

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 89/MP/2018

Coram:

**Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member**

**Date of Hearing: 18.12.2018
Date of Order: 21.02.2019**

In the matter of

Petition under section 79(1)(a) read with section 62 and 64 of the Electricity Act, 2003 and Regulations 36 (A) and 54 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2014 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) (Amendment) Regulations, 1999 for relaxation of the Normative Annual Plant Availability Factor of Indira Gandhi Super Thermal Power Station (3×500 MW) of Aravali Power Company Private Limited on account of non-availability of coal.

And

In the matter of

Aravali Power Company Private Ltd,
NTPC Bhawan,
Core-7, SCOPE Complex
7 Institutional Area, Lodhi Road
New Delhi - 110 003.

.....Petitioner

Vs

1. Haryana Power Purchase Centre (HPPC)

Shakti Bhawan, Sector-VI,
Panchkula, Haryana - 134109

2. Tata Power Delhi Distribution Ltd.

33 KV Grid Sub-station, Hudson Road
Kingsway Camp
Delhi - 110009



3. BSES Rajdhani Power Ltd.
BSES Bhawan, Nehru Place
New Delhi -110019

4. BSES Yamuna Power Ltd.
Shakti Kiran Building
Karkardooma, Delhi- 110092

.....**Respondents**

Parties present:

Shri M.G. Ramachandran, Advocate, APCPL
Ms. Poorva Saigal, Advocate, APCPL
Shri Buddy A. Rangnadhan, Advocate, BRPL
Shri Rahul Kinra, Advocate, BRPL
Shri Ashutosh Kr. Srivastava, Advocate, BRPL
Shri Vishvendra Tomar, Advocate, TPDDL
Shri Raunak Jain, Advocate, TPDDL
Shri Kanishk, BRPL
Shri Nishant Gupta, NTPC

ORDER

1. Aravali Power Company Pvt. Ltd (hereinafter referred to as 'APCPL') is a 'Generating Company' within the meaning of Section 2(28) of the Electricity Act, 2003. Being a Central Government controlled Generating Company, the tariff of APCPL is regulated by this Commission in terms of Section 79 (1) (a) of the Electricity Act, 2003. APCPL has set up Indira Gandhi Super Thermal Power Station (hereinafter referred to as 'Generating Station') with a total capacity of 3X500 MW in the Jhajjar district of Haryana.
2. On 21.02.2014, this Commission had notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (herein after referred to as the 'Tariff Regulations, 2014') governing the norms and parameters including the normative plant availability factor applicable for the tariff



determination of the generating stations or companies such as APCPL for the control period 1.4.2014 to 31.3.2019.

3. Tariff for the Generating Station for the tariff period 2014-19 has been determined by the Commission vide Order dated 09.03.2017 in petition no 266/GT/2014.

4. The petitioner has prayed as follows:

(a) Consider the difference between NAPAF of 85% and the availability declared by the APCPL Generating Station (to the extent of coal actually available) as deemed availability for the purpose of computing fixed charges payable to APCPL; and

(b) Consider provision similar to Regulation 21 (4) of Tariff Regulations 2009 to enable the coal generation maximize their availability during the peak hours so as to support the grid demand

5. Reply to the petition has been filed by Tata Power Delhi Distribution Limited vide affidavit dated 09.7.2018 and petitioner has filed rejoinder vide affidavit dated 27.8.2018. The respondent BSES Rajdhani Limited vide affidavit dated 27.7.2018 filed their reply and petitioner has filed rejoinder vide affidavit dated 3.9.2018. The respondent TPDDL vide affidavit dated 28.12.2018 filed additional reply and the respondent BSES Rajdhani filed reply vide affidavit dated 10.01.2019. The petitioner has filed rejoinders vide affidavit dated 10.01.2019.

Submissions of the Petitioner

6. With regard to the coal availability at Generating Station of APCPL, it has been submitted that there has been significant shortage in the availability of coal and uncertainty of assured coal supply on a sustained basis within the scope of Regulation 36 for the period from 1.04.2017 onwards. As a result of the fuel shortage, the availability of the generating station of APCPL has been substantially below 85%. The detail of the actual availability of the Generating Station of APCPL is as under:



Station	Cumulative Availability as on 31.12.2017 (2017-18)	ACQ (MMT)	Requirement of Coal (MMT) at normative levels (Specific coal)	Coal Tie-up as % of reqd. for operation at normative levels	% Materialization of ACQ as on 31.12.2017
IGSTPS	77.107	CCL-3 .543 NCL- 1.5 ECL- 0.58	7.26 (0.65)	77.45	CCL – 53 NCL – 77 ECL – 102

7. The shortage of coal mentioned herein above, is on account of the non-availability of the coal itself for reasons beyond the control of the Petitioner and for factors not attributable to the Petitioner. As mentioned herein above, the uncertainty of coal supply is much severe than what was envisaged at the time of the Notification of the Tariff Regulations, 2014 on 21.2.2014.
8. Petitioner submits that the primary reason for the Commission to relax the Normative Plant Availability at the time of notification of the Tariff Regulations, 2014 for Thermal Generating Stations from 85% to 83% was due to the shortage of coal and the uncertainty of assured coal supply, as contained in the Statement of Reasons notified by the Central Commission along with the Tariff Regulations, 2014.
9. Petitioner states that the reasons for the shortage and uncertainty of assured coal supply are as under:
- (a) The Ministry of Coal, Government of India vide Office Memorandum dated 26.07.2013 issued the modified New Coal Distribution Policy. In terms of the said amended policy, the assured domestic coal supply from the Coal Companies with the linked mines and under the Fuel Supply Agreements entered into between APCPL and the Coal Companies have been restricted to 65% of the annual contracted quantum (i.e. equivalent to the coal required for sustaining 85% generation level) for FY 2014-15, 67% for FY 2015-16 and 75% for



FY 2016- 17. The above works out to equivalent to 55%, 57% and 63.75% requirement corresponding to the installed capacity of the generating station.

- (b) **SHAKTI Policy:** Govt. of India, Ministry of Coal vide communication dated 22.05.2017 (Annexure B) has issued the policy guidelines for signing of FSAs with Letter of Assurance (LoA) holders and has introduced New Coal Allocation Policy for Power Sector, 2017-SHAKTI as per which coal supply to the stations beyond 31.03.2017 will be 75% of ACQ i.e. $0.85 \times 90 \times 75 = 57\%$ PLF.

The above assured quantum was to be supplied by the domestic Coal Companies (Coal India Limited and/or its subsidiaries) from the identified sources with a provision for supply of any shortfall in such quantum through import of coal and/or alternate sources. In this regard, Clause 3.3 of the Fuel Supply Agreement dated 23.07.2013 entered into between APCPL and Mahanadi Coal Fields Limited (similar FSA exists with other Coal Suppliers) reads as under;

3.3 Sources of Supply

3.3.1 *The Seller shall endeavour to supply Coal from own sources as mentioned in Schedule I. In case the Seller is not in a position to supply the Scheduled Quantity (SQ) of Coal from such sources as indicated in Schedule I, the Seller shall have the option to supply the balance quantity of Coal through import which shall not, unless otherwise agreed between the parties, exceed 15% of the ACQ in the year 2012-13, 13-14 and 14-15, 10% of ACQ in the year 2015-16 and 5% ACQ for the year 2016-17 and onwards. Seller may at its discretion, make such arrangement for supply of imported coal through, CIL and/ or other enterprises. Accordingly, the purchaser has to enter into a "Side Agreement" with CIL and / or the seller, as the case may be, in the addition to this agreement. The Side Agreement dealing with the terms and conditions for supply of imported coal would be an integral part of this agreement.*

3.3.2 *For the supply of coal through import as stated in Clause 3.3.1 above, the purchaser shall agree to have back to back arrangements, if so required, with the importing agency (ies) to be notified by the Seller/ CIL and deposit*



100% of payable amount in advance. The commercial terms and conditions for such supply shall be regulated as per the Side Agreement.”

(c) The Ministry of Coal, Government of India has prohibited the supply/use of imported coal in the case of Central Public Sector Thermal Power Plants including the Generating Station of APCPL. In the Minutes dated 20th October 2015 pertaining to review performance of NTPC by the Ministry of Power, NTPC was directed to minimize import of coal as far as possible. In line with the above directions, APCPL has reduced import of coal and has not placed any orders for import of coal post August 2015. Similarly, in the Minutes of Conference dated 3/4th May, 2017 of Power, New and Renewable Energy and Mines Minister of States/UTs dealing with the coal related issues, it was resolved as under;

COAL RELATED ISSUES

“45. Coal Import by Public Sector TPP based on domestic coal shall be reduced to zero. States shall also endeavour to reduce coal import by Independent Power Producers (IPPs) based on domestic coal.”

The coal supplied by the coal companies i.e. the percentage materialization against the Annual Contracted Quantity is much less as indicated in the table. The less coal supply by the coal companies is primarily due to less production at the domestic coal mines. There have also been constraints faced by NTPC in transportation of the coal to these stations, due to rail congestion and placement of coal rakes at the mines. APCPL has taken up the above with the various authorities/ forums.

10. Though APCPL had attempted to mitigate the shortage in the availability of coal, it is not possible for APCPL to undertake generation to reach the NAPA level specified in the Tariff Regulations, 2014. There has been a significant reduction in the ability of APCPL to declare availability of the quantum of electricity on account of the non-availability of coal. The efforts made by APCPL, broadly stated, are as under:



(a) APCPL requisitioned far more quantity of coal than the ACQ, the allocation and actual dispatches. APCPL has consistently and rigorously followed up with the Coal India Limited and its subsidiaries for augmentation of coal supply.

Further, APCPL has been continuously taking up the matter of fuel shortage with the Ministry of Coal, Ministry of Power and has been requesting for enhancement of the Annual Contracted Quantity to meet the generation requirement. APCPL has written various communications to MoP, MoC and Coal Companies.

(b) Apart from the above difficulties faced and efforts put by APCPL for supply of coal; APCPL has also faced problems in transportation of coal from the coal mines to Generating Station due to railway congestion as well as unavailability of adequate number of coal rakes. APCPL took up the matter with the Railways at the highest level for timely placement of rakes for seamless transportation of coal.

(c) APCPL executives were deputed on continuous basis at Railway Dhanbad Division HQ, Chopan Railway Station, Railway Asansol division HQ, and other crucial en-route Railway stations for augmentation of rake placement and expediting of rake movement.

(d) The issue of coal shortage at APCPL was taken up at all meetings of Sub Group constituted by “Infrastructure Constraints Review Committee”, Gol and despite the recommendation of 5 rakes for APCPL, Jhajjar on every day basis the coal rake receipt at site is hardly 3 to 4 rakes per day.

11. APCPL has not been able to operate the Generating Station to the extent of NAPAF specified in the Tariff Order of this Commission for the period 1.4.2017 onwards at 85% target availability, for the reasons beyond the control of APCPL. At the same time, APCPL is required to service its fixed charges. In view of the above, even though APCPL’s Generating Station has been in a position to generate and make available the electricity to the Respondent Beneficiaries (machine availability) it has been able to undertake generation significantly lower than the NAPAF of 85%, solely for reasons of non-availability of the requisite quantum of coal as mentioned herein above.



12. The less availability of coal at thermal power stations was also brought to the notice of the Commission by POSOCO vide its letter dated 18.10.2017. In the said letter, POSOCO observed as under

“It is observed that the supply side is constrained due to less availability of coal and as on 15th Oct 2017, more than 31 GW thermal capacity is out due to less availability of coal.”

From the above, it may be seen that availability of coal is a matter of concern for all thermal station including that of APCPL Generating Station.

13. In the above mentioned letter, POSOCO has also observed as follows:

“As a consequence of reduced generation availability, the frequency during the peak hours remain low and has even gone to around 49.65 Hz. Considering the ongoing high demand period and the festival season, in order to maintain secure grid operation, all residual generation available (including gas, RLNG, liquid) is being dispatched under Ancillary from September 2017 onwards.”

In the POSOCO letter, concerns have been raised in respect of availability of coal generation during peak hours. It is pertinent to mention here that peak requirement of power these days is after 06:00 PM. The contribution of solar generating stations is increasing and such solar capacity is not available in the evening hours and the grid is primarily dependent on coal generation for meeting the peak hour requirement. From the grid point of view, it is essential that coal stations are available for maximizing the generation during the peaking hours and contribute maximum to the grid at the time of peak demand.

To address similar situations, Regulation 21 (4) of Tariff Regulations 2009 provided as below:

“21 (4) In case of fuel shortage in a thermal generating station, the generating company may propose to deliver a higher MW during peak-load hours by saving fuel during off-peak hours. The concerned Load Despatch Centre may then specify a pragmatic day-ahead schedule for the generating station to optimally



utilize its MW and energy capability, in consultation with the beneficiaries. DCi in such an event shall be taken to be equal to the maximum peak-hour ex-power plant MW schedule specified by the concerned Load Despatch Centre for that day.”

It is most likely that high demand will continue due to various Government of India initiatives such as 24 X 7 power for all, Make in India etc. Further, it is expected that coal shortage period may continue. In view of the grid stability and fuel shortage, it is humbly submitted that similar provisions as quoted above might be introduced in the current Tariff Regulations for the benefit of the sector as a whole. This will enable the coal stations to make available their generation during the times when most needed by the grid.

14. The facts and circumstances of the case, the inability of APCPL’s Generating Station to declare availability due to non-availability of the coal, namely, the difference between NAPAF of 85% and generation possible to the extent of the coal actually available to APCPL, should be treated as deemed availability for the purpose of computing fixed charges payable by the Respondent Beneficiaries to APCPL. Petitioner, however, submits that it is not claiming deemed availability for non-generation of electricity for reasons other than the Coal un-availability.
15. Petitioner submits that the shortfall in the availability of domestic coal on account of changes in the New Coal Distribution Policy notified by the Central Government has been held to be a Change in Law event entitling the generator to appropriate relief in the decision of the Hon’ble Supreme Court in Energy Watchdog v Central Electricity Regulatory Commission (2017) 4 SCALE 580.

Submissions of the Respondents

16. The Petitioner in its tariff petition No. 266/GT/2014 considered the target availability of 83% for the FY 2014-15 to 2016-17 and 85% for FY 2017-18 and 2018-19 and had also prayed to grant liberty to approach the Commission for seeking relaxation of operating norms as per actual scenario and PLF. The above petition was disposed by the Commission vide its order dated 09.03.2017. No liberty has been granted by the Commission to the petitioner to approach the Commission for



seeking relaxation of operating norms as specifically prayed by the Petitioner while determining the tariff for the power station of the Petitioner for the period 2014-15 to 2018-19.

17. The arrangement of fuel for the thermal power station is the sole responsibility of the project developer and consequences of failure to arrange fuel on the tariff cannot be passed on to the beneficiaries and the ultimate consumer. The Hon'ble Appellate Tribunal for Electricity, vide its judgment dated 02.12.2013 in Appeal No. 132 of 2012 titled "Junagarh Power Projects Pvt. Ltd vs GUVNL" has held as under:

"The State Commission in the impugned order has held that availability of fuel and other parameters is the responsibility of the Project Developers. While we agree that arranging the supply of fuel is the responsibility of the project developers, the price of fuel is uncontrollable factor and will vary depending on the demand and supply situation in the market which is beyond the control of the Appellants."

18. The coal distribution policy was revised on 26.07.2013, i.e. before the notification of the Tariff Regulations, 2014. The New Coal Distribution Policy issued vide memorandum dated 22.05.2017 has made no change in the policy for the power plants covered under the old regime of LOA. The FSA dated 18.03.2013 executed by the petitioner with ECL also has no provision of penalty for indigenous coal supply up to 75% of ACQ. Thus, the change in coal distribution policy cannot be construed as "Change in Law."

19. The Petitioner in para 8 of its petition has provided a table wherein it has been mentioned that it has coal tie up of only 77.45% of the quantum required to run at normative basis. Considering the same, it was prudently expected that the petitioner increases the ACQ so as to meet the necessary coal requirement. However, the Petitioner has failed to do so and thus further failed to reproduce any steps taken by it in this behalf to increase its ACQ even before this Commission and is now claiming relaxation on NAPAF for its own failure to arrange adequate coal. Therefore, there cannot be any relaxation when the Petitioner itself has failed to undertake necessary and prudent steps to increase its ACQ.



20. The PLF of APCPL from 2014-15 to 2018-19 (up to May'2018) along with availability claimed by the Petitioner's plant is stated below:

FY	PLF (%)	PAF (%)
2014-15	55.67	84.565
2015-16	44.47	95.469
2016-17	42.04	94.845
2017-18	60.02	76.081
2018-19 (till May'2018)	51.29	56.646

The Table above indicates that the PLF of APCL has varied between 55% to 60.02% for FY 2014-15 to 2017-18. It may be noted that when the PLF was around 55% in FY 2014-15, complete availability was claimed by the petitioner. Similarly the PLF in FY 2015-16 and 2016-17 was only around 42% to 44% and the availability claimed was to the tune of 94%. From the above table it can be deciphered that any PLF above 45% is leading to reduction in availability of the Petitioner. It is not clear that in the past when the PLF was only 44%, how the availability could have been 95% and now a mere increase in PLF by 7% in FY 2018-19 (up to May'2018) is allegedly causing the availability to reduce by 39%. The above clearly shows that availability being claimed by the Petitioner during the past years was abnormally high and the same did not emerge correctly because of the less schedule given to the petitioner by its beneficiaries resulting in low PLF during the past periods. Thus, when the actual data of past 3 years is considered in terms of Regulation 36 (A) (a) of the Tariff Regulation, 2014 then it is clear that there is no such shortfall in coal and the Plant Availability factor is quite adequate.

It cannot be the purpose of a Regulation and prudent practice to claim a higher availability/ full fixed costs when the schedule and resultant PLF is less and to seek undue advantage in the form of relaxed PAF when the schedule to run the plant is being given and which is resulting in a higher PLF requirements which the Petitioner plant is not able to meet.

21. The Petitioner has stated that it has taken several steps to mitigate the shortage in the availability of coal. It may however be noted that the documents provided to substantiate the same pertains to period of May'2017 to November'2017. In this regard, it may be noted that the Tariff regulations, 2014 were issued in February'2014 and accordingly, the Petitioner should have made proper and



necessary arrangement of coal to achieve NAPAF. The Petitioner never made adequate arrangement of coal to achieve NAPAF. However, due to low PLF at that point of time, the Petitioner did not face issue of any shortage of coal earlier. Now, with the rise in PLF of the plant to 60.02% in FY 2017-18 and corresponding increase in requirement of coal, the Petitioner never made necessary arrangement of required coal supply and the same has become apparent with increase in PLF. As the Petitioner's justification is based on their convenience, it cannot be accepted and is liable to be rejected.

22. CIL has issued the *“Provisional Production and Offtake Performance of CIL and Subsidiary Companies for the month of March’2018 and for April’2017-March’2018”* dated 01.04.2018. As per the said report, the coal offtake from ECL, CCL and NCL has increased by 1.4%, 10.9% and 15.9% respectively. The report further states that CIL in FY 2017-18 has made available 580.3 MT of coal to consumer(highest ever), which is an increase of about 7% as compared to 543.3MT in FY 2016-17. As per the said report, the coal made available by CIL to its beneficiaries was not less than the FY 2016-17, accordingly the insistence by the petitioner that coal supply in FY 2017-18 was less, is questionable.
23. Petitioner is seeking to re-open a tariff order dated 09.03.2017, wherein the Commission after considering the due shortage of domestic coal and in accordance with Regulation 36 (A) of the Tariff Regulations, 2014 had determined the NAPAF for the Generating Station at 85% for the FY 2017-18 and 2018-19.
24. There is no provision under the Tariff Regulations, 2014 which provides for deemed availability in case there is non-availability of coal or due to any other exigency. The Petitioner, by way of the present Petition, is seeking to amend the Tariff Regulations, 2014 by including the concept of deemed availability for shortage of coal.
25. The Petitioner has an option provided under the modified New Coal Distribution Policy as well as the FSA dated 23.07.2013 to procure coal from alternate sources in case there is any shortage of coal. Therefore, the Petitioner rather than claiming deemed availability due to shortage of coal should endeavour to source



the coal shortage from alternate sources by invoking the mechanism prescribed under the FSA.

26. Apart from the above, it is noteworthy that clause 3.6.1 of the FSA provides for compensation for short delivery/lifting of coal, in terms of which the defaulting party has to compensate the other party. However, the Petitioner cannot by any stretch of imagination seek deemed availability for alleged short supply of coal by the subsidiary of CIL.
27. Power of removal of difficulties can only be exercised for removal of any difficulties encountered in the enforcement of the statute, and cannot be invoked to change/add or amend the basic structure of Regulations.
28. Further, Tariff Policy, 2016 notified by the Central Government under section 3 of the Electricity Act, 2003. Clause 5.11(f) provides as under:

“Suitable performance norms of operations together with incentives and disincentives would need to be evolved along with appropriate arrangement for sharing the gains of efficient operations with the consumers. Except for the cases referred to in para 5.11(h)(2), the operating parameters in tariffs should be at “normative levels” only and not at “lower of normative and actuals”.

The Petitioner is praying for considering the difference between NAPAF of 85% and availability declared by APCPL to the extent of coal actually available as deemed availability for the purpose of computing fixed charges payable to them. In other words, APCPL is praying to treat the normative plant availability as per the actual plant availability or ‘lower of normative and actuals’ which is contrary to the provision of the Tariff Policy above.

Rejoinder of the Petitioner to the replies of Respondents

In response to the above replies, the Petitioner has filed its rejoinder and has mainly submitted the following:

29. This Commission has granted a liberty to the effect that the provision of Regulation 36 (A) as regards the normative availability of 83% ‘shall be reviewed based on actual feedback after 3 years from 01.04.2014’ i.e. after 01.04.2017. There is no



provision regarding the mode of review and accordingly, this Commission could have proceeded to review the normative availability either of its own accord or on an application by any of the affected parties. There is no bar or prohibition, preventing this Commission from reviewing its operating norms, on an application by the affected party.

- 30.** It is not denied that the fuel is the responsibility of the generator and had the Petitioner not undertaken its due diligence and made efforts to mitigate the consequences of the shortage of coal, then there is no question of seeking a relaxation in respect of the operating norms. In *the prevailing circumstances however, the Petitioner has been unable to arrange for the fuel on account of the subsequent directions of the Central Government prohibiting import of coal by the Central Power Generating Station. Accordingly, the finding of the Hon'ble Tribunal in the case of Junagadh Power Project Vs GUVNL, is not applicable in the present case where the question is not in relation to the cost of the fuel but the availability of the fuel.*
- 31.** It is the cumulative effect of the New Coal Distribution Policy, restricting the domestic coal availability read with the direction of the Central Government prohibiting the import of coal that has led to a shortage in the fuel availability, necessitating the filing of the present petition before this Commission. As mentioned in the petition, the Generating Station has not placed any import orders since August, 2015. The Petitioner was relying on the NCDP to indicate that there is in fact a shortfall in domestic coal, which has been re-iterated by the Hon'ble Supreme Court in the Energy Watchdog case.
- 32.** It is incorrect on the part of the Respondent to suggest that the Petitioner has failed to take steps to increase its ACQ. The ACQ is determined in terms of FSA, which in turn is governed by the provisions of the NCDP to be a 'Law'. In terms of the NCDP (and consequently- the FSA), the coal supplier is not required to provide the Petitioner with any supply over and above the ACQ. There is no provision in the FSA for an enhancement in the ACQ, particularly in light of the prevalent fuel shortage situation.



- 33.** It is denied that the Petitioner is seeking to claim any advantage by declaring higher availability when less power is being scheduled. In terms of the Indian Electricity Grid Code, the Respondent could have called upon the Petitioner to demonstrate its capacity at any instance, during the relevant time. It is quite unbecoming of the Respondent to be making such frivolous allegations against the Petitioner, without any proof.
- 34.** The details regarding the declared capacity of the generating station, the monthly plant availability factor, and the details of GCV and price of fuel i.e. domestic coal, proportion of e-auction coal and the weighted average GCV of the fuels are provided to the beneficiaries as per the Tariff Regulations, 2014. The said information is also available at the website of the petitioner.
- 35.** The Generating station is covered under the NCDP and the provision as regards supply of coal sufficient to achieve 57% PLF is applicable to projects covered under SHAKTI policy. The reliance on the SHAKTI policy was to indicate that the new FSAs would also provide quantity lower than that required for achieving 85% availability. It is submitted that as indicated in para 11 (a) of the petition, the provision of NCDP provide coal quantity sufficient for achieving PLF of 63.75% only.
- 36.** FSAs have been signed equivalent to quantity as provided under NCDP and percentage materialization indicated in table is percentage of quantity agreed to be supplied in FSA. As per the FSA signed with the coal companies, only 72% of ACQ has been supplied in first three quarters which indicates shortage of coal supply.
- 37.** It is submitted that as per the report dated 01.04.2018 of the Coal India Ltd filed before Bombay Stock Exchange Ltd, the off take of coal from mines of CIL has increased in the year 2017-18 as compared to 2016-17 but it is re-iterated that the coal supplied to APCPL, Jhajjar was not sufficient enough to achieve normative DC. It is re-iterated that due to low production of coal vis a vis target production coupled with the direction of the Central Government prohibiting import of coal by the Central Power Generating Stations and constraints in transportation of coal, the petitioner could not achieve normative DC.



- 38.** The Petitioner is not requesting that the provisions of the tariff Regulations, 2009 be made applicable in the present control period but is highlighting the hardship/difficulty being faced by the generator in the absence of a provision such as Regulation 21(4) of the Tariff Regulations, 2009 which allowed the Petitioner to optimize on its availability during condition of fuel shortage.
- 39.** It was open for the generator to approach the fuel supplier in case of shortfall in coal and seek appropriate compensation. Pursuant to the NCDP and in terms of the FSA dated 23.07.2013 between the Petitioner and Mahanadi Coalfields Ltd, the Coal Supplier is only obligated to provide to the Petitioner 65%, 67% and 75% of the ACQ (which is inclusive of the imported coal) for the FY 2014-15, 2015-16 and 2016-17. Since the Government of India directions prohibit the coal suppliers and/or the central Government controlled generating stations from importing coal, there is no recourse or remedy available to the petitioner to make up for the shortfall in coal.
- 40.** The availability of the generating station of the Petitioner for the year 2014-15 was 84.565 % as certified in the Energy Accounts issued by NRPC and not 105% as indicated by the respondent. It is further submitted that the Petitioner was able to achieve the Target Availability during the 2014-16 period because the Petitioner was allowed to import coal from international markets, as per requirement. Even though no further orders for procurement of import coal were placed after August, 2015, the imported coal from the previously placed orders was received till December, 2015 and this receipt of imported coal allowed the Petitioner to achieve the target availability during 2015-16. It is submitted that during the year 2016-17 the requirement of coal at the Generating Station was very low due to less offtake of power by beneficiaries.
- 41.** Therefore, even during the FY 2014-15 to FY 2016-17, there was a situation of domestic fuel shortage but the Petitioner was able to procure the coal through alternate sources namely through import. It is w.e.f August, 2015 that the Petitioner stopped placing further orders for importing coal. It is submitted that the Petitioner is unable to achieve normative DC due to coal shortage in the year 2017-18, and the relief is restricted to the control period.



42. It is denied that the Petitioner is seeking any amendment in the Tariff regulations, 2014. The Petitioner has sought for a consideration of a provision similar to Regulation 21(4) which allowed the Generators to optimize on their generation during conditions of fuel shortage. The absence of a similar provision under the prevailing regulations and the consequential benefits which had allowed the Generator to mitigate the situation of fuel shortage under the previous regulations, may be considered by the Commission while considering the relief under the present petition.

Analysis and Decision

43. The issue under consideration is whether receipt of reduced coal supply from linked mines during the year 2017-18 and 2018-19 along with the ban on import of coal by MoP, entitles the petitioner for the relief sought.

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

45. Commission vide Regulation 36 (A) (a) fixed the NAPAF of 85% in general for coal based thermal generating stations. However, considering the shortage of coal supply from linked mines the following proviso was also added to the above Regulation:

"Provided that in view of shortage of coal and uncertainty of assured coal supply on sustained basis experienced by the generating stations, NAPAF for recovery of fixed charges shall be 83% till the same is reviewed. The above provision shall be reviewed based on actual feedback after 3 years from 01.04.2014."

46. It is observed that as per modified New Coal Distribution Policy notified by MoC vide memorandum dated 26.07.2013, the assured domestic coal supply from the linked mines was restricted to 65%, 67% and 75% for 2014-15, 2015-16 and 2016-17



respectively of annual contracted quantum (ACQ). As such, petitioner was aware right from the beginning that for declaring availability of 83%, it would have to arrange additional coal to meet required NAPAF to claim full capacity charge during these years. Moreover, the cost of arranging the coal from alternative sources to the extent of shortfall is a pass through in tariff. There was therefore no embargo on the petitioner to procure coal from alternative sources such as imported coal or e-auction and accordingly give declaration based on coal stock.

47. The NAPAF of 83%.The NAPAF achieved by the station and the PLF indicating low schedule given by beneficiaries during the period 2014-17,is reflected in the following table:

FY	PLF (%)	PAF (%)
2014-15	55.67	84.565
2015-16	44.47	95.469
2016-17	42.04	94.845
2017-18	60.02	76.081
2018-19 (till May'2018)	51.29	56.646

48. In terms of the above table indicating PAF for the first three years of tariff period 2014-19, Commission is of the view that within the existing constraints of low coal supply from linked mines during the period 2014-17, petitioner was able to declare PAF to claim full capacity charge. Due to low schedule from beneficiaries, in spite of very low realization of coal, even much less than assured quantum from linked mine, Petitioner was able to declare high availability as the coal was not being consumed in real terms for generation of electricity. As such, the generator was comfortable with the situation. Nothing has been placed on record by the petitioner to show that it took the case of not receiving even the assured quantum of coal from the linked mines with MOP, MOC or Railway prior to May 2017. All the communication as submitted as proof for being pro-active in the matter of short coal supply starts from May, 2017. As such, based on the data of DC as certified by the RLDC for the period 2014-17, the case of Petitioner claiming coal shortage is not sustainable. In the present case, petitioner is seeking relaxation in availability norm after the completion of tariff period. As such, there was no occasion of review after completion of first three year of tariff period based on actual data of 2014-15 to 2016-17.



49. Reliance has been placed by the petitioner for seeking relief for the period 2017-19 on the fact that less realization/availability of coal from linked mines coupled with ban on import by MOP were the reasons that it could not declare availability to the tune of 85% resulting in shortfall in recovery of Annual Fixed charges.
50. In this context, petitioner has placed on the record Minutes of the Meeting dated 20.10.2015 pertaining to review performance of NTPC by MOP in which NTPC was directed to minimize import of coal as far as possible. Petitioner has submitted that in line with the above direction it stopped the import of coal post August, 2015 but the imported coal from the previously placed orders was received till December, 2015 and this receipt of imported coal allowed the Petitioner to achieve the target availability during 2015-16. Petitioner has further submitted that during the year 2016-17 the requirement of coal at the Generating Station was very low due to less offtake of power by beneficiaries. But we also note that the petitioner has not explained the declaration of higher availability during 2016-17, despite no imports and short supply of coal from linked mines.
51. Petitioner has further submitted that similarly in the Conference dated 3rd & 4th May, 2017 of Power, New and Renewable Energy and Mines Minister of States/UTs while dealing with the coal related issues, one of the resolutions was:

Coal Related Issues

45. Coal Import by Public Sector TPP based on domestic coal shall be reduced to zero. States shall also endeavour to reduce coal import by IPPS based on domestic coal"

52. Petitioner has submitted that in the light of above, the Central Generating Stations including the generating station of the petitioner were prohibited from importing coal. This according to the petitioner is an executive direction on the part of the Government of India and is binding on Coal India Limited as well as the petitioner. In this regard, petitioner has further submitted that responsibility of arranging fuel can be there only when the coal is available and/or import of coal is not prohibited



and has no relevance to the above situation where there is a direction by the Central government.

- 53.** With regard to the direction of MOP to minimize the procurement of imported coal vide minutes of meeting dated 20.10.2015, it is noted that petitioner was aware right from 2015-16 that low realization of coal from linked mines together with reduction in allowed quantum of imported coal may affect it commercially. However, there is nothing on record to show that during this period starting from August, 2015 to 31.03.2017, it tried to impress upon Ministry of Power, Ministry of Coal or Railways to allow the import of coal or to increase the supply of coal from linked mines.
- 54.** Regarding the resolution taken in Conference dated 3.5.2017/4.5.2017 of Ministers of State to stop import of coal altogether, there is nothing on record shows that the petitioner tried to impress upon the Ministry of Power that without import of coal, it would be commercially hit in terms of Declaring capability (DC) of the station as the linked mines are already supplying less coal in terms of NCDP. Further, petitioner has not submitted anything on record that during 2017-18 and 2018-19, when it was not being able to declare capability for want of low realization of coal from the linked mines and ban on coal import, it had tried to procure coal from the e-auction route.
- 55.** Petitioner admittedly acknowledges that the arrangement of fuel is the sole responsibility of the project developer.
- 56.** Now the question before us is whether risk of arranging fuel which lies with the Petitioner could be passed on to the beneficiaries of the generating stations in the circumstances of the case.
- 57.** A similar question was considered by the Commission in Petition No 225/MP/2017 and Commission vide order dated 5.11.2018 has held as follows:

“25 The Commission, while relaxing the NAPAF norms in case of Assam GPS to 72% for the tariff period 2009-14 and 2014-19 had recognized the fact that



with the committed gas supply of 1.4 MCMD by OIL, the maximum target availability that can be achieved is 72% and had also noted the fact that there was no alternative source from where the petitioner can arrange gas and under these circumstances the onus was on the Petitioner to ensure that Minimum Guaranteed Quantity of gas should be 1.4 MCMD. Having failed to do that there was always possibilities to less declaration of availability in case of short supply of gas anything less than 1.4 MCMD.

26. Respondent APDCL has submitted that to arrange adequate fuel supply is the sole responsibility of the Petitioner. It has submitted that the fuel supply is being governed by a separate bilateral Fuel Purchase Agreement (FPA) signed between the Petitioner and Oil India Limited (OIL) and beneficiaries are not a party to it.

27. The Commission In the Tariff Period 2009-14 and 2014-19 , has relaxed NAPAF to 72% from 80 % and 85% respectively for short supply of gas and accordingly risk for short fall in gas supplies was passed on to the beneficiaries. Now, the question arises as to what extent such risk of short supply of gas should be allowed to be passed on to the beneficiaries. Should the entire business risk of the generator with regard to supply of gas be passed on to the beneficiaries? In this context we are of the view that the responsibility for arranging the gas for declaration up to 72% squarely lies on the generating company.

28. It is true that the beneficiaries have no control over the supply of gas. Accordingly, further relaxation of NAPAF due to short supply of gas by the gas supplier would load the beneficiaries extra burden of higher tariff.

29. Based on the above discussions, it is observed that the shortfall in Target Availability is not due to any operational problems and could only be attributed to inadequate gas supply by the gas supplier. We are of the view that risk of non supply of gas up to the requirement of 1.4 MCMD may have to be borne by the petitioner. The generating company and the Gas supplier both are the Government Companies and they should settle the gas supply issues among themselves. Accordingly, we are not inclined to relax the target availability any further to the level of actual availability.”



- 58.** In the instant case petitioner does not appear to have taken timely action to ensure enough supply of coal so as to achieve the NAPAF of 85% and as such consequences of failure to arrange fuel by the petitioner cannot be passed on to the beneficiaries. Further, 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 is owned / controlled by the Government, it would not be appropriate to pass on the fuel supply risks to the beneficiaries.
- 59.** In the light of the above, the prayer of the petitioner to consider the difference between NAPAF of 85% and the availability declared by the APCPL generating station (to the extent of coal actually available) as deemed availability for the purpose of computing fixed charges payable to APCPL is not admissible and hence not allowed.
- 60.** Regarding second prayer of the petitioner to consider provision similar to Regulation 21 (4) of Tariff Regulations 2009 to enable the coal generation maximize their availability during the peak hours so as to support the grid demand, it is held that the same is beyond the scope of Tariff Regulations, 2014 and as such cannot be considered in the instant petition.
- 61.** Petition No. 89/MP/2018 is disposed of in terms of the above.

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

Sd/-
(P. K. Pujari)
Chairperson

