plant Availability Factor as sought by the Petitioner.

**Analysis and Decision**

7. 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.

8. The petitioner, NTECL has filed this petition seeking relaxation of Normative Plant Availability Factor under Regulation 54 (Power to Relax) of Tariff Regulations, 2014 and submitted that despite the all out efforts made by NTECL on continuous basis, there is always a shortage of coal supply at the station and the situation is envisaged to be no different in the ensuing years as well.

9. The petitioner has submitted the details of the Plant Availability Factor and the Plant Load Factor of the Generating Station as under:

| FY | Plant Availability Factor (PAF) (%) | Plant Load Factor (PLF) (%) |
|---|---|---|
| 2014-15 | 62.7 | 62.329 |
| 2015-16 | 58.85 | 58.53 |
| 2016-17 | 79.073 | 70.1 |
| 2017-18 | 67.52 | 54.55 |

10. The petitioner has submitted that it was not able to declare PAF to claim full capacity charge as it has been unable to arrange for the fuel on account of the shortage in domestic coal and the subsequent directions of the Central Government (Ministry of Power) prohibiting import of coal by the Central Power Generating Station. The petitioner is seeking relief for the period 2017-19 on the fact that less realization/availability of coal from linked mines coupled with ban on import by MOP were the reasons that it could not declare availability of 85% resulting in shortfall in recovery of Annual Fixed charges.

11. 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."*

12. However, the Power to Relax under the 2014 Tariff Regulations is in general terms and its exercise is discretionary. 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 relaxation of Normative Plant Availability Factor; we examine the Petitioner's case.

14. Regulation 36(A) of CERC Tariff Regulations, 2014 provides as under -

> *(A) Normative Annual Plant Availability Factor(NAPAF)*
> *(a) All Thermal generating stations, except those covered under clauses (b) (c) (d) &(e)- 85%.*

15. 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, the 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.*

16. The Tariff Regulations, 2014 allow a coal based generator to procure coal from any source, over and above the coal to be received from linked mines, i.e. through e-auction or through import of coal. This dispensation was provided to generators to declare overall availability above the normative annual plant availability prescribed in the Tariff regulations, 2014. As per 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.

17. The petitioner has placed on the record Minutes of the Meeting dated 20.10.2015 pertaining to review performance of NTPC by MOP in which NTPC was directed to minimize import of coal as far as possible. Petitioner has further submitted that in the Conference dated 3rd & 4th May, 2017 of Power, New and Renewable Energy and Mines Minister of States/UTs while dealing with the coal related issues, one of the resolutions was:

> *"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."*

18. The petitioner in its submission has also submitted a copy of the letter dated 28.12.2016 to CEA requesting the augmentation of daily requirement of coal. However, it can be observed that the petitioner was aware right from 2015-16 that low realization of coal from linked mines together with reduction in allowed quantum of imported coal may affect it commercially as there was a direction of MOP to minimize the procurement of imported coal.

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.

22. Petition No. 68/MP/2018 is disposed of in terms of above.

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