

CENTRAL ELECTRICITY REGULATORY COMMISSION NEW DELHI

Petition No.46/MP/2018
(on remand)

Coram:

Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V, Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Date of Order: 25th August, 2026

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 Conditions of Tariff) Regulations, 2014 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for relaxation of the Normative Annual Plant Availability Factor (NAPAF) for specific NTPC thermal generating stations on account of non-availability of coal.

And

In the matter of:

Implementation of the APTEL judgment dated 13.1.2026 in Appeal No. 399/2019 (NTPC v CERC & ors.) against the Commission's order dated 28.8.2019 in Petition No. 46/MP/2018 (*on remand*).

And

In the matter of:

NTPC Limited
NTPC Bhawan, Core-7, Scope Complex 7,
Institutional Area, Lodhi Road New Delhi-110003

.....Petitioner

Vs

1. Chhattisgarh State Power Distribution Company Limited,
P.O. Sundernagar, Danganiya, Raipur – 492013
2. Madhya Pradesh Power Management Company Limited,
Sakti Bhawan, Vidyut Nagar, Rampur, Jabalpur – 110003
3. Maharashtra State Electricity Distribution Company,
Prakashgad, Bandra (East), Mumbai – 400051.



4. Gujarat Urja Vikas Nigam Limited, Sardar Patel Vidyut Bhawan,
Race Course, Vadodara
Gujarat-390007
5. Electricity Department, Govt. Of Goa,
Vidyut Bhawan, Panaji,
Goa – 403001
6. Electricity Department, Administration of Daman & Diu,
Daman – 396210
7. Electricity Department, Administration of Dadra & Nagar Haveli,
Silvasa – 396230
8. A.P. Eastern Power Distribution Company Ltd.,
P&T Colony, Seethammadhara,
Vishakapatnam – 503013
9. A.P. Southern Power Distribution Company Ltd.,
Tiruchanur Road, Kesavayana Gunta, Tirupati – 517501
10. Telangana Northern Power Distribution Company Ltd.,
H.No. 2-5-31/2, Vidyut Bhavan, Nakkalagutta,
Hanamkonda, Warangal – 506001
11. Telangana State Southern Power Distribution Company Ltd.,
Mint Compound, Corporate Office, Hyderabad – 500063.
12. Tamil Nadu Generation & Distribution Corporation Ltd.,
NPKRR Maaligai, 144, Anna Salai, Chennai – 600002.
13. Bangalore Electricity Supply Company Ltd.,
Krishan Rajendra Circle,
Bangalore – 506001
14. Mangalore Electricity Supply Company Ltd.,
MESCOM Bhavana, Corporate Office Bejjaikevai
Cross Road, Mangalore – 575004
15. Chamundeshwari Electricity Supply Company Ltd.,
Corporateoffice, No.29, Ground Floor,
Kaveri Grameena Bank Road Vijayanagar 2nd Stage,
Mysore – 570017
16. Gulbarga Electricity Supply Company Ltd.,
Main Road, Gulbarga – 585102
17. Hubli Electricity Supply Company Ltd.
PB Raod, Hubli – 580025.



ORDER

The Petition No. 46/MP/2018 was filed by the Petitioner seeking relaxation of the normative NAPAF of 85% for FYs 2017-18 and 2018-19 in respect of Mouda Stage-I (2×500 MW), Mouda Stage-II (2×660 MW), Solapur TPS (2×660 MW) and Simhadri Stage-I (2×500 MW), and treatment of the shortfall between normative NAPAF and actual declared availability, attributable to inadequate coal supply from linked mines and restrictions on coal imports, as deemed generation for recovery of fixed charges under the proviso to Regulation 36(A) of the Tariff Regulations, 2014. The Commission, vide order dated 28.8.2019, rejected the prayer, as under:

“

51. Further, the Commission in Petition No 68/MP/2018 w.r.t. NTECL vs APTRANSCO & 14 others, vide order dated 26.6.2019 has rejected the revision of NAPAF for Vallur Thermal Power Station (3X500MW) for the period from 01.04.2017 to 31.03.2019 with the following observations: -

“19. Further, the Commission in a similar prayer made by the NTPC-SAIL in Petition No.245/2010 for relaxation of Target Availability norms for the period 22.4.2009 to 31.3.2010 for non-supply/shortage of coal to its generating station, by its order dated 27.5.2011 had disposed of the petition rejecting the prayer of NTPC-SAIL with the following observations:

“15.We are of the view that the petitioner would be entitled to recover the full fixed charges only if the generating station perform to the normative availability and the risk, if any, for non-performance on account of failure to arrange coal after the date of commercial operation, is required to be borne by the petitioner and it would be unreasonable to burden the beneficiaries on this count.

16. The responsibility and the risk for arranging fuel for the generating station lies with the generator. In the instant case, the

supply of coal (annual coal linkage of 2.4 million MT) to the generating station is governed by the Fuel Supply Agreement dated 3.1.2009 between the petitioner and SECL. For the non-supply/ short supply of coal to the generating station in violation of the FSA, the petitioner has the recourse to seek appropriate remedy in terms of the relevant clauses in the agreement. Hence, the prayer of the petitioner for relaxation of target availability fails on this count.”

20. From the above discussions and observations it is clear that the question of reasonableness of transferring the cost implication without commensurate benefits due to shortage of coal to the beneficiaries needs to be seen in the context of the fact that the beneficiaries also do not have any control over coal supplies. It is the responsibility of the generator to arrange the coal and bear the associated risks involved. Further, since the petitioner as well as the coal supply companies are owned by the Government, it would not be appropriate to pass on the fuel supply risks to the beneficiaries.

21. The power of relaxation under the 2014 Tariff Regulations is in general terms and its exercise is discretionary. It is settled law that exercise of discretion must not be arbitrary, must be exercised reasonably and with circumspection, consistent with justice, equity and good conscience, always in keeping with the given facts and circumstances of a case. Based on the above discussions, we hold that the submission of the petitioner for relaxation of Normative Annual Plant Availability Factor (NAPAF) for 2017-19 period by invoking Commission’s powers under Regulation 36 and Regulation 54 “Power to Relax” under CERC Tariff Regulations, 2014 has no merit and therefore is rejected.”

52. From the above decisions of the Commission, it is clear that the Commission has consistently taken the view that the consequences of failure to arrange fuel by the petitioner cannot be passed on to the beneficiaries, especially when the Petitioner does not appear to have taken timely action to ensure enough supply of fuel so as to achieve the target PAF. The 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 the responsibility of the generator to arrange the coal and bear the associated risks involved. Further, since the Petitioner as well as the coal supply companies are both owned/ controlled by the Government, it would not be appropriate to pass on the fuel supply risks to the beneficiaries.

53. 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 NTPC generating stations (to the extent of coal actually available) as deemed availability for the purpose of computing fixed charges payable to NTPC is not admissible and hence not allowed.

54. The second prayer of the petitioner to consider provision similar to Regulation 21 (4) of Tariff Regulations 2009 to enable the coal generation to maximize their availability during the peak hours so as to support the grid demand is beyond the scope of Tariff Regulations, 2014 and as, such cannot be considered in the instant petition.

.....”

2. Aggrieved by the said order, the Petitioner, NTPC, filed Appeal No. 399 of 2019 before the Hon'ble Appellate Tribunal for Electricity (APTEL), inter alia, seeking setting aside of the Commission's order dated 28.8.2019 and relaxation of NAPAF for FYs 2017-18 and 2018-19 by treating the shortfall in availability due to non-availability of coal as deemed generation for recovery of fixed charges. The Hon'ble APTEL, vide judgment dated 13.1.2026 in Appeal No. 399 of 2019, set aside the Commission's order dated 28.8.2019, observing as under:

“

61. We may note that once a coordinate bench of a court/ tribunal has rendered a judgment on certain facts or has settled a question of law, a subsequent bench of equal strength is bound to follow that judgment in a subsequent case involving identical facts and identical issues. Such discipline to be adhered to by the coordinate benches has been reiterated by the Supreme Court in a catena of judgments, the latest being the judgment in Adani Power Ltd. and Anr. v. Union of India and Ors. pronounced on 05.01.2026. The relevant portion of the said judgment is reproduced hereinbelow: -

“77. The discipline expected of coordinate Benches does not permit such an approach. This Court, in State of Uttar Pradesh v. Ajay Kumar Sharma (2016) 15 SCC 289, has reiterated that once a coordinate Bench of a High Court has settled a question of law, a subsequent Bench of equal strength is bound to follow that view when confronted with the same issue. If the later Bench believes that the earlier view is so manifestly erroneous or inapplicable that it ought not to be followed, the later Bench must refer the matter to a larger Bench for reconsideration. What it cannot do is to sidestep or whittle down the earlier pronouncement by confining it artificially or by treating it as a fact-specific indulgence.

78. The discipline of precedent is not a matter of personal predilection; it is an institutional necessity. Stare decisis et non quieta movere which means to stand by what is decided and not to disturb what is settled, is a working rule which secures stability, predictability and respect for judicial outcomes. The law cannot change with the change of the Bench.”

(Emphasis supplied)

62. Thus, it is not permissible for us in this appeal to sidestep or ignore the earlier pronouncement of this Tribunal in Appeal No.318/2019 (Vallur Judgment) which has been rendered on identical facts and issues. We are bound to follow the findings arrived at therein and the ratio of that judgment.

63. In view of above deliberation, we are unable to sustain the impugned order of the Commission as it has erroneously refused to invoke its power to relax under Regulation 54 of 2014 CERC Regulations despite there being sufficient ground for such invocation. The impugned order is, thus, set aside. We hereby direct the Commission to provide relaxation to the appellant by reducing the figure of NAPAF for its thermal power plants mentioned in Paragraph no.2 of the judgment, for recovery of fixed charges from 85% to 83% for the period from 01.04.2017 to 31.03.2019

64. The appeal stands allowed to the above extent.

.....”



Proceedings:

3. On 24.4.2026, the learned counsel for the Petitioner submitted that the Hon'ble APTEL, vide Judgment dated 13.1.2026 in Appeal No. 399 of 2019, had remanded the matter to the Commission with a direction to reduce the NAPAF from 85% to 83% for the specified thermal generating stations for the period from 1.4.2017 to 31.3.2019 for recovery of fixed charges. The parties sought time to file written submissions, which was granted, and the matter was listed for hearing on 21.5.2026. On 27.5.2026, the Petitioner submitted that MSEDCL had filed a Civil Appeal before the Hon'ble Supreme Court against the APTEL Judgment and, in the absence of any interim order, requested the Commission to proceed with the matter subject to the outcome of the proceedings before the Hon'ble Supreme Court. MPPMCL also sought time to file its submissions, stating that it was in the process of filing an appeal. The Commission directed the Petitioner to furnish, on affidavit, additional information and the status of the proceedings before the Hon'ble Supreme Court. The Respondents were permitted to file their replies by 15.7.2026 and the Petitioner its rejoinder by 22.7.2026. The matter was thereafter listed for hearing on 28.7.2026. On 30.7.2026, the learned counsels for the Petitioner and the Respondents made detailed submissions and reiterated their respective pleadings. After hearing the parties at length, the Commission reserved the matter for order.

Written submissions by the Petitioner

4. The Petitioner, vide affidavit dated 12.5.2026, mainly submitted that the shortfall in Plant Availability Factor (PAF) during FYs 2017-18 and 2018-19 was primarily attributable to sustained uncertainty and shortage in assured coal supply, arising from the Modified New Coal Distribution Policy, 2013, SHAKTI Policy, 2017, and Government directives restricting coal imports. The Petitioner submitted that all four stations had PAF below 85% in FY 2017-18, whereas in FY 2018-19 only Mouda Stage-II had PAF below 85% as under:

Financial Year	Mouda, Stage I (PAF %)	Mouda, Stage II (PAF %)	Solapur (PAF %)	Simhadri, Stage I (PAF %)
FY 2017-18	76.73	43.90	49.67	81.97
FY 2018-19	85.01	78.31	86.45	88.68

[Plant Availability Factor (PAF) – FY 2017-18 and FY 2018-19]



Accordingly, in compliance with the Hon'ble APTEL's Judgment dated 13.1.2026, NTPC sought relaxation of NAPAF from 85% to 83% under Regulation 54 of the Tariff Regulations, 2014, for FY 2017-18 in respect of all four stations and for FY 2018-19 in respect of Mouda Stage-II, along with consequential recovery of fixed charges and carrying cost from the beneficiaries.

5. Further, the Petitioner, vide affidavit dated 1.7.2026, mainly submitted that the variation in PAF figures arose because the data furnished in Petition No. 46/MP/2018 was based on cumulative availability up to 31.12.2017, whereas the figures reported in Appeal No. 399 of 2019 represented actual PAF for the entire FY 2017-18. NTPC furnished station-wise and year-wise details of PAF, scheduled generation, actual generation/ supply and coal consumption for FYs 2017-18 and 2018-19. It reiterated that the shortfall in NAPAF was directly attributable to coal shortage arising from the Modified New Coal Distribution Policy, 2013, SHAKTI Policy, 2017 and Government directives restricting coal imports, and was not attributable to any act, omission or operational deficiency on its part. NTPC further submitted the consequential impact and beneficiary-wise details of additional fixed charges arising from reduction of NAPAF from 85% to 83%. It clarified that its claim was confined strictly to implementation of the APTEL Judgment dated 13.1.2026 and did not include any claim for deemed generation or further relaxation based on actual availability. NTPC also submitted that no interim order or stay had been granted by the Hon'ble Supreme Court in Civil Appeal No. 4550 of 2026 filed by NTPC or Civil Appeal (Diary No. 15918 of 2026) filed by MSEDCL.

Written submissions by the Respondents

6. MSEDCL, vide affidavit dated 12.5.2026, mainly submitted that it had filed Civil Appeal (Diary No. 15918 of 2026) before the Hon'ble Supreme Court on 14.3.2026 challenging the APTEL Judgment dated 13.1.2026, including the reduction of NAPAF. MSEDCL requested that any adjudication pursuant to the remand and any consequential computation or recovery of fixed charges be made subject to the final outcome of the said Civil Appeal. Further, MSEDCL, vide affidavit dated 15.7.2026, submitted that NTPC had not furnished detailed station-wise computation sheets and underlying calculations supporting the additional fixed charges claimed pursuant to reduction of NAPAF from 85% to 83%. MSEDCL accordingly requested NTPC to place on record the detailed station-wise

and beneficiary-wise computation sheets, along with the methodology and workings adopted, to enable effective prudence check and verification by the Commission.

7. GUVNL, vide affidavit dated 15.7.2026, mainly submitted that NTPC had not furnished the complete and verifiable station-wise and year-wise details of Declared Capacity, beneficiary scheduling, actual generation/ supply and PAF, as well as the unit-wise outage details, coal stock, coal receipt and consumption, availability declarations and RLDC data directed by the Commission. GUVNL contended that, in the absence of such supporting records, NTPC's assertion that the shortfall in NAPAF was solely due to coal shortage beyond its control remained unsubstantiated and could not be accepted.

8. MPPMCL, vide affidavit dated 15.7.2026, mainly submitted that the Hon'ble APTEL had found that NTPC failed to establish that the Government of India directives dated 20.10.2015, 3.5.2017 and 4.5.2017 materially affected coal availability and also failed to establish the efforts undertaken for optimal utilisation of available coal to enhance Plant availability and achieve the normative NAPAF. MPPMCL further submitted that it had filed Civil Appeal (Diary No. 29878 of 2026) before the Hon'ble Supreme Court on 13.5.2026, challenging the APTEL Judgment on the issue of relaxation in NAPAF, and requested the Commission to undertake appropriate prudence check of NTPC's claim for additional fixed charges, including verification of the station-wise and beneficiary-wise impact, subject to the final outcome of the said Civil Appeal.

Rejoinder by the Petitioner

9. The Petitioner, in its rejoinder affidavit dated 22.7.2026, mainly submitted that the Commission had already granted the same relaxation of NAPAF from 85% to 83% for the period from 1.4.2017 to 31.3.2019 in respect of Vallur Thermal Power Station, pursuant to the Hon'ble APTEL's Judgment dated 8.4.2025 in Appeal No. 318 of 2019, which has attained finality. NTPC further submitted that it had furnished the station-wise data and computations sought by the Commission and that MPPMCL could not seek reconsideration of the findings of the Hon'ble APTEL before the Commission. It stated that MPPMCL's remedy, if any, lies before the Hon'ble Supreme Court in the Civil Appeal filed by it, in which no interim order has been passed.

Analysis and Decision

10. We have considered the submissions of the Petitioner and the Respondents, the additional information furnished by the Petitioner, the rejoinder and the relevant provisions of the Tariff Regulations, 2014. The issue for consideration is limited to implementation of the judgment dated 13.1.2026 of the Hon'ble APTEL in Appeal No. 399 of 2019.

11. Regulation 36(A) of the Tariff Regulations, 2014 specified the normative NAPAF for thermal generating stations at 85%. The proviso provided for a NAPAF of 83% for recovery of fixed charges, in view of the shortage of coal and uncertainty of assured coal supply on a sustained basis. The Commission subsequently restored the NAPAF to 85% with effect from 1.4.2017. The Petitioner thereafter sought relaxation of NAPAF on account of continued shortage of coal and restrictions on coal imports. The Commission, vide order dated 28.8.2019, rejected the prayer. Aggrieved by the said order, the Petitioner approached the Hon'ble APTEL. The Hon'ble APTEL, vide judgment dated 13.1.2026, set aside the Commission's order and, following its earlier judgment dated 8.4.2025 in Appeal No. 318 of 2019 concerning Vallur Thermal Power Station, directed reduction of NAPAF from 85% to 83% for the period from 1.4.2017 to 31.3.2019, for the purpose of recovery of fixed charges, in respect of the generating stations covered by the said judgment. The Hon'ble APTEL observed that the Commission had erroneously declined to exercise its power to relax under Regulation 54 of the Tariff Regulations, 2014 despite sufficient grounds for such invocation. Accordingly, the Petitioner's entitlement to the said relaxation stands settled by the judgment of the Hon'ble APTEL.

12. The Respondents have submitted that appeals against the judgment dated 13.1.2026 are pending before the Hon'ble Supreme Court and that the consequential recovery should be subject to the outcome thereof. It is, however, not disputed that no interim order or stay against the operation of the said judgment has been granted by the Hon'ble Supreme Court. Therefore, the judgment of the Hon'ble APTEL continues to operate and is required to be implemented. The pendency of the Civil Appeals, in the absence of any order staying the judgment, does not preclude its implementation.

13. The PAF furnished by the Petitioner indicates that all four generating stations had PAF below 85% during FY 2017-18, whereas during FY 2018-19 only Mouda Stage-II had PAF below 85%. Accordingly, the benefit of the reduced NAPAF of 83% shall be available only to the extent of fixed charges recoverable with reference to the revised NAPAF. Where

the actual PAF is above 83%, no additional fixed charges shall be admissible merely on account of reduction of NAPAF from 85% to 83%. The Petitioner has also clarified that its claim is confined to implementation of the Hon'ble APTEL's judgment and does not include any claim for deemed generation or any further relaxation based on actual availability.

14. In view of the foregoing, and in compliance with the judgment dated 13.1.2026 of the Hon'ble APTEL, the Commission, in exercise of the power under Regulation 54 read with Regulation 36(A) (a) of the 2014 Tariff Regulations, relaxes the NAPAF from 85% to 83%, for the purpose of recovery of fixed charges, for the period from 1.4.2017 to 31.3.2018 in respect of Mouda Stage-I (2×500 MW), Mouda Stage-II (2×660 MW), Solapur TPS (2×660 MW) and Simhadri Stage-I (2×500 MW), and for FY 2018-19 in respect of Mouda Stage-II (2×660 MW) only. The Petitioner shall revise the annual fixed charge computations accordingly, based on the applicable actual PAF. The Respondents shall give effect to the revised computations. The resulting amount shall be recovered in accordance with Regulation 8(13) of the Tariff Regulation 2014 from the date of this order. Since Civil Appeal No. 4550 of 2026 filed by NTPC, Civil Appeal (Diary No. 15918 of 2026) filed by MSEDCL and Civil Appeal (Diary No. 29878 of 2026) filed by MPPMCL are pending before the Hon'ble Supreme Court, and no interim order staying the operation of the judgment dated 13.1.2026 has been brought on record, the implementation of this order and consequential recovery of fixed charges shall remain subject to the final outcome of the said proceedings. Any amount recovered pursuant to this order shall be subject to consequential adjustment, as may be directed by the Hon'ble Supreme Court.

15. In view of the above, the judgment dated 13.1.2026 of the Hon'ble APTEL in Appeal No. 399 of 2019 stands implemented to the extent specified herein.

Sd/-	Sd/-	Sd/-	Sd/-
(Ravinder Singh Dhillon) Member	(Harish Dudani) Member	(Ramesh Babu V.) Member	(Jishnu Barua) Chairperson

