



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

O.P.No.10 of 2016

Dated 25.08.2021

Present

Sri T.Sriranga Rao, Chairman
Sri M.D.Manohar Raju, Member (Technical)
Sri Bandaru Krishnaiah, Member (Finance)

In the matter of according approval to the Power Purchase Agreements (PPAs) entered into between NTPC Limited and TSDiscoms for purchasing electricity from Telangana Super Thermal Power Station (TnSTPS) (Phase I) (2x800 MW) located at Jyothi Nagar (formerly Ramagundam) in Peddapalli (formerly Karimnagar) District, Telangana State

The petition came up for hearing on 21.12.2019, 04.01.2020, 09.11.2020. Sri Y.Rama Rao, Standing Counsel for the petitioners has appeared on 21.12.2019 and on 04.01.2019. Sri D.N.Sarma, OSD for the petitioners has appeared through video conference on 09.11.2020. Subsequently, having been heard in Public Hearings on 14.07.2021 & 20.07.2021 and having stood over for consideration to this day, the Commission passed the following:

ORDER

Background

1. The Government of India (GoI) had enacted the Andhra Pradesh Reorganisation Act, 2014 (Act 6 of 2014). In terms of provisions made in clause 7 of Schedule XIII of the Act 6 of 2014, National Thermal Power Corporation Limited (NTPC) is required to establish a 4000 MW power facility in the successor State of Telangana after establishing necessary coal linkages. Accordingly, NTPC is establishing a 4000 MW Telangana Super Thermal Power Station (TnSTPS or TSTPP) in two phases, i.e., first phase of 1600 MW (2x800 MW) and the second phase of 2400 MW (3x800 MW) at Jyothinagar in Peddapalli District of Telangana State.

Admission of Petition and Regulatory Process

2. TSSPDCL as a lead procurer for TSDiscoms had addressed a letter bearing No.CGM/(Comml)/SE(IPC)/F.TSTPP Ph-I/D.No.1781/16, dated 04.02.2016 seeking in- principle approval under Section 86 (1) (b) of the Electricity Act, 2003 for the two (2) Power Purchase Agreements (PPAs) entered with NTPC [a separate PPA with each TSDiscom] on 18.01.2016 for purchasing electricity from TnSTPS-I for 25 years from the date of commissioning of Unit-I of TnSTPS-I on mutually agreed terms and conditions mentioned in said PPAs. TSSPDCL also stated that PPAs have been vetted by the legal advisor at Central Government and also by Law Attache of TSTransco and all the clauses mentioned in the PPAs are standard clauses. The Commission has treated the letter of the TSSPDCL dated 04.02.2016 as a petition and took it on its file as O.P.No.10 of 2016. Initiating the proceedings, the Commission has conducted a Public Hearing on 20.06.2016.

Interim Orders dated 30.07.2016

3. Consequently, to facilitate TSDiscoms to negotiate with the NTPC authorities on the clauses of PPAs to be amended the Commission passed Interim Order on 30.07.2016 in O.P.No.10 of 2016 (Suo-Moto) wherein the Commission expressed its views on each issue identified by considering the comments/objections/suggestions received. The Commission directed TSDiscoms to negotiate with NTPC authorities to amend the clauses wherever necessary to meet the views expressed by the Commission and to file the draft agreement duly incorporating the amendments as directed for according consent/approval by the Commission. The Commission also said that the draft agreement will have to be placed before the stakeholders and after hearing all the persons a final order can only be passed.

Subsequent correspondence

4. Pursuant to the directions given by the Commission in the Interim Order, TSDiscoms wrote a letter to NTPC on 26.09.2016 for incorporating the modifications in the Clauses of PPA of TSTPP. In reply, NTPC vide letter dated 14.10.2016 have furnished their views against the issues identified by the Commission in its Interim Order. TSDiscoms vide letter dated 18.11.2016 have communicated NTPC comments to the Commission for orders. TSDiscoms held discussions with NTPC several times to persuade NTPC to incorporate the issues identified by the Commission in the PPA

by way of amendment. NTPC vide letter dated 18.01.2019 reiterated their earlier views/comments.

5. The Commission vide letters dated 28.11.2016, 25.03.2017, 18.12.2017 and 07.07.2018 (duly enclosing the necessary documents) has been addressed to the Government of Telangana State (GoTS) for eliciting the views on the letter of TSDiscoms. Likewise, the Commission also addressed TSDiscoms vide letter dated 18.12.2017 requiring them to take such legal action.

6. TSDiscoms vide letter dated 17.05.2018 communicated the opinion obtained by their counsel on the matter, wherein the counsel in his considered opinion expressed that the appropriate Commission to determine the tariff of NTPC's TnSTPS in question is the Central Commission under Section 79 of the Electricity Act, 2003. TSDiscoms vide letter dated 19.10.2018 has requested to accord approval of PPAs at the earliest. The Commission vide letters dated 06.12.2018 directed TSDiscoms to submit the revised PPA for further necessary action.

Commission Hearings and consequences

7. The Commission held hearings in the matter on 21.12.2019, 04.01.2020 and 09.11.2020. The record of proceedings on all the days of hearing are reproduced below:

Record of Proceedings dated 21.12.2019

Sri Y.Rama Rao, Standing Counsel for the petitioners is present. He stated that the Commission required the petitioners to undertake amendment of the agreement by way of interim order and also conveyed the same in its letter addressed in December, 2018. The Commission directed that further steps will be taken only after receipt of amended agreement in the matter. He would ascertain the latest status in the matter and place it before the Commission. They have to submit the latest position by way of a memo.

The Commission pointed out that the matter was considered and examined by undertaking public hearing and pursuance thereto, interim order had been passed. Even now also upon submission of the status, the Commission will be required to undertake the same route of public hearing for deciding the matter.

Filing of Memo

8. In pursuance of hearing dated 21.12.2019, the counsel for the petitioner filed a memo on 04.01.2020 stating that NTPC vide letters dated 14.10.2016 and 18.01.2019 had agreed for amending certain clauses of PPAs viz., clauses 3.1, 3.2 and 3.3 with

regard to issue of connecting to the CTU network for evacuation of power and Delivery Point of NTPC.

Record of Proceedings dated 04.01.2020

... .. The counsel for the petitioners stated that as per the directions of the Commission on the earlier date of hearing, the petitioners are filing memo brining out the status of implementation of directions given by the Commission earlier in the interim order. He also stated about the provisions of the Electricity Act, 2003 and the opinion tendered by him earlier to his client on the quantum of power that can be availed by them.

However, the Commission emphatically made it clear that the petitioners are required to comply with the directions of filing the draft amended PPA for consideration of the Commission and final disposal of the matter through public hearing mode. The counsel for the petitioners sought time of two weeks to place before the Commission the final draft amended PPA in terms of the directions of the Commission.

The Commission observed that upon filing of the amended PPA, further steps will be initiated.

Record of Proceedings dated 09.11.2020 (held through video conference)

... .. The representative of the petitioners made elaborate submissions relating .to the PPAs and also the directions issued by the Commission in its order dated 30.07.2016. The submissions touched upon each and every direction given by the Commission relating to the capacity availability to coal linkage and exclusive availability of 100% capacity to Telangana State. The representative relied on certain documents, which were the off shoot of the orders of the Commission as also the inter-se correspondence between the TSDiscoms and NTPC on the capacity allocation, coal linkage, etc.

As these documents relied upon by the petitioners are not forming part of the record, the Commission directed the placing of all those documents before it. Considering the issue is to be decided expeditiously,

Additional Submissions of TSDiscoms

9. As per directions during virtual hearing dated 09.11.2020, TSDiscoms have filed additional submission on 19.11.2020 along with the supporting documents and sought permission to sign a Supplementary Agreement with NTPC to the extent of terms mutually agreed upon. The Commission vide letter dated 02.02.2021 directed TSDiscoms to file the draft amended PPA insofar as the aspects which are agreed to by the parties and an affidavit in accordance with business regulation of the Commission insofar as other aspects are concerned so as to enable the Commission to proceed further in the matter as has been observed by it in the Interim Order.

Supplementary PPAs

11. TSDiscoms signed the Supplementary PPAs with NTPC on 09.04.2021 and submitted the same vide letter dated 19.04.2021 along with an Affidavit in support to the submissions made to the Commission and prayed to grant consent to the PPAs dated 18.01.2016 read with supplementary PPAs dated 09.04.2021.

Notification calling for objections/suggestions

12. As directed by the Commission the TSDiscoms published a Public Notice on 15.06.2021 in two (2) English, two (2) Telugu and one (1) Urdu daily newspapers inviting the objections/suggestions on PPAs entered between TSDiscoms and NTPC for TSTPP Phase-I from all the stakeholders and public at large on or before 06.07.2021 by 5.00 pm and also informing that in this regard the Commission shall conduct a Public Hearing through virtual video conference on 14.07.2021. The copies of the daily newspaper clippings of Public Notice are placed in Annexure-1. TSDiscoms have uploaded the Public Notice, copies of PPAs and all relevant documents in their official websites and the same are also placed in Commission's website.

Response to Public Notice

13. In response to the above Public Notice, objections/suggestions have been received from three (3) stakeholders. The details of stakeholders who submitted written objections/suggestions are listed in Annexure-2.

14. The TSDiscoms were directed to arrange their written replies to all the stakeholders and the copies of these replies were to be made available to the Commission also. The objections/suggestions received and the replies of TSDiscoms were posted on the Commission's website.

15. The Commission sent the virtual link to all the stakeholders who have sent their objections/suggestions, TSDiscoms and NTPC officials for participation in Public Hearing through virtual video conference.

Public Hearings

16. The Commission conducted Public Hearing on 14.07.2021 at 11:30 am through virtual video conference. During the Public Hearing, based on the request from

stakeholders the Commission posted for further hearing on 20.07.2021 at 11:30 hrs. The stakeholders who attended the Public Hearings are listed in Annexure-3.

17. During Public Hearing, the TSSPDCL on behalf of TSDiscoms made a brief presentation on the subject matter. Subsequently, TSDiscoms elucidated their replies on the objections/suggestions received from the stakeholders and then the Commission heard the stakeholders. At the end, as per the directions of the Commission, TSDiscoms responded to the issues raised by the objectors during the public hearing. Further, NTPC also responded to the issues raised by the objectors during the public hearing. On the request of the stakeholders the Commission has permitted the stakeholders to submit their additional objections/suggestions/comments if any, as well as, TSDiscoms to submit their written submissions to the Commission.

18. By considering the written objections/suggestions received and oral submissions made during the Public Hearings by the stakeholders, submissions and response of NTPC and TSDiscoms on stakeholders objections/suggestions and on compliance to directions of the Commission in Interim Order, the issues have been identified and are discussed in the subsequent paragraphs.

TSDiscoms’ submission on compliance to all directions of the Commission in Interim Order and objections/suggestions received in present proceeding

Issue 1: Jurisdiction on determination of Tariff

| <i>Commission’s View in its Interim Order</i> | <i>Submissions of NTPC</i> | <i>Submissions of TSDiscoms</i> |
|--|---|--|
| It may be appropriate to state that the tariff has to be determined by the CERC under section 79 (1) (a) of Act, 2003, but this Commission is vested with the powers under section 86 (1) (b) of the said Act to regulate the PPA which covers price and terms of the PPA entered by TSDiscoms for supplying the power procured from the project within Telangana State. | As per Section 79 (1) (a) of the Electricity Act,2003 CERC shall regulate the tariff of generating companies owned by the Central Government. Accordingly, tariff of TSTPP-I, which is owned and controlled by NTPC, a Central Generating Company, comes under the purview of CERC. NTPC further stated that Rule 8 of the Electricity Rules, 2005, mandated that the tariff determined by CERC shall not be re-determined by the State Commission. Hence, TnSTPS-I comes under the jurisdiction of CERC only. Therefore, no amendment is proposed | As directed by the Commission, TSDiscoms obtained a legal opinion from Sri. Y. Rama Rao, Advocate, High Court of Telangana and filed before the Commission, who has also endorsed the tariff determination for TSTPP by CERC only. The Commission is prayed to accept the jurisdiction of CERC on tariff determination of TSTPP Phase-I (2x800 MW) in view of the mandatory provisions of the Electricity Rules, 2005 read with the Electricity Act, 2003 provisions. |

Stakeholder Comments

19. TSDiscoms in line with the argument of NTPC prayed the Commission to accept the jurisdiction of CERC for tariff determination of TSTPP. The Commission should re-examine the issue on the following grounds, among others:

- (i) Jurisdiction of CERC to determine tariff for the subject plant is not a reasoned opinion.
- (ii) Judgement by Hon'ble APTEL or Hon'ble Supreme Court, if any, upholding the view regarding determination of tariff of Central Generating Station (CGS) by CERC and PPA approved by the Commission in case generating capacity is fully allocated to one State.
- (iii) The Hon'ble Supreme Court, in its Judgment dated 11.04.2017 in Civil Appeal Nos.5399-5400 of 2016 and other Petitions, held that:
"This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission's jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression "composite scheme" does not mean anything more than a scheme for generation and sale of electricity in more than one State".
- (iv) From the above, it is clear that PPA which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission, but the State Commission's jurisdiction is only where generation and supply takes place within the State. In the present case, since generation and supply take place in Telangana State only, not more than in one State, generation, apart from supply, being basis for determining the jurisdiction of the State Commission, and determination of tariff being interlinked with PPA, it would be proper to interpret that determination of tariff also falls within the jurisdiction of the State Commission.

- (v) The very basis on which PPA of the plant is submitted for the consideration of the Commission which gave its Interim Order five years back should be the basis for determination of capital cost and tariff by the Commission itself.
- (vi) Even though TSTPP is a CGS, when its capacity is allocated to Telangana State exclusively and the project is being set up in Telangana State, it becomes State-specific project and does not assume the nature of a multi-State project.
- (vii) Section 79 (1) (b) of the Electricity Act, 2003 specified that CERC shall discharge the function as to regulate the tariff of generating companies owned or controlled by the Central Government and Section 86 (1) (b) specified that SERC shall discharge the function as to regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State. So, if a CGS is set up in a State exclusively for that State, Section 79 (1) (b) of the Act cannot bar the SERC from discharging its functions under Section 86 (1) (b). The interpretation that CERC has to determine tariff of such a project, if accepted, the powers of SERC under Section 86 (1) (b) get nullified or become a mechanical formality. Without determining permissible capital cost and tariff of such a project, SERC cannot regulate the price at which electricity shall be procured from the generating companies.
- (viii) Singareni Collieries Company Limited (SCCL), in which both the Central and State Governments have their shares, is governed by the policies of MoC, GoI. All issues, including permissible capital cost, tariff and PPA have come before the State Commission.
- (ix) Any applicable Act for determination of tariff by CERC has to take into consideration PPA approved by SERC and for determination of price at which the TSDiscs have to procure electricity from such a project SERC has to take into consideration the tariff determined by CERC.
- (x) In the additional submissions, TSDiscs have submitted that the legal opinion obtained by them also endorsed that tariff determination for TSTPP be done by CERC only. In their submissions dated 19.04.2021, TSDiscs have stated

that in the hearing held on 09.11.2020, the Commission accepted the jurisdiction of CERC in respect of tariff determination for NTPC's TSTPP-1. The said hearing is not a public hearing. In the Daily Orders, no such opinion of the Commission is recorded and no formal Order to that effect, if given by the Commission, is available in the public domain.

- (xi) In the case of stage-I of Simhadri project of NTPC set up in Visakhapatnam whose 100% capacity was allocated to Andhra Pradesh, that issue did not come up before APERC for determination of permissible capital cost, generating tariff and approval of PPA. In the subject case, TSDiscoms and NTPC came before the Commission for consideration of PPA. Therefore, the Commission should assert its authority and direct TSDiscoms & NTPC to file their submissions for determination of capital cost and tariff for TSTPP in order to exercise its powers to regulate the price at which the TSDiscoms shall procure electricity from the project and give a combined order on all the issues. For a harmonious and cohesive determination of all issues concerned in cases like the present one, without conflict of jurisdiction, such an approach is imperative.

20. Regarding the jurisdiction for determination of tariff for this project, the responses of TSDiscoms and the legal opinion obtained by them on the issue failed to take into consideration the context and spirit of AP Reorganisation Act, 2014. The observations of the Hon'ble Supreme Court quoted by TSDiscoms that *"the doctrine of comity or amity requires a court not to pass an order which would be in conflict with another order passed by a competent court of law ... 19. A court while exercising its judicial functions would ordinarily not pass an order which would make one of the parties to the lis violate a lawful order passed by another court"* seem to be quoted out of context, for, they do not apply to the issue of jurisdiction of TSERC and CERC in the subject issue. An order given by a lower court is being set aside by a higher court; an order given by a single judge or a bench is being set aside by a division bench or higher bench of the same court; orders given by Hon'ble High Courts are being set aside by Hon'ble Supreme Court; orders of SERCs and CERC are being set aside by Hon'ble APTEL; and Hon'ble APTEL's orders are being set aside by Hon'ble Supreme Court. There have been several instances to this effect. Moreover, going by the logic of the observations of Hon'ble Supreme Court, if the Commission gives its approval to

the subject PPA, CERC should not give its order contrary to the terms of the PPA while determining tariff of the subject project.

21. TSDiscoms submitted that *“Tariffs of generating companies under section 79 – The tariff determined by the Central Commission for generating companies under clause (a) or (b) of sub-section (1) of section 79 of the Act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of sub-section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.”* In such a case, NTPC should first get Tariff Order provisionally or finally from CERC. Then only, keeping the tariff determined by CERC in view, the Commission can determine whether TSDiscoms should enter into a PPA with NTPC to purchase power from the subject project based on relevant factors like reasonableness of the tariff determined by CERC, and whether power from other sources can be contracted at relatively lower tariffs, etc., and even reject consent to the subject PPA. Then, TSDiscoms should clarify that without NTPC first approaching CERC for determination of tariff, provisionally or finally, why TSDiscoms are approaching the TSERC for approval of the PPA.

22. TSDiscoms have submitted that in the case of Simhadri TPP Phase-I of NTPC, though the entire capacity (2x500 MW) was allocated to the united AP State, yet CERC determined the tariff of the said project. However, the TSDiscoms approached the Commission seeking its consent to the subject PPA.

23. Regarding jurisdiction of CERC to determine tariff for TSTPP, TSDiscoms submitted that *“TSDiscoms will put forth its views before Ld. CERC once the Tariff petition is filed by NTPC in respect of TSTPP-I. CERC would examine the Prudence of the Capital Cost of TSTPP-I including IDC & IEDC based on guidelines framed by Hon’ble APTEL in its judgment in O.P.No.72 of 2010 in delay computation and sharing of IDC between the Parties.”* In their presentation before the Commission, TSDiscoms informed that the original estimated capital cost of TSTPP is Rs.10,997.7 Crore and that the NTPC has accorded approval to the revised capital cost of Rs.11,811.26 Crore. While zero date of TSTPP is 29.01.2016, proposed COD of Unit-I is May, 2022

and Unit-II is September, 2022. As per the revised capital cost, the cost per MW works out to Rs.7.38 Crore. Moreover, there is no certainty that the revised cost will be the final capital cost and that NTPC would not claim any additional capital cost in future for the subject plant. The submissions and responses of TSDiscoms confirm that mostly they have been ignoring their own interests and those of their consumers.

24. TSDiscoms should clarify if NTPC has approached to CERC for determination of tariff for TSTPP. The Commission should direct TSDiscoms and NTPC to submit their Petition for determination of permissible capital cost and tariff for the subject project. The Commission should give a comprehensive and common order on the permissible capital cost, tariff and PPA after holding public hearing on the Petition pertaining to determination of permissible capital cost and tariff.

25. If the Commission sticks to the view that tariff for the subject plant has to be determined by CERC, the Commission should keep the subject issue in abeyance and direct the TSDiscoms to approach the Commission for consent to PPA of the subject project only after NTPC gets determination of tariff by CERC for the subject project. If the Commission gives its consent to the subject PPA first, it will not have any opportunity to examine reasonableness or otherwise of the tariff to be determined by CERC and whether TSDiscoms should be permitted to purchase that power at that rate and consent to PPA be given or not.

26. If the Commission decides to give consent to the subject PPA, the Commission should ascertain whether power from the subject project is required by TSDiscoms, whether the tariff to be determined by CERC is reasonable, whether power from other sources can be procured at relatively lower tariffs, etc.

27. If the Commission decides to proceed with the public hearing on the subject issue and give its Order, the Commission should direct the respondent NTPC also to make its submissions, give its responses and clarify factual position of relevant factors, along with the petitioner TSDiscoms.

TSDiscoms' Replies

28. Unlike State generators, NTPC is generating company owned and controlled by the Central Government and as per the Section 79 (i) (a) of the Electricity Act, 2003, the tariff has to be determined by the Central Commission. The jurisdiction can be

conferred only by Law/Statute or settled Case laws of Apex Court in case of grey areas. Since, the Electricity Act, 2003 specifically stipulated the regulation for CGS owned by Gol under Section 79(1) (a) of the Act, the judgment cited by the stakeholder is not relevant in this case. The Electricity Act, 2003 stipulated distinct functions for CERC and SERCs under different Sections. Hence, the respective Regulatory Commissions have to function within those areas only and cannot interfere in other's functions. In this context, Hon'ble APTEL in its judgment passed in some appeals, cited the Apex Court's judgments on doctrine of comity as extracted below:

Case law: (2007) 5 SCC 510 (Hon'ble Supreme Court)

India Household and Healthcare Ltd. vs. LG Household and Healthcare Ltd.

.....
"16 The doctrine of comity or amity requires a court not to pass an order which would be in conflict with another order passed by a competent court of law

.....
19. A court while exercising its judicial functions would ordinarily not pass an order which would make one of the parties to the lis violate a lawful order passed by another court."
.....

29. Further the Electricity Rules 2005 have also specifically mandated as follows:

"8. Tariffs of generating companies under section 79 - The tariff determined by the Central Commission for generating companies under clause (a) or (b) of sub-section (1) of section 79 of the act shall not be subject to re-determination by the State Commission in exercise of functions under clauses (a) or (b) of sub-section (1) of section 86 of the Act and subject to the above the State Commission may determine whether a Distribution Licensee in the State should enter into Power Purchase Agreement or procurement process with such generating companies based on the tariff determined by the Central Commission.
....."

30. Further, though stakeholders have raised that TSTPP Phase-I is exclusively dedicated to Telangana State and the Commission shall only determine the final capital cost/tariff of TSTPP Phase-I, yet the Commission in the Interim Order dated 30.07.2016 has in-principle agreed for tariff determination by CERC in terms of Section-79 (1) (a) of the Electricity Act, 2003. In view of the above legal position, the Commission also accepted the jurisdiction of CERC at para 10 of its Interim Order; hence, the Commission can adopt the Tariff determined by CERC. Therefore, it is required to appreciate the legal position in this regard and also note that CERC is also a Regulator, which can regulate the tariff of generating companies based on the Tariff Regulations, which have also been adopted by the SERCs.

31. Further, in the case of Simhadri TPP Phase-I of NTPC, though the entire capacity (2x500 MW) was allocated to the united A.P. State, yet CERC determined the tariff of the said project. Also, a copy of the Legal Opinion obtained by TSDiscoms is submitted as sought by the stakeholder.

32. Regarding filing of Tariff Petition before CERC, as per the CERC Tariff Regulations, NTPC has to file necessary Petition before CERC for provisional/final capital cost approval and tariff determination for TSTPP Phase-I, which can be done only after COD of the units/project is declared and audited capital cost expenditure details of the project are filed. NTPC is yet to file the Tariff Petition before CERC.....

33. TSDiscoms would file counter whenever NTPC file Petition for determination of tariff and capital cost of TSTPP and for seeking CERC to finalize the capital cost of TSTPP Ph-I including IDC & IEDC based on guidelines framed by Hon'ble APTEL in its judgment in O.P.No.72 of 2010, in the interest of the consumers of Telangana State.

Commission's View

34. As TSTPP Phase-I Project is owned by NTPC (Govt. of India), NTPC cited the jurisdiction of CERC for tariff determination of generating companies owned by Central Government under Section 79 (1) (a) of the Electricity Act, 2003. The Commission also noted that as directed by the Commission, TSDiscoms obtained a legal opinion from Sri Y.Rama Rao, Advocate, High Court of Telangana and filed before the Commission, who has also endorsed the tariff determination for TSTPP by CERC only. The Commission, in the Interim Order, has also viewed that it may be appropriate to state that the tariff has to be determined by the CERC under section 79 (1) (a) of Electricity Act, 2003 and CERC will decide the tariff on *ad hoc* basis or regular basis. Thus, the Commission accepts the jurisdiction of CERC on tariff determination of TSTPP-I. However, the Commission directs TSDiscoms to make all necessary efforts by providing comments on the submissions made by NTPC before CERC for prudent determination of capital cost and tariff by CERC.

Issue 2: Allocation of total capacity of the NTPC plant to Telangana State

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
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| The Commission if of the view that the objection raised by the objectors i.e., " <i>The TnSTPS Phase-I is being set up by</i> | The Ministry of Power (MoP), Gol vide letter dated 16.03.2016 has allocated 85% capacity (power) to Telangana | The Chief Secretary, Government of Telangana (GoTS) vide letter dated 04.10.2014 had addressed the |

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|--|--|--|
| <p><i>NTPC as per the provisions of Clause 7 of Schedule 13 of the Act, 6 of 2014. The total capacity of the plant is meant for Telangana State. According to Clause 2.2.1 'Allocation of capacity from the Station to Telangana State shall be decided by Gol.' Following the Act, 6 of 2015 it shall be mentioned that total capacity of the station shall be allocated to Telangana State. In Clause 2.2.2 of the PPA it shall be mentioned that the Government of Telangana State shall allocate capacities between the procurers." needs to be considered. Mere stating or understanding would not suffice in the matter of PPA and its provisions. To bring the clarity on the allocation of the entire capacity of the plant exclusively for Telangana State, it may be appropriate to amend the clause 2.2.1 and 2.2.2. Therefore, the PPA shall have to be amended as follows:</i></p> <p><i>2.2.1 Entire capacity of the NTPC plant is exclusively allocated to Telangana State. In turn allocation of the capacity shall be made between the procurer(s) that is TSSPDCL and TSNPDCL by the State Government or the State Electricity Regulatory Commission.</i></p> <p><i>2.2.2 The entire capacity allocated between procurer(s) by the State Government or the State Electricity Regulatory Commission shall be the contracted capacity. The procurer(s) shall draw electricity against the above contracted capacity limited to the amount of the Letter of Credit (LC) opened and maintained by them. The NTPC shall intimate SRLDC/SLDC from time to time regarding the quantum of capacity</i></p> | <p>State. Moreover, a certain percentage of power is retained as unallocated quota by the Gol, which may change from time to time. Hence, the existing PPA has relevant provisions accordingly. Therefore, no amendment is proposed.</p> | <p>Chairperson, CEA (functioning under the MoP), New Delhi, requesting for 100% power allocation from NTPC TSTPP Phase-I to Telangana State.</p> <p>However, MoP, Gol vide letter dated 25.02.2019 has allocated 85% of the total capacity of 4000 MW (i.e.3400 MW) to Telangana State and retained the balance 15% capacity (i.e. 600 MW) as unallocated power, which would be placed at the disposal of the Central Government for allocating to other States based on their requisition, subject to the condition that beneficiaries ensuring compliance with the financial and commercial terms (including coverage for Letter of Credit) of the PPA signed with NTPC.</p> <p>The allocation of power (Capacity) to Discoms in Central PSUs like NTPC (Thermal Stations) by MoP Gol, is based on the prevailing power allocation guidelines.</p> <p>Since, NTPC being a Central PSU, owned by the Gol, it shall have to follow the allocation given by MoP and it cannot act contrary to the directions of the MoP. As such, the Standard PPA with NTPC provides for allocation of capacity to beneficiaries, in percentage of total capacity as per the MoP, Gol, without any indication of specific quantum in the PPA as specified in Clause 2.2 of the PPA.</p> <p>Unlike the PPAs entered by other beneficiary States with NTPC, this particular PPA was entered with TSDiscoms only, which means that Telangana State is the Sole beneficiary, having allocation of entire 85% in the Project and no other State is having share in this allocated quantum (unlike power sharing by other beneficiaries in other PPAs).</p> <p>Further, the TSTPP Phase-I (2x800 MW) is State grid</p> |

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
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| <p><i>procurer(s) is eligible to draw.</i></p> | | <p>connected project and the power from this project will be evacuated by TSDiscoms through STU (TSTransco) Transmission Network as directed by the Commission. Therefore, other States do not have direct Network access to NTPC TSTPP Phase-I (2x800 MW) for evacuating power from TSTPP except through STU Network of Telangana. If other States seek to draw the balance 15% capacity unallocated power, then they have to necessarily incur additional Transmission charges payable to TSTransco in addition to Point of Connection (POC) Charges payable to PGCIL, which is generally not preferred by those States.</p> <p>Further, CERC Tariff Regulations, 2019 (valid for the period FY 2019-24), which regulate the tariff of CGS stations, have stipulated a specific condition in respect of unallocated power, as extracted below:</p> <p>CHAPTER-13 (SCHEDULING, ACCOUNTING AND BILLING)</p> <p>55. Billing and payment of Charges:</p> <p>(1)</p> <p>(2)</p> <p><i>Note-I</i></p> <p><i>Shares or allocations of each beneficiary in the total capacity of Central sector generating stations shall be as determined by the Central Government, inclusive of any allocation made out of the unallocated capacity. The shares shall be applied in percentages of installed capacity and shall normally remain constant during a month. Based on the decision of the Central Government, the changes in allocation shall be communicated by the Member-Secretary, Regional Power Committee in advance, at least three days prior to beginning of a calendar month, except in</i></p> |

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|--|---------------------|---|
| | | <p>case of an emergency calling for an urgent change in allocations out of unallocated capacity. The total capacity share of a beneficiary would be sum of its capacity share plus allocation out of the unallocated portion, In the absence of any specific allocation of unallocated power by the Central Government, the unallocated power shall be added to the allocated shares in the same proportion as the allocated shares.</p> <p>.....”</p> <p>As could be seen from the above CERC Tariff Regulations, 2019, for computing the Capacity charges payable by a Beneficiary in a month, the Total Capacity share would be reckoned as sum of its capacity share (allocated) plus allocation out of the unallocated capacity portion and in case the Central Government does not allocate the unallocated power to any other State, the unallocated power quantum will be added to the allocated shares in the same proportion as the allocated shares. Since Telangana (TSDiscoms) is Sole Beneficiary State, having entire 85% capacity allocation in TSTPP Phase-I (2x800 MW) Project and the Project switchyard being connected to STU Network, the balance 15% unallocated capacity would also be allocated to Telangana State, which in effect deemed that 100% capacity is allocated to TSDiscoms.</p> <p>Thus, the CERC Tariff Regulations, 2019, have facilitated 100% capacity allocation from TSTPP Phase-I (2x800 MW) to TSDiscoms. However, TSDiscoms through the State Government have been pursuing with the MoP, Gol for 100% firm allocation of the capacity in STPP Phase-I</p> |

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|---|----------------------------|--|
| | | (2x800 MW), so as to avoid any ambiguity in future. In light of above submissions, and in line with subsisting PPA provisions already entered with NTPC in respect of other Projects, the Commission is prayed to grant exemption from amending the PPA as directed in the Interim Order. |

Stakeholder Comments

35. In the Interim Order, the Commission directed the TSDiscoms to amend the relevant clauses for allocation of 100% capacity of 4000 MW TSTPP, as it is exclusively allocated to Telangana State under AP Reorganisation Act, 2014. The stand of NTPC on allocation of only 85% capacity to Telangana State by the Gol, and various submissions of TSDiscoms are untenable for the following reasons:

- (i) The prayer of TSDiscoms to the Commission to grant exemption from amending the PPA as directed in the Interim Order on this issue is contrary to the stand taken by the GoTS in its correspondence dated 10.03.2016 with the Central Electricity Authority (CEA) for allocation of 100% capacity of the project to Telangana State.
- (ii) Since, this project is allocated to Telangana State exclusively, the guidelines for allocation of capacity of CGS to different States and retaining 15% capacity for Gol to allocate to States based on their requisition, subject to certain conditions, based on the prevailing power allocation guidelines do not apply to the subject project.
- (iii) That 100% capacity of stage-I of Simhadri power project of NTPC was allocated to Andhra Pradesh as a special case (land for the project was allocated by Government of AP) further justifies the stand for allocation of 100% capacity of the subject project to Telangana State as a special case under AP Reorganisation Act, 2014.
- (iv) The very fact that Telangana State is the sole beneficiary, having allocation of 85% in the capacity of TSTPP, with no other State having allocation of a share from it, shows qualitative difference between allocation in this case and allocation of shares in a CGS to different States under power allocation

guidelines of MoP, GoI. Such a qualitative difference further justifies 100% allocation of the capacity of the subject project to Telangana State. In other words, prevailing power allocation guidelines of the GoI were not applied while allocating 85% capacity of the subject project, without any share to other States in the southern region. Similarly, the said guidelines need not be applied for allocation of 15% balance capacity to other States on requisition and the same has to be allocated exclusively to Telangana State.

- (v) The presumptuous contention of TSDiscoms that, if other States seek to draw the balance 15% capacity of unallocated power, then they have to necessarily incur additional transmission charges in addition to PoC charges payable to PGCIL, which is generally not preferred by those States, implies that generally the unallocated 15% capacity remains with the CGS concerned without being sought by, and supplied to any State. If that is the ground reality, there is no need and justification for retaining 15% capacity with the CGS concerned, in the present case TSTPP, to be allocated to a State/States at the discretion of the GoI. There is no justification in the GoI not taking a favourable decision in this regard, despite the requests made by the GoTS.
- (vi) The specific condition in CERC Tariff Regulations 2019, quoted by TSDiscoms that, if no State seeks allocation from the unallocated 15% capacity of a CGS, then that capacity shall be added to the States concerned in proportion to the shares allocated to them in 85% capacity. Conversely, if GoI allocates 15% unallocated capacity of a CGS to any other State/States, then the addition of that capacity to the States in proportion to the shares allocated to them in 85% capacity simply does not arise. Therefore, the contention of TSDiscoms that the CERC Tariff Regulations 2019 have facilitated the 100% capacity allocation from the TSTPP Phase-I to TSDiscoms does not have any merit. If such a precedent is there in the case of any CGS, the same would further strengthen and justify the demand for allocation of the balance 15% capacity to Telangana State in the subject issue. That is the reason why the State Government has been pursuing with the MoP, GoI for 100% firm allocation of the capacity in TSTPP Phase I, so as to avoid any ambiguity in future, and to attain finality of 100% firm allocation.

- (vii) The GoTS has been constrained to pursue with MoP, Gol for 100% firm allocation of TSTPP Phase-I to TSDiscoms, even after a period of five years and after letter dated 25.02.2019 of MoP Gol, conveying allocation of only 85% of capacity of the said project to TSDiscoms and retaining the balance 15% at the disposal of Gol confirms that uncertainty and ambiguity on allocating or adding the balance 15% unallocated power to TSDiscoms continues.
- (viii) Therefore, the Commission should direct the authorities concerned to allocate 100% capacity of TSTPP to Telangana State in true letter and spirit of AP Reorganisation Act, 2014. Power allocation guidelines of Gol cannot override an Act passed by the Parliament. The very principle adopted for allocating 85% capacity in the subject project to TSDiscoms should be applied for allocation of the balance 15% to the latter.

36. The contention of TSDiscoms and in the legal opinion obtained by them that the AP Reorganisation Act mandated NTPC to establish a 4000 MW power facility in the successor Telangana State after establishing necessary coal linkages and that no mention was made therein about allocation of power cannot be interpreted mechanically to mean that 100% capacity of the project need not be allocated to Telangana. For establishing a power project by NTPC in any State, no Act by Parliament is required. No such mandate needs to be incorporated in any such Act of the Parliament. The very fact that such a mandate is incorporated in the AP Reorganisation Act and that 85% of the capacity of the subject project is already allocated to Telangana State, that, too, contrary to the guidelines of allocation of power from CGS by MoP, Gol, shows that in order to overcome shortage for power in Telangana State when it was formed, bifurcating the then Andhra Pradesh, the TSTPP is intended for Telangana State. The same yardstick should be applied for allocating the balance 15% also to Telangana.

37. TSDiscoms should also explain their submission that *“Thus, the CERC Tariff Regulation, have facilitated the 100 % capacity allocation out of NTPC TSTTP-1 (2x800 MW) to TSDiscoms”*.

TSDiscoms’ Replies

38. The AP Reorganization Act 2014 mandated NTPC to establish a 4000 MW power facility in the successor Telangana State after establishing necessary coal

linkages in order to overcome shortage for power in Telangana State when it was formed, after bifurcation of the then Andhra Pradesh. Nowhere it was mentioned about allocation of power. Since, NTPC is owned by Gol, it is the prerogative of Gol in allocating generation capacity to the States. Despite that the Gol allocated entire 85% capacity in TSTPP Phase-I to Telangana State and retained balance 15% as unallocated capacity as was done in other cases. However, TSDiscoms through GoTS are pursuing with MoP, Gol for allocation of balance 15% share from the subject project to Telangana State. The GoTS has addressed the MoP, Gol for allocating balance 15% capacity on firm basis and the response from the Ministry is awaited.

39. In the absence of any specific allocation by the Central Government, the CERC Tariff Regulations 2019 facilitated the balance 15% unallocated capacity allocation to beneficiaries (States), in the same proportion as per their percentage allocation on monthly basis. Since, Telangana State is sole beneficiary of 85% capacity allocation, the balance 15% unallocated capacity would also be allocated to Telangana State only and hence, it is deemed that 100% capacity is allocated to Telangana State only.

Commission's View

40. Since NTPC TSTPP (4000 MW) is exclusively allocated to Telangana State under AP Reorganisation Act, 2014, the Commission vide Interim Order had directed TSDiscoms to amend the Clauses 2.2.1 and 2.2.2 of the PPA for allocation of 100% capacity to TSDiscoms. The Commission noted from the submission of TSDiscoms that the Chief Secretary, GoTS vide letter dated 04.10.2014 had addressed the Chairperson, CEA (functioning under the MoP), requesting for 100% power allocation from NTPC TSTPP Phase-I to Telangana State. However, MoP, Gol vide letter dated 25.02.2019 has allocated 85% of the total capacity of 4000 MW (i.e., 3400 MW) to Telangana State and retained the balance 15% capacity (i.e., 600 MW) as unallocated power, which would be placed at the disposal of the Central Government for allocating to other States based on their requisition.

41. The Commission is of the view that since the TSTPP Station is connected to the State Transmission periphery and based on CERC Tariff Regulations, 2019, the unallocated share of the station shall be in proportion of the allocation, the entire capacity shall be allocated to TSDiscoms. However, the Commission also noted that TSDiscoms through the State Government have been again pursuing with MoP for

100% firm allocation of the capacity in TSTPP Phase-I (2x800 MW), so as to avoid any ambiguity in future. Therefore, the Commission directs TSDiscoms to communicate the outcome of the same.

Issue 3: Delivery points of NTPC and Connecting to the CTU Network for evacuation of power

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|--|---|--|
| <p>The Commission if of the view that either in the definition part of the PPA (Article 1) or in the clause 3.1 relating to the delivery point shall be clearly defined/specified as the delivery point of the TnSTPS Phase-I of 2x800 MW plant ex-bus at which the NTPC supplies the power to TSDiscoms. The relevant Article/clauses shall be amended accordingly.</p> <p>(i) The entire capacity of the NTPC plant is meant for Telangana State, the connectivity can be given to TSTransco network, as is being done in case of Simhadri Stage-I plant by NTPC by APTransco. The TSTransco can lay the required line for evacuation of the power from the NTPC plant. This will avoid point of connection charges (PoC) and losses of Power Grid Corporation of India Limited (PGCIL). This will reduce additional burden on the State consumers. The issue has to be pursued by the TSDiscoms in the standing committee meeting that may be conducted by the CEA. Accordingly, the clauses 3.2, 3.3 and other clauses of the PPA wherever necessary, shall have to be amended appropriately. (ii) in the clause 3.2 for the works "<i>For timely and expeditiously development of the required transmission system for evacuation of power from the said project to its various beneficiaries</i>" can be replaced with "<i>One year prior to the declaration of CoD, for evacuation of power from the said project to its procurers (TSSPDCL and TSNPDCL), the</i></p> | <p>NTPC agreed that the project connectivity & evacuation from NTPC TSTPP Phase-I shall be through STU Network (TSTransco) only as directed by the Commission and also agreed for amendment of relevant Clauses in the PPA.</p> | <p>As directed by the Commission, for power evacuation from the TSTPP Phase-I, TSTransco has laid necessary 400 kV Lines and also it is installing 400 kV Substations and connecting bays, which works are nearing completion.</p> <p>As such, necessary amendment is carried out in the PPA as below:</p> <p>"</p> <p>3.1 <i>Sale of electricity shall be at the bus bars of the Station and it shall be the obligation and responsibility of Procurer(s) to make the required arrangement for evacuation of electricity from delivery point (Bus bar) of TSTPS-I.</i></p> <p>3.2 <i>Deleted.</i></p> <p>3.3 <i>Charges for utilization of transmission system(s) for transmission/wheeling of the electricity beyond bus bar of the Station shall be paid directly by procurer(s) to the Transmission Licensee.</i></p> <p>...."</p> <p>Therefore, the Commission is prayed to accept the submission and approve the amendment proposed.</p> |

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|--|----------------------------|---------------------------------|
| <i>procurer(s) shall make an application for connectivity and long term access (LTA) to the TSTransco." based on these lines the entire clause may be amended.</i> | | |

Stakeholder Comments

42. TSDiscoms should submit the relative differences between present evacuation costs from STU instead of CTU. As regards query on the cost benefit of changing from CTU to STU, TSDiscoms have submitted that, in case if it is connected to STU then there would be a saving of around 56 paisa/kWh as POC losses of CTU would not be imposed. This answer is not explaining the basis of this cost benefit. TSDiscoms should provide the basis of this figure with calculations of transmission charges and basis of STU and CTU charges.

TSDiscoms' Replies

43. The sharing of inter-state transmission charges and losses are approved by CERC and transmission charges & losses are computed by implementing agency under Sharing Regulation 2020 i.e., National Load Despatch Centre (NLDC). Based on the LTA application quantum applied by the State, the PGCIL claims the monthly bills on the prevailing rates computed by NLDC and uploaded in the website of SRPC.

44. Similarly, State transmission charges are approved by the Commission and losses are computed by TSTransco. Monthly payments for STU & SLDC charges and losses are claimed by TSTransco and are being paid. The detailed cost benefit for a particular month of changing from CTU to STU is submitted in reply which shows that there would be a saving of around 56 paisa/kWh.

Commission's View

45. The Commission, in the Interim Order, viewed that the NTPC project can be connected to TSTransco's network and TSTransco can lay the required line for evacuation of the power from the NTPC plant, which will avoid POC charges & losses of PGCIL. Therefore, the Commission had directed to amend the Clauses 3.2, 3.3 and other Clauses of PPA, wherever necessary. NTPC agreed that project connectivity and evacuation from NTPC TSTPP Phase-I shall be through STU network (TSTransco) only as directed by the Commission. Accordingly, TSDiscoms & NTPC,

through Supplementary PPA, have undertaken necessary amendment in the PPA. The Commission also noted from the submission of TSDiscoms that for power evacuation from TSTPP Phase-I, TSTransco has laid necessary 400 kV lines and also it is installing 400 kV Sub-stations and connecting Bays, which works are nearing completion. Since the TSTPP is connected at the State Transmission Periphery, there shall be savings in transmission charges and losses.

Issue 4: Generation of Power less than Threshold level

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|--|---|---|
| <p>The Commission is in agreement with the view expressed by the TSSPDCL as far as the conditions for payment of the fixed charges is concerned. Regarding non-operation of the plant exclusively on account of failure of NTPC other than force-majeure conditions, there shall be penalty clause for the non-operating period of the plant, to have equitable liability on both sides. Hence the TSSPDCL may negotiate with the NTPC on this account and modify the relevant clauses suitably.</p> | <p>CERC Tariff Regulations stipulated the penalty provision for the generating companies in case the generating station does not achieve the Normative Plant Availability Factor (NPAF), as the generating station recovers Fixed (Capacity) Charges based on the cumulative plant availability factor achieved based on Declared Capacity (DC). Hence, there is no need to amend the clause.</p> | <p>The Central Generating Power Plants are governed by CERC Tariff Regulations, issued from time to time. CERC Regulations have already provided for penalty on generating stations, by way of reduced capacity charges payable to them on pro rata basis, for achieving lesser Plant Availability Factor (PAF) vis-à-vis (NPAF@ 85% in general). This reduced Capacity charges payment itself is a penalty and therefore, the thermal generating plants always endeavour to maintain cumulative PAF up to its NPAF, in order to recover its full Fixed Charges, except during Force Majeure events.</p> <p>Since, the point of evacuation of power from Central Generating Stations is Ex-Bus of the NTPC generating plant, and if the generating plant achieve its Normative Plant Availability for the billing period, then it is the obligation of TSDiscoms to evacuate such power and the generating plants are entitled to claim full Fixed Charges.</p> <p>In case of any Network constraint for power evacuation from the NTPC Project, which is not attributable to generating station/NTPC, full Capacity Charges are payable by TSDiscoms as per CERC Tariff Regulations. However, if a NTPC generating Station is non-operating, it cannot declare its plant availability/ readiness to generate power. Therefore, it cannot achieve the NPAF as</p> |

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|---|----------------------------|--|
| | | <p>fixed by CERC. Hence, it would lose the Fixed Charges during the non-operating period.</p> <p>Even the Tariff Regulation issued by TSERC in the year 2019 adopted the same procedure (as fixed by CERC) for State generating plants. No other penalties have been stipulated in the TSERC Tariff Regulation, 2019, as directed in the TSERC Interim Order.</p> <p>In light of above submissions, TSDiscoms prayed the Commission to exempt from such a direction for negotiation with NTPC for incorporation of additional penalty during non-operating period of the generating plant.</p> |

Stakeholder Comments

46. In the Interim Order, the Commission asserted that regarding non-operation of the plant exclusively on account of failure of NTPC other than force majeure conditions, there shall be a penalty clause for the non-operating period of the plant, to have equitable liability on both sides. The submissions of NTPC and TSDiscoms that no such penalty clause is required is untenable. Their contentions are that, if NTPC fails to generate and supply power from the subject project to TSDiscoms, fully or less than Plant Availability Factor (PAF), proportionate reduction of capacity charges (fixed charges) itself is a penalty and therefore, no need to amend the said clause as directed by the Commission. If the TSDiscoms fail to take power from the project as per declared plant availability factor, they have to pay fixed charges to NTPC to the extent of capacity backed down. Similarly, if NTPC fails to generate and supply power as per PAF, it has to pay penalty to TSDiscoms to have equitable liability on both sides, as the Commission asserted rightly in the Interim Order.

47. Reduction of fixed charges proportionate to lesser generation and supply of power by the subject project is not a benefit to TSDiscoms, for, they are paying fixed charges proportionate to power generated and supplied by the project. In other words, they are not paying fixed charges for power not generated and supplied to them. In case of backing down, TSDiscoms are paying fixed charges proportionate to power not generated and supplied as per backing down orders of SLDC, i.e., TSDiscoms are

paying penalty in the form of fixed charges for power not generated and supplied for which the failure of TSDiscoms to take that power is responsible. When NTPC fails to generate and supply power from TSTPP to TSDiscoms, it should also pay penalty to TSDiscoms proportionate to power not generated and supplied for its failure to generate and supply that power. It is because of the failure of NTPC to generate and supply power or supply power lesser than PAF, TSDiscoms will be constrained to purchase power from other sources and in the process may incur additional expenditure and/or face other problems. In order to compensate TSDiscoms for the additional burden caused to them due to the failure of NTPC, the latter has to pay penalty to TSDiscoms. That is the sound reasoning behind the direction given by the Commission.

48. That there is no such provision in the Regulation of CERC and TSERC is no valid ground for not including by way of an amendment to the PPA a clause imposing penalty on NTPC in the said eventuality. The said Regulation do not categorically and specifically say that no such provision for imposing penalty on the developers, here NPTC, for their failure to generate and supply power, fully or partly vis a vis PAF, to the buyer TSDiscoms under PPA be incorporated in PPA. The Commission has discretionary powers to deviate from the Regulation by recording the reasons for the same in writing, to ensure equitable liability on both sides. Therefore, the Commission should get the amendment to PPA brought about as directed in its Interim Order.

49. Regarding need for incorporating a clause in the PPA providing for payment of penalty by NTPC to TSDiscoms when NTPC fails to generate and supply power, fully or partly, the TSDiscoms argued that in such a case, TSDiscoms will not make payment of Energy charges also as there would be no generation and this will also be a saving to TSDiscoms. When NTPC fails to generate and supply power, fully or partly, to TSDiscoms, the argument that non-payment of fixed charges and variable charges proportionate to such short-supply of power will also be a saving to Discoms is amusing. When a PPA is entered into by TSDiscoms with a generator of power, it is to get supply of power to meet requirements of demand, not for non-supply of power and so-called saving. The argument of TSDiscoms, that, if generators fail to supply power as per PPAs, non-payment of tariffs, both fixed & variable, by TSDiscoms would be a saving to the latter, it defeats the very purpose for which PPAs are entered into.

50. TSDiscoms failed to respond to the stakeholder's submission that, just as the TSDiscoms have to pay fixed charges to NTPC for backing down capacity of the subject plant when the TSDiscoms do not require power from it, NTPC, too, should pay penalty to TSDiscoms when it fails to generate and supply power in order to compensate the additional burdens TSDiscoms have to bear for purchasing power from other sources at higher costs to meet demand. The implication in the arguments of TSDiscoms is that, for the failure of TSDiscoms to take power from NTPC, they have to pay penalty in the form of fixed charges to NTPC, but if NTPC fails to supply power to TSDiscoms, it need not pay penalty to TSDiscoms; it is self-defeating, as it does not protect interests of TSDiscoms and their consumers.

51. Precisely because there is no provision in the Regulations for imposing penalty on NTPC for its failure to generate and supply power to TSDiscoms, stakeholder suggested and the Commission directed in its Interim Order to amend the terms of the PPA accordingly. When TSDiscoms are arguing that it may not be possible for deviating the Regulation, they are questioning the discretionary power of the Commission which is specifically incorporated in every Regulation that the Commission can deviate from the Regulations for reasons to be recorded in writing. Absence of a provision like this in Regulation does not mean that the Commission cannot direct the parties to PPA to incorporate such a provision in the PPA concerned by amending it accordingly. Moreover, there is no Regulation which prohibits imposition of a penalty on a generator for the latter's failure to supply power to TSDiscoms as per PPA. Therefore, the said direction of the Commission to amend the subject PPA is intended to correct a glaring deficiency in the Regulation in a fair, rational and balanced way to ensure equity in terms of ensuring liability on both sides to the PPA for their respective failures. Otherwise, the PPA should be amended to remove the clause providing for payment of fixed charges by TSDiscoms to NTPC for backing down capacity of the subject plant.

TSDiscoms' Replies

52. In case of failure of NTPC to generate power, to that extent, there will not be any plant availability declaration by it and if the Normative Plant Availability Factor (NPAF) (@ 85% on annual basis) is not achieved by the generating plant of NTPC, then there will be pro-rata reduction in the Annual Fixed Charges (AFC) payable to

NTPC as per CERC/TSERC Regulations and the reduction of Fixed Charges condition will act as a penalty which is a saving to TSDiscoms.

53. Whereas the stakeholder's contention is that to the extent of loss of generation from NTPC, TSDiscoms would have to purchase the energy from markets and thus incur additional cost. It is to be noted that during such generation loss, TSDiscoms will not make payment of energy charges also as there would be no generation and this will also be a saving to TSDiscoms. As such, the Tariff Regulations framed by CERC or TSERC have not stipulated any such penalty for incorporation in the PPA. Without such penalty stipulation in the Tariff Regulations, it may not be possible for deviating the Regulations and for incorporation of penalty clause in the PPAs as Regulation will override the PPA provisions in case of inconsistency. It is required to appreciate the legal implications upon deviating from Tariff Regulations. As per the TSERC Regulation 2019 at Clause 17:

“

17. *Norms of operation for Thermal Generating Stations*

... ..

ii. *Full Capacity charges shall be recoverable at Normative Annual Plant Availability Factor (NAPAF) specified above of these Regulation. Recovery of Capacity Charges below the level of Normative Annual Plant Availability Factor (NAPAF) will be on a pro-rata basis. At zero availability, no capacity charges shall be payable.*

iii. *The availability certified by SLDC shall also include Backing Down of the Generating Stations for the purpose of recovery of capacity charges.*

... ..”

54. As per the definition of the CERC (Terms & Conditions) Regulation 2019:

‘Declared Capacity’ or ‘DC’ in relation to a generating station means, the capability to deliver ex-bus electricity in MW declared by such generating station in relation to any time-block of the day as defined in the Grid Code or whole of the day, duly taking into account the availability of fuel or water, and subject to further qualification in these Regulation;

55. In case of backing down it means the capability of the Station to deliver ex-bus electricity declared by the station is back down as per the procedure laid down in Indian Electricity Grid Code (IEGC) for grid safety and the generator is in readiness for supply of power. PPA provisions are based on standard clauses as per the prevailing CERC Regulation applicable from time to time. In case PPA terms & conditions are

inconsistent with CERC Tariff Regulations, to the extent of inconsistency, CERC Regulations will prevail over the PPA provisions.

Commission's View

56. The Commission in Interim Order, had observed that regarding non-operation of the plant exclusively on account of failure of NTPC other than force majeure conditions, there shall be a penalty clause for the non-operating period of the plant, to have equitable liability on both sides. Therefore, the Commission had directed TSSPDCL to negotiate with NTPC on this account and modify the relevant clauses suitably. However, NTPC and TSDiscs are of the view that there is no need to amend the clause since the CERC Regulations have already provided for penalty on generating stations, by way of reduced capacity charges payable to them on pro rata basis, for achieving lesser PAF vis-à-vis (NAPAF @ 85% in general). TSDiscs have also submitted that even the TSERC Tariff Regulation, 2019 issued by the Commission has adopted the same procedure (as fixed by CERC) for State generating plants and no other penalties have been stipulated in the TSERC Tariff Regulation.

57. TSDiscs requested the Commission to exempt from such a direction for negotiation with NTPC for incorporation of additional penalty during non-operating period of the generating plant, which has not been stipulated either in CERC or in TSERC Tariff Regulation, 2019. In view of this, the Commission is inclined to exempt from such a direction to amend the PPA.

Issue 5: Allocation of coal linkage from Odisha Coal Mines

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscs |
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| The variable cost of the generation depends on cost of fuel that is mainly on the cost of coal delivered at the site. As stated by the Discom, if the coal is allocated from the mines of Odisha State, it would be costlier. In view of the above, the Discom through the State Government may pursue with Coal India Limited and MoP, Gol for allocation of linkage of coal from Singareni mines instead of Odisha State mines for TnSTPS. | No comments furnished by NTPC. | NTPC was allotted Mandakini-B Coal block in Odisha State for Captive mining for supply of Coal to TSTPP Phase-I by MoC, Gol. The coal requirement for the NTPC would be 8 MTPA (Million Tons per Annum) based on estimated GCV of coal between 3200 to 3900 kcal/kg. MoC, accorded in-principle approval for grant of Tapering linkage from CIL for the TSTPP Phase-I, till the commencement of coal supplies from Mandakini-B Coal Block. Accordingly, CIL allotted Tapering Coal Linkage for |

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|---|----------------------------|--|
| | | <p>TSTPP Phase-I, from Western Coal fields (WCL).</p> <p>As directed by the Commission, the Special Chief Secretary, Energy Department, Govt. of Telangana State vide letter dated 21.07.2020 requested the Secretary, MoC, Gol to consider shifting of the existing Tapering Linkage of WCL to SCCL, due to proximity of SCCL mines and as a policy of rationalization of coal linkages for optimization of Transportation cost, in order to supply electricity to Telangana State consumers at affordable prices. Even MoP has also recommended for shifting of tapering coal linkage.</p> <p>The Standing Linkage Committee (under MoC) considered the request of GoTS & MoP and recommended for shifting of existing coal linkage from WCL to SCCL & directed NTPC to submit necessary application for grant/shifting of tapering linkage. Further, TSDiscoms have been pursuing with Gol (MoC) through State Government & MoP, as directed by the Commission for shifting of regular long-term coal linkage to SCCL, Telangana from Odisha.</p> <p>In light of the above, the Commission is requested to appreciate the steps taken up by GoTS, TSPCC and TSDiscoms in arranging necessary coal linkage to TSTPP Phase-I from SCCL.</p> |

Stakeholder Comments

58. In the Interim Order, the Commission directed TSDiscoms to pursue with Coal India Limited (CIL), MOP and MoC, Gol, through the State Government for allocation of linkage of coal from Singareni Collieries Company Limited (SCCL), instead of Odisha State mines for TSTPP. SCCL mines being in the vicinity of TSTPP will reduce the burden of transportation charges, which will result in reduction in tariff. Since, SCCL has adequate coal to supply to TSTPP and it expressed its willingness to do so,

there should not be any objection to it. Such an arrangement should not be confined to just tapering linkage, but extended to regular long-term linkage of coal, in all fairness. While the said direction was given by the Commission in the year 2016, going by the correspondence the GoTS had with the Gol copies are submitted by TSDiscoms along with their additional responses in the present case. There has been inordinate delay in taking up the issue with the Gol. The Special Chief Secretary of GoTS has written a letter to the Secretary, MoP, Gol on 10.03.2020. Subsequently, another letter was sent to the Secretary, MoC, Gol on 21.07.2020. A letter was sent to the CMD of NTPC on 10.11.2020. GoTS did not take any initiative to take up the issue with the concerned authorities of the Gol for almost four years. To take a decision on these issues, it does not require more than one year. The GoTS should consistently pursue with Gol for its favourable decisions on these issues without further delay.

59. For a thermal generation power plant to be cost efficient, design specified calorific value of coal should always be available from a coal mine consistently. Thus, besides the price of coal for the required grade of coal, the transportation cost from the mine is a significant cost. Costs of oils & coal (including royalty, cess, taxes and transportation) is almost 55% of the revenue in the case of TSGenco. So, the location of the mine and rail connectivity decides the logistics costs (about 35% today on an average).

60. TSDiscoms in additional submission dated 18.04.2021 submitted that 8 MTPA will be required for NTPC based on estimated GCV of coal between 3200 to 3900 kcal/kg. Further, in additional submission NTPC has not furnished its views. The Commission should direct NTPC and TSDiscoms to submit their views on above as quality, quantity and economics issues arise.

61. TSDiscoms should clarify if the required 8 MTPA of coal with the required GCV (3200-3900 kcal/kg of coal) is based on a written report from SCCL. While Transportation costs are important to consider, the primary basis is the availability of the required grade of coal. It is not clear from the submissions of TSDiscoms that SCCL has confirmed the twin requirements of quality in terms of GCV (with the average surface moisture and inherent moisture) and the estimated quantity requirement of 8 MTPA.

62. The Commission should direct TSDiscoms to get such a report from SCCL and submit it to the Commission and upload after the Commission scrutiny in the TSDiscoms Website.

63. As regards the query on the advantages arising from change of mine source from Mandakini –B mine and SCCL, TSDiscoms or NTPC should confirm about a written confirmation on availability of 8 million tons/year for 25 years at the required quality of 3220-3900 kcal/kg from Coal India/SCCL. The quantity and specifically quality are the basis for plant performance and generation costs. Therefore, the Commission should direct TSDiscoms/NTPC to provide this important confirmation. TSDiscoms have stated that SCCL has communicated to supply coal to NTPC Telangana plant. However, it is to be clarified if there is a confirmation of quality.

64. Regarding cost advantage due to transportation, TSDiscoms have stated approximately Rs. 2000/ton will be saved in transportation costs, if the coal re-allocated to SCCL instead of Mandakini B Coal mine. TSDiscoms/NTPC should substantiate this conclusion. Further, TSDiscoms should ascertain confirmation of allocation of coal from SCCL to the subject project on a firm basis and work out the resultant reduction in variable cost.

TSDiscoms' Replies

65. The stakeholder's concern on coal transportation charges from Odisha State Mine is very much appreciated and TSDiscoms have already taken steps in this regard. TSDiscoms would constantly pursue with MoC, GoI through GoTS for obtaining long term coal linkage from SCCL Mines only. NTPC has already requested MoC for surrendering of Mandakini-B Coal mine in Odisha State and is awaiting approval and have taken up with MoP, GoI for grant of firm linkage for the plant through Standing Linkage Committee (Long term) and SCCL has also communicated their willingness to supply coal under long term linkage. Further, Standing Linkage Committee has approved shifting of tapering coal linkage from WCL to SCCL and MoU is under finalization.

66. From the Freight Operation Information System available on the web portal of Indian Railways, it has been observed that the freight as on date from the nearest station, i.e., Angul of Mandakini-B coal mine at Orissa to NTPC Ramagundam is

Rs.2126/Tonne. From the monthly bills of STPP, it has been observed that the transportation charges are in the range of Rs.90/Tonne to 150/Tonne. It can be noted that the cost benefit arising out of change of mine from Odisha to SCCL is estimated around Rs.2000/Tonne as per the prevailing rate as on date.

Commission's View

67. The Commission, in Interim Order, had observed that the cost of transportation of coal from Odisha Coal Mine is higher compared to the cost of coal available from mines of Singareni Collieries (SCCL) in view of their vicinity to TSTPP. Therefore, the Commission had directed the TSDiscoms to pursue with Coal India Limited (CIL), MoP, and MoC, GoI through the State Government for allocation of linkage of coal from SCCL mines instead of Odisha State mines for TSTPP.

68. It is noted that MoC has accorded in-principle approval for grant of Tapering linkage from CIL for the TSTPP Phase-I, till the commencement of coal supplies from Mandakini-B Coal Block and accordingly, CIL has allotted Tapering Coal Linkage for TSTPP Phase-I, from Western Coal fields. The Commission also noted from the submission of TSDiscoms that they have been pursuing with MoC through State Government and MoP for shifting of regular long-term coal linkage to SCCL, Telangana from Odisha. The Commission appreciates the steps taken up by the GoTS, TSPCC and TSDiscoms in arranging necessary coal linkage to TSTPP Phase-I from SCCL. The Commission directs TSDiscoms to pursue the coal allocation from SCCL and communicate the outcome to the Commission.

Issue 6: Provision for Termination of agreement is one sided

| <i>Commission's View in its Interim Order</i> | <i>Submissions of NTPC</i> | <i>Submissions of TSDiscoms</i> |
|--|--|--|
| The Commission considers that equities have to be built into the agreement in the event of the termination of the agreement by either of the parties in the event of any one of the parties does not meet the obligation under the agreement. The provision in the PPA should provide for the other party to issue notice for termination. Accordingly, the clause 12.4 shall be modified. | NTPC stated that the Sub-clause 12.4 may have to be read together with Clause 12.0 (Successors and permitted assigns) to get the intent of the clause. | The issue of termination of PPA under Clause 12 arises only when TSDiscoms are re-organized and assigned to private organization/Successors and in order to ensure Payment Security Mechanism subsequently, NTPC seeks to establish the Letter of Credit & ESCROW mechanism before assignment of PPA to successor's entities. If the successor entities do not fulfil the pre-requisites on Payment Security Mechanism, this |

| Commission's View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|---|----------------------------|--|
| | | clause would enable NTPC for such termination of PPA. NTPC seeks to invoke the above termination provision only during such cases. The PPAs with NTPC in respect of other Thermal power projects also provided identical Clauses and same has been submitted to the Commission. Therefore, TSDiscoms requested the Commission to exempt from such direction for amending the Clause 12.4 in the PPA. |

Stakeholder Comments

69. The Commission, in its Interim Order, asserted that the clause on termination of the PPA by NTPC was not equitable and directed to modify the clause 12.4 to provide for the other party, i.e., TSDiscoms, to issue notice for termination. The submissions of NTPC and TSDiscoms that the issue of termination of PPA under clause 12 arises only when TSDiscoms are re-organised and assigned to private organisation/successors, and if the latter do not fulfil the pre-requisites on payment security mechanism. If such is the case, the same should be made clear categorically in the PPA, besides incorporating a clause that no party to the PPA, i.e., NTPC or TSDiscoms, can terminate the PPA unilaterally as long as TSDiscoms continue as they are, i.e., as the companies of the GoTS. The Commission should get amendments brought about in the subject PPA accordingly. It is a standard practice that, when a corporate entity is transferred to another entity, both liabilities, obligations, assets and rights of the former also would stand transferred to the successor entity.

70. Regarding the amendment in PPA to incorporate a provision to facilitate TSDiscoms to issue notice of termination on par with NTPC, the arguments of TSDiscoms are untenable. Other PPAs of NTPC contained such one-sided provisions is not acceptable justification for the same. Uniformity is no virtue when it contains elements of inequity, one-sidedness and irrationality. TSDiscoms also failed to explain how incorporation of the said amendment is unacceptable and how it would cause any difficulty or harm to NTPC. A PPA should ensure equity and balance in terms of rights and obligations, and interests of both sides.

TSDiscoms' Replies

71. TSDiscoms have already submitted to the Commission that the termination clause would be invoked by NTPC only when further re-organization occurs and the PPA is assigned to private organizations or successors and also, the pre-requisite conditions such as payment security mechanism is not fulfilled. NTPC PPA contained similar provisions as already provided in subsisting PPAs entered with other States in respect of other NTPC projects, in order to maintain uniformity in the PPAs and prayed to the Commission for exemption of its direction in this regard.

72. Since the similar provision is available in other existing NTPC PPAs, this does not cause any harm to TSDiscoms as long as Discoms continue to be the Companies under the GoTS.

73. Many States are willing to relinquish their share in NTPC power projects, due to huge penetration of Renewable Energy (Solar/Wind) capacity, but MoP is not allowing it. Under these conditions, the possibility of termination of PPA by NTPC is very less, as such capacity would become stranded and idle.

Commission’s View

74. The Commission has found the submission made by TSDiscoms in order and therefore, the Commission exempts from the direction for amending the Termination clause in PPA.

Issue 7: Acquisition of the plant after completion of agreement term

| Commission’s View in its Interim Order | Submissions of NTPC | Submissions of TSDiscoms |
|--|--|---|
| Though the Commission agrees with the submission of TSDiscoms i.e., “ <i>The regulation made by CERC does not stipulate for providing buy-out clause in the PPA.</i> ” it desires that endeavour should be made by them to provide for buy-out clause as the project being established as an exclusive one to Telangana State. The Commission is of the view that the tax paid on income gained on this project alone shall be allowed subject to the production of documents regarding liability of taxes on income to be passed on to the procurer(s). | CERC Regulations do not provide for buy-out of the plant after 25 years. Since, the Commission agrees with the submissions of TSDiscoms which is in line with the above. | The Commission made this observation based on the objections/suggestions raised by some of the stakeholders in the Public Hearing held on 20.06.2016, by considering the buy-out provision in case of Gas based power projects (PPAs) set up by IPPs. Whereas the TSTPP Phase-I is being set up by NTPC, a Central PSU, owned by the GoI, and the project tariff is being governed by CERC Tariff Regulations, which do not provide for such buy-out conditions. Further, TSERC Tariff Regulation, 2019 also have not provided for such buy-out condition for State generating Companies. |

| | | |
|--|--|---|
| | | Therefore, TSDiscoms prayed the Commission to exempt from compliance of such direction. |
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Stakeholder Comments

75. Regarding buy-out, Regulation of CERC or TSERC do not provide for the same is no reason for not incorporating a clause providing for buy-out of TSTPP project after completion of the term of PPA. No Regulation categorically says that such a clause should not be incorporated in PPA. Even while agreeing with the submission of TSDiscoms, the Commission, in its Interim Order, desired that endeavor should be made by TSDiscoms to provide for buy-out clause, as the NTPC project is being established exclusively for Telangana State. Needless to say, TSDiscoms have been paying fixed charges during the period of PPA which cover about 90% of the capital cost of the plant, return on equity and interest on debt fully. Moreover, the project is being set up in Telangana State and exclusively for Telangana State as per the Act passed by the Parliament which is not the case with other CGS. By providing for buy-out clause in the PPA, NTPC will get terminal value of the project and would not incur any loss. Therefore, the Commission should direct both the parties to the PPA to incorporate buy-out clause with appropriate terms and conditions. If any section/clause in any Regulation or any deficiency therein is irrational and imbalanced and detrimental to larger consumer interest, the same needs to be amended. That is the reason why in every Regulation a saving clause is incorporated to the effect that the Commission concerned can deviate from the Regulation by recording the reasons therefor in writing. After all, all future eventualities cannot be foreseen in advance.

76. Regarding need for incorporating buy-out provision in the subject PPA, the TSDiscoms maintained that whereas, there is no such provision in PPAs related to TSGenco (or) CGS, whereunder the tariff is determined under Section-62 of the Electricity Act 2003. TSDiscoms submitted that the Commission would ensure uniformity in all the provisions of PPAs subsisting with TSGenco plants/CGS plants and hence, the deviation from Tariff Regulation proposed by the stakeholder may not be possible. However, State Genco plants continue to be property of the State Government and their entire capacity is intended for TSDiscoms to meet demand in the State and hence, the need for buy-out clause does not arise. In the case of private projects or CGSs, that is not the position. The so-called uniformity is no virtue and it

cannot be a justifiable ground to continue a deficiency or defect or manipulation to recur and continue.

TSDiscoms' Replies

77. TSDiscoms already submitted that the Regulatory Commissions can determine tariff of generating Stations under Section-62 of the Electricity Act, 2003 as per the Tariff Regulations framed by them only and Regulatory Commissions generally do not deviate from the same. The stakeholder might have raised this issue based on the PPAs with gas based IPPs, which had provided for buy-out option to TSDiscoms. In case of Private gas IPPs, the tender conditions had stipulated for buy-out condition also, hence, it was provided in their PPAs. Whereas there is no such provision in PPAs related to TSGenco (or) CGS, where-under the tariff is determined under Section 62 of the Electricity Act 2003.

78. The Commission would ensure uniformity in all the provisions of PPAs subsisting with TSGenco/CGS Plants and hence, the deviation from Tariff Regulations proposed by the stakeholder may not be possible. It is required to appreciate the legal implications in regard to buy-out clause incorporation in the PPA. CERC and TSERC Regulations do not provide for buy-out of the plant after 25 years. Moreover, after 25 years, there will be huge penetration of renewable energy capacity and the renewable energy has to be encouraged to reduce green gas emissions.

Commission's View

79. The Commission, in the Interim Order, had desired that endeavour should be made by TSDiscoms to provide for buy-out clause as the NTPC project is being established exclusively for Telangana State. However, NTPC and TSDiscoms submitted that CERC Regulations do not provide for buy-out of the plant after 25 years and in addition, there is no specific clause for buy-out of the project as per the TSERC Tariff Regulation, 2019. Therefore, the Commission exempts from compliance of such direction.

Issue 8: Details of Projects

Stakeholder Comments

80. In the Interim Order of the Commission dated 30.07.2016, it is specified that TSSPDCL vide a letter dated 14.02.2016 has furnished details of estimated cost as

Rs.9954.20 Crore and COD of Unit-I as 52 months from zero date indicated in the investment approval. The COD of subsequent unit shall be at an interval of 6 months thereafter. The Commission should direct TSDiscoms to reassess the details given in the TSSPDCL letter to the Commission. Now, it is more than 65 months since the PPA was signed on 14.02.2016 and therefore, clarity on the present status of project is required in terms of following:

- (i) Any revision in the estimated cost;
- (ii) Filing of NTPC before CERC for approval of projected cost;
- (iii) Status of Project Financing;
- (iv) Revalidation of No Objection Certificate (NOC) from Airports Authority of India (AAI), which was valid till the year 2018;
- (v) Status of the Environmental Clearance from The Ministry of Environment, Forest and Climate Change (MoEF&CC) for the new Coal linkage; and
- (vi) Current zero date for the project and expected COD.

81. TSDiscoms in their reply has submitted that the present project is within the investment approval accorded by NTPC and NTPC has not yet filed a Petition before CERC for determination of capital cost and tariff. It will be filed before COD of Unit-I, i.e., May 2022. TSDiscoms would have been conducting periodic review with NTPC to assess project progress and escalation of costs. However, their reply on this pertinent issue of project financing is incomplete and unsatisfactory. NTPC should have clear picture by now on these issues.

TSDiscoms' Replies

82. The NOC from AAI is for Chimney, the construction of which was started within the validity period and is already completed. MoEF&CC vide OM dated 11.11.2020 has clarified that power plants can change the coal source without seeking the amendment in Environment Clearance. The zero date of the TSTPP project is 29.01.2016. Tentative dates of COD for Unit-I and Unit-II are May 2022 and September 2022, respectively. Further, TSDiscoms are conducting periodic review with NTPC to assess progress of TSTPP.

83. NTPC has not yet filed a Petition before CERC for determination of capital cost and tariff. The same will be filed before COD of Unit-I. NTPC makes general purpose borrowings for capacity addition. Financing of NTPC project is done on NTPC's balance sheet and its capacity to raise the debt. Financial closure is accorded with investment approval of the project.

Commission's View

84. The Commission is of the view that the details of project cost shall be clear once the plants are close to COD and NTPC files Petition before CERC for approval of capital cost & Tariff. The Commission directs TSDiscoms to make all necessary efforts by providing comments on the submissions made by NTPC for prudent determination of capital cost and tariff by CERC.

Issue 9: Delay in Execution of the Project

Stakeholder Comments

85. Details like the stage of execution of TSTPP (Phase I) and COD are required to be examined. If there is impermissible delay in execution of the project, as per terms and conditions in the PPA or Regulation in force during that period of execution, impermissible additional capital expenditure and IDC during the period of impermissible delay need to be examined and rejected. Liquidated damages should be collected from NTPC for the impermissible delay and failure to generate and supply power to the TSDiscoms during the period of delay.

86. It should also be checked whether there have been any orders from the National Green Tribunal (NGT) imposing restrictions on NTPC for not fulfilling legally binding obligations for controlling emissions from the subject plant at required level, and if so, whether the failure of NTPC to fulfil the same in time led to avoidable delay in execution of the project and escalation in cost. TSDiscoms have to agitate their legitimate concerns before CERC, if a Petition for determination of tariff comes up for hearing. The Commission, if it sticks to the stand that CERC has to decide tariff for the subject plant, should direct TSDiscoms to agitate their concerns before CERC to protect larger consumer interest in an effective manner.

87. Regarding notice of NGT issued to NTPC TSTPP Phase-I, as of now, no data is available in the office of TSDiscom. The information should be available in the office

of NTPC. That is the reason why NTPC, as the respondent in the subject Petition, should participate in the regulatory process of the Commission, make their submissions, submit their responses and clarify factual position relevant to the subject issue. It is for NTPC to make submissions before the Commission on how the subject project is being implemented, what kind of problems, if any, it has been encountering in execution of the project, when CODs of its units would be declared and when it would submit its Petition to CERC for determination of permissible capital cost and tariff of the project, etc.

TSDiscoms' Replies

88. As opined by the stakeholder, TSDiscoms will put forth its views before CERC once the Tariff Petition is filed by NTPC in respect of TSTPP Phase-I. CERC would examine the prudence of the capital cost of TSTPP Phase-I including IDC & IEDC based on guidelines framed by Hon'ble APTEL in its judgment in O.P.No.72 of 2010 in delay computation and sharing of IDC between the parties.

89. Regarding notice of NGT issued to NTPC TSTPP Phase-I, as of now, no data is available in Offices of TSDiscoms.

Commission's View

90. The Commission is inclined to accept the reply of TSDiscoms. The Commission directs TSDiscoms to make all necessary efforts by providing comments on the submissions made by NTPC for prudent determination of capital cost and tariff by CERC.

Issue 10: Delay in amendments in PPA

Stakeholder Comments

91. In the Interim Order dated 30.07.2016, the Commission directed TSDiscoms to negotiate with NTPC and file Supplementary PPA incorporating the amendments in line with views of the Commission. However, both the parties signed PPA on 09.04.2021 and incorporated only one marginal amendment instead of incorporating all amendments suggested in the Interim Order. TSDiscoms took five years to incorporate one marginal amendment, which means parties defied the directions of the Commission. Therefore, TSDiscoms should provide reasons for delay in signing PPA.

92. TSDiscoms submitted that *“no consensus was arrived between TSDiscoms & NTPC on the directions given by TSERC and this led to a standstill in the discussions. Meanwhile, the Members and Chairman of the Commission demitted the Office, followed by COVID-19 Pandemic restrictions and therefore, parties could not proceed in the matter. The inordinate delay occurred in signing the Supplementary PPA with NTPC is because of the factors/events beyond the control of the Parties.”* However, it is noted that before the TSERC became defunct with the posts of Chairman and Members remaining unfilled, from the date of the Interim Order given by the Commission in 2016 till the Commission became defunct, the gap has been very long and there has been no justification for the inordinate delay in signing and filing the Supplementary PPA seeking consent of the Commission during that period. TSDiscoms failed to explain what those factors and events which were beyond the control of the parties to the PPA which are being claimed as the reasons for such inordinate delay.

93. An early filing of a Petition and determination of tariff by CERC would make subsequent claims of NTPC for increase in capital cost of the project and impermissible delay in execution as per the then applicable regulations. Terms and conditions in the PPA are invariably interlinked with the process of determining permissible capital cost and tariff. In other words, even for determination of tariff, CERC has to take into account the applicability of terms and conditions in the PPA as approved by the Commission. The Commission, in its Interim Order, specified that the Commission is in agreement with the statement of the TSDiscoms regarding determination of tariff on ad-hoc basis or regular basis.

94. TSDiscoms in their reply, has informed that NTPC expressed its inability to carry out the amendments to the subject PPA as per Interim Order dated 30.07.2016 since they are contrary to the standard/existing PPAs it had already entered with TSDiscoms and other States in respect of other NTPC projects. TSDiscoms should clarify when NTPC has expressed its said inability to carry out the amendments and whether any discussions on the issues have taken place between TSDiscoms and NTPC. If so, TSDiscoms should submit the correspondence between the parties, and minutes of their discussions, if recorded in writing. It is required to ascertain the specific stand taken by TSDiscoms on each point. The terms in the standard/existing PPAs

NTPC had with TSDiscoms or different States for supplying power from its respective stations are not binding on the Commission. NTPC intends that the Commission should give its consent to the PPA as signed and submitted by the parties thereto. However, the Commission has every authority to direct the parties to the PPA to amend it as directed by it.

95. TSDiscoms submitted that the legal position on the order of priority is that the Electricity Act, 2003, the Regulation made thereunder, and PPA would follow the sequence. In case PPA terms & conditions are inconsistent with CERC Tariff Regulations, to the extent of inconsistency, CERC Tariff Regulation will prevail over the PPA provisions. Therefore, NTPC expressed its inability to deviate from the CERC Tariff Regulation as well as directions of the MoP, Gol. The Commission is an independent quasi-judicial body same as CERC. The Regulations of CERC are not binding on the Commission. The Commission can adopt Regulations of CERC or take an independent decision as per its applicable Regulations and exercise its discretionary powers as well to deviate from the Regulations for reasons to be recorded in writing. Similarly, the directions of MoP, Gol, to NTPC are not binding on the Commission.

96. The Commission should ensure that the amendments are incorporated as directed in the Interim Order dated 30.7.2016. The Commission should direct parties to the PPA to sign and submit the amended PPA accordingly for record purpose, making it clear that the amended PPA would come into force after such submission.

TSDiscoms' Replies

97. The reason for the inordinate delay in signing the Supplementary PPA with NTPC is that the Commission, in consideration the objections raised by stakeholders in the Public Hearing held on 20.06.2016, directed TSDiscoms to incorporate the same in the PPA by negotiating with NTPC, in line with the terms & conditions of subsisting PPAs with Private Gas based IPPs, such as acquisition/buy-out Clause, termination of agreement, penalty for reduced generation, etc.

98. However, NTPC, being a Central Generating Station (CGS), owned by the Gol, which is bound by the directions of MoP, as well as CERC Tariff Regulations, expressed its inability to carry out the amendments contrary to the standard/existing

PPAs it had already entered with different States in respect of other NTPC projects, except for power evacuation to be taken up by STU network instead of PGCIL network, since the delivery point of power supply would be ex-bus of TSTPP Phase-I.

99. Regarding the objection raised that “*CERC has to take into account the applicability of terms & conditions of PPA as approved by the Commission*”, the legal position on the order of priority is that the Electricity Act, 2003, the Regulations made there-under, & PPA would follow the sequence and in case PPA terms & conditions are inconsistent with CERC Tariff Regulations, to the extent of inconsistency, CERC Regulations will prevail over the PPA provisions. Therefore, NTPC expressed its inability to deviate from CERC Tariff Regulations as well as from MoP directions.

100. Due to the aforementioned reasons, no consensus was arrived between TSDiscoms and NTPC on the directions given by TSERC which led to a standstill in the discussions. Meanwhile, the Members and Chairman of the Commission demitted the Office, followed by COVID-19 pandemic restrictions and therefore parties could not proceed in the matter. The inordinate delay occurred in signing the Supplementary PPA with NTPC is because of the factors/events beyond the control of the parties.

101. After the new Commission has assumed office, TSDiscoms apprised the issues related to TSTPP Phase-I on 09.11.2020 and persuaded the Commission for amending the PPA to the extent of power evacuation by STU besides seeking exemption from other directions in the Interim Order and accordingly signed the Supplementary PPA with NTPC.

102. TSDiscoms vide memo dated 03.01.2020 and additional submissions dated 19.11.2020, have already submitted to the Commission the remarks of NTPC and views of TSDiscoms on the directions in the Interim Order dated 30.07.2016 to incorporate the amendments to the terms of the PPA for TSTPP.

Commission's View

103. The Commission is in agreement with the response of the TSDiscoms that the inordinate delay occurred in signing the Supplementary PPA with NTPC is mostly because of the factors/events beyond the control of the parties. As regards the submission of stakeholders on the amendments in PPA as per the Interim Order, the Commission has discussed these issues in earlier paragraphs of this Order.

Issue 11: Capacity of TSTPP Phase-II

Stakeholder Comments

104. As of now, no agreement has been signed by TSDiscoms with NTPC in respect of TSTPP Phase-II. TSDiscoms are not in a position to assert with any degree of certainty the need for the balance 2400 MW from TSTPP Phase II. Whether TSDiscoms require 1600 MW under Phase I of the subject project is also a moot point which needs to be examined realistically. Many States are willing to relinquish their share in NTPC power projects, due to huge penetration of Renewable Energy capacity, but MoP, GoI, is not allowing it. Therefore, it is all the more necessary for TSDiscoms to determine whether power from the subject project is required or not. They cannot go on haphazardly entering into long-term PPAs to purchase power from different sources, without any realistic medium and long-term load forecast, resource plan, procurement plan, etc.

105. Therefore, the Commission should direct the TSDiscoms to submit these details and the Commission should also hold public hearings on the same. Based on the order to be issued by the Commission on long-term load forecast, etc., need should be considered for purchasing power from any power project, including the subject project.

TSDiscoms' Replies

106. TSTPP project is intended for Telangana State only. However, as regards the balance TSTPP capacity of 2400 MW (3x800 MW) under 2nd Phase, it can be considered only after the 1st Phase (2x800 MW) is commissioned and coal linkage issues are resolved. Further, the huge capacity addition by TSGenco would also be taken into consideration in order to assess whether there is a need to go for 2nd Phase of TSTPP. As of now, no agreement has been signed by TSDiscoms with NTPC in respect of TSTPP Phase-II.

107. Long term load forecast assessment is being done before entering into the PPA considering the anticipated future load growth of 8% including Lift Irrigation Loads of Kaleswaram, Palmuru Rangareddy, Sitaram Projects (around 8000 MW) and 24x7 power supply for the additional Agriculture pump sets in the State.

Commission's View

108. The Commission noted that TSDiscoms have not signed PPAs with NTPC in respect of power procurement TSTPP Phase-II. By considering ever growing peak demand & energy requirement, present installed capacity, capacity additions in progress, retirement of thermal units and 5% spinning reserve, there is dearth for additional power projects based on Thermal, Hydro and Renewable mix to derive timely benefits. It is thus clear that an increase in generating capacity is essential in order to reduce the shortfall of electrical power and to meet the present and future agricultural power demand as well as other developmental activities in Telangana State. However, the Commission also finds the merit in the submissions of the stakeholders that TSDiscoms should undertake realistic medium and long-term load forecast, resource plan, procurement plan, etc. before entering into new PPA. The Commission, in its Order in O.P.No.15 to 19 of 2021 dated 06.08.2021 has already directed TSDiscoms to submit Power Procurement Plan as per the Commission's Guidelines issued on Load Forecasts, Resource Plans and Power Procurement Plan for approval of the Commission.

109. As discussed in the foregoing paragraphs on dealing with the issues related to consent of referred PPAs, the Commission hereby accords the consent to the PPAs dated 18.01.2016 along with their Supplementary PPAs filed by TSDiscoms for TSTPP Phase-I.

110. Accordingly, this matter is disposed of.

This Order is corrected and signed on this the 25th day of August, 2021.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M.D.MANO HAR RAJU)
MEMBER

Sd/-
(T.SRIRANGA RAO)
CHAIRMAN

//CERTIFIED COPY//

Appeared in the Indian Express, the Hans India and the Siasat (English) Dated 15.06.2021

**BEFORE THE HON'BLE
TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad - 500004.

| | |
|---|--|
| SOUTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED (TSSPDCL) | NPD NORTHERN POWER DISTRIBUTION COMPANY OF TELANGANA LIMITED (TSPDCL) |
|---|--|

PUBLIC NOTICE O.P. No. 10 of 2016

1. Notice is hereby given to all that TSDISCOMs viz., Southern Power Company of Telangana Limited (TSSPDCL) and Northern Power Company of Telangana Limited (TSPDCL), had submitted before the Telangana State Electricity Regulatory Commission (TSERC) the proposal for consent of Principal Power Purchase Agreement (Principal PPA) for Telangana Super Thermal Power Plant (TSTPP) in two phases, i.e., with first phase of 1600 MW (2 x 800 MW) and second phase of 2400 MW (3 x 800 MW) at Ramagundam in Karimnagar District entered between TSDISCOMs and M/s NTPC Limited for establishment of Telangana Super Thermal Power Project Phase-I (TSTPP) for a capacity of 20000 MW under Section 86 (1) (b) of the Electricity Act, 2003. This filing has been taken on record by the Hon'ble Commission in O.P. No. 10 of 2016. The Commission had held public hearing on 20.06.2016 after receiving objections/suggestions from the Stakeholders and issued Interim Order on O.P. No. 10 of 2016 dated 30.07.2016, wherein the Commission has directed the TSDISCOMs to file the draft agreement duly incorporating the amendments as directed above for awaiting consent / approval by the Commission. The TSDISCOMs, as per the directions have filed the supplementary Power Purchase Agreement (Supplementary PPA) with amendments to the Principal PPA to the Commission along with the responses to all the directions of the Commission in the Interim Order dated 30.07.2016.

2. Copies of the Principal PPA, Supplementary PPA, Interim Order issued by the Commission dated 30.07.2016 and additional submission and the response filed by TSDISCOMs in form of affidavit in O.P. No. 10 of 2016 referred above are available in the Office of Chief General Manager (IPC & RAC), TSSPDCL, Corporate Office, Ground Floor, Mint compound, Hyderabad-500063 and the Superintending Engineer, Operation circles of the Distribution Company at Banjara Hills, Hyderabad (South), Hyderabad (Central), Medchal, Cybercity, Habsiguda, Secunderabad, Rajendranagar, Saroornagar, Vikarabad, Mahabubnagar, Gadwal, Nagarkurnool, Wanaparthy, Medak, Siddipet, Sangareddy, Nalgonda, Yadadri and Suryapet pertaining to TSSPDCL and in the office of The Chief General Manager (IPC & RAC), TSPDCL, Corporate Office, #2-5-31/2, Vidyut Bhavan, Nakkalagutta, Hanamkonda - 506001 and the Superintending Engineer, Operation circles of the Distribution Company at Warangal Urban, Warangal Rural, Jangaon, Bhupalapally, Mahabubabad, Karimnagar, Jagtial, Poddapally, Khammam, Kothagudem, Nizamabad, Kamareddy, Adilabad, Asifabad, Mancherial and Nirmal pertaining to TSPDCL. Interested persons may inspect/peruse the said filings and take note thereof during office hours at any of the said offices free of cost. These proposals are also available on www.tssouthampower.com, www.tspndcl.in and the same may be accessed at www.tserc.gov.in. A copy of these filings can be obtained from the above offices from 15.06.2021 onwards on payment of normal photocopying charges.

3. Objections/suggestions if any, on the said filings together with supporting material may be sent to The Chief General Manager (IPC & RAC), TSSPDCL, Corporate Office, Ground Floor, Mint compound, Hyderabad-500063 & The Chief General Manager (IPC & RAC), TSPDCL, Corporate Office, #2-5-31/2, Vidyut Bhavan, Nakkalagutta, Hanamkonda - 506001 in person or through Registered Post so as to reach on or before 06.07.2021 by 5 PM. A copy of the same must also be filed with the Commission Secretary, TSERC, at the address mentioned above. The objections/suggestions should be duly signed and should carry full name and postal address of the person(s) sending the objections/suggestions. If the objections/suggestions are filed on behalf of any organization or any category of consumers, it should be clearly mentioned. If the objector also wants to be heard in person it may also be specifically mentioned. The Objection/Suggestion should accompany the following statement as an overleaf-

| Name & full address of the Objector | Brief details of Objection(s)/ Suggestion(s) | Objections against supplementary PPA | Whether copy of objection & proof of delivery at TSDISCOM's office enclosed (Yes/No) | Whether Objector wants to be heard in person (Yes/No) |
|-------------------------------------|--|--------------------------------------|--|---|
|-------------------------------------|--|--------------------------------------|--|---|

4. Telangana State Electricity Regulatory Commission intends to conduct a Public Hearing through video conference on 14.07.2021 from 11:30 hrs onwards. The Stakeholders desiring to be heard in person shall furnish the required details for attending the Public Hearing through video conference (Refer to Proceedings No. TSERC/Secy/No. PD-1/2020 Dated:09.09.2020 hosted on the Commission's website www.tserc.gov.in for further details).

Sd/- Chairman & Managing Director
TSSPDCL
Hyderabad 15.06.2021

Sd/- Chairman & Managing Director
TSPDCL

R.O. No. : 1851-PPCL-AGENCY/ADVT/1/2021-22, Date: 14-06-2021.

Annexure-2

List of stakeholders who submitted written objections/suggestions

| Sl. No. | Name of the stakeholder |
|---------|---|
| 1) | Sri M.Venugopal Rao, Senior Journalist & Convener, Centre for Power Studies, Hyderabad. |
| 2) | All India Furnaces Association South Central Region (SCR), Hyderabad |
| 3) | Federation of Telangana Chambers of Commerce and Industry (FTCCI), Hyderabad. |



Annexure-3
List of stakeholders who attended the virtual Public Hearing on
14.07.2021 & 20.07.2021

| Sl. No. | Name of the stakeholder |
|----------------|---|
| 1) | Sri M.Venugopal Rao, Senior Journalist & Convener, Centre for Power Studies, Hyderabad. |
| 2) | Federation of Telangana Chambers of Commerce and Industry (FTCCI), Hyderabad. |

