

CENTRAL ELECTRICITY REGULATORY COMMISSION

NEW DELHI

Petition No: 267/MP/2017

Coram:

Shri P.K. Pujari, Chairperson

Dr. M.K. Iyer, Member

Date of Order: 30.01.2019

In the matter of

Petition under Section 79 of the Electricity Act, 2003 read with Part.7, Clause.4 of the CERC (Indian Electricity Grid Code) Regulations, 2010 with regard to difficulties faced in implementation of the Detailed Operating Procedure for taking unit(s) under Reserve Shutdown and Mechanism for Compensation for Degradation of Heat Rate, Auxiliary Energy Consumption and Secondary Fuel Consumption due to Part Load Operation and Multiple start/stop of units dated 05.05.2017 notified by this Hon'ble Commission pursuant to the CERC(Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016.

AND

IN THE MATTER OF

Tamil Nadu Generation and Distribution Corporation Limited,
144, Anna Salai,
Chennai-600 002

..... **Petitioner**

VS

1. NLC India Limited,
No.8, Mayor Sathyamurthy Road,
FSD Egmore complex of Food Corporation of India,
Chetpet – Chennai-600031.

2. NTPC Limited
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi – 110 003.

3. The Superintending Engineer (Electrical)



State Power Purchase Co-ordinate Centre,
4th Floor, Kavery Bhawan, Bangalore-560 009

4. The Deputy Chief Engineer Tariff and Regulatory Affairs Cell,
Kerala State Electricity Board, Vidyuthi Bhawan,
Pattom, Thiruvananthapuram-695 004

5. The Superintending Engineer
Puducherry Electricity Department,
Beach Road, Puducherry-605 001

6. The Chief Engineer (Commercial)
Transmission Corporation of Andhra Pradesh,
Vidhyuthi Soudha,
Hyderabad-500 082

7. The Chief Engineer (Commercial)
Transmission Corporation of Telangana,
Vidhyuthi Soudha,
Hyderabad-500 082

.....**Respondents**

Parties present:

Shri S. Vallinayagam, Advocate, TANGEDCO
Shri G.Umapathy, Advocate, TANGEDCO
Shri M.G.Ramachandran, Advocate, NLC
Ms. Ranjitha Ramachandran, Advocate, NLC
Ms. Anushree Bardhan, Advocate, NLC

ORDER

The petitioner TANGEDCO has filed the present petition, pleading for review of the fourth amendment to IEGC Regulation, 2016 for payment of compensation mechanism along with IA No. 2/2018, seeking relief & interim stay of the operation of the detailed operating procedure notified by the Commission vide order dated 5.5.2017.



2. The petitioner in its plea has submitted that it has been under financial stress due to the unscheduled infirm power injection by non-conventional energy sources in the State of Tamilnadu and has filed this petition seeking relief under following grounds.

- i. The Detailed Operating Procedure for operating at Technical Minimum of NLDC was neither provided to the petitioner nor were comments on the same called for. In the process of Finalising the Detailed Operating Procedure, the Commission consulted Central Generating Stations and NLDC but did not consult the distribution companies which are purchasing power from ISGS.
- ii. In the process of bringing sub regulation 6.3 B through the 4th Amendment to IEGC, the Commission only took into consideration issues relating to hardship and financial constraints of Central Generating Stations. The hardship and financial constraints that would result to the distribution licensees / beneficiaries, consequent to the passing of Detailed Operating Procedure under sub regulation 6.3 B through the 4th Amendment to IEGC were not considered. The petitioner and its consumers have been put to huge financial burden without getting an opportunity to respond to the Detailed Operating Procedure, which is a violation of principles of Natural Justice.
- iii. It is evident from the 4th Amendment to IEGC that the compensation so computed shall be borne by the entity that has caused the plant to be operated at schedule lower than corresponding to Normative Plant Availability Factor up to technical minimum and the compensation is based on the mechanism finalized by the RPCs. However, while finalising the Detailed Operating Procedure as required under the 4th Amendment to IEGC, the Commission failed to frame requisite operating procedure to identify and fix the responsibility on the entity which caused the plant to be operated at a schedule lower than corresponding NPAF.
- iv. The Commission did not appreciate that the Detailed Operating Procedure safeguards only the interest of the generators and there is no consideration for the consumers who ultimately bear the cost. The Commission also did not address the key issue of grid disturbance due to the increase in injection of renewable energy sources without there being any regulation fixing accountability for the consequences of unscheduled infirm power into the Grid.



- v. The various provisions of IEGC deal with all likely eventualities that are required for the safe operation of the grid. However, the commercial/financial impact on the distribution licensees due to the injection of unscheduled infirm power by the renewable energy generators is not dealt with anywhere in the IEGC. In the statement of objects and reasons to the 4th Amendment of IEGC, the Commission acknowledges that there has been a large capacity addition of renewable sources of energy and there is an ambitious plan to add about 175 GW of generation capacity based on renewable energy sources by 2022 (100 GW of Solar plus 60 GW of Wind and balance others). However, the Commission did not make any commercial arrangement for the distribution licensees to deal with the consequences of unscheduled infirm power injection, which leads to over draw / under drawl, backing down of conventional generation to maintain the grid frequency at the stipulated level.
- vi. The distribution licensees are compelled to back down cheaper round-the-clock power from their own conventional generating stations and CGS plants and purchase infirm, unscheduled costly power from renewable sources of energy. The financial implication of such purchase being a pass through in the general tariff is ultimately borne by the consumers. This particular aspect of tariff shock has not been considered in the Detailed Operating Procedure pursuant to 4th Amendment to IEGC. The only issue which is discussed and remedied in the 4th Amendment to IEGC is the financial implication of backing down of CGS units up to 55% and reserve shutdown. The tariff shock which would ensue due to passing through of the impact of such financial burden on the consumers has not even been referred to in the Detailed Operating Procedure. This is not in line with the National Electricity Policy, National Tariff Policy, the provisions of Electricity Act, 2003 and Tariff Regulations.
- vii. The entire scenario of backing down of conventional generation is only to increase the use of non-conventional energy because the same is environment friendly and reduces green house effect. However, the non-conventional energy generators are not made accountable for the grid disturbances caused by such unscheduled, uncommitted, infirm power injection. The non-conventional energy generators being the primary cause for backing down of conventional



generation ought to be made accountable for the financial implications borne by the distribution licensee on account of the grid disturbances caused by them. This issue is clearly addressed in sub regulation 6.3 B(vi) of the 4th Amendment to IEGC. The Commission did not consider this in the Detailed Operating Procedure.

- viii. There is financial implication for the petitioner when it is compelled to purchase non-conventional energy. As an example, when wind energy is purchased by the petitioner, it pays Rs 3.45 per unit in addition to payment of fixed charges ranging from Rs.0.98/kWh to Rs.2.58/kWh to all the CGS thermal power plant under the PPA as per the share. In addition to this cost, the petitioner also pays penal charges to RLDC for the grid code violations caused by unscheduled injection of nonconventional energy.
- ix. The unregulated injection of non-conventional energy into the grid is both a security concern as well as a financial burden on the consumers who ultimately end up paying the charges under the general tariff. The 4th Amendment to IEGC specifically holds that the entity responsible for backing down of conventional generators is liable to pay the compensation payable to the back down conventional generators. The commission ought to have considered and fixed the accountability on the entity responsible for causing such unabated continuous grid disturbances in the Detailed Operating Procedure. The financial burden due to the injection of unscheduled, infirm nonconventional energy in the state of Tamil Nadu due to the high influx of Wind Energy is around Rs 622.69 Cr.

3. On the financial impact due to backing down of its own Thermal generating stations based on merit order stacking, the petitioner TANEDCO has submitted as under:-

- (i) TANGEDCO's own Thermal Generating Stations are also being backed down based on merit order stacking to fully accommodate renewables on the directions issued by the State Load Dispatch Centre.
- (ii) The duration of backing down of TANGEDCOs TPS and the corresponding financial impact have been enclosed with the petition.



(iii) Considering the average cost per unit as determined by the Commission vide its order dated 25.01.2016 in 15/SM/2015 and order dated 18.7.2017 in 11/SM/2017, the financial impact to TANGEDCO due to backing down of own thermal stations works out to the extent of Rs.1121.59 Crores for the period from January, 2017 to July, 2017.

4. On difficulties in the payment of compensation to CGS and ISGS, the petitioner TANGEDCO has submitted the followings.

(i) The capacity charges to the CGS and ISGS are being paid in accordance with Regulation 42 of the CERC (Terms and Conditions of Tariff) Regulations, 2014. Even though, there is no drawal, during a specified time period due to specific grid conditions, the capacity charges are billed and collected from the beneficiaries for the quantum of share allocated to the beneficiary from the respective Central Generating Station.

(ii) TANGEDCO is fully accommodating the energy produced from the renewable energy resources, far beyond the Renewable Purchase Obligation, meeting approximately 40% to 60% of the demand during optimum wind season; backing down its own thermal stations & consequently bearing the financial impact. Subsequent to the orders dated 05.05.2017 the petitioner is also made liable for compensating the Central Generating Stations, when the drawal quantum falls below the range provided under the 4th Amendment to IEGC. This results in additional financial burden on the utility.

5. The petitioner has further submitted that as per notification dated 19.05.2016 of the Ministry of Power, the Central Generating Stations are given the option of sale of un-requisitioned power of state utilities at the power exchange and TANTRANSCO has given No objection Certificate to the Central Generating Stations for sale of URS power in the power exchanges. On one side, the Central Generating Stations are benefitting by collecting capacity charges from the beneficiary utilities and on the other, such Central Generating Stations are again recovering capacity charge and energy charge from 3rd party purchasers by sale of URS power through exchanges. Thus the CGS are more than compensated. Under such conditions, imposing compensation charges is an unwarranted burden on the petitioner.



6. Further, the petitioner has submitted that penetration of more Renewable Energy into the Grid by 2019 will affect the TANGEDCO's financial planning. The Ministry of New and Renewable Energy, in the Notification dated 21.03.2017, has fixed a target of 40,000 MW through development of solar parks and ultra mega solar power projects in the country by 2019. With the penetration of more and more renewable energy, backing down of CGS/ISGS are more likely and there may be corresponding increase in the compensation to be borne by the Discoms in the future. The petitioner has submitted that it is not responsible for the backing down or reserve shutdown of CGS stations. It is the regulations, which create a situation where the beneficiaries are compelled to back down the CGS stations or require the CGS stations to go in for Reserve Shutdown. When the revenue loss of Rs.1121.59 crores incurred by TANGEDCO during the period January 2017 to June 2017, due to backing down of State owned generating stations cannot be passed on to the consumers, the compensation under the Detailed Operating Procedure and Compensation Mechanism formulated in pursuance of the 4th Amendment to IEGC will put only additional financial burden.

7. Based on the submissions above, the petitioner has made following prayers.

- i) To revisit the payment of compensation mechanism envisaged in the order dt.5.5.2017 considering the submissions made above under the Regulation 54 "Power to Relax" and Regulation 55 "Power to Remove Difficulty" to the CERC (Terms and Conditions of Tariff) Regulations, 2014;
- ii) To implement the Detailed Operating Procedure only after getting the feedback from concerned RPCs and after giving an opportunity to the beneficiaries, who are going to get financially affected by the implementation of Detailed Operating Procedure; and
- iii) To exempt TANGEDCO from making payment towards the compensation for Reserve shutdown claimed by SPRC in the Regional Energy Accounts pending review and finalisation of the Detailed Operating Procedure by the Commission.
- iv) Grant ad-interim exemption to the application from payment of compensation of Central Generating Stations under the Detailed Operating Procedure dated 05.05.2017 till the disposal of the Miscellaneous Petition.



8. The respondent NLC, vide its affidavit dated 15.3.2018, has submitted that the petition has raised legal issues and there are no factual aspects to be dealt in this petition. The points raised by TANGEDCO in the above petition are devoid of any merit and TANGEDCO is not entitled to any relief as prayed for or otherwise. In the meanwhile, TANGEDCO has not been paying the due amount to NLC India Limited under the Power Purchase Agreement (**PPA**) entered into between TANGEDCO and NLC India Limited. TANGEDCO has decided not to pay the due amount to NLC India Limited unilaterally without any order, direction or stay granted by this Commission in the proceedings in the above mentioned petition. TANGEDCO, vide its letter dated 24.2.2018, informed NLC India Limited that they are disputing and withholding an amount of Rs. 10.74 Crores for payment to NLC India Limited on account of the pendency of the Petition No. 267/MP/2017.

9. As regards the Power Sale Agreement dated 5.3.2014 entered into between the parties; the NLCIL has stated that TANGEDCO is required to pay even the disputed amount i.e. 100% of the amount claimed by NLC India Limited. The parties have agreed to the above stipulation, as non-payment by the Procurers of electricity to NLC India Limited will seriously affect the operation of NLC India Limited. In the meeting of the Southern Regional Power Committee (SRPC) held on 24.11.2017, it was decided that TANGEDCO should pay the amount due to NLC India Limited and the suggestion of TANGEDCO regarding the deferment of the payment of compensation charges etc. was not agreed to. Despite the above, TANGEDCO has not been paying the amount that has become due to NLC India Limited, under the cover that Petition No. 267/MP/2017 filed by TANGEDCO is pending before this Commission.

10. NLCIL has sought a clarification that no stay order or interim direction for non-payment of the amount disputed by TANGEDCO has been issued and that TANGEDCO is liable to pay the entire amount as per the bills raised by NLC India Limited on TANGEDCO without withholding any amount and that the action of TANGEDCO in not discharging its payment obligation as per the PPA on the plea that the petition is pending before the Commission is wrong. NLCIL has further sought a direction to be issued to TANGEDCO to pay the outstanding amount with interest at the earliest to



enable NLC India Limited to maintain its corresponding obligation for undertaking the activities of generation and supply of electricity.

11. SRPC vide affidavit dated 3.4.2018 has submitted that the issue was discussed in the 29th and 30th SRPC meetings, where there was adequate representation from TANGEDCO, but no issue was raised by TANGEDCO on the compensation procedure. CMD, TANGEDCO was the chairperson of SRPC for the period 2016-17.

Analysis and Decision

12. The Commission notified IEGC (Fourth Amendment) Regulations, 2016, (hereinafter referred to as “the IEGC Amendment Regulations, 2016”) on 06.04.2016 which provides for operation of CGSs and ISGSs at a technical minimum schedule of 55% of Maximum Continuous Rating (MCR) and operating norms to be followed while backing down the Central Generating Stations (CGS) and Inter State Generating Stations (ISGS) based on merit order stacking. The notification also provides for additional compensation to be shared by the State Discoms when the scheduled generation falls below 55%.

13. Pursuant to the 4th Amendment to IEGC, the Commission by subsequent order dated 05.05.2017 approved (a) Detailed Operating Procedure for taking unit(s) under Reserve Shutdown on scheduling below Technical Minimum; and (b) Mechanism for compensation for degradation of Heat Rate, Auxiliary consumption and Secondary fuel consumption due to part load operation and Multiple Start / Stop operation of the units which came into force with effect from 15.05.2017.

14. The IEGC Amendment Regulations, 2016 was issued by the Commission on 6.4.2016. The said Regulations were notified in the Gazette of India on 29.4.2016. Regulation 1(2) of the IEGC Regulations, 2016 provides that sub-Regulation 6.3B would come into force on such date as the Commission may appoint by the notification in the official Gazette. The same is extracted as under:

1. Short title and commencement:

(1) xxxx



(2) These Regulations shall come into force with effect from date of publication in Official Gazette except Sub-Regulation 6.3B which shall come into force on such date as the Commission may appoint by notification in the Official Gazette.

15. The provisions of Regulation 6.3B of the IEGC Regulations, 2016 which provided for Technical minimum for operation of Central Generating Stations and Inter State Generating Stations as under:-

- i. The technical minimum for operation in respect of a unit or units of a Central Generating Station of inter-State Generating Station shall be 55% of MCR loading or installed capacity of the unit of at generating station.*
- ii. The CGS or ISGS may be directed by concerned RLDC to operate its unit(s) at or above the technical minimum but below the normative plant availability factor on account of grid security or due to the fewer schedules given by the beneficiaries.*
- iii. Where the CGS or ISGS, whose tariff is either determined or adopted by the Commission, is directed by the concerned RLDC to operate below normative plant availability factor but at or above technical minimum, the CGS or ISGS may be compensated depending on the average unit loading duly taking into account the forced outages, planned outages, PLF, generation at generator terminal, energy sent out ex-bus, number of start-stop, secondary fuel oil consumption and auxiliary energy consumption, in due consideration of actual and normative operating parameters of station heat rate, auxiliary energy consumption and secondary fuel oil consumption etc. on monthly basis duly supported by relevant data verified by RLDC or SLDC, as the case may be.*
- iv. In case of a generating station whose tariff is neither determined nor adopted by the Commission, the concerned generating company shall have to factor the above provisions in the PPAs entered into by it for sale of power in order to claim compensations for operating at the technical minimum schedule.*
- v. The generating company shall keep the record of the emission levels from the plant due to part load operation and submit a report for each year to the Commission by 31st May of the year.*



- vi. *NLDC shall prepare a Detailed Operating Procedure in consultation with the generators and beneficiaries at RPC forums within 2 months" time and submit to the Commission for approval. The Detailed Operating Procedure shall contain the role of different agencies, data requirements, procedure for taking the units under reserve shut down and the methodology for identifying the generating stations or units thereof to be backed down up to the technical minimum in specific Grid conditions such as low system demand, Regulation of Power Supply and incidence of high renewable etc., based on merit order stacking.*
- vii. *The RPCs shall work out a mechanism for compensation for station heat rate and auxiliary energy consumption for low unit loading on monthly basis in terms of energy charges and compensation for secondary fuel oil consumption over and above the norm of 0.5 ml/kWh for additional start-ups in excess of 7 start-ups, in consultation with generators and beneficiaries at RPC forum and its sharing by the beneficiaries.*

16. POSOCO by letters dated 12.8.2016 and 4.11.2016 submitted the "Detailed Operating Procedure for taking units under Reserve Shut Down" (Detailed Operating Procedure). The RPC's finalized the "Mechanism for Compensation for Degradation of Heat Rate, Aux Energy Compensation and Secondary Fuel oil Consumption, due to Part Load Operation and Multiple Start/Stop of Unit" (Compensation Mechanism) after discussions with stakeholders and submitted the same to the Commission. The Commission examined the Detailed Operating Procedure and the Compensation Mechanism after consultation of the same with CEA, NLDC, RLDCs and RPCs and approved them in terms of sub-clause 6 of the Regulation 6.3B (6) of IEGC Regulations, 2016 by order dated 5.5.2017. It was however made clear in the said order that the Detailed Operating Procedure and the Compensation Mechanism specified therein would come into force from 15.5.2017. The same was notified by the Commission on 5.5.2017, as under:

"And, now therefore, it is notified for the information of all concerned that Regulation 6.3B of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 and the Detailed Operating Procedure on reserve shutdown and Mechanism for Compensation shall come into force with effect from 15.5.2017."



17. The Petitioner in this Petition has prayed for review of the compensation mechanism provided in the IEGC Amendment Regulations, 2016 and has submitted that the Detailed Operating Procedure safeguards only the interest of the generators and there is no consideration for the consumers who ultimately bear the cost of all such expenses and the commercial/financial impact on the distribution licensees due to the injection of unscheduled infirm power by the renewable energy generators is not dealt with anywhere in the IEGC. The petitioner in its justification has submitted that distribution licensees are compelled to back down cheaper round-the-clock power from its own conventional generating stations and CGS plants and purchase infirm, unscheduled costly power from renewable sources of energy. However, the petitioner has further submitted that, efforts are being taken to accommodate maximum wind generation but TANGEDCO is paying the penalty, compensation and high cost energy charges in accommodating the high wind generation in the grid.

18. The Respondent NLC India Ltd. vide affidavit dated 15.3.2018 has submitted that the point raised by the petitioner is devoid of any merit and the petitioner is not entitled for any relief. The respondent NLC India Ltd. has further submitted that the petitioner is not paying the amount due to the respondent. The petitioner in its rejoinder dated 20.03.2018 has submitted that NLCIL is purposefully offering lower rates than the CERC approved rates so as to get accommodated in Merit Order ranking and later on claim the difference in prices at the time of truing up. By reducing the variable cost on their own, the respondent NLCIL has forcibly pushed the other competing CGS/ISGS generators including TANGEDCO to a lower rank. This act of NLC is in violation of the objectives of the Electricity Act, 2003. The petitioner has further reiterated its prayer to exempt TANGEDCO from making payment towards the compensation for Reserve shutdown claimed by SRPC in the Regional Energy Accounts pending review and finalisation of the Detailed Operating Procedure by this Commission based on the feedback provided by RPCs.

19. Further, the petitioner has also filed an IA No. 2/2018, seeking relief & interim stay of the operation of the Detailed Operating Procedure notified by the Commission vide order dated 5.5.2017. On hearing dated 18.9.2018, the learned counsels for the respondent NLC India submitted that the Petitioner is not discharging its payment obligation as per the PPA entered into between the Petitioner



and the respondent NLC India Limited. However, the petitioner has submitted that it has paid the amount to the respondent. Since, the Petitioner has paid the amount to NLC India Limited, IA has become infructuous. Taking note of the submissions of the learned counsels for the Petitioner and NLC India, the Commission disposed of the IA No.2/2018 vide ROP of the hearing dated 18.9.2018.

20. One of the contentions of the petitioner is that while formulating the Detailed Operating Procedure for operating at Technical Minimum, neither the petitioner was provided any details of the procedure nor were the comments on the same called for. The petitioner has further submitted that in the process of finalising the Detailed Operating Procedure, the Commission consulted Central Generating Stations and NLDC but did not consult the distribution companies which are purchasing power from ISGS.

21. From the pleadings, it emerges that, the contention of the petitioner is not supported by facts. The SRPC vide affidavit dated 3.4.2018 has furnished the details of all the participants including those of TANGEDCO who attended the 29th and 30th meeting of SRPC and also submitted that the issue was discussed in these meetings of SRPC and clarified that there was adequate representation from TANGEDCO. SRPC in its reply has further clarified that the CMD, TANGEDCO was the chairperson of SRPC for the period 2016-17 and representation of TANGEDCO was at highest level and no issue was raised by TANGEDCO on the Compensation Mechanism.

22. The petitioner has raised its concern over the clause 6.3 B (vi) of the 4th amendment to IEGC which provides as under:-

“(vi) The compensation so computed shall be borne by the entity who has caused the plant to be operated at schedule lower than corresponding to Normative Plant Availability Factor up to technical minimum based on the compensation mechanism finalized by the RPCs.”

23. The petitioner on the above clause has submitted that the non conventional energy generators being the primary cause of backing down of conventional generation ought to be made accountable for the financial implication borne by the distributing licensees. The only issue left out is as to which is the entity which has caused these thermal plants to be operated at schedule lower than NAPAF. In this context it is to point out that a unit may be operating lower than the normative availability level



during a time block due to URS schedule given by the beneficiaries. This may be due to the obligations put upon them by policy directives of G.O.I in form of RPO etc. But the generators are also not responsible for the same. As such, this compensation has to be paid by the distribution licences who are responsible for giving URS schedule. This has to be seen in the perspective that consumers and future generations of consumers would be the main beneficiaries of the Government's initiative of adding renewable based plants. Accordingly, Commission is of the view that compensation for not scheduling the unit/station shall be borne by the beneficiaries i.e. TANGEDCO in the instant case.

24. We are of the view that the Detailed Operating Procedure has clearly spelt out the methodology and Compensation Mechanism as regards Technical Minimum of 55% of Reserve Shutdown. In the garb of a petition it is not appropriate to argue the basis on which the Regulation has been brought in.

25. Another contention of the petitioner on sale of URS is that, the Central Generating Stations are getting capacity charges from the beneficiary utilities as per share allocation and further by sale of URS power, the CGS are getting the capacity charges and energy charges from purchasers. The petitioner has submitted that as CGS is recovering 2 capacity charges by selling URS, the compensation charges as per IEGC are unwarranted burden on respondent utility.

26. As per notification dated 19.05.2016 of the MOP, the CGS are given the option of sale of URS power at power exchange due to surrender of power by State utilities. Further, the clause 6.5(A)(c) of IEGC (fifth amendment) Regulation, 2017 provides as under:

"6.5(A) Scheduling and commercial settlement of energy exchanged under Ancillary services including Spinning Reserves and URS:

(a).....

(b).....

(c) In case of sale of share of original beneficiaries in market by ISGS for which consent has been given, the realized gains shall be shared between the ISGS and the concerned beneficiary in the ratio of 50:50 or as mutually agreed by the ISGS and concerned beneficiary in the billing of the following month. This gain shall be calculated as the



difference between selling price of such power and fuel charge including incidental expenses.

Provided that such sale of power by ISGS shall not result in any adverse impact on the original beneficiary(ies) including in the form of higher average energy charge vis-à-vis the energy charge payable without such sale:

Provided further that there shall be no sharing of loss between the ISGS and the beneficiary(ies):

Provided also that, the liability of fixed charge in such cases shall remain with original beneficiary(ies) as determined in accordance with the Tariff Regulations notified by the Commission from time to time.

27. The provision of IEGC (fifth amendment) Regulation, 2017 clearly provides for sharing the gains in the ratio of 50:50 in case of sale in open market. Hence, the contention of the petitioner that Central Generating Stations are recovering 2 capacity charges by selling URS is devoid of any merits.

28. Further, the petitioner has invoked the provisions of Regulation 54, Power to Relax and Regulation 55, Power to remove difficulty of the Tariff Regulations, 2014 for relaxation and removal of difficulty in Regulation 6.3 B of the IEGC Regulations, 2016. Regulation 54 and Regulation 55 of the Tariff Regulations, 2014, provides as under:

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

“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.

Regulation 55 of the CERC Tariff Regulations, 2014, provides as under:-

Power to remove difficulties

If any difficulty arises in giving effect to the provisions of these regulations, the Commission may, by order, make such provision not inconsistent with the provisions of the Act or



provisions of other regulations specified by the Commission, as may appear to be necessary for removing the difficulty in giving effect to the objectives of these regulations. “

29. It is the settled law that the power to remove difficulties is conferred upon the Commission to remove difficulties in implementation of provisions of a Regulation and does not include the power to amend the Regulations. In addition to above, the said power to remove difficulty can be exercised to the extent necessary only for giving effect to a particular Regulation. The Tribunal in its judgment dated 25.3.2011 in Appeal No.130 of 2009 (RGPPL V CERC & ors) had held that the power to remove difficulties is to be exercised when there is difficulty in effecting the Regulations and not when difficulty is caused due to application of the Regulations. In M.U.Sinai Vs Union of India (1975) 2 SCR 640, the Supreme Court had held as under:-

“The existence or arising of a difficulty is the sine qua non for the exercise of power. If this condition precedent is not satisfied as an objective fact, the power under this clause cannot be invoked at all. Again, the “difficulty” contemplated by the clause must be a difficulty arising in giving effect to the provisions of the Act and not a difficulty arising all under, or an extraneous difficulty. Further, the Central Government can exercise the power under the clause only to the extent it is necessary for applying or giving effect to the Act etc., and no further. It may slightly tinker with the Act to round off angularities, and smoothen the joints or remove minor obscurities to make it workable, but it cannot change, disfigure or do violence to the basic structure and primary features of the Act. In no case, can it, under the guise of removing a difficulty change the scheme and essential provisions of the Act.”

30. The order of the Commission dated 5.5.2017 directing the implementation of Detailed Operating Procedure and the Compensation Mechanism under Regulation 6.3B from 15.5.2017 was also notified in the official gazette on 5.5.2017. Accordingly, the Detailed Operating Procedure and the Compensation Mechanism under Regulation 6.3B had attained the force of statute from 15.5.2017. In our considered view, the prayer of the Petitioner to exercise the power of relaxation/removal of difficulty and to relate back the date of implementation of the Detailed Operating Procedure and the



Compensation Mechanism under Regulation 6.3B from 15.5.2017 to 6.4.2016 would have the effect of amending the said Regulations, which is not permissible. Under the guise of relaxation or removing the difficulty, the Petitioner cannot seek amendment of the said regulations and /or the retrospective application of the Detailed Procedure and Compensation Mechanism under Regulation 6.3B.

31. In the light of the above discussions, we find no reason to allow the prayer of the Petitioner for review of Compensation Mechanism envisaged in order dated 5.5.2017, and there is no case to exercise the Power of relaxation/Removal of difficulty in the present case. Accordingly, the Petition is not maintainable and is hereby dismissed.

32. Petition No. 267/MP/2017 is disposed of in terms of the above.

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

Sd/-
(P.K. Pujari)
Chairperson

