

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 292/MP/2015**

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson  
Shri A.K. Singhal, Member  
Shri A.S. Bakshi, Member  
Dr. M.K. Iyer, Member**

**Date of order: 10.11.2017**

**In the matter of**

Petition under Section 79 (1)(f) of the Electricity Act, 2003 seeking recovery of excess amount vis-à-vis interest on working capital after taking consideration lack of stock of coal maintained by NTPC for Farakka Super Thermal Power Station.

**And**

**In the matter of**

West Bengal State Electricity Distribution Company Limited  
VidyutBhawan, Block DJ, Sector-II  
Salt Lake City, Kolkata

**.....Petitioner**

**Vs**

1. NTPC Limited  
NTPC Bhawan,  
SCOPE Complex, Institutional Area  
Lodhi Road,  
New Delhi- 110003

2. Bihar State Power Holding Company  
VidyutBhawan, Bailey Road,  
Patna-800001

3. Jharkhand Urja Vikas Nigam Limited  
Engineering Building, Heavy Engineering Corporation,  
Dhurwa P.S, Hatia  
Ranchi- 834004

4. Grid Corporation Of Orissa Limited  
Gridco Colony, Janpath, Bhoinagar,  
Bhubaneshwar-751022

5. Damodar Valley Corporation  
DVC Towers, VIP Road,  
Kolkata-700054



6. Energy & Power Department  
Govt. Of Sikkim  
Kazi Road, Gangtok,  
East Sikkim- 737101

7. Tamil Nadu Generation & Distribution  
Corporation Ltd. (TANGEDCO)  
NPKRR Maaligai, 144, Anna Salai  
Chennai-600002

8. Union Territory of Puducherry  
No. 137, Netaji Subhash Chandra Bose Salai,  
Pondicherry- 605001

9. Uttar Pradesh Power Corporation Limited  
Shakti Bhawan, 14, Ashok Marg,  
Lucknow-226001

10. Jammu & Kashmir State Power Development Corporation Limited  
Head Office: Exhibition Ground,  
PDD Building, Jahangir Chowk,  
Srinagar

11. Tata Power Delhi Distribution Limited  
NDPL House, Hudson Lines, Kingsway Camp,  
New Delhi-110009

12. BSES Rajdhani Power Limited  
BSES Bhawan, Nehru Place,  
New Delhi-110019

13. BSES Yamuna Power Limited  
Shakti Kiran Building, Karkardooma  
New Delhi- 110092

14. Gujrat Urja Vikas Nigam Limited  
Sardar Patel Vidyut Bhawan  
Race Course, Vadodara- 390007

15. Electricity Department  
VidyutBhawan, Near 666/11 kV Kachigam Sub-Station,  
Somnath- Kachigam Road, Kachigam, Daman- 396210

16. Electricity Department  
Dadra and Nagar Haveli  
Silvassa- 396230

17. Maharashtra State Electricity Distribution Company Limited  
Hong-Kong Bank Building, M.G. Road,  
Fort, Mumbai- 400001



18. Madhya Pradesh Power Trading Company Limited  
Shakti Bhawan, Ranipur,  
Jabalpur- 482008

19. Power Department/ Electricity Department  
Deluxe Building, Sector-9,  
Chandigarh- 160009

.....Respondents

**Parties Present:**

Shri Hemant Sahai, Advocate, WBSEDCL  
Shri Aniket Prasoon, Advocate, WBSEDCL  
Shri R.B. Sharma, Advocate, BRPL & GRIDCO  
Shri Ajay Dua, NTPC  
Shri Prashant Chaturvedi, NTPC  
Shri Manish Garg, BYPL

**ORDER**

This Petition has been filed by the Petitioner, West Bengal State Electricity Distribution Company Limited (WBSEDCL) under Section 79 (1) (f) of the Electricity Act, 2003 (the 2003 Act) seeking the following reliefs:

- (a) Call for necessary records from the Respondent regarding actual coal stock maintained by the Respondent at the Farakka STPS from 1.4.2009 to till date;*
- (b) Compute the differential (excess) amount that the Respondent is collecting from the Petitioner towards interest on working capital on the basis of normative coal stock of 1.5 months from 1.4.2009 onwards on the basis of information/ documents provided by the Respondent in terms of prayer (a);*
- (c) Direct refund of this excess amount as computed above to the Petitioner; and*
- (d) Pass such further or other order(s) as this Commission may deem fit in the facts and circumstances of the case.*

2. The Petitioner has been granted license by the West Bengal Electricity Regulatory Commission for distribution of electricity within the State of West Bengal. The Respondent, NTPC is a Central Generating Company supplying power to the Petitioner from Farakka STPS (the generating station). The Petitioner, in the Petition has submitted as under:



(i) The Central Commission under Section 79 (1) (a) of the 2003 Act determines the tariff of the generating station in terms of the CERC (Terms and conditions for tariff) Regulations, 2009 (the 2009 Tariff Regulations). Regulation 18 of the 2009 Tariff Regulations provides for computation of Interest on working capital as under:

*“18. Interest on working capital. (1) The working capital shall cover:*

*(a) Coal- based/ lignite-fired thermal generating stations*

*(i) Cost of coal or lignite and limestone, if applicable, for 1<sup>1/2</sup> months for pithead generating stations and two months for non-pit-head generating stations, for generation corresponding to the normative annual plant availability factor;*

In terms of the above, the Respondent, NTPC needs to maintain a coal stock of 45 days in case of a pit head station and 60 days in case of a non- pit head generating station.

(ii) The Central Commission by order dated 14.6.2012 in Petition No. 222/2009 had determined the tariff of the Stages- I & II (1600 MW) of the generating station for the period 2009-14 having regards *inter alia* to interest on working capital taking into consideration coal stock required to be maintained by NTPC under the regulations. Accordingly, the Petitioner as beneficiary of NTPC has paid tariff as determined by the Central Commission

(iii) It now transpires that NTPC has not complied with the regulations of this Commission regarding maintaining of specified coal stock even though it has recovered the interest on working capital awarded for maintaining specified coal stock.

(iv) The Commission in order dated 14.6.2012 took into account cost of fuel component in working capital for 1.5 months in terms of the regulations. On the other hand, in actual practice, the generating station does not even maintain coal stock of 7 days out of the normative period of 45 days in terms of Regulation 18 of the 2009 Tariff Regulations.

(v) Pursuant to the tariff determination by the Central Commission, NTPC has been recovering tariff from the Petitioner under invoices raised from time to time. This Petition may kindly be considered while determining the tariff of the generating station for the period 2014-19 in terms of 2014 Tariff Regulations.

(vi) The Petitioner had filed RTI application dated 11.5.2015 seeking information from NTPC regarding the coal stock maintained at the generating station, as under:



- (a) records of the day to day coal stock actually maintained for the past one year and also the average usage of coal on a daily/ monthly/ quarterly basis;
- (b) records of the maximum coal storage capacity of the generating station and the actual coal stock as on date.

(vii) In reply to the RTI application, NTPC did not provide details of the day to day coal stock actually maintained by the generating station. It has however provided details of coal stock on the 1<sup>st</sup> day of the concerned month and monthly coal consumption for the period April, 2014 to March, 2015. From the data provided by NTPC, the coal stock on the 1<sup>st</sup> day of a month is consistently and significantly lower than the monthly coal consumption.

(viii) It is evident from the above that the coal stock maintained by NTPC is less than what is prescribed as a mandatory period. It is observed that the total imported coal procured by NTPC was 1286630 MT for the generating station for the period 2014-15 whereas consumption of imported coal in the same period was 1391899 MT.

(ix) The computation provided by NTPC in its reply to the RTI application shows the total coal consumption for the year 2014-15. However, it does not provide any break up of coal stock in to imported and domestic coal for 2014-15. No data has been provided by NTPC on coal stock maintained through their monthly bills.

(x) Under the 2009 Tariff Regulations, a large part of the working capital comprises of normative requirement of maintaining 1.5 months of coal stock, whereas the actual position is that a much lower level of coal stock has been maintained by NTPC. Consequently, it is unethical and improper for NTPC to recover and retain Interest on working capital based on normative coal stock when normative coal stock is not even maintained. It adversely affects the tariff charged from the consumers, creating a huge burden on them.

(xi) The computation of working capital based on the provision of coal stock is nothing but mere unjust enrichment on the part of the Petitioner. NTPC is not maintaining coal stock even for 7 days out of the mandatory period of 45/ 60 days but are over charging distribution companies for the same and hence it is burden on the consumers.

(xii) It is the case of the Petitioner that generating companies like NTPC is over charging the consumers qua the interest on working capital. This is nothing but unjust enrichment since NTPC has clearly recovered monies that are in excess of whatever is required for maintaining the actual coal stock lying with it. As such, NTPC has not been able to maintain a preserve of coal stock as per the mandatory period specified under the 2009 Tariff Regulations. The



interest on working capital is worked out on normative parameters on the assumption that the generating station will comply with the normative requirements and in doing so will require the requisite funds worked out under applicable tariff. When NTPC is not complying with the normative parameters, it cannot seek benefit of the approved amount and has to refund the excess amount unutilized towards maintaining the normative level of the coal stock.

(xiii) This practice of charging higher tariff from the distribution companies and passing of the burden on the consumers is nothing but unjust enrichment on the part of the generating companies. The distribution companies should be reimbursed the extra amount collected from them on account of differential in actual coal stock maintained qua the normative coal stock.

3. In the above background, the Petitioner has filed this Petition and has prayed for the reliefs as stated in para 1 above.

4. The Commission vide Record of Proceedings (ROP) of the hearings dated 7.1.2016 and 5.5.2016 directed the Petitioner to convene a meeting with NTPC within one month to resolve the issue and file the outcome of the meeting within 15 days thereafter. As the parties could not settle the issue mutually, the Commission vide ROP of the hearing dated 6.10.2016 admitted the Petition to decide the issue on merits. The Petitioner was directed to implead other beneficiaries of the generating station as parties to the Petition and file amended memo of parties. Accordingly, the Petitioner has impleaded the other beneficiaries of the generating station and had served them the copies of the petition. After completion of the pleadings by the parties, the matter was heard on 27.7.2017 and the Commission reserved its orders after directing NTPC to provide the Petitioner and other respondents the details of the day to day coal stock maintained by it in respect of the Farakka STPS ('the generating station') comprising the following:

- i. Coal stock available at the beginning of the day*
- ii. Coal received during the day from various sources;*
- iii. Coal consumed during the day by the generating plant; and*
- iv. Coal stock at the end of the day*



## Submissions of Respondents

5. The respondents NTPC, UPPCL, BYPL, BRPL and GRIDCO have filed their replies in the matter and the Petitioner has filed its rejoinder to the submissions of NTPC. The gist of the submissions of the respondents is as under:

### NTPC

6. The respondent No. 1, NTPC vide affidavit dated 2.12.2016 has mainly submitted as under:

(i) The Petitioner has misinterpreted Regulation 18 (1) (i) of the 2009 Tariff Regulations. The one month's cost of coal/ fuel is allowed in working capital towards generation and 15 days cost of coal / fuel is allowed in working capital towards coal stock at pit head stations. This has been clarified by the Central Commission in the Statement of Reasons (SOR) to the Regulation 18 of the 2014 Tariff Regulations as under:

*"28.18.....the relevant provision of tariff Regulations, 2009 was "cost of coal or lignite and limestone, if applicable, for 1.5 months for pithead generating stations and two months for non-pit-head generating stations, for generation corresponding to the normative annual plant availability factor". Thus, in the Tariff Regulations, 2009, the cost of coal or lignite for thermal generating stations includes one month fuel cost and cost of fuel towards 15 days of stock for pit head stations and 30 days of stock for non pit head stations....."*

In view of the above, the Petitioner has wrongly concluded that the total cost of fuel allowed for computing IWC is only towards stock.

(ii) The Commission allows cost of coal/ fuel for 45 days in computing IWC for the period 2009-14 on normative basis taking into consideration the weighted average landed price of coal at station for the preceding three months at the beginning of tariff period (Jan, 2009, Feb 2009 and Mar 2009). In respect of the generating station, the Commission by order dated 14.6.2012 had considered Rs 30205.93 lakh as cost of coal for 1.5 months (30 days towards generation and 15 days towards stock) on normative basis, for computation of IWC for the tariff period by taking weighted average cost of coal as ₹2557 per MT, based on landed cost of coal for the period Jan, 2009 to Mar, 2009. The increase in landed cost of coal during the tariff period due to increase in freight charges by railways, change in transportation cost due to change in diesel cost, increase in notified prices of coal by CIL has not been provided for in the Tariff Regulations as IWC is computed on normative basis.



Moreover, the increase in cost of coal during the tariff period towards coal stock and generation is borne by NTPC.

(iii) As regards the information sought by the Petitioner on day to day stock maintained at Farakka STPS for the year 2014-15, it is submitted that depending on various operational issues, the coal is fed to different units sometimes directly from coal unloading points and sometimes from the coal stockyard. In view of these factors, the figures of coal stock on day to day coal stock may not represent the true picture of coal stock maintained. Thus, NTPC had provided opening coal stock on the first day of the month instead.

(iv) It is evident from the data furnished by NTPC that the coal stock maintained at the generating station has depleted during the monsoon period of 2014-15 due to less supply from the Coal companies and again regained after the supplies were restored to full by the Coal companies.

(v) The cost of coal towards stock in computation of IWC, as provided by the Commission in the Tariff Regulations is therefore necessary to meet exigencies such as less supply due to heavy rainfall, so that the supply of electricity to the consumers does not get interrupted. This has been explained in the SOR to the 2014 Tariff Regulations, as under:

*“...Therefore, the Commission is of the view that there is no merit in increasing the fuel stock, while at the same time, it would be appropriate to allow reasonable fuel stock to ensure smooth operation of the plant duly keeping in mind the contingencies affecting supply of coal to power stations. Therefore, the Commission has decided to continue to include cost of fuel towards fuel stock as 15 days for pit-head stations and 30 days for non-pit head stations, subject to maximum storage capacity, as part of working capital...”*

In view of the above, in conditions such as monsoons, strikes at Coal mines, Railway network constraints, less production etc., which are beyond the reasonable control of the NTPC, it is very difficult to maintain stock at constant level keeping the generation of plant at desired levels. Thus, the coal stock maintained at Farakka station has varied from 21 days to 2 days during the period 2014-15. Further, it is not the intention of NTPC to maintain less stock at Farakka station as any loss of generation /DC due to less stock maintained results in penalty in the form of under recovery of capacity charges.

(vi) On the issue of under recovery of fixed charges due to less coal supply/stock at Farakka Station, NTPC had earlier filed Petition No.189/2010 praying for revision of Target Availability (NAPAF) for the period 2009-14 with respect to power stations of NTPC in the Eastern Region primarily on account of acute coal shortage at all these stations. In the said petition, NTPC had provided details of coal sourcing, coal consumption etc., establishing the fact that the





shortage of coal at Farakka station is due to inadequate coal supplies/production from /at coal companies of CIL and congestion in Indian Railways network where NTPC had arranged coal from sources other than linked mines. The Commission vide order dated 25.4.2012 disallowed the prayer of NTPC and observed that it is the responsibility of the generator to arrange the coal and bear the associated risks involved.

(vii) Due to less coal supplies at Farakka STPS, Stage-I, NTPC has incurred a huge dis-incentive and there was an under recovery of capacity charges to the tune of ₹245 crore for the period 2009-14.

(viii) The Petitioner has prayed for truing-up of one element of IWC , namely cost of coal towards stock, assuming that 45 days provided is only for coal stock, but has not sought true-up of other elements of working capital namely, O&M expenses for one month, maintenance spares etc., as these elements are not in favour of the Petitioner.

(ix) Thus, it is clear that there is no unjust enrichment by NTPC as NTPC is making recoveries from its customers for energy supplied at Farakka station in line with the applicable tariff regulations and Commission's orders.

(x) NTPC is providing the details of coal as per the agreed format in the ERPC meeting after approval of all the stakeholders. The said norms for cost of coal stock for the period 2009-14 were fixed by the Commission after taking into consideration the requests by beneficiaries, including West Bengal. From the SOR to the 2009 Tariff Regulations regarding norms of operation of thermal generating stations, it is evident that the problem of coal supply/ stock at Farakka STPS was known and the Commission has fixed the norms on normative basis for 2009-14, keeping all these facts in view and through consultation process to which the Petitioner was also a party. The Petitioner is now trying to re-open the issues which were settled during the process of fixation of norms / framing of tariff Regulations. The Petitioner is trying to challenge the regulations in the garb of this petition which is not allowed.

(xi) The record of actual coal stock maintained at Farakka STPS was placed before the Commission during the consultation process for drafting/ fixing norms for the 2014 Tariff Regulations applicable for the period 2014-19. Accordingly, NTPC has prayed that the Petition may be rejected.

## **UPPCL**

7. The respondent, UPPCL vide affidavit dated 24.11.2016 and BYPL vide affidavit dated 7.12.2016 have mainly submitted as under:



(i) The coal stock on the first day of the month is consistently and significantly lower than the monthly consumption. Thus, it is evident that the stock of coal maintained by NTPC is less than what is prescribed as the mandatory period.

(ii) From the data furnished by NTPC, it is evident that the average availability of coal during 2014-15 is 10 days. NTPC is entitled to recover interest of coal stock for 45 days as per the 2014 Tariff Regulations. Thus, NTPC has recovered interest on 45 days stock whereas the average actual stock maintained is for 10 days.

(iii) As per CEA, the total normative stock requirement is 15 days. Thus, there is no rationale for normative norms of 45 days which has resulted in undue enrichment for NTPC. NTPC may be directed to provide details of imported coal consumption and procurement for the last five years.

8. The respondent, GRIDCO vide affidavit dated 31.1.2017 and BRPL vide affidavit dated 28.4.2017 have submitted the following:

(i) Farakka station is a pit head generating station and as per Regulation 18 (1) (i) of the 2009 Tariff Regulations, stock for a period of 45 days is required to be maintained. By not maintaining the stock for the said period, NTPC has exposed the beneficiaries to a huge risk, especially in the event of lack/ loss of supply of coal from the pit head. Maintaining less than the stock prescribed and resorting to import of coal means sharp increase in the variable charges in this generating station. The lack of coal stock plays heavily on the beneficiaries but at the same time NTPC is able to enrich unjustly by claiming interest on working capital for a period of 45 days.

(ii) The Commission has permitted stock of 45 days in the event of lack/ loss of coal supply from the pit head coal company. As NTPC could not maintain the stock necessary for operating the generating station, they cannot claim interest on working capital.

(iii) The Commission may call for the records of this generating station from NTPC and compute the differential (excess) amount from the beneficiaries towards interest on working capital as prayed in the Petition.

### **Rejoinder of NTPC**

9. NTPC has filed its rejoinder to the replies filed by other respondents as under:

(i) The 2009 Tariff Regulations consider one month's cost of coal/ fuel towards generation and 15 days cost of coal/ fuel towards coal/ fuel stock in working capital on normative basis.



(ii) It is pertinent to mention that if the opening stock of imported coal of 1.48 lakh MT as on 1.4.2014 is considered, the consumption of imported coal during the year (13.92 lakh MT) is less than the sum of the opening stock (1.48 lakh MT) and imported coal during the year (12.87 lakh MT). Thus, the contention of other respondents that the consumption of imported coal is higher than the total imported coal during the year are misplaced and denied.

(iii) As per CEA report (relied by UPPCL), the coal stock for Farakka station was for 12 days. The CEA report also mentions the reasons for less stock than normative (15 days) at Farakka station. In this case, the reasons mentioned for stock less than normative stock of 15 days is less supply of coal by the coal companies.

(iv) NTPC has made all efforts for sourcing additional coal from various sources. However, due to less production at linked mines and constraints in transportation of non-linked coal to Farakka, sufficient coal could not be arranged. NTPC has already lost ₹245 crore due to disincentive for not getting sufficient coal for Farakka station.

(v) NTPC has placed the details of coal stock maintained at different stations by NTPC including Farakka station for the period 2008-13 during the formulation of 2014 Tariff Regulations. The 2014 Tariff Regulations were finalized after consultation with all stakeholders including the Petitioner and the other respondents herein. Based on this, the Commission had notified the norms for the period 2014-19 allowing the cost of coal for 15 days stock for computation of IOWC on normative basis. Thus, the contentions raised by the respondents are liable to be rejected.

### **Rejoinder of Petitioner**

10. The Petitioner vide rejoinder affidavit dated 17.7.2017 (to reply of NTPC) has submitted as under:

(i) The computation of working capital based on the provisions of coal stock is nothing but mere unjust enrichment on part of NTPC. NTPC is not maintaining the coal stock for even 7 days out of the mandatory period of 15/30 days but are over charging the distribution companies for the same.

(ii) The IOWC is worked out on normative parameters on the assumption that the generating stations will comply with the requirements and in doing so will require the requisite funds worked out under applicable tariff. Since, NTPC is not complying with normative parameters and it is not entitled for the benefit of



approved amount and therefore it has to refund the excess amount unutilized towards maintaining the normative level of coal stock to the Petitioner.

(iii) NTPC should have provided data in relation to day to day stock maintained at Farakka station and the data actually provided by NTPC cannot be used to ascertain the actual stock of coal for Farakka Stage- I, II & III respectively. The Commission may call for necessary records from NTPC and compute the differential amount in terms of recovery of higher working capital from the beneficiaries due to higher projection of coal stock for Farakka station.

(iv) As per the 2009 and 2014 Tariff Regulations, the generating station is required to maintain a minimum stock for coal for 15 days for pit head stations and 30 days for non-pit head stations and clearly Farakka station has failed to maintain the stock of coal in terms of the said regulations.

(v) The Commission in its order in Petition No. 189/2010 has observed that it is the exclusive duty of the generator to arrange any shortfall in coal and bear the associated risks. Therefore, reliance placed by NTPC in justification of shortfall of coal by putting onus on coal companies and railways is incorrect. Accordingly, the petition may be allowed as prayed for in the Petition.

11. During the hearing, the learned counsels appearing for GRIDCO & BRPL supported the contentions of the Petitioner and prayed that the Petition may be allowed.

12. The respondent, NTPC vide affidavit dated 17.1.2017 has submitted the data pertaining to the coal received, coal consumed and the coal stock on daily basis for the period 2014-15 as sought for vide ROP dated 27.7.2017 and has served copies of the same on the petitioner and other respondents. After scrutiny of the coal data for the period 2014-15, it is observed that NTPC has maintained the average coal stock for 10.35 days and the coal stock ranged from 1.21 days to 41.33 days during 2014-15.

13. From the above discussions, the issue which emerges for consideration is as under:

*“Whether the fuel component in working capital for purpose of tariff in respect of Farakka STPS shall be considered on ‘normative basis’ as specified under the Tariff Regulations or at ‘actuals’ as prayed for by the Petitioner”*



14. Based on the submissions of the parties and documents available on record, we proceed to examine the issue in the subsequent paragraphs.

15. The Petitioner in the Petition has submitted that in terms of Regulations 18 of the 2009 Tariff Regulations, the respondent, NTPC, for the purpose of working capital, is required to maintain a coal stock of 45 days in case of pit head stations and 60 days in case of non-pit head generating stations. It has further submitted the NTPC has not complied with the said regulation with regard to maintaining of specified coal stock, even though it has recovered the interest on working capital given for maintaining specified coal stock. The Petitioner has added that in actual practice the generating station does not even maintain coal stock of 7 days out of the normative period of 45 days in terms of the Regulation 18 (1) (i) of the 2009 Tariff Regulations. Accordingly, the Petitioner has submitted that it is unethical and improper on the part of the respondent, NTPC to recover and retain interest on working capital based on normative coal stock when the same is not being maintained. The other respondents, UPPCL, BYPL, BRPL & GRIDCO have raised similar objections. In response, the respondent, NTPC has clarified that in terms of Regulation 18 (1) (i) of the 2009 Tariff Regulations, one month's of cost of coal/ fuel is allowed in working capital towards generation and 15 days cost of coal/ fuel is allowed in working capital towards coal stock at pit head stations. NTPC has also pointed out that the coal stock in the computation of IWC as specified under the Tariff Regulations is necessary to meet exigencies such as less supply due to heavy rainfall so that the supply of electricity to the consumers do not get interrupted.



## Analysis and decision

16. We now examine the matter. Section 61 of the Electricity Act, 2003 (the 2003 Act) provides as under:

*“61. “Tariff Regulations- The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:-*

*(a) .....*

*(b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;*

*(c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;*

*(d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;*

*(e) the principles rewarding efficiency in performance.”*

17. Accordingly, the Central Commission in exercise of its powers under Section 178 of the 2003 Act has specified the norms for determination of tariff of generating stations/inter-state transmission systems for the periods 2009-14 and 2014-19, based on commercial principles, for encouraging competition, to safeguard consumer interest and at the same time to ensure the recovery of the cost of electricity by the generating station in a reasonable manner. One such norm notified under the 2009 Tariff Regulations for computation of interest on working capital for coal-based/lignite-fired thermal generating stations for the period 2009-14 is Regulation 18 which provides as under:

*“18. Interest on Working Capital. (1) The working capital shall cover:*

*(a) Coal-based/lignite-fired thermal generating stations*

*(i) Cost of coal or lignite and limestone, if applicable, for 1½ months for pithead generating stations and two months for non-pit-head generating stations, for generation corresponding to normative annual plant availability factor*

*(ii) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil.*



*(iii) Maintenance spares @ 20% of operation and maintenance expenses specified in Regulation 19.*

*(iv) Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor, and*

*(v) Operation and maintenance expenses for one month.”*

18. Similarly, for the computation of interest on working capital for coal-based/lignite-fired thermal generating stations for the period 2014-19, Regulation 28 of the 2014 Tariff Regulations notified by the Commission provides as under:

*“(a) Coal-based/lignite-fired thermal generating stations*

*(i) Cost of coal or lignite and limestone towards stock, if applicable, for 15 days for pit-head generating stations and 30 days for non-pit-head generating stations for generation corresponding to the normative annual plant availability factor or the maximum coal/lignite stock storage capacity whichever is lower;*

*(ii) Cost of coal or lignite and limestone for 30 days for generation corresponding to the normative annual plant availability factor;*

*(iii) Cost of secondary fuel oil for two months for generation corresponding to the normative annual plant availability factor, and in case of use of more than one secondary fuel oil, cost of fuel oil stock for the main secondary fuel oil;*

*(iv) Maintenance spares @ 20% of operation and maintenance expenses specified in regulation 29;*

*(v) Receivables equivalent to two months of capacity charges and energy charges for sale of electricity calculated on the normative annual plant availability factor; and*

*(vi) Operation and maintenance expenses for one month”*

19. The Petitioner has submitted that in case of computing the interest on working capital under the 2009 Tariff Regulations, a large part of the working capital comprises of the normative requirement of maintaining 1.5 months of coal stock, whereas the actual position is that a much lower level of coal stock is maintained by the respondent, NTPC. It has further stated that it is unethical and improper on the part of NTPC to recover and retain interest on working capital based on normative stock when normative stock is not maintained. Accordingly, the Petitioner has submitted that the distribution companies should be reimbursed with the extra amount collected from them on account of differential in actual stock maintained qua the normative stock. In



other words, the Petitioner has submitted that since NTPC is not maintaining the normative coal stock, as per regulations, it is entitled to recover the interest on working capital only on the actual coal stock maintained by it in respect of the generating station.

20. These submissions of the Petitioner in our view are misconceived. Under the 2009 Tariff Regulations, the cost of coal or lignite for thermal generating stations includes one month fuel cost towards generation and cost of fuel towards 15 days stock for pit head stations and 30 days stock for non-pit head stations for the purpose of computation of working capital. However, under the 2014 Tariff Regulations, the cost of coal or lignite for thermal generating stations includes the cost of fuel stock as 15 days for pit head stations and 30 days stock for non-pit head stations, subject to maximum storage capacity. The Commission, keeping in view the contingencies affecting the supply of coal to power stations and in order to ensure the smooth operation of the generating station had decided to include cost of fuel towards fuel stock as 15 days for pit-head stations and 30 days for non-pit head stations, as part of the working capital under these regulations. The Commission had approved the year-wise fixed charges of the generating station (Farakka STPS) based on the normative parameters specified by the Commission for the periods 2009-14 and 2014-19 under the 2009 and 2014 Tariff Regulations respectively. Accordingly, the generating station is eligible to get full fixed charges, which also includes the component of interest on working capital, only if it achieves the normative Target Availability of 85% during 2009-14, 83% for 2014-17 and 85% for 2017-19. Thus, in order to declare the availability of capacity of the generating station which is ready to deliver power to the beneficiaries, the generating company has to take into account the availability of required quantum of coal and water for the plant. Therefore, the responsibility for arranging fuel or keeping the requisite





stock of fuel to declare capacity upto 85% on a day to day basis lies with the generator. Accordingly, the Commission under the 2009 and the 2014 Tariff Regulations has provided a reasonable coal stock to facilitate the generator to declare upto 85% normative availability. The sole responsibility for maintenance of less coal stock and the consequent failure on the part of the generating station to declare availability upto 85% rest with the generator and the risk for such less coal stock maintained has to be borne by the generator, whereby the generator is penalized by way of loss of annual fixed charges, to the extent of the shortfall. This acts as a disincentive to the respondent, NTPC and it would not be in its interest to maintain less stock at Farakka STPS, as any loss of generation/ DC due to less stock maintained, except for reasons beyond its control, would result in penalty in the form of recovery of capacity charges. In this regard, it is pertinent to mention that the prayer of the respondent, NTPC for revision of Normative Annual Plant Availability Factor in respect of its power stations in Eastern Region, namely Farakka STPS (1600 MW), Kahalgaon STPS, Stage-I (840MW) and Kahalgaon STPS, Stage-II (1500MW) on account of acute shortage of coal at these generating stations and the non-availability of cooling water at Farakka STPS was examined by the Commission in Petition No. 189/2010 and the Commission by order dated 25.4.2012 had rejected the prayer of the respondent, NTPC observing as under:

*“12. From the details given in the tabular statement in Table-II under paragraph 7(c) above it is observed that the availability in respect of Farakka STPS and Kahalgaon STPS, Stage-I has gradually decreased since the year 2008-09. The first unit of Kahalgaon STPS, Stage-II was commissioned during August, 2008 and Unit-II was commissioned during December, 2008. It has been submitted by the petitioner that the coal supply to Kahalgaon STPS, Stage-II was linked to MGR system from Chuperbhita, Rajmal expansion and Hurra mines of ECL, but the development of the identified coal mines has been extensively delayed due to law and order problems etc. This according to the petitioner, has left the coal supply from the linked mines to Kahalgaon STPS, Stage-II in complete disarray.*

*13. In the light of above, the generation of Kahalgaon stage-II could be sustained by the petitioner through supply of coal from the mines other than linked mines and with the reduction in supply of coal from linked mines to Farakka STPS and Kahalgaon Stage-I as the long term*



linkage for coal supply to these generating stations has been provided from coal mines of Rajmahal Coalfields under ECL which is connected to both the generating stations with MGR system for transportation of coal.

14. Therefore, it is observed from the documents and the submissions made by the petitioner that the shortage of coal supply is due to non-development of linked mines and bottlenecks in the Railway system. However, the question of 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 therefore the responsibility of the generator to arrange the coal and bear the associated risks involved. 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.

15. It is noticed that 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, the Commission by its order dated 27.5.2011 had disposed of the petition rejecting the prayer of NTPC-SAIL. The relevant portion of the order is extracted as under:

"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."

16. It is also observed that the fixed charges in respect of Farakka STPS (Petition No. 222/2009) is (₹565.93 crore per annum) which works out to ₹0.51/kWh and Kahalgaon STPS, Stage-I (Petition No. 245/2009) is (₹498.39 crore per annum) which works out to ₹0.87 per kWh claimed by the petitioner as against the fixed charges of ₹761.60 crore per annum for Kahalgaon STPS, Stage-II (Petition No. 282/2009) claimed which works out to ₹1.088 per kWh at 85% corresponding target availability. Thus, it is observed that the generators interest would get better served by having more generation at Kahalgaon Stage-II generating station and by sacrificing generation at Farrakka SPS and Kahalgaon Stage-I generating stations, by supplying coal to Kahalgaon Stage-II. As noticed, there was no shortage of coal to Farakka STPS and Kahalgaon Stage-I generating stations till the commercial operation of Kahalgaon STPS, Stage-II generating station. On this consideration, the prayer of the petitioner for relaxation of NAPAF in respect of Farakka STPS and Kahalgaon STPS, Stage-I is not justified."

21. The Petitioner and some of the other beneficiary respondents have submitted that the non-maintenance of adequate coal stock by the Petitioner in terms of the regulations have put the beneficiaries to risk. In our view, the associated risks involved in arranging coal lies with the generator, NTPC and the same is not passed on to the beneficiaries. Based on the above discussions, we find no reason to entertain the



submissions of the Petitioner that the respondent, NTPC is entitled to recover and retain interest on working capital based on actual coal stock and accordingly the same is rejected.

22. The issue as to whether actual coal stock or normative coal stock should be considered for the purpose of working capital for determination of tariff was considered by the Commission at the time of framing of the 2009 and the 2014 Tariff Regulations. In fact, some of the beneficiaries of NTPC, including GRIDCO (the respondent herein) had raised the issue of reduction in fuel stock (coal stock) by NTPC while framing the 2009 Tariff Regulations applicable for the period 2009-14. The relevant portion from Para 17.3 of the Statement of Reasons to the 2009 Tariff Regulations, is extracted hereunder:

*“17.3 On the other hand beneficiaries like GRIDCO, BSEB, and consumers like Er. R. B. Sharma proposed further reduction of fuel stock to ½ month in case of pit-head stations and to 1 month in case of non pit-head stations on the ground that in actual practice, the thermal generating stations do not even maintain coal stock of 7 days.”*

23. Similarly, some of the beneficiaries of NTPC including the Petitioner had sought for truing-up of the working capital based on actual fuel price etc., during the framing of the 2014 Tariff Regulations. The relevant portion from the Statement of Reasons to the 2014 Tariff Regulations is extracted hereunder:

*“28.5. Some of the beneficiaries submitted that the stock of coal may be allowed corresponding to the normative plant availability factor or the maximum coal storage capacity, whichever is lower. The beneficiaries also submitted that most of the generating plants are maintaining the fuel stock for less than 15 days during last few years, irrespective of the fact that whether it may be a pithead or non-pithead station. It is, therefore, proposed to reduce the cost of coal to 15 days for calculation of interest on working capital.*

*28.6 Some beneficiaries submitted that secondary fuel oil stock should be reduced from proposed two months to 15 days for the purpose of calculation of IOWC. A beneficiary further submitted that in respect of secondary fuel oil, the Commission may limit inventory to 30 days stock as each thermal station is linked to a particular agency (IOCL/BPCL, etc.) and it is always possible to get the secondary fuel oil at short notice, say 7 days. A beneficiary further submitted that the generators may be directed to declare the storage capacity of coal and oil available in their power stations so that the limitation of inventory level under working capital requirement is monitored.*



*28.7 Some beneficiaries suggested that the truing up of interest on working capital should also be done, particularly, when true up of operational parameters, viz., SHR, AUX, SFC, is done, the true up should also be done for fuel stock actually maintained as against fuel stock required to be maintained and in case of reduced fuel stock, the deduction of interest on working capital may be done*

*28.10 Some of the stakeholders submitted that 60 days stock may be allowed for non-pit head coal based generating stations due to unpredictability of coal supply from CIL. It further submitted that the receivables should be re-determined considering the actual days taken by the beneficiaries to make payment.*

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24. Rejecting the submissions of the beneficiaries, the Commission, keeping in view the contingencies affecting the supply of coal to power stations include the cost of fuel towards fuel stock as 15 days for pit-head stations and 30 days for non-pit head stations, as part of the working capital and accordingly notified the norms under Regulation 18 (1)(a)(i) and Regulation 28(1)(a) of the 2009 and 2014 Tariff Regulations (as quoted above). The observations of the Commission in the relevant paras of the Statement of Reasons to the 2014 tariff Regulations are extracted hereunder:

*28.19 Most of the generating companies have requested to increase the fuel stock, while on the other hand, most of the beneficiaries have suggested to reduce the fuel stock considering the actual fuel stock position. The Commission, in the Explanatory Memorandum to draft Regulations observed that in almost all the stations, the average fuel stock maintained was well below the normative 15 days for pit head stations and 30 days for non pit head stations allowed and the average coal stock at most of the generating stations was in the range of around 10-15 days. The Commission further observed that very few generating stations even have the coal storage capacity of more than 30 days and in most of the cases, the maximum storage capacity of fuel is around 15-30 days. Therefore, the Commission is of the view that there is no merit in increasing the fuel stock, while at the same time, it would be appropriate to allow reasonable fuel stock to ensure smooth operation of the plant duly keeping in mind the contingencies affecting supply of coal to power stations. Therefore, the Commission has decided to continue to include cost of fuel towards fuel stock as 15 days for pit-head stations and 30 days for non pit-head stations subject to maximum storage capacity, as part of working capital.*

*28.20 Some of the stakeholders suggested that the truing up of working capital shall be carried out considering the actual fuel prices, interest rate, etc. In this regard, the Commission is of the view that the interest on working capital is allowed on normative basis, irrespective of whether the loan has been availed for working capital or not. In case truing up of interest on working capital or adjustment to interest on working capital is to be carried out based on actual fuel prices, fuel price escalation, movement in interest rates, liquid fuel stock, the objective of providing interest on working capital on normative basis will be defeated and the further the entire exercise of adjustments to*



*interest on working capital will be complicated exercise resulting in frequent revision in tariff.....”*

25. It is evident from the above that the Commission while specifying the norms for cost of coal stock for computation of working capital had considered the submissions of the stakeholder beneficiaries, including the Petitioner herein, for reduction of fuel stock/truing-up of working capital based on actual fuel prices etc, and rejected the same. In this background, it cannot be prudent on the part of the Petitioner to reopen the issues which had already been settled by the Commission while laying down the norms for computation of working capital under the 2009 and 2014 Tariff Regulations. In our view, the issues raised by the Petitioner in this Petition, is in the nature of challenge to the 2009 and 2014 Tariff Regulations, which has been framed after wider stakeholder consultations. Accordingly, we hold that the respondent, NTPC is entitled to recover interest on working capital on normative basis in terms of the Tariff Regulations notified by the Commission.

26. One more contention of the Petitioner is that the generating companies of NTPC are overcharging the consumers qua the interest on working capital. This, according to the Petitioner is nothing but unjust enrichment, since the respondent NTPC has clearly recovered monies that are in excess of whatever required for maintaining the actual stock lying with it. It has also submitted that the data actually provided by NTPC cannot be used to ascertain the actual stock of coal for Farakka Stages I, II & III respectively. However, the respondent, NTPC has pointed out that the Petitioner while praying for truing-up of one element of working capital, namely cost of coal stock, has not sought truing-up of other elements of working capital namely, O&M expenses for one month, maintenance spares etc., as these elements are not in favour of the Petitioner. There is no merit in the submission of the Petitioner that the actual coal stock maintained by the



respondent NTPC as against normative coal stock be ascertained and excess monies recovered against working capital be refunded to the beneficiaries. This prayer of the Petitioner for truing-up of only one element of interest on working capital namely, the cost of coal stock for the purpose of tariff, is not acceptable as the tariff determined by the Commission based on norms, is a complete package and the same cannot be re-opened based on actual parameters. In this connection, it is pointed out that the Appellate Tribunal for Electricity (the Tribunal) in its judgment dated 31.7.2009 in Appeal No.42 & 43 of 2008 (Haryana Power Generation Corporation Limited v. Haryana Electricity Regulatory Commission) has held that adjusting the normative parameters to actual is contrary to the basic tariff principles. The relevant portion of the judgment is extracted as under:

*“34. ....As regards interest on working capital, the State Commission has adopted the normative approach adopted by the CERC. In our opinion, once the State Commission adopts normative approach, it is neither in the interest of the long term development of the electricity industry in the State nor is a fair play to the appellant to deny the benefits of the normative approach to the appellant. The very purpose of normative approach is that the parties are informed of the benchmarks beforehand and that if they are in a position to better the benchmarks, they are entitled to the benefits unless there is some unhealthy practice adopted by them. In the case before us, if the appellant is able to raise resources below the benchmark rates, it indicates efficiency on the part of the appellant for which it should be allowed benefit in terms of the norms. Otherwise, the purpose of normative approach would get defeated and the appellant may not remain adequately motivated to work with the desired efficiency. It is true that the consumers should not be burdened with unnecessary costs, but the same is equally applicable to the appellant when it is denied recovery of costs incurred by it if the same is not in line with the norms”*

27. Similarly, the Tribunal in Appeal No. 96 of 2005 (NTPC v CERC & ors) had examined the methodology adopted by this Commission considering the normative debt repayment or actual debt repayment ‘whichever is higher’ for computing the interest on loan. Rejecting the above methodology adopted by the Commission, the Tribunal by its judgment dated 14.11.2006 observed as under:

*“13. As mentioned earlier the servicing of the capital (equity or debt) is financed by the recovery of interest on debt capital and through earning of return on equity capital. The actual loan repayment has been normalized to 50% of the total capital by the formula in para 22 of the impugned order given in para 11 above. Once it has been decided and agreed that the financing*



plan would be based on normative debt–equity ratio of 50:50 and not the actual debt-equity ratio, the same normative basis should be adopted for recovery of cost of servicing the capital.

14. In the instant case since the normative debt-equity ratio of 50:50 has been adopted in the financing plan, the loan repayment should be computed based on normative debt. This is to ensure that whatever normative debt has been considered, tariff should ensure the recovery of the same normative debt and interest thereon.

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16. After normalizing the repayment of debt on the basis of debt equity ratio of 50:50, it appears unfair to compare it with the actual repayment and taking either normative debt repayment or actual debt repayment 'whichever is higher' for computing the interest. This will render a part of debt un-serviced to the disadvantage of the appellant as demonstrated in the succeeding paragraphs.

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18. In its Tariff Regulation of 2004 the Central Commission perhaps recognizing the aforesaid anomaly has dispensed with the practice of adopting higher of actual or normative repayment and has corrected the method of determination of quantum of debt repayment only on the basis of the normative debt with effect from 01.04.2004. In view of the above, the Central Commission is required to adopt normative debt repayment methodology for working out the interest on loan liability for the period 01.04.1998 to 31.03.2001”

28. Also, the Tribunal in Appeal No. 148 of 2015 (NTPC v UPPCL & ors) while affirming the order of this Commission rejecting the claim of NTPC for additional O&M expenses towards Water charges, observed as under:

*“13.6 According to Tariff Policy, the O&M expenses are controllable factor and hence, the Appellant/Petitioner has to take suitable measures to control the O&M expenditures and the Act provides reward for efficiency in performance. Further, the O&M expenditure as per Tariff Regulations, 2009, is norm based and not at actual, hence, any additional expenses in one component cannot be allowed and whole spectrum of cost should be looked into while considering the comparison of actual cost and the recovery based on norms.*

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*13.8.....Thus, the actual cost of O&M expenses also included additional cost on account of wage revision over and above Normative O&M expenses and this cannot be the ground for considering the increase in water charges. In our view, once, the tariff has been fixed on the basis of normative parameters; the same should not be opened, even if, there is, any variation between normative and actual.”*

29. In line with the above decisions, we hold that the contention of the Petitioner and other respondents that NTPC is overcharging the consumers qua interest on working capital resulting in unjust enrichment by NTPC is unfounded. In our view, NTPC in terms of the Commission’s Tariff Regulations is entitled to recover the cost of coal



stock in working capital on normative basis. Accordingly, the prayer of the Petitioner for computation of Interest on working capital based on actual cost of fuel etc. and refund of differential amount merit no consideration and is accordingly rejected.

30. Petition No. 292/MP/2015 is disposed of in terms of the above.

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

**Sd/-**  
**(A. S. Bakshi)**  
**Member**

**Sd/-**  
**(A. K. Singhal)**  
**Member**

**Sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**

