

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.68/MP/2018

Coram:

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

Date of Order: 14th January, 2026

In the matter of:

Petition under Section 62 and 79 (1) (a) of the Electricity Act, 2003 read with Chapter-V of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 and Regulations 36 and 54 of the Central Electricity Regulatory Commission (Terms and Condition of Tariff) Regulations, 2014 for revision of NAPAF of Vallur Thermal Power Station (1500 MW) for the period 2017-19.

And

In the matter of:

Implementation of the APTEL judgment dated 8.4.2025 in Appeal No. 318/2019 (NTECL v CERC & ors.) against the Commission's order dated 26.6.2019 in Petition No. 68/MP/2018 (*on remand*).

And

In the matter of:

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

.....Petitioner

Vs

1. Andhra Pradesh Transmission Corporation Limited
Vidyut Soudha, Khairatabad, Hyderabad-500082
2. A.P. Eastern Power Distribution Company Limited,
P&T Colony, Seethammadhara, Vishakapatnam-503013
3. A.P. Southern Power Distribution Company Limited,
Beside Srinivassakalyana Mandapam, Tiruchanur Road,
Kesavayana Gunta, Tirupati- 517501
4. Transmission Corporation of Telangana Limited,
Vidyut Soudha Khairatabad, Hyderabad – 500082



5. Telangana State Southern Power Distribution Company Limited,
Mint Compound, Corporate Office, Hyderabad – 500063.
6. Telangana Northern Power Distribution Company Limited,
H.No. 2-5-31/2, Vidyut Bhavan, Nakkalagutta, Hanamkonda,
Warangal – 506001
7. Power Company of Karnataka Limited,
KPTCL complex, KaveriBhawan, Bengaluru- 560009
8. Bangalore Electricity Supply Company Limited,
Krishna Rajendra circle, Bangalore- 506001
9. Mangalore Electricity Supply Company Limited,
MESCOM Bhavana, Corporate Office, Bejai Kevai Cross Road
Mangalore-575004
10. Chamundeshwari Electricity Supply Company Limited,
Corporate Office, No 29, Ground Floor, Kaveri Grameena Bank Road
Vijayanagar 2nd Stage, Mysore- 570017
11. Gulbarga Electricity Supply Company Limited,
Main Road, Gulbarga- 585102
12. Hubli Electricity Supply Company Limited,
Navanagar, PB Road, Hubli- 580025
13. Kerala State Electricity Board Limited,
Vaidyuthi Bhavanam, Pattom, Thiruvananthapuram- 695004
14. Tamil Nadu Generation & Distribution Corporation Limited,
NPKRR Maaligai, 144, Anna Salai, Chennai- 600002
15. Electricity Department
Govt. of Puducherry, 137, Netaji Subhash Chandra Bose Salai,
Puducherry- 605001

... Respondents

ORDER

Petition No. 68/MP/2018 was filed by the Petitioner, NTPC Tamil Nadu Energy Company Limited (in short 'NTECL') seeking relaxation of the Normative Annual Plant Availability Factor (NAPAF) from 85% to 83% for the period 2017-19, in respect of its Vallur Thermal Power Station, under Regulation 36(A)(a) read with Regulation 54 of the 2014 Tariff Regulations, on the ground that due to less realization/ availability of coal from the linked mines coupled with ban on import by MOP GOI, it could not



declare availability of 85%, thereby, resulting in shortfall in the recovery of the annual fixed charges. However, this prayer of the Petitioner was rejected by the Commission vide its order dated 26.6.2019, as under:

“16. 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. As per 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.

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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.”

2. Aggrieved by the above order, the Petitioner filed Appeal No. 318/2019 before the Appellate Tribunal for Electricity (APTEL) and the APTEL vide its judgment dated 8.4.2025, set aside the Commission's order dated 26.6.2019, observing as under:

“19. We have already noted herein above that by attaching proviso to Regulation 36 (A) of 2014 CERC Tariff Regulations, the Commission had reduced the NAPAF figure for all thermal generating stations based on domestic coal from 85% to 83% in view of the shortage of coal and uncertainty of assured coal supply on sustained basis faced by these generating stations till 31st March, 2017. The proviso provided for review of the situation after 1st April, 2017 based on actual feedback. It cannot be gainsaid that the office memorandum dated 26th July, 2013 issued by Government of India thereby revising the new coal distribution policy had created such situation for the thermal power plants based



on domestic coal as the assured annual coal quantity was restricted to 65% for the Financial Year 2014-15, 67% for Financial Year 2015-16 and 75% for Financial Year 2016-17. It is not disputed that from 1st April, 2017 also, the domestic coal supply to the thermal power plant was only to the extent of 63.75% of the installed capacity. However, the review of the situation as contemplated by the proviso attached to Regulation 36(A) has not been conducted by the Commission. Nothing has been brought on record on behalf of Respondent No. 14 to show that entire assured quantity of coal as per FSA dated 24th July, 2013 was being supplied to the Appellant by MCL w.e.f. 1st April, 2017.

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23. The Appellant neither had adequate domestic coal supply from MCL as assured under the FSA nor could it take steps to import coal from outside India. The situation was completely beyond its control. Therefore, in these circumstances, the Appellant had made out a good case for invocation of power to relax under Regulation 54 of the Commission for revision of target availability factor from 85% to 83% from 1st April, 2017 onwards. In our opinion, it was a fit case in which the Commission ought to have exercised its power under Regulation 54 of 2014 CERC Regulations for relaxation of the target availability factor for the Appellant's Vallur thermal power plant

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29. In the instant case, manifestly, the Commission has not considered the fact that the Appellant was genuinely experiencing shortfall in domestic coal for its Vallur thermal power plant despite making endeavors to augment supply of domestic coal for the said plant. The Commission has also failed to consider the fact that the situation in which the Appellant was placed due to shortage in coal supply, was not its own creation and could not be attributable to it. Mere fact that there was no embargo upon the Appellant for importing coal for its power plant cannot be taken to indicate that the shortfall in coal was creation of the Appellant itself. It would not be out of place to mention here that the Appellant's thermal power plant in question was established primarily based on domestic coal linkage allocated by the Government of India and as per FSA dated 24th July, 2015 executed by it with MCL, it expected to receive 100% of its normative coal requirement from MCL. However, the supply of annual coal quantity from the coal lines to thermal power plants under the FSAs was restricted by the Government of India through office memorandum dated 26th July, 2013 which was the main reason for shortfall in coal supply experienced by the thermal power plants. Such situation created by the said office memorandum dated 26th July, 2013 was taken note of by the Commission itself while issuing the 2014 Tariff Regulations. Accordingly, by inserting proviso to Regulation 36(A), a general relaxation was given to all the thermal power plants till 1st April, 2014 by reducing the figure of NAPAF for recovery of fixed charges to 83% from 85%. At the same time, the Commission also stated in the proviso that this dispensation shall be reviewed after 1st April, 2017 based on the actual feedback. Admittedly, no such review has taken place but the thermal power plants continued to experience shortfall in coal supply and uncertainty of assured coal supply as per the FSA's from the linked coal mines. In view of the said situation, we are of the opinion that since there was no change in circumstances, that were prevailing as regards the coal supply from the linked coal mines to the thermal power plant before 1st April, 2014, after the said date also, the Commission ought to have continued such relaxation in the figure of NAPAF for the thermal power plant beyond 1st April, 2017 also. This would have certainly been done, in case the Commission had conducted a review of the situation as envisaged in the above noted proviso attached to Regulation 36(A). It is clearly a case where the Commission has failed to take note of the reasons due to which the Appellant was experiencing shortfall in coal supply for its coal based thermal power plant at Vallur and to ascertain whether or not was such shortfall the creation of the Appellant itself or attributable to the Appellant.

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31. Be that as it may, 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 Tariff Regulations despite there being sufficient ground for such invocation and such refusal on the part of the Commission having caused mis-carriage of justice besides severe financial loss to the Appellant.

32. Hence, the impugned order of the Commission is hereby set aside. We hereby direct the Commission to provide relaxation to the Appellant by reducing the figure of NAPAF for its Vallur thermal power plant for recovery of fixed charges from 85% to 83% for the Financial Years 2017-18 and 2018-19.”

3. Thus, APTEL has set aside the order dated 26.6.2019 and directed the Commission to provide relaxation to the generating station, by reducing the NAPAF from 85% to 83% for the period 2017-19. Accordingly, we, based on the findings and directions therein, relax the NAPAF of the Petitioner's generating station from 85% to 83% for the period 2017-18 and 2018-19, in exercise of the power under Regulation 54 read with Regulation 36(A) (a) of the 2014 Tariff Regulations. The Petitioner shall accordingly revise the annual fixed charge computations for the period 2017-19, and the Respondents shall give effect to such revision, in line with this order.

4. With this, the APTEL judgment dated 8.4.2025 (in Appeal No. 318/2019) relating to Petition No.68/MP/2018 filed by the Petitioner, stands implemented.

Sd/-
(Ravinder Singh Dhillon)
Member

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson