

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No: 155/MP/2018

Coram:

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Shri I.S. Jha, Member

Date of Order: 30th of August, 2019

In the matter of

Petition under Section 79 (1) (a) & (f) and other applicable provisions of the Electricity Act, 2003 read with Regulation 110 & 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking adjudication of dispute between the Petitioner and Respondent NTPC Ltd. regarding excess recovery of Annual Fixed Costs for various generating stations of the Respondent during FY 2014-19:

AND

IN THE MATTER OF

BSES YAMUNA POWER LTD

Through its Asst. Vice President

Shakti Kiran Building

Karkardooma

New Delhi-110032

.....**Petitioner**

Vs

National Thermal Power Corporation Limited

Through Its General Manager,

NTPC Bhawan, Scope Complex,

7 Institutional Area, Lodhi Road,

New Delhi - 110003

.....**Respondents**



Parties present:

Shri Buddy A. Ranganadhan, Advocate, TPDDL, BRPL & BYPL

Shri Hasan Murtaza, Advocate, BRPL & BYPL

Shri Kartik Anand, Advocate, BRPL, BYPL

Shri Abhishek Srivastava, Advocate, BYPL

Shri M.G. Ramachandran, Sr. Advocate, NTPC

Ms. Ranjitha Ramachandran, Advocate, NTPC

Ms. Anushree Bardhan, Advocate, NTPC

Ms. Poorva Saigal, Advocate, NTPC

Ms. Tanya Sareen, Advocate, NTPC

Shri Nishant Gupta, NTPC

Shri E.P Rao, NTPC

Shri S.P Kesarwani, NTPC

ORDER

The Petitioner, BYPL (BSES Yamuna Power Ltd.) has filed this Petition seeking adjudication of dispute between the Petitioner and the Respondent, NTPC Ltd. regarding excess recovery of Annual Fixed Costs ("AFC") for various generating stations of the Respondent. The Petitioner has made the following prayers:

- a) Direct the Respondent to refund the excess Capacity charges as follows:
 - (i) Rs. 29.33 Crore recovered from the Petitioner during the period of FY 2016-17 and FY 2017-18 and;
 - (ii) The additional capacity charges including interest pertaining to FY 2014-15 and FY 2015-16 recovered from the petitioner during the FY 2016-17 and FY 2017-18 as part of arrear bills.
- b) In the alternative, so that the ARR of the Petitioner is protected and Petitioner does not suffer adversely on this account and because there is regulatory certainty in respect of treatment of AFC being billed by the Respondent, Commission may be pleased to clarify that the formula laid down by this Commission vide its order dated 28.07.2016 in P. No. 290/GT/2014 i.e. calculation of GCV of coal on "as billed" basis with adjustment



of moisture, is only an interim arrangement and that the Commission shall re-fix the AFC of the Respondent in future based on “as received” GCV of coal in order to facilitate refund of excess billing of AFC by the Respondent to the beneficiaries including the Petitioner during the period of FY 2014-19;

- c) Pass appropriate ad-interim orders;
- d) Pass any such further or other orders as this Commission may deem fit and proper in the facts and circumstances of the present case.

Background

2. The Petitioner, BSES Yamuna Power Limited is a joint venture between the BSES Yamuna Power Limited (“BYPL”) and the Government of National Capital Territory of Delhi (“GNCTD”) with majority stake i.e. 51% shareholding held by BYPL. Petitioner is a distribution licensee in terms of Section 14 of the Electricity Act, 2003, read with the Delhi Electricity Reforms Act, 2000, thus undertakes the business of distribution and retail supply of electricity in the East and Central Districts of the GNCTD.

3. The Respondent, NTPC Ltd., is a Central Generating company supplying power to the State of Delhi. The present Petition has been filed by the Petitioner BYPL, seeking adjudication of dispute between the Petitioner and Respondent NTPC Ltd. regarding excess recovery of Annual Fixed Costs (“AFC”) for various generating stations of the Respondent.

Submission of the Petitioner

4. The Petitioner has mainly submitted as under:

(a) The Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the 2014 Tariff Regulations), specify the methodology for computation of tariff for supply of electricity by the Central Sector Generating Stations for the period 1.4.2014 to 31.3.2019. In terms of the 2014 Tariff Regulations, all the beneficiaries are required to pay the tariff as determined by the Commission for the control period of five years starting from 1.4.2014.



(b) The Respondent NTPC raises its energy bills on monthly basis payable by the Petitioner, in line with the billing methodology prescribed by the Commission under Regulation 42 of the CERC Tariff Regulations, 2014. Accordingly, the Respondent NTPC Ltd. had filed various petitions for approval of tariff for the period 2014-19 for its various generating stations. The Commission in the various tariff orders passed in respect of the Respondent, has issued certain directions that GCV of Coal be taken on “as billed” basis with adjustment of moisture content. Also, similar directions have been given by the Commission in the Tariff Orders for the other Generating Stations of the Respondent.

(c) The calculation of interest on Working Capital towards fuel cost is being done by the Respondent on the basis of formula specified by the Commission and is being considered in the total Annual Fixed Costs of the plant. However, in earlier Tariff Orders, the entire Fixed Cost was determined by the Commission only. As a result, there is a substantial difference in the AFC as applicable under the tariff orders issued by the Commission under the Regulations, 2014 and the AFC being actually charged by the Respondent for the respective Generating Stations on account of recalculation of Interest on working capital after adjustment of total moisture content.

(d) The Petitioner on 12.10.2016 wrote a letter to the Respondent seeking clarification for the difference observed in the AFC used for the tariff orders notified by the Commission for FY 2014-19 under the CERC Tariff Regulations, 2014. The Petitioner vide letter dated 13.05.2017, 19.05.2017 & 26.06.2017 further wrote to the Respondent seeking clarification for the difference observed on AFC used for invoicing of Farakka, Kahalgaon-II, Rihand-II, Rihand-III, Unchahar-I, Unchahar-II, BTPS & NCPP. The Respondent on its reply vide letter dated 15.05.2017, 25.05.2017 & 23.08.2017 has stated that the Commission has determined interest on working capital provisionally on “as billed” GCV for arriving at the Interest on working capital component of the AFC of



the relevant NTPC station and accordingly NTPC has recalculated the GCV of coal after adjustment of total moisture content.

(e) The AFC determined by the Commission is required to be calculated on the GCV of coal on “as received basis”, while Respondent is calculating the same on “as billed” basis after adjustment of moisture unilaterally, which is leading to excess recovery of AFC from the Petitioner. Hence, the Petitioner has filed this petition to adjudicate the dispute regarding excess billing of AFC by the Respondent due to unilateral adjustment of moisture from the GCV of coal to arrive at Interest on Working Capital. The petitioner has further submitted that the Petitioner, being a regulated entity under DERC, is not permitted to make any excess payment to the generating companies since the cost of total power purchase, including the sources for purchase of power are also regulated and approved by DERC.

Reply of the Respondent

5. The Respondent NTPC in its reply vide affidavit dated 15.01.2019 has submitted as under:

(a) The allegation of the petitioner that NTPC has been billing in excess of the Annual Fixed Charges, as determined by the Commission in its tariff orders for the control period 2014-19, is misconceived and devoid of any merit.

(b) The Commission in the various tariff orders; on account of the unavailability of the data in respect of ‘as received’ GCV of coal, had provisionally determined the Energy charges on the basis of “as billed” GCV of coal with a moisture correction formula. Such determination was subject to adjustment in light of the GCV of coal on “as received” basis.

(c) NTPC has been billing the beneficiaries including the Petitioner, as per the tariff orders issued by the Commission. There is no inconsistency between the Annual Fixed Charges, as determined by the Commission and as billed by the Respondent and that



the annual fixed charges, as billed by the Respondent are in accordance with the tariff orders issued by the Commission.

(d) The computation of the interest on working capital in terms of Regulation 28 of the Tariff Regulations, 2014 includes amongst others namely, the cost of fuel, maintenance spares, receivables, O&M expenses etc. Accordingly, the determination of the energy charges on the basis of GCV "as billed" would consequentially have a corresponding effect on the determination of Interest on Working Capital as well.

(e) The Respondent has further denied that it is required to refund any sum to the Petitioner, as alleged or otherwise as the Commission in the tariff orders has already specifically stated that the amount computed shall be considered at the time of truing up.

Rejoinder of the Petitioner

6. The Petitioner in its rejoinder dated 11.04.2019, has prayed the Commission for appropriate clarification in the matter of calculating Interest on Working Capital component of AFC, based on the methodology specified by the Commission and has submitted as under:

(a) The AFC is decided by the Commission and is not calculated by NTPC as is the case with ECR (Energy Charge Rate). Accordingly, the revised AFC may be required to be vetted by the Commission before attaining finality.

(b) In view of the admission by Respondent NTPC in its reply, that the Commission has provisionally determined the GCV on "as billed" basis (with moisture adjustment formula) and the same is subject to adjustment of measurement of GCV on "as received" basis". The Petitioner is seeking Commission's clarification as to whether this is an interim arrangement and AFC shall be re-calculated based on GCV "as received".

(c) The Auditor of DERC has observed that for few generating stations of NTPC, the AFC billed by the Generating Stations are higher than that approved by CERC. However, the DERC has provisionally considered AFC as billed by NTPC, since it has



had taken up the issue with NTPC, subject to filing of petition by the Petitioner and its outcome before the CERC. Hence, the petitioner has requested the Commission to pass suitable orders/clarifications considering the observations of the DERC.

Analysis and decision

7. We have considered the submissions of the Petitioner BYPL (BSES Yamuna Power Ltd.), the Respondent NTPC and perused all the documents available on record. The Commission in its order dated 25.1.2016 in Petition No. 283/GT/2014 has clarified that the measurement of GCV of coal on as received basis shall be taken from the loaded wagons at the unloading point either manually or through the Hydraulic Augur. Relevant extracts from order dated 25.1.2016 is as under:

“55. The only practicable alternative is to take samples from the wagons either manually or by installing Hydraulic Auger at the suitable places. GUVNL, vide affidavit dated 30.11.2015 has submitted the video recording of the samples of coal being collected from the railway wagon at the generating stations of GSECL, namely at Ukai TPS and Wanakbori TPS. They have also filed the laboratory testing procedure of the samples taken from the wagons/ Coal Rakes at Wanakbori TPS. From the examination of the video recording, it is observed that samplings of coal were being collected from the railway wagons using Hydraulic Auger. The process of taking samples was found to be smooth, capable of taking representatives samples from any depth of the wagon, from different locations without taking too much of time and the process appears to be safe and reliable. GSECL has been successfully using the Hydraulic Auger for collection of samples from the top of the wagons and NTPC and other generating companies can adopt and improvise the protocol for collection of samples from the wagons. As regards the threat to the safety of the personnel, the issue has been discussed in detail in para 41 of this order and the safeguards suggested in the said para should be adopted.

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58. In view of the above discussion, the issues referred by the Hon^{ble} High Court of Delhi are decided as under:

(a) There is no basis in the Indian Standards and other documents relied upon by NTPC, etc. to support their claim that GCV of coal on as received basis should be



measured by taking samples after the crusher setup inside the generating station, in terms of Regulation 30 (6) of the 2014 Tariff regulations.

(b) The samples for the purpose of measurement of coal on as received as basis should be collected from the loaded wagons at the generating stations either manually or through the Hydraulic Auger in accordance with provisions of IS 436(Part1/Section1)- 1964 before the coal is unloaded. While collecting the samples, the safety of personnel and equipment as discussed in this order should be insured. After collection of samples, the sample preparation and testing shall be carried out in the laboratory in accordance with the procedure prescribed in IS436 (Part1/Section1)-1964 which has been elaborated in the CPRI Report to PSERC.”

8. Further, in absence of “as received” GCV of coal, the Commission in the order dated 21.1.2017 in Petition No. 283/GT/2014, has decided as under:

“84. The petitioner has claimed Energy Charge Rate (ECR) of 282.080 Paise/kWh based on the weighted average price, GCV of coal (as fired basis) and oil procured and burnt for the preceding three months. It is observed that the petitioner has not placed on record the GCV of coal on “as received” basis though the petitioner was statutorily required to furnish such information with effect from 1.4.2014. The petitioner has not submitted the required data regarding measurement of GCV of coal in compliance with the directions contained in the said order dated 25.1.2016. The present petition cannot be kept pending till the petitioner submits the required information. Hence, the Commission has decided to compute fuel components and the energy charges in the working capital by provisionally taking the GCV of coal on as “billed basis” and allowing an adjustment for total moisture as per the formula given as under:

$$\frac{\text{GCV X (1-TM)}}{(1 - \text{IM})}$$

Where: GCV=Gross Calorific value of coal
TM=Total moisture
IM= Inherent moisture

9. Regulation 28(a) of Tariff Regulations, 2014 provides the method of computation of ‘Interest on Working Capital’, as under:

“28. 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 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.”

10. Further, the Regulation 30(6)(b)(a), provides that the cost of fuel for working capital has to be computed by adopting the GCV of coal on “as received” basis. The Regulation is quoted as under:

“30. Computation and Payment of Capacity Charge and Energy Charge for Thermal Generating Stations:

(6) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae:

(b) For gas and liquid fuel based stations $ECR = GHR \times LPPF \times 100 / \{CVPF \times (100 - AUX)\}$

Where,

AUX = Normative auxiliary energy consumption in percentage.

CVPF= (a) Weighted Average Gross calorific value of coal as received, in kCal per kg for coal based stations”



11. However, in absence of “as received” GCV of coal, the Commission in the various tariff orders has already given direction to consider the “as billed” GCV of coal with adjustment for total moisture.

12. The Petitioner has contended that NTPC is calculating the GCV of coal on “as billed” basis with unmonitored adjustment of moisture and hence, NTPC is charging over and above the “Annual Fixed Cost” approved by Commission in the tariff orders.

13. The Respondent, NTPC has contended that GCV on coal has been provisionally determined on ‘as billed’ basis with a moisture correction formula and there is no variation between the costs determined by the Commission and that billed by the Respondent. The Respondent has further contended that the argument of the Petitioner regarding the absence of a mechanism for determining the moisture content, is equally applicable to the determination of GCV of coal on “as received” basis. It was owing to the absence of a mechanism to measure the GCV on “as received” basis that the Commission proceeded to provisionally determine the AFC on GCV on “as billed” basis with a moisture content formula. NTPC in its reply has clarified that it has been billing the beneficiaries in accordance with the Annual Fixed Charges (including the interest on working capital), as determined by the Commission in the various tariff orders and it has calculated the weighted average value of GCV based upon the formula as provided by the Commission. The adjustment in GCV on account of above has changed the value of IWC and AFC. NTPC has stated that the AFC determined by the Commission is bound to undergo change due to application of the moisture correction formulae, as this formula impact the IWC, which is one of the components of AFC.

14. During the course of hearing, Commission directed the Respondent, NTPC to clarify whether it was revising the IWC on month to month basis by applying the moisture correction factor /formulae approved by the Commission. NTPC has clarified that IWC once frozen by



applying moisture correction formulae to the “as billed” GCV for January-March 2014 period, is not revised on month to month basis. The Petitioner may, if they so wish, verify it from the bills submitted by the Respondent. We observe that in the similar issue, the Commission in its order dated 11.7.2018 in Petition No. 93/MP/2017 had observed as under:

“ 34. It is noticed that the Commission in its various orders for the period 2014-19 has arrived at the IWC on "as billed GCV" of the coal. It was left to the generator to revise the IWC based on the moisture content of coal received during the preceding three month by applying the moisture correction formulae. However, interest on working capital once fixed based on the landed price of fuel during preceding three months and by application of inherent moisture correction factor as finalized by the Commission, is not to be revised every month based on the moisture content of the fuel received during month of billing. Revising GCV based on moisture content of the fuel is allowed for calculation of "Energy Charge Rate" on month to month basis only for billing of monthly variable charges.

35. NTPC, vide Record of proceedings for the hearing dated 28.9.2017, was directed to clarify whether NTPC is revising the IWC on month to month basis by applying the correction factor/formula approved by the Commission. NTPC vide its affidavit dated 9.11.2017 has clarified that NTPC is not revising the IWC on month to month basis and the adjustment has been taken into account by NTPC in IWC calculation on normative basis only once to arrive at the fixed charges for the period 2014-19.

36. Considering the submission of the NTPC that it is not revising the IWC on month to month basis, in our view, it is not claiming AFC over and above that approved by the Commission.”

15. In view of the above, the prayer of the Petitioner to direct NTPC for refund of excess capacity charges is not sustainable.

16. Further, the Petitioner has prayed to clarify whether the formula laid down by the Commission vide its order dated 28.07.2016 in Petition No. 290/GT/2014 (the tariff Petition in respect of Singrauli generating station of NTPC) for calculation of GCV of coal on “as billed” basis with adjustment of moisture, is only an interim arrangement. The Petitioner has



also sought clarification whether the Commission shall re-fix the AFC of the Respondent in future based on “as received” GCV of coal. Relevant extract of order dated 28.7.2016 is as under:

“78. Further, the petitioner has claimed an energy charge rate (ECR) of 123.855 Paise/kWh based on the weighted average price, GCV of coal (as fired basis) & Oil procured and burnt for the preceding three months. It is observed that the petitioner has not placed on record the GCV of coal on „as received“ basis though the petitioner was statutorily required to furnish such information with effect from 1.4.2014. In compliance with the direction of the Hon'ble High Court of Delhi, the Commission in its order dated 25.1.2016 in Petition No. 283/GT/2014 has clarified that the measurement of GCV of coal on as received basis shall be taken from the loaded wagons at the unloading point either manually or through the Hydraulic Augur. The petitioner has not submitted the required data regarding measurement of GCV of coal in compliance with the directions contained in the said order dated 25.1.2016. The present petition cannot be kept pending till the petitioner submits the required information. Hence, the Commission has decided to compute the energy charges by provisionally taking the GCV of coal on as “billed basis” and allowing on adjustment for total moisture as per the formula given as under:

$$\frac{GCV \times (1 - TM)}{(1 - IM)}$$

Where: GCV=Gross Calorific value of coal

TM=Total moisture

IM= Inherent moisture”

17. Since the Respondent has not submitted the information as per the direction of the Commission in Petition No. 283/GT/2014 dated 25.1.2016 till date, the Respondent is directed to furnish the required information within three months of this order, so that the Commission can take a final view on the issue.

18. The Petition No. 155/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**

