CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No. 370/MP/2022

Coram:
Shri Jishnu Barua, Chairperson
Shri Pravas Kumar Singh, Member

Date of Order: 30th April, 2024

In the matter of
Petition under Section 79 (1) (a) of the Electricity Act, 2003 ("the Act") seeking deemed availability for the period from 01.06.2021 to 30.08.2021 in respect of Singrauli Super Thermal Power Station- 2000 MW ("SSTPS") under Regulation 76 and Regulation 77of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2019.

And

In the matter of
National Thermal Power Corporation Limited,
NTPC Bhawan,
Core-7, Scope Complex,
7, Institutional Area, Lodhi Road,
New Delhi-110 003 **…….Petitioner**

Vs

1. Uttar Pradesh Power Corp. Limited,
   Shakti Bhawan, 14, Ashok Marg,
   Lucknow-226 001

2. Rajasthan Urja Vikas Nigam Limited,
   (On Behalf of Rajasthan Discoms),
   Vidyut Bhawan, Janpath,
   Jaipur-302005

3. Tata Power Delhi Distribution Limited,
   Grid Substation, Hudson Road,

Kingsway Camp,
New Delhi-110009

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

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

6. Haryana Power Purchase Centre,
   Shakti Bhawan, Sector-VI,
   Panchkula-134109

7. Punjab State Power Corporation Limited,
   Through its Managing Director,
   The Mall,
   Patiala-147001

8. Himachal Pradesh State Electricity Board Limited,
   Kumar Housing Complex Building-II,
   Vidyut Bhawan, Shimla-171004

9. Power Development Department,
   Government of J&K, Civil Secretariat,
   Srinagar

10. Electricity Department of Chandigarh.
    Union Territory of Chandigarh,
    Additional Office Building, Sector-9 D,
    Chandigarh

11. Uttarakhand Power Corporation Limited,
    Urja Bhavan, Kanwali Road,
    Dehradun-248 001 **…….Respondents**

Parties Present:
Shri Venkatesh, Advocate, NTPC

Shri, Nihal Bhardwaj, Advocate, NTPC
Shri Shivam Kumar, Advocate, NTPC
Shri Rahul Kinra, Advocate, BRPL & BYPL
Shri Aditya Ajay, Advocate, BRPL & BYPL
Ms. Isnain, Advocate, BRPL & BYPL
Ms. Megha Bajpai, Advocate, BRPL
Ms. Shweta Choudhary, BRPL & BYPL
Ms. Jaya, BRPL & BYPL
Shri Mansoor Ali Shoket, Advocate, TPDDL
Shri Nitin Kala, Advocate, TPDDL
Shri Kunal Singh, Advocate, TPDDL
Shri Tanmay Jain, Advocate, TPDDL
Ms. Kanishka Rawat, Advocate, TPDDL

ORDER

The present Petition has been filed by the Petitioner NTPC Limited, praying to grant deemed availability of 82.28% for the period from 01.06.2021 to 30.08.2021 for Singrauli STPS. The Petitioner has prayed as under:

(a) Grant deemed availability of 82.28% for the period from 01.06.2021 to 30.08.2021 for Singrauli STPS
(b) *Pass such orders as deemed fit and necessary in the facts and circumstances of the present case.*

Submission of the Petitioner: -

2. The Petitioner in the petition has mainly submitted as under: -

a) The Petitioner (NTPC) is a 'Generating Company' as defined under Section 2(28) of the Electricity Act, 2003.

b) The Petitioner has power stations/ projects in different regions and places in the country. Singrauli Super Thermal Power Station (hereinafter referred to as

Singrauli STPS) is one such station located in the state of Uttar Pradesh with an installed capacity of 2000 MW (5 x 200 MW + 2 x 500 MW).

c) The Commission over the five tariff periods (2001-2024) is determining/ regulating the generation tariff of the generating stations installed under Section 62 of the Electricity Act 2003. The Commission, at the beginning of each tariff period, notifies the terms and conditions of the Tariff applicable for the extant tariff period after consultation with all stakeholders. It may be pertinent to mention that over the tariff periods, the Commission has tightened the norms of operating parameters of generating stations. The operating norms specified in the respective Tariff Regulations were equitable to both generators and beneficiaries as they were based on the past actual operating details of the generating stations and, at the same time, encouraged efficiency improvement so that the generators could earn incentives.

d) In this regard, it is submitted that for full recovery of Annual Fixed Charges (AFC) of a thermal generating station, the Normative Annual Plant Availability Factor (NAPAF or Target Availability) has been tightened over control periods from 2001-2004 to 2009-14 from 62.8% to 85%, respectively. Thereafter, for the period 2014- 24, the Target Availability for full recovery of AFC of a generating station was specified at 85% except for the period from 2014 to 2017, wherein NAPAF for the period 2014-17 was lowered slightly to 83% because of the coal shortage scenario in the country.

e) It is evident from the Statement of Reasons (SoR) of the Tariff Regulations 2009 that NAPAF of 85% was specified for the thermal power stations to provide operation flexibility and to mitigate any risk arising out of fuel and operational contingency. The operating margin was allowed since thermal units operate at high temperatures and pressures with high-speed rotating equipments, which are more prone to wear and tear and forced outages in spite of diligently carrying out annual unit overhauls. NTPC, in most of its stations, could achieve the Target Availability specified in the extant tariff regulations by meticulously planning its unit's annual overhauls, renovations, and other repair works at the same time meeting the grid demand, etc.

f) Generally, NTPC carries out annual overhauls of a unit from 18 days to 45 days, which corresponds to a loss of availability of about 5% to 12% for a single unit. The balance margin of availability provides operation flexibility for loss of availability arising out of fuel issues or forced outages due to equipment problems. The operational flexibility is also achieved by taking planned shutdown of units one by one in the case of multiple unit stations.

g) Regulation 42 of the Tariff Regulations, 2019 introduced a new mechanism for recovery of AFC based on the seasonal normative target availability w.e.f. 01.04.2020, which has further reduced the operation flexibility. As per the above regulations, to recover full AFC, the generator has to achieve target availability separately for two seasons, namely High Demand Season (period of three months, consecutive or otherwise) and Low Demand Season (period of remaining nine

months, consecutive or otherwise) w.e.f. 01.04.2020. Further, High Demand Season and Low Demand Season months are different in different Regions, and these months are defined based on the Regional seasonal/ demand variations. The same has to be declared by respective RLDCs six months in advance.

h) The Northern Regional Power Committee (NRPC), vide its 180Th OCC, declared June 2021, July 2021, and August 2021 the High Demand Season for the year 2021-22, and the remaining 09 months of FY 2021-22, i.e. from April 2021 to March 2022 (excluding the above months), the Low Demand Season for the Northern Region stakeholders.

i) Based on the above, NTPC carried out detailed shutdowns/ overhauls/ planning/ Additional Capitalization works, etc., keeping enough margin for forced shutdown /Partial Availability arising out of operational exigencies so that each station in the Northern Region, including Singrauli STPS, could achieve the seasonal Target Availability of 85% for both High Demand and Low Demand season separately. Accordingly, for Singrauli STPS, all the works were planned such that the operational flexibility for achieving the target availability separately for both the High and Low demand seasons was secured, and Singrauli STPS could supply cheaper power to the benefit of beneficiaries as per their demand.

j) However, due to some unforeseen and unfortunate circumstances that were beyond the reasonable control of the petitioner, there was some underachievement of availability during the High Demand Season (June 21 to Aug

21) despite all-out efforts by the petitioner to mitigate the effect of those circumstances.

k) The overall availability achieved for the year 2021-22 by Singrauli STPS is as tabulated below:

PAF Cumm. 2021-22	PAF High Demand Season		PAF Low Demand Season	
	Peak Hour	Off Peak Hour	Peak Hour	Off Peak Hour
83.47	71.62	72.31	87.06	87.31

Note: Singrauli STPS has achieved overall availability of 87.26% and 72.19% in Low-demand and High-demand seasons, respectively.

l) The factors that led to the under-achievement of Availability in the High Demand Season are detailed below:

A) Effect of COVID Lockdown on Overhauling/Maintenance Works of Unit#3 and Unit#7:

i. Power plant maintenance is regularly performed in power plants, which includes inspections, preventive maintenance, and repairs for all of the assets throughout a power plant. This maintenance work is crucial for the safety and preservation of the longevity of energy plant assets. The longer a plant can run, the more cost-effective it is over time, and maintenance plays a crucial role in maximizing the longevity of an energy plant.

ii. Power plant maintenance refers not just to the maintenance of assets and equipment but also to routine inspections, installation of equipment, regular reporting, systems integrations and reviews, and scheduled preventive maintenance for all of the work required to help the plant stay

active and in good working order from one day to the next. Petitioner, in all of its stations, carries out regular maintenance routines for all its units as per schedules.

iii. Petitioner has been carrying out shutdowns/ overhauls / Add-cap works in a planned and phased manner in Singrauli STPS station such that the maximum energy/ power is made available to the beneficiaries and at the same time achieves the required overall availability of the station as specified in the Commission's Regulations.

iv. It is being done in consultation with the beneficiaries at the RPCs and other relevant forums. In the past year, the station has been able to achieve PLF well above the normative availability specified in Tariff Regulations.

v. During the year 2021-22, with due consent at OCC forums of NRPC. NTPC had planned Overhauling for its units as follows:

Unit	**Maintenance**	**Scheduled Start of Work**	**Scheduled End Of Work**	**Duration (days)**
Unit 3 (200 MW)	**Annual Overhaul**	17th March 2021	24th April 2021	38
Unit 7 (500 MW)	**Annual Overhaul**	29th June 21	03rd Aug 21	35

vi. Accordingly, resources were mobilized, and equipment/ parts were ordered in advance to carry out the above-planned work.

vii. The overhauling work for Unit#3 (200 MW) was going on at full scale and was expected to be completed as planned. The mobilization of men and materials for the purpose was already in full swing.

viii. However, in the month of April, there have been developments which have affected not only industry but the country as a whole. The COVID-19 pandemic 2nd wave wreaked havoc on the overall social and economic healthcare as well as industrial sectors of our country. In early April 2021, a major *second wave* of COVID-19 infections took hold in the country, with destructive consequences. By late April, the country surpassed millions of active cases and suffered thousands of unfortunate deaths every day. It is believed to be the second-worst pandemic that has affected the country, almost after 100 years. The last menace was witnessed during the 1918 influenza outbreak, which claimed 12 million lives.

ix. The second wave placed a major strain on the healthcare system, including a shortage of liquid medical oxygen, logistic issues, and a lack of essential supplies. The need to "provide solutions in a very short time", doubled up efforts, especially towards the availability of medical oxygen, such as increases in production and the use of alternate sources to deliver oxygen supplies. A large number of industrial oxygen plants were employed for the purpose.

x. By 25 August 2021, it was said that India may be entering some kind of stage of endemicity where there is low-level transmission or moderate-

level transmission going on" but nothing as severe as before; in other words, the devastation seemed to subside.

xi. In this regard, the Government of India (GOI) took several proactive preventive and mitigating measures, starting with progressive tightening of travel, issuing of advisories for the members of the public, setting up quarantine facilities, contact tracing of persons infected by the virus and various social distancing measures. Several advisories have been issued to States and Union Territories (UTs) for taking necessary measures to subside the spread of this wave.

xii. All efforts were being taken up by the petitioner to prevent the spread of the pandemic. In order to ensure social distancing at the workplace and isolation measures in line with the guidelines issued by the Govt. of India/ State Govt, from time to time, a comprehensive SOP (standard operating procedure) was implemented to start the above-mentioned activities while ensuring the safety and security of employees and other stakeholders.

- All the persons entering the plant premises were scanned through the thermal scanner at the entry gate to screen off.
- Gate passes for workers were being issued only after medical examination.
- Workers coming from outside the district were being quarantined as per prevailing government guidelines.
- Washbasin/ arrangements for hand washing provided at different locations of the site.
- Regular sanitization of workplaces.

- Regular Awareness sessions on COVID-19 organized.
- Distribution of masks and gloves to contract workers and other associates done.
- Ensuring round-the-clock availability of Ambulance (Basic & Advance Life Support) oxygen supplies & and first aid kits.
- Necessary tie-ups with State administration have been done for COVID-19 testing of contract workers/associates as per requirement.

xiii. Despite best efforts, Singruli Station couldn't remain immune to the fallout of the 2nd wave of COVID. The prevalent wave had a devastating effect on the overall activities in the Singrauli station. There has been a significant spread of COVID-19 infections at the Singrauli station, which has also led to some unfortunate deaths among NTPC employees as well as other workforce. Further, the construction works have also suffered massively due to the effect of COVID on health and medical infrastructure. The unprecedented Oxygen Crisis due to COVID 2nd wave has disrupted the supply of oxygen for use in overhauling activities.

xiv. Due to the complete lockdown during the above-mentioned period, the workers/ labourers left the site, and there was complete demobilization of workers/ labourers bringing the overhauling activities to a standstill. Further, the supply of the material/equipment from manufacturers was also completely disrupted due to issues with supplies as well as logistics.

xv. Normalization of various works being carried on at Singrauli STPS, including overhauling activity of the units, was not fully achieved due to the fear of the spread of the pandemic in spite of adequate care and safety measures taken to contain the spread of the pandemic. Therefore, normal work progress required to meet the targeted timelines of activities was still in effect. All efforts were made by the petitioner to restart overhauling works progressively.

xvi. In spite of all efforts by the petitioner, the overhauling works with respect to Unit #3 and Unit #7, particularly Unit #3, which bore the major brunt of the fallout, at the instant station could not be normalized as the labourers/workforce had not turned up fully due to COVID 19 virus scare and the social distancing norms was also to be followed strictly at the work site based on Govt. guidelines. The fear of infection was more as the works involved the gathering of men in enclosed areas. The non-availability of the required number of Skilled/Semi-skilled labourers hampered the progress of work and caused a delay in completing the overhauling activities of Unit#3 and Unit#7, as detailed below:

Unit	Work start date	scheduled completion Date	Actual Completion Date	Delay in Days in completion
U3	17th Mar 21	24th Apr 21	3rd Aug 21	101
U7	29th Jun 21	3rd Aug-21	18th Aug-21	15

xvii. Due to the pandemic, the work of overhauling these two units was prolonged, and the units continued to be off-bar for a long duration leading to generation loss. The unit's loading was restored to full after the completion of work as per the date mentioned above.

xviii. The communications regarding the situation from contractors indicated the disruption of construction activity at the site as well as at the manufacturing facilities.

xix. The overhauling work for Unit#7 in the High Demand season was as per the contracted schedule, and the delay due to the COVID Lockdown/Restrictions in the later phase of COVID 2nd Wave an on affected the availability of this Unit's later part of the High Demand Season. The extension of the Unit 7 overhaul resulted in the loss of DC of167.64 MU, equivalent to a DC loss of 4.09% in high demand season.

xx. The delay due to COVID 2nd wave in the overhauling works of Unit#3 had a direct adverse effect on its availability during the High Demand Season. Had there been no COVID 2nd wave and subsequent fallout, the petitioner would have easily restored Unit#3 to its full capacity well before the start of High Demand Season (i.e., 01-June-21 to 30-Aug-21) & there would have been no DC Loss as demonstrated during previous years. It is submitted that the delay in the completion of overhauling works in Unit#3 due to COVID 2nd wave and the consequent loss of 242.67 MU availability during the High Demand Season was

unforeseen, unfortunate & was completely beyond the reasonable control of the Petitioner.

B) Delay in Revival of Unit #3 due to generator stator issue:

i. On 11.04.2021, as per the test routine of overhauling Unit#3 Generator. The activity of "STATOR SLOT WEDGES DEFLECTION TEST AND RECTIFICATION FOR LOOSE WEDGES. REPLACEMENT OF SLOT, HOT GAS AND COLD GAS RTDS" was carried out. During the process of the Generator Hydro test, leakage was observed from Bottom Bar no-46 & Bar 55B. To rectify the same, it was decided to immediately approach the OEM Manufacturer, i.e., M/S BHEL, for the Technical Team, skilled workforce, and specific tools & machines for the job, which are normally not available at the station.

ii. However, the spread of COVID 2nd wave during the same time disrupted the whole process, as the required men and materials from the OEM Supplier, i.e. M/S BHEL, could not reach Singrauli. Only by the end of June 2021 the BHEL team, along with special tools and machinery could, reach the station.

iii. Without losing any further time, the necessary works were carried out and the system was restored. Normally, this problem could have been rectified at a maximum within the duration of 15 days; however, it was due to the unfortunate fallout of the pandemic that such a delay occurred. It is humbly submitted that despite the best efforts, the petitioner couldn't prevent the unintentional delay caused due to the fallout of the COVID-19 2nd wave.

iv. The loss of generation during peak season (01.06.2021 to 03.08.2021) due to U#3 outage was nearly 242.67 MUs, equivalent to a DC loss of 5.92%. Had there been no COVID-19 spread and lockdown/restrictions, the petitioner would have revived Unit#3 in the scheduled 38 days, i.e., by 24.04.2021.

v. Similarly, it is submitted that the Loss of generation during peak season (01.06.2021 to 03.08.2021) due to the U#7 outage was nearly 167.64 MUs, equivalent to a DC loss of 4.09%.

vi. It is submitted that the delay in overhauling works in Unit#3 and Unit#7 due to COVID-19 fallout and consequent loss of 410.31 MUs availability during the High Demand Season was unintended, unfortunate, and beyond the reasonable control of the Petitioner.

vii. Singrauli STPS could not achieve the target of 85% DC in the High demand season as a result of COVID-19, 2nd wave, whose fallout was beyond the reasonable control of the petitioner as submitted in the above paras.

viii. For recovery of full AFC corresponding to the High Demand Season (June 2021, July 2021, and August 2021) for Singrauli STPS, the total permissible outage (@ 15%) is equivalent to 610 MUs in the said three months with respect total 4067 MUs (@ 100% availability) for 2000 MW capacity of Singrauli STPS.

ix. Singrauli STPS has achieved an Availability of 72.19% during the High Demand season of FY 2021-22, and a loss of 12.81% with respect to the Normative Availability factor of 85% is equivalent to 524.78 MUs during the high-demand season, out of which only 410.31 MUs is due to effect of COVID 2nd wave on overhauling works of Unit#3 and Unit#7.

x. As submitted in the preceding paras above, had there been no COVID-19 spread, lockdown, and subsequent fallout, NTPC would have completed the overhauling works of Unit#3 well before High Demand Season & revived Unit#7 as per schedule without the delay of 15 days (as done in other units for similar works). Accordingly, the effective availability achievement during the High Demand Season for Singrauli STPS would have been 410.31 MUs more (242.67 MUs for Unit#3 & 167.64 MUs for Unit#7).

xi. It is requested that the Commission be pleased to consider the unforeseen situation in which the petitioner was struggling, on one hand, to maintain a reliable and continuous supply of power from its stations, including Singrauli STPS, during the unprecedented health and humanitarian crisis, and at the same time, trying its best to revive all its Units of the station to their full capacity, notwithstanding the limitations due to fallout of the COVID situation. It is, therefore, prayed that the Commission be pleased to relax the provision of achieving the Target Availability in the High Demand season of FY 2021-22 for Singrauli STPS & allow the recovery of Deemed AFC equivalent to 82.28% during the high demand period.

xii. It may be pertinent to mention here that vide letters dated 19.03.2020 and 24.03.2020, NTPC has approached the Commission to defer the implementation of the provisions of Regulations 42 of the Tariff Regulations 2019, which inter alia provides for recovery of full fixed charges by achieving target availability separately for High Demand Season and Low Demand season.

3. In view of the above submissions, it was prayed that the Commission allow a deemed availability of 82.28% for Singrauli STPS for the period from 01.06.2021 to 30.08.2021.

Replies and Rejoinders in the petition.

4. The Respondents, TPDDL, BRPL, and BYPL, have filed their replies vide affidavit dated 22.8.2023, 2.1.2024, and 2.1.2024, respectively. The Petitioner vide affidavit dated 23.1.2024 has filed its rejoinder to the above replies of BRPL and BYPL. However, the Petitioner has not filed its rejoinder to the reply of TPDDL.

Hearings in the matter dated 15.5.2023

5. The matter was heard on 15.5.2023. The Commission, after hearing the learned counsel for the Petitioner, admitted the Petition and directed the Petitioner to submit the following additional expenditure:

(i) The specific dates, viz. scheduled start and completion of the work along with the actual dates of work started and work completion;
(ii) The scope of work along with a copy of work order issued;
(iii) The clarification based on above information {sub para (a) and (b)} for delay of 101 days for Unit-3, in comparison to delay of 15 days for Unit-7;
(iv) The reason for planning annual overhaul maintenance during the high-demand season;
(v)Provide the PAF envisaged during high inflow season considering the above maintenance against the actual PAF achieved.

6. The Petitioner, vide affidavit dated 20.6.2023, has submitted the above information.

Hearing dated 31.7.2023, 22.09.2023, 2.2.2024 and 15.3.2024

7. The matter was heard on 31.7.2023, 22.09.2023, 2.2.2024 and 15.3.2024. The Commission, after hearing the parties, reserved the petition for order on 15.3.2024.

Analysis and Decision

8. We have perused and considered the submissions of the parties. The claim of the Petitioner is for the deemed availability of the generating station on the basis that the planned Annual Overhauling for Singrauli STPS-2000MW was delayed beyond the scheduled time period due to the COVID-19 lockdown, which was beyond the control of the Petitioner. The Petitioner has submitted that after considering the loss in energy generation due to the COVID-19 lockdown, the PAF works out to 82.28% during the High demand season of FY2021-22. Accordingly, the Petitioner has prayed to grant deemed availability of 82.28% during the high-demand season.

9. As per the 2019 Tariff Regulations, to recover full AFC, the Petitioner must achieve Target Availability separately for two seasons, namely High Demand Season and Low Demand Season.

10. Regulation 42 of the Tariff Regulations 2019 provides as under:

> *"42. Computation and Payment of Capacity Charge for Thermal Generating Stations:*
> *(1) The fixed cost of a thermal generating station shall be computed on annual basis based on the norms specified under these regulations and recovered on monthly basis under capacity charge. The total capacity charge payable for a generating station shall be shared by its beneficiaries as per their respective percentage share or allocation in the capacity of the generating station. The capacity charge shall be recovered under two segments of the year,*
> *i.e. High Demand Season (period of three months) and Low Demand Season (period of remaining nine months), and within each season in two*

parts viz., Capacity Charge for Peak Hours of the month and Capacity Charge for Off- Peak Hours of the month as follows:

…

(3) Normative Plant Availability Factor for "Peak" and "Off-Peak" Hours in a month shall be equivalent to the NAPAF specified in Clause (A) of Regulation 49 of these regulations. The number of hours of "Peak" and "Off-Peak" periods during a day shall be four and twenty respectively. The hours of Peak and Off-Peak periods during a day shall be declared by the concerned RLDC at least a week in advance. The High Demand Season (period of three months, consecutive or otherwise) and Low Demand Season (period of remaining nine months, consecutive or otherwise) in a region, shall be declared by the concerned RLDC, at least six months in advance:

Provided that RLDC, after duly considering the comments of the concerned stakeholders, shalldeclare Peak Hours and High Demand Season in such a way as to coincide with the majorityof the Peak Hours and High Demand Season of the region to the maximum extent possible:

Provided further that in respect of a generating station having beneficiaries across different regions, the High Demand Season and the Peak Hours shall correspond to the High Demand Season and Peak Hours of the region in which majority of its beneficiaries, in terms of percentage of allocation of share, are located.

4) Any under-recovery or over-recovery of Capacity Charges as a result of under- achievement or over-achievement, vis-à-vis the NAPAF in Peak and Off-Peak Hours of a Season (High Demand Season or Low Demand Season, as the case may be) shall not be adjusted with under-achievement or over-achievement, vis-à-vis the NAPAF in Peak and Off-Peak Hours of the other Season… "

11. The Petitioner had submitted that it had planned Annual Overhauling for Unit-3 (200 MW) and Unit-7 (500 MW) of Singrauli STPS-2000MW from 17.3.2021 to 24.04.2021 and 29.06.2021 to 03.08.2021, i.e., for a period of 38 days and 35 days, respectively. During the commencement of overhauling, there were very few cases of COVID-19 and overhaul was going on as per schedule. However, in mid-April, the COVID cases started to surge in the instant station on account of the 2nd wave of the COVID-19 pandemic. It is submitted that due to the pandemic, the work of overhauling these two

units was prolonged, and the units continued to be off-bar for a long duration, leading to generation loss. Overhauling work for Unit#7 in the High Demand season was as per the contracted schedule, and the delay due to the COVID Lockdown/Restrictions in the later phase of COVID 2nd wave had an effect on the availability of this Unit in the later part of High Demand Season.

12. Petitioner further submitted that during the 2nd wave of COVID, there was a serious scarcity in the supply of Industrial Oxygen. The prohibition on the supply of oxygen for industrial purposes by the Central Government under the Disaster Management Act affected the repair works at the site, which has led to the underachievement of availability.

13. The Petitioner further submitted that due to the onset of COVID-19 and the consequent lockdown, the Petitioner's planned overhauling work was delayed by 101 days and 15 days for Unit-3 and Unit-7, respectively. The above delay is akin to 'Force Majeure' as per Regulation 3 (25) of the Tariff Regulations, 2019, and hence, the Petitioner has requested the invocation of Regulations 76 and 77 of the Tariff Regulations, 2019.

14. The Petitioner has sought relief to grant deemed availability under Regulation 76 and Regulation 77 of the 2019 Tariff Regulations.

15. Regulation 76 of the 2019 Tariff Regulations provides as under: -

> ***"76. 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 byan interested person."

16. The Power to Relax under the 2019 Tariff Regulations is in general terms, and its exercise is discretionary. As regards the exercise of power to relax, the APTEL vide its judgment dated 25.3.2011in appeal No. 130/2009 (RGPPL v. CERC & anr.) has observed the following: -

> *"18.1 The Regulations of the Central Commission and the decision of the Tribunal and the Supreme Court confer the judicial discretion to the Central Commission to exercise power to relax in exceptional case. However, while exercising the power to relax there should be sufficient reason to justify the relaxation and non-exercise of discretion would cause hardship and injustice to a party or lead to unjust result. It has also to be established by the party that the circumstances are not created due to act of omission or commission attributable to the party claiming relaxation. Further, the reasons justifying relaxation have to be recorded in writing."*

17. It is clear from the above observation of the APTEL that the Central Commission has discretionary power to relax norms based on the peculiar facts and circumstances of the case. However, there has to be asufficient and reasonable justification, and such a case has to be one of those exceptions to the general rule. There must also be sufficient reason to justify the Power to relax. We find that the order of the Ministry of Home Affairs, dated 24.3.2020, clearly exempted the units and services relating to generation, transmission, and distribution from the lockdown. In view of the above, we are of the considered view that such relaxation cannot be allowed to the generating station by burdening the extra cost upon the beneficiaries. Accordingly, we are not inclined to invoke our power under Regulation 76 of the 2019 Tariff Regulation.

18. Regulation 77 of the 2019 Tariff Regulations provides as under: -

> ***"77. Power to Remove Difficulty:*** *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 theseregulations.*

19. It is our considered view that the power to remove difficulty is to be exercised only when there is difficulty in effecting the Regulations and not when difficulty is caused by the application of the Regulations. Thus, we are not inclined to exercise our power to remove difficulties in the given facts and circumstances.

20. Further, it must be mentioned that the Petitioner had filed Petition No. 225/MP/2022 with a similar issue wherein the Petitioner had claimed a declaration of Deemed Availability for the period from 10.05.2021 to 22.06.2021 in respect of Rihand Super Thermal Power Station Stage-II (2X500 MW) due to COVID-19 lockdown on account of 'Force Majeure' as per Regulation 3(25) of the Tariff Regulations, 2019. The Commission, vide order dated 20.1.2024, in the said Petition, had not considered the COVID-19 as a Force Majeure event in terms of the order of the Ministry of Home Affairs dated 24.3.2020, whereby the units and services relating to generation, transmission, and distribution were exempted from the restrictions imposed on account of the COVID-19 lockdown.

21. In light of the above deliberations and to balance the interests of the generator and the beneficiaries, the Commission is of the considered view that it is not a fit case for the Commission to invoke Regulations 76 and 77 of the 2019 Tariff Regulations.

22. Accordingly, we are not inclined to grant deemed availability of equal to 82.28 %, as claimed by the Petitioner during the High Demand Season of FY 2021-22.

23. Petition No. 370/MP/2022 is disposed of based on the above discussions and findings.

Sd/-
(P.K. Singh)
Member

Sd/-
(Jishnu Barua)
Chairperson