

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 410/MP/2019

Coram:

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri Pravas Kumar Singh, Member

Date of order: 18th July, 2023

In the matter of

Application under Regulation-31(6) of CERC (Terms and Conditions of Tariff) Regulations, 2014 for recoument of under-recovered energy charges due to shortfall in energy generation for reasons beyond the control of generating station during 2018-19 in respect of Koldam Hydro Electric Power Station.

And

In the matter of:

NTPC Limited,
Core-7, Institutional Area,
Lodhi Road, New Delhi.

..... Petitioner

Vs

1. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14-Ashok Marg,
Lucknow-226001 (Uttar Pradesh).

2. Jaipur Vidyut Vitaran Nigam Ltd,
Vidyut Bhawan, Janpath, Jyoti Nagar,
Jaipur-302005 (Rajasthan).

3. Ajmer Vidyut Vitaran Nigam Limited,
Old Power House, Hatthi Bhatta, Jaipur Road,
Ajmer - 305 001 (Rajasthan).

4. Jodhpur Vidyut Vitaran Nigam Limited,
New Power House, Industrial Area
Jodhpur - 342 003 (Rajasthan).

5. Tata Power Delhi Distribution Limited,
Grid Sub-station Building,
Hudson Lines, Kingsway Camp,
Delhi-110009.



6. BSES Yamuna Power Limited,
Shakti Kiran Building, Karkadooma, Delhi-110072

7. Haryana Power Utilities (UHBVNL & DHBVNL),
Shakti Bhawan, Sector-6, Panchkula-134109 (Haryana).

8. Punjab State Power Corporation Limited,
The Mall, Near Kali Badi Mandir, Patiala-147001 (Punjab).

9. Himachal Pradesh State Electricity Board,
Vidyut Bhawan, Kumar House, Shimla - 171 004 (Himachal Pradesh)

10. Power Development Department,
New Secretariat, Jammu (J&K)-180001.

11. Engineering Department,
1" Floor, UT Chandigarh, Sector-9 D, Chandigarh-160009

12. Uttaranchal Power Corporation Ltd.,
Urja Bhawan, Kanwali Road,
Dehradun - 248 001 (Uttarakhand).

..... Respondents

ORDER

The Petitioner, NTPC Ltd, had filed this petition, seeking the following relief(s):

- (a) *The Commission may kindly allow recovery of energy charges amounting to Rs. 17.09 Crs in FY 2018-19 against the shortfall in generation of 72.47 MU in FY 2018-19 in six equal monthly installments as per regulation 31(6)(a) of Tariff Regulations, 2014 read with Reg. 44(7) & (8) of CERC Tariff Regulations, 2019; and*
- (b) *The Commission may allow issuance of supplementary bill for recovery of balance shortfall in energy charges directly from beneficiaries after determination of final true up tariff.*

2. The above petition was disposed of by the Commission vide order dated 7.6.2023 granting reliefs as under:

"20. We have considered the submissions of the Petitioner as well as the Respondents. As discussed earlier, in absence of details to be submitted by the Petitioner which were sought by the Commission vide Technical Validation (TV) letter dated 3.1.2023, we have verified the data from websites of CEA, NRPC, NRLDC and also from generation tariff petition (petition no. 363/GT/2020) filed by the Petitioner for true up of tariff for the period 2014-19 for the instant generating station. Based on the above details, we now deal further.

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31. The matter has been examined, in absence of the correlation of water discharge at Pandoa site on Satluj and Rainfall in the nearby districts w.r.t. actual water inflow to Koldam, correlating the above rainfall data as per IMD reports and data of Snow



Hydrology Division-CWC, Shimla, it indicates low rainfall in comparison to long period averages. Accordingly, we, thus, hold that the energy shortfall of 129.81 MU due to less inflows was beyond the control of the Petitioner.

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34. The matter has been examined, in absence of the above data, with regard to planned and forced outages in the instant generating station for the period 2018-19, we have verified the same from CEA Report of August 2019 on 'REVIEW OF PERFORMANCE OF HYDRO POWER STATIONS 2018-19' and noticed that various units of the generating station were under Planned Outage between the period from 19.11.2018 to 1.3.2019 and under forced outage from 4.10.2018 to 5.10.2018.

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43. In light of above deliberations, the Commission is of the view that the Petitioner shall be allowed to recover shortfall in energy charges in proportion to the energy shortfall which occurred due to reasons which were not under the control of the Petitioner i.e. (-) 129.81 MU. However, the Petitioner by managing the reservoir level has managed to generate additional energy of 57.34 MU. Accordingly, the net shortfall of energy generation of (-) 72.47 MU $[(-) 129.81\text{MU} + 57.34\text{MU}]$ claimed by the Petitioner has been considered beyond the control of the Petitioner.

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45. In absence of above information, as discussed at para 22 above, the difference of 43.53 MU (2995.31 MU- 2951.78 MU) is the energy accounted under DSM i.e. which is part of total ex-bus generation and not the part of Saleable Scheduled Energy (ex-bus). Revenue earned from energy accounted under DSM is not available in the Petition, however as per NRPC website, the instant generating station has been able to earn revenue of Rs. 25.42 crore under DSM. In our view, there is no doubt that the energy accounted in DSM is actual energy generated and also that the Petitioner has received payment for the same in terms of provisions of the 2014 DSM Regulations. Therefore, the energy that has been accounted in DSM cannot be counted towards shortfall in energy in terms of Regulation 44 (6), (7) and (8) of the 2019 Tariff Regulations and, therefore, corresponding energy charge cannot be recovered in terms of that regulation. Thus, energy accounted in DSM needs to be appropriately accounted for while deciding the quantum of shortfall under provisions of Regulation 44 (6), (7) and (8) of the 2019 Tariff Regulations.

50. The matter has been considered, we notice that, in this case, the immediate recovery year i.e. 2019-20 fall in the tariff period 2019-24. Accordingly, in terms of Regulation 44(7) of the 2019 Tariff Regulations, we allow the energy charge shortfall of Rs. 6.31 crore for the period 2018-19 and the same shall be recovered by the petitioner in six equal monthly interest free instalments. Further, the difference in energy charge shortfall to be recovered for the year 2018-19 which may arise after the true-up of tariff for the period 2014-19 shall be recovered directly by the generating station from beneficiaries through supplementary bill."

3. However, in the said order, the Commission, issued show cause notice to the Petitioner under Section 142 of the Electricity Act, 2003 ('the Act') as under:



“51. Further, the Petitioner has not provided the details as sought by the Commission vide TV letter dated 3.1.2023. As the petitioner has not complied with the directions of the Commission, a show cause notice is hereby issued as to why action should not be initiated against the petitioner under section 142 of the Electricity Act. The reply to the show cause must be submitted within a week of this order.”

4. In response to the show cause notice, as above, the Petitioner, has furnished its reply vide letter dated 14.6.2023 stating mainly as under:

- (a) As soon as the order dated 7.6.2023 was received, NTPC perused the list of TVs which were uploaded and available on the website of the Commission, and no such TV letter dated 3.1.2023 was found on the website. Further, since NTPC files a large no. of petitions before this Commission as well as a Respondent in them, it regularly checks the TV list on the website and at no point of time was the letter dated 3.1.2023 available on the website;
- (b) In terms of ROP dated 17.1.2020, NTPC had filed detailed affidavit containing the entire information on 19.2.2020. In the ROP reserving orders on 29.7.2022, no information was called for from NTPC and there was no TV uploaded on the website of this Commission. NTPC was not even aware that any further information was required in the matter.
- (c) In the circumstances, it is extremely unfair on the part of the Commission to invoke its power under Section 142 against NTPC at this stage, which gives the impression that NTPC has contravened any provisions of the Act or Rules or Regulations or directions issued by this Commission. Surely, a TV, which is not even reflected on the website of this Commission and issued by the staff, 6 months after the order was reserved, cannot be construed as ‘any directions issued by the Commission’;
- (d) Petition No.410/MP/2019 was finally decided by order dated 7.6.2023 by the Commission, based on the data already available on record. In the circumstances, merely not giving the TV reply will not amount to attracting the provisions of Section 142 of the Act. In a given case, if some information is sought for and not given to the satisfaction of the Commission, adverse inference can always be drawn against the party. In the present case, when orders were reserved, it cannot be that non-reply to a TV query issued post such dates, can invite Section 142.
- (e) Section 142 is a penal provision and is a punishment for non-compliance of a direction issued by Appropriate Commission. Section 142 cannot be used to punish a person for noncompliance of something which he does not know he is required to comply with. In any event, the very fact that the final order has been passed without the reply to TV means that the information was not so essential as to prevent this Commission from deciding the matter on



merits. [Judgment of the Hon'ble Supreme Court in R.N.Dey & ors v Bhagyabati Pramanik & ors (2000) 4 SCC 400 and Judgment of APTEL dated 13.9.2007 in Appeal No. 115/2007 (B.M.Verma v UERC) and Judgment dated 15.5.2017 in Appeal No103/2017 (BRPL V Secretary, DERC)] has been referred to.

- (f) In the circumstances, this Commission may discharge the notice under Section 142 as the Petitioner NTPC has not disobeyed any direction of this Commission knowingly or willingly. Considering the fact that the Petitioner has always been keeping highest reverence for the Commission and has always complied with the directions issued in the past, the Commission may be pleased to not proceed with further cation in this regard.

5. We have considered the aforementioned reply submissions of the Petitioner. Regulation 55 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 provides that the Commission may, at any time, before passing orders on any matter, require the parties or any one of them or any other person whom the Commission considers appropriate, to produce such documentary or any other evidence as the Commission may consider necessary for the purpose of enabling it to pass orders. Accordingly, in the present case, which was reserved for orders on 29.7.2022, the Petitioner was called upon, based on the directions of the Commission, to submit certain data/information vide Technical Validation (TV) letter dated 3.1.2023, with copies to the Respondents.

6. The Petitioner has pointed out that the data/ information sought vide TV letter dated 3.1.2023, could not be submitted, as the same was not made available on the website of the Commission. Accordingly, it has submitted that Section 142 cannot be used to punish a person for non-compliance of something which he does not know he is required to comply with. It has also stated that in case information is sought for and not given to the satisfaction of the Commission, adverse inference can be drawn against the party.



Admittedly, in the present case, the TV letter dated 3.1.2023 was not uploaded on the website of the Commission. However, we notice from records that the said letter was dispatched to the Petitioner through speed post on 5.1.2023 and was also issued to the Petitioner (in its registered account), through the e-portal of the Commission viz., 'SAUDAMINI' on 6.1.2023. It appears from the submissions of the Petitioner, that the Petitioner has not taken note of the service of the TV letter dated 3.1.2023, made through the above modes and therefore could not submit the required information. Be that as it may, we take note that the Petition has been disposed of by order dated 7.6.2023, based on available records and after verification of the data from other sources (viz CEA, NRPC, NRLDC). Having done so, we find no reason to initiate proceedings against the Petitioner for non-compliance of the directions in TV letter dated 3.1.2023, under Section 142 of the Act. Accordingly, we discharge the notice issued under Section 142 of the Act against the Petitioner. The Petitioner is advised to be more careful, in such situations, in future.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S. Jha)
Member

