

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 382/MP/2018

Subject : Petition under Section 79 of the Electricity Act read with Regulations 15 and 16 of the Central Electricity Regulatory Commission (Ancillary Services Operations) Regulations, 2015 seeking the exercise of the power to relax and remove difficulties on the aspect of the severe under-recovery of variable charges under Regulation 13.3 for the Five (5) Gas Based Generating Stations of NTPC.

Petitioner : NTPC Limited

Respondents : Power System Operation Corporation Ltd (POSOCO) & Ors

Date of hearing :14.5.2020

Coram : Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member

Parties present : Ms. Swapna Seshadri, Advocate, NTPC
Shri S.P.Kesarwani, Advocate, NTPC
Shri Gautam Chakraborty, POSOCO

Record of Proceedings

The matter was listed for hearing through video conferencing

2. Learned counsel for the Petitioner submitted that the present Petition has been filed seeking relaxation of the provisions of Regulation 13.3 of the Central Electricity Regulatory Commission (Ancillary Services Operations) Regulations, 2015 (hereinafter referred to as 'the ASO Regulations') in so far as the five (5) gas based stations of the Petitioner are concerned and to direct that when RLNG power is scheduled, there would be truing up of the variable charges to the extent of schedule. Learned counsel mainly submitted as under:

(a) The main intent behind the ASO Regulations is that the generating companies get recovery of all reasonable costs and expenses and also get incentivized to participate in the Regulation Up services and not incur losses for such participation.

(b) As opposed to the above, the gas based generating stations of NTPC which have no control over the cost of RLNG (which depends purely on discovery of price in market and fluctuations in the foreign rate exchange variation) are losing by participating in the scheme.

(c) Regulation 13.3 of the ASO Regulations uses the term '*as applicable at the time of delivery of RRAS*'. The intention of this provision was to give the generator the energy charges for the month in which the Ancillary Services are delivered. As per the practice being followed, energy charges are calculated on monthly basis. Therefore, the applicable energy charges should be equal to energy charges for the month in which Ancillary Services are delivered. Even though there is a slight dilution of the above principle in the Detailed Procedure, the main intention of Regulation 13.3 cannot be taken away.

(d) In so far as the gas based generating stations is concerned, the principle for settlement of variable charge may be relaxed under Regulation 15.1 of the ASO Regulations and a new principle should be applied. Some deviation / truing up only to the extent of RLNG power scheduled under the RRAS should be allowed by the Commission.

(e) APTEL in its judgment in the case of NTPC Limited v. Madhya Pradesh State Electricity Board [2007 ELR APTEL 7] has held that `the power comprised in Regulation 13 is essentially the “power to relax”. In case any Regulation causes hardship to a party or works injustice to him or application thereof leads to unjust result, the Regulation can be relaxed. The exercise of power under Regulation 13 of the Regulation is minimized by the requirement to record the reasons in writing by the Commission before any provision of the Regulations is relaxed. Therefore, there is no doubt that the Commission has the power to relax any provision of the Regulations.`

3. In response to the Commission`s observation that loss or gain may get neutralized in the long run, the learned counsel for the Petitioner submitted that power to relax is a judicial discretion which should not be withheld if facts are made out.

4. The representative of POSOCO submitted that reply to the Petition has already been filed and requested to consider the same while deciding the case.

5. After hearing the learned counsel for the Petitioner and the representative of the Respondent, the Commission directed the Petitioner to submit, by 30.05.2020, the details of cost and recovery on account of participation under the provisions of the ASO Regulations. This information has to be provided, in the following format, in respect of the five generating stations since the coming into force of the ASO Regulations and up to the latest period for which such information is available.

Details of Cost and Recovery under RRAS UP and DOWN										
Gas Generator (Name) :										
Period of RRAS Schedule		Energy Scheduled in		Variable Charge As per AS3	ECR as per Monthly Billing	Difference in Variable Charge	Amount on account of Change in VC	Mark Up for RRAS UP	Amount retained by Gen in RRAS DOWN	Total Amount
From	To	RRAS UP (MUs)	RRAS DOWN (MUs)	(Rs/kWh)	(Rs/kWh)	(Rs/kWh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)	(Rs. Lakh)
		(a)	(b)	(c)	(d)	(e)	(f)	(g= 0.5xax10)	(h= 0.25xcxax10)	(i = f-g-h)
16-Apr-16	30- Apr-16									
01-May-16	15-May-16									
....									
...									
01-April-20	15-Apr-20									
16-Apr-20	30-Apr-20									

6. Subject to the above, the Commission reserved the order in the matter.

By order of the Commission

**SD/-
(T. D Pant)
Dy. Chief (Law)**