



Southern Power Distribution Company of Telangana Limited

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From

Chief General Manager (IPC & RAC),
TSSPDCL, Corporate Office,
6-1-50, Ground Floor, Mint Compound,
Hyderabad – 500 063.

To

The Commission Secretary,
TSERC, 11-4-660, 5th Floor,
Singareni Bhavan, Red Hills,
Hyderabad – 500 004.

Lr No. CGM (IPC & RAC)/SE(RAC)/F. NTPC(1600 MW)/D.No 440/21, Dt: 12.07.2021

Sir,

Sub:- TSSPDCL – IPC – Proposal for consent of PPA entered between the TSDISCOMs and NTPC for supply of power from 2X800 MW TSTPP Phase I at Ramagundam being established by M/s NTPC – O.P. No 16 of 2016- Replies to Objections/Suggestions received – Submitted – Reg

Ref:- 1) Public Notice Dt 15.06.2021 issued in 2 English, 2 Telugu and 1 Urdu Newspapers in the matter of approval of the PPA between TSDISCOMs and NTPC in O.P. No 16 of 2016
2) Objections and Suggestions dated 22.06.2021 received from Sri M. Venugopala Rao, Sr Journalist & Convener, Centre for Power Studies
3) Objections and Suggestions dated 06.07.2021 received from the Federation of Telangana Chambers of Commerce and Industry

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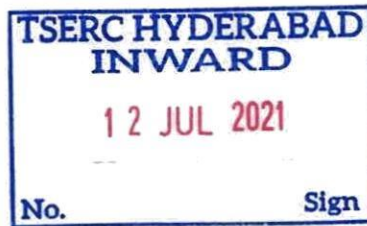
In compliance to the directions of the Hon'ble Commission, a public notice with regard to proposal for consent of PPA entered between the TSDISCOMs and NTPC for supply of power from 2X800 MW Telangana Super Thermal Power Station (TSTPP) Phase – I was published in the two (2) English newspapers (New Indian Express and The Hans India), two (2) Telugu newspapers (Namasthe Telangana and Andhra Prabha) and One (1) Urdu newspaper (The Siasat) on 15.06.2021 and suggestions/objections/ comments were invited from all stakeholders and public at large.

Objections and suggestions were received from the following objectors vide ref (2 & 3) cited above.

- M. Venugopala Rao, Senior Journalist & Convener, Centre for Power Studies
- Federation of Telangana Chambers of Commerce and Industry

The views/replies of TSDISCOMs on the objections received from various objectors in this matter are submitted herewith.

Encl: As above



Yours faithfully,

P. Krishnaiah

Chief General Manager (IPC & RAC)
Email Id:- seipctspdcl@gmail.com
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Objections raised by Sri M.Venugopala Rao, Senior Journalist & Convener, Centre for Power Studies, Hyderabad on the proposal of granting consent to the PPA entered between TSDISCOMs and NTPC u/s.86(1)(b) of the Electricity Act 2003, in respect of supply of power from 2x800 MW Telangana Super Thermal Power Plant (TSTPP) Phase-I being set up by NTPC at Ramagundam in Karimnagar District under Petition, O.P.No.10 of 2016 - Public Hearing - Replies submitted by TSSPDCL & TSNPDCL.

1. **The issues raised by the objector in respect of the aforesaid PPA with NTPC – TSTPP phase-I have been summarized & submitted together with the replies as below.**

Issue-1:

- (i) The objector stated that the Hon'ble Commission in its interim order dated 30th July 2016 directed TSDISCOMs to negotiate with NTPC to amend the PPA dated 18th January 2016 entered with NTPC in respect of specifically identified issues as pointed by the objectors in the Public Hearing held on 20th June 2016 such that the amended clauses shall meet the views expressed by the Commission and to file the draft agreement by incorporating the amendments as directed for according Consent /approval to the PPA.
- (ii) The objector also stated that TSDISCOMs entered Supplementary PPA with NTPC on 9th April 2021 with only one marginal amendment without incorporating all other amendments disregarding the interim directions given by the Commission that too after a gap 5 years and sought reasons for the inordinate delay.
- (iii) The objector contended that NTPC seems to have deliberately delayed by not coming forward on the direction of TSERC till the then TSERC Members & Chairman demitted the Office.
- (iv) The objector also contended that for determination of tariff, CERC has to take into account the PPA terms & conditions as approved by this Hon'ble Commission.
- (v) The objector sought to know whether the parties to the PPA approached CERC for determination of tariff for the 2x800 MW TSTPP phase-I and obtained its order?

Reply:

- a) The reason for the inordinate delay in signing the supplementary PPA with NTPC is that the Hon'ble Commission, having taken into consideration the Public Objections raised in the Public Hearing held on 20th June 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 IPPs, such as Acquisition / Buy-out Clause, Termination of Agreement, Penalty for reduced generation, etc.
- b) However, NTPC, being a Central Generating Station, owned by the Govt. of India, which is bound by the directions of Ministry of Power (**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 TS STU Network instead of PGCIL Network, since the delivery point of power supply would be **ex-bus** of TSTPP-I.
- c) Regarding the objection raised that "*CERC has to take into account the applicability of terms & conditions of PPA as approved by the Hon'ble 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 the CERC tariff Regulations as well as MoP directions.
- d) Further, though objectors raised that NTPC – TSTPP-I is exclusively dedicated to Telangana State and TSERC shall only determine the final Capital Cost / Tariff of TSTPP-I, yet this Hon'ble 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.
- e) Due to the aforementioned reasons, 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 this Hon'ble Commission demitted the Office, followed by Covid 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.
- f) After the new Commission has assumed Office, TSDISCOMs apprised the issues related to NTPC TSTPP-I on 09.11.2020 and persuaded the Hon'ble

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.

- g) Regarding the issue raised by the objector on filing of Tariff Petition before CERC, it is to state that as per the CERC Tariff Regulations, NTPC (the generating company) has to file necessary Petition before CERC for provisional / final Capital cost approval and tariff determination in respect of TSTPP-I, which can be done only after Commercial Operation Date (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.

Issue-2:

- (i) The objector seems to be not convinced on the CERC jurisdiction instead of TSERC jurisdiction and requested the Hon'ble Commission to re-examine the issue of CERC jurisdiction for tariff determination on the basis of the Apex Court's judgment dated 11th April 2017 in Civil Appeal No.5399-5400 of 2016, wherein it was held that the CERC jurisdiction will be applicable for Composite scheme, supplying power to more than one State.

Reply:

- a) The objector may please note that 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 Central Generating Stations owned by Govt. of India under Section 79(1) (a) of the Act, the judgment cited by the objector is not relevant in this case.
- b) The Electricity Act 2003 stipulated distinct functions for CERC and State ERCs under different Sections. Hence, the respective Regulatory Commissions have to function within those areas only and cannot interfere in other's functions.
- c) In this context, Ld. 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."

.....

d) 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.

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- e) In view of the above legal position, the Hon'ble TSERC also accepted the jurisdiction of Ld. CERC at Para-10 of its Interim order, hence TSERC can adopt the Tariff determined by CERC. Therefore the objector may kindly 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 State ERCs.
- f) Further, as raised by the objector, 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.**
- g) Also a copy of the Legal Opinion obtained by TSDISCOMs is enclosed herewith as sought by the objector.

Issue-3:

The objector raised that since the Telangana STPP-I of NTPC was exclusively allocated to the State of Telangana, under a Special Act (A.P Reorganization Act 2014), hence retaining 15% capacity by the Govt. of India under the guidelines for Capacity allocation to States does not apply to this project, in line with Simhadri Phase-I, where 100% Capacity was allocated to united

A.P.State and hence the balance 15% Capacity (retained by the Govt. of India) should also be allocated to Telangana only on Firm basis.

Reply:

- a) The objector may please note that the A.P Reorganization Act 2014 mandated “NTPC to establish a 4000 MW power facility in the successor State of Telangana after establishing necessary coal linkages”. No where it was mentioned about allocation of power. Since NTPC is owned by Govt. of India, it is the prerogative of Govt.of India in allocating generation Capacity to the States. Despite that the Govt. of India allocated entire 85% Capacity in the Phase-I of Telangana STPP (2x800 MW) to Telangana and retained balance 15% as unallocated Capacity as was done in other cases. However, the Govt. of Telangana has addressed the Ministry of Power, Govt. of India for allocating balance 15% Capacity on **firm basis** and the response from Ministry is awaited.
- b) Further, in the absence of any specific allocation by the Central Government, the CERC Tariff Regulations 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. The Hon’ble Commission was apprised of this position. The objector may kindly appreciate the same.

Issue-4:

Incorporation of penalty Clause in the NTPC PPA for TSTPP-I for compensating TSDISCOMs in the event of failure of generation by NTPC as directed by the Hon’ble TSERC in the Interim Order – The objector urged Hon’ble TSERC to get the amendment to the PPA with NTPC.

Reply:

- a) The objector may please note that 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 (Normative PAF @ 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 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 DISCOMs.

- b) Whereas the objector's contention is that to the extent of loss of generation from NTPC, DISCOMs would have to purchase the energy from Markets and thus incur additional cost.
- c) The objector may please note that during such generation loss, DISCOMs will not make payment of Energy charges also as there would be no generation and this will also be a saving to DISCOMs. 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.
- d) The above position was apprised to the Hon'ble Commission and sought for exemption from the directions given in the Interim order.
- e) The objector may please appreciate the legal implications upon deviating from Tariff Regulations.

Issue -5:

Regarding the Coal supply to NTPC- TSTPP-I, the objector urged the Govt. of Telangana to consistently pursue with Ministry of Coal, Govt. of India for obtaining the regular Long term linkage of coal instead of Captive coal mine allocated in Odisha State, which would reduce the Transportation charges and resultant tariff payable by the State Consumers.

Reply:

The objector's concern on Coal transportation charges from Odisha State Mine is very much appreciated and TSDISCOMs have already taken steps in this regard and would constantly pursue with Ministry of Coal, Govt. of India through Govt. of Telangana for obtaining long term coal linkage from SCCL Mines only. NTPC has already requested Ministry of Coal for surrendering of Mandakini-B Coal mine in Orissa State and is awaiting approval and have taken up with Ministry of Power, 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.

Issue -6:

The objector has stated that the direction given by the Hon'ble TSERC in its Interim order on modification of Clause 12.4 of PPA regarding the provision to issue notice of PPA termination by NTPC and urged to incorporate in the amendment that no party to the PPA (NTPC or TSDISCOMs) can terminate the PPA unilaterally, as long as TSDISCOMs continue to be the Companies of Govt. of Telangana.

Reply:

- a) TSDISCOMs already submitted to Hon'ble TSERC 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 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 Hon'ble TSERC for exemption of its direction in this regard.
- b) The objector may please appreciate that 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 Govt. of Telangana.
- c) The objector may also note that many States are willing to relinquish their share in NTPC power projects, due to huge penetration of Renewable Energy (Solar/Wind) Capacity but the Ministry of Power 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.

Issue -7:

The objector raised the issue of incorporation of Buy-out clause in the PPA as per the Interim directions of Hon'ble TSERC and urged the Hon'ble TSERC to direct DISCOMs to incorporate the same in the PPA with appropriate terms & conditions as the 90% of Fixed charges of the plant for entire duration would be paid by the DISCOMs, and therefore the Hon'ble TSERC can deviate from the Regulations.

Reply:

- (a) TSDISCOMs already submitted that 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 objector might have raised this issue based on the PPAs with gas IPPs, which had provided for Buy-out option to DISCOMs. 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 State GENCO (or) Central Generating Stations, where-under the tariff is determined under Section-62 of the Electricity Act 2003.**
- (b) The Hon'ble Commission would ensure uniformity in all the provisions of PPAs subsisting with State GENCO Plants /CGS Plants and hence the deviation from Tariff Regulations proposed by the objector may not be possible. The objector may kindly appreciate the legal implications in regard to Buy-out Clause incorporation in the PPA.

Issue - 8:

- (i) The objector urged the State Commission that if CERC jurisdiction is accepted, then TSDISCOMs should put forth their concerns/views before CERC in the Tariff determination process to protect large Consumer interest in an effective manner.
- (ii) The objector also raised that if there is impermissible delay in the execution of the TSTPP-I project, additional Capital expenditure & IDC for the impermissible delay period need to be examined by TSDISCOMs including Liquidated Damages collection from NTPC for delay period and failure to generate & Supply power to DISCOMs during delay period.
- (iii) The objector sought to know whether any notice was received by NTPC from **NGT (National Green Tribunal)** imposing restrictions on NTPC for not controlling emissions which led to avoidable delay in execution of the Project and hence the escalation of cost need to be examined.

Reply:

- a) As opined by the objector, TSDISCOMs will put forth its views before Ld. CERC once the Tariff petition is filed by NTPC in respect of TSTPP-I.
- b) CERC would examine the Prudence of the Capital Cost of TSTPP-I including IDC & IEDC based on guidelines framed by Ld. APTEL in its judgment in O.P.No.72 of 2010 in delay computation and sharing of IDC between the Parties.
- c) Regarding notice of NGT issued to NTPC TSTPP-I, as of now, no data is available in this Office.

Issue – 9:

The objector sought to know the position relating to the balance Capacity of 2400MW out of 4000MW capacity of NTPC-TSTPP-I, as to whether any Agreement / PPA is signed, in view of growing demand in Telangana and to fulfil the obligation under the Reorganization Act.

Reply:

Regarding the balance NTPC TSTPP Project Capacity of 2400 MW (3 x 800 MW) under 2nd Phase, this can be considered only after the 1st Phase (2 x 800 MW) is commissioned and coal linkage issues are resolved and 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 NTPC TSTPP-I. As of now, no Agreement has been signed by TSDISCOMs with NTPC in respect of TSTPP Phase-II.

Y. RAMA RAO
ADVOCATE

Plot No. 550 C, Road No.92
Jubilee Hills, Hyderabad.
email.yramaraoadvocate@gmail.com,

Date: .04.2018

To
The Chief Engineer(Comml)
TSPCC,
Vidyut Soudha
Hyderabad.

CE/Comml./TSPCC	
01 MAY 2018	
Inward No: 298	
SE/Comml.	SE/IPC
	ADE(T)
CE/Comml./TSPCC	

Sir,

Sub: AP Reorganisation Act 2014- Establishment of a Power Plant at Ramagundam as per the said Act - PPA entered into by TSDISCOMs with M/s. NTPC -Which is the appropriate Commission to determine tariff- Directions of TSERC – legal opinion is sought for -reg

- Ref: 1. PPA dated 18.01.2016 between TSDISCOMs & NTPC
2. Lr.No.CE(Comml)/SE(IPC)/F.TSTPP-I/D.No.1781/16,
Dt: 04.02.2016 addressed to TSERC
3.Lr of TSERC dated 18.12.2017 addressed to the CMDs of TSDISCOMs.
4. Lr.No.CE(Comml)/TSPCC/SE(IPC)/DE(IPC)/F.NTPC/D.No.22
2018, Dt:27.02.2018 addressed to me.

I was called upon to give my opinion on the subject matter referred hereinabove.

I have discussed the matter with the officers of Telengana State Power Coordination Committee(TSPCC) who have sought my opinion.

NTPC is developing 4000MW Telengana Super thermal Power Project in two phases: Phase 1 for 2*800MW at Ramagundam and balance 3*800MW in Phase 2 . This is being done in terms of compliance with the provisions of Schedule 13, clause2, provision 7, of the Andhra Pradesh the Reorganization Act, 2014. The relevant provision reads as under:

"NTPC shall establish a 4000 MW power facility in the Successor State of Telengana after establishing necessary coal linkages".

NTPC entered into Power Purchase Agreement(PPA) with TSDISCOMs on 18.01.2016 for sale of power from 2X800 MW power project (Phase-I) established at Ramagundam.

As per the request of NTPC authorities to enter into a PPA, the same was placed before this Hon'ble TSERC for issuing in-principle approval as required under Section 86 (1) (b) of the Electricity Act 2003.

In the process of granting approval to the PPA, the TSERC conducted public hearing on 20.06.2016 and heard the objections of the public and various stakeholders. Subsequently, TSERC seems to have passed an interim order dated 30.07.2016 directing TSDISCOMs to negotiate certain clauses of the PPA with NTPC.

NTPC authorities stated that the amendments suggested by TSERC would not be necessary and further stated that, it being a Central generating company, the Central Electricity Regulatory Commission (CERC) is empowered to determine the tariff of the said project under the provisions of 79 (1) (a) of the Electricity Act 2003.

Further, NTPC reiterated, vide letter dated 09-11-2017, that the proposed power project is a Central generation unit and, as such, it is Central Electricity Regulatory Commission (CERC) alone that is empowered to determine the tariff on the filing of the tariff petition before them. It appears that they decided the provisional 1st year tariff would be around Rs. 4/Kwh (fixed cost Rs. 2.26/Kwh and variable cost Rs. 1.74/Kwh).

However, TSERC vide letter dated 18.12.2017 observed that the tariff of said project has to be determined by State Commission as it is a "dedicated project" to Telangana State and the project cannot be treated as Central generating unit. They have mainly relied on the non obstante clause contained in the following provision of A.P. Reorganization Act :

"107. Effect of provisions of the Act inconsistent with other laws

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law".

They have also quoted other provisions of AP Reorganization Act, 2014 and Electricity Act, 2003. In consonance with their view, the State Commission also took issue with the Central Government (Ministry of Power) for allocating the power of the NTPC project in question at 85% to Home State and the balance to other States or treating it as unallocated. They opined that the Central Ministry lost sight of the relevant provisions of the Reorganization Act and concluded that this is a violation of the provisions of the said Act.

In view of the divergent stands taken by the State Commission and NTPC, the question arises as to which Commission i.e. the Central Commission or the State Commission, has the authority and jurisdiction to determine the tariff of the project in question of NTPC in terms of the provisions of the Reorganization Act and the Electricity Act 2003 and the Rules there under.

07-12

Section 79 of the Electricity Act lays down the functions of the Central Commission. Section 86 of the same Act lays down the functions of the State Commission.

Relevant portion of Section 79 reads asunder:

"79

(1) The Central Commission shall discharge the following functions, namely -

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State.

.....(emphasis supplied)"

Relevant portion of Section 86 of the Electricity Act, 2003 reads as under:

"86 Functions of State Commission

(1) The State Commission shall discharge the following functions, namely -

(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be within the State:

.....

(b) 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;

(c)

Rule 8 of Indian Electricity Rules,2005, reads as under:

"The tariff determined by the Central Commission for generating companies under clause (a) or clause (b) of subsection (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".

NTPC is, admittedly, a Central Government undertaking. The 2*800Ramagundam project in question is established by NTPC and so it is also an integral part of NTPC. Simply because it is established in terms of the Reorganization Act, it does not become a State Undertaking. Schedule 13 of the Reorganization Act only stipulates the establishment of the power project in question in the State of Telengana.

Handwritten signature and date: 07-2-90

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The Act does not call it a "dedicated Project". No such expression is used in the Act, though the project is for the benefit of Telengana.

Section 79 of the Electricity Act 2003 clearly empowers the Central Commission to regulate the tariff of "generating companies owned or controlled by the Central Government". The matter of tariff of NTPC(including the 2*800 MW project in question) falls within the jurisdiction of the Central Commission.

Under section 86 of the said Act, the State Commission can determine the tariff of electricity supplied within the State of Telengana and also regulate the electricity purchase and procurement process.

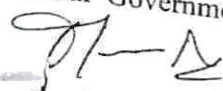
Reading sections 79 and 86 of the Electricity Act 2003 together, it is evident that tariff of the 2*800 Ramagundam Plant in question has to be determined by the Central Commission, but it is for the State Commission to decide whether or not to enter into a particular PPA. This position is made clear both by section 86 of the Act and also rule 8 of Electricity Rules 2003.

The non obstante clause in section 107 of the Reorganization Act comes into operation only if there is a conflict between the provisions of the said Act and the provisions of any other Act. I do not see any conflict between the provisions of schedule 13, clause 2, provision 7 of the Reorganization Act and section 79 of the Electricity Act. The provisions of the Reorganization Act do not empower the State Commission to fix the tariff of a Central Undertaking. Simply because a Central Undertaking is established for the benefit of a State, it does not mean that Central Commission is stripped of its statutory powers.

It has been held by the Apex Court that "the intention of the legislature as to be gathered from the language used which means that attention should be paid to what has been said as also to what has not been said". As a consequence a construction which requires for its support addition or substitution of its words or which results in rejection of words as meaningless has to be avoided.

Section 79 of the Electricity Act, 2003 is quite clear and unambiguous that the Central Commission has to regulate that tariff of the generating companies owned or controlled by the Central Government shall be determined by the Central Commission. There is no scope for placing any other construction on this provision.

It has also been held in number of cases that the functions specified in the statute to be discharged by a particular functionary or an organisation have to be discharged by that very functionary or organisation. As the function of determination of the tariff in respect of generating companies owned or controlled by the Central Government is



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specified to be discharged by the Central Commission, there is no scope to entrust this function to the State Commission.

In the PPA dated 18-04-2016, it is stated that the Project of 2*800MW in question is owned and operated and maintained by NTPC. When all the costs of establishment of the project and generation of power are incurred by NTPC, it is only normal for the Central Commission to regulate the tariff.

It is brought to my notice that there are other projects of NTPC where Central Commission determines the tariff but 100% allocation of power is made to the Home State. State of Telengana can make a similar claim before the Central Power Ministry relying on the fact that the project is for the benefit of Telengana. However, I am informed by the representatives of TSPCC that the Centre is willing to allow 100% allocation.

In the light of and subject to the above, in my considered opinion, the appropriate Commission to determine the tariff of the NTPC project in question is the Central Commission under section 79 of the Electricity Act 2003.

Hence this Opinion.

REGARDS



Y RAMA RAO

21/5/16
to

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REPLY TO OBJECTIONS RAISED BY FEDERATION OF TELANGANA CHAMBERS OF COMMERCE AND INDUSTRY IN OP NO. 10 OF 2016 CONSENT OF NTPC PPAS

Sl. No.	OBJECTIONS	REPLY OF TSDISCOMS
1.	<p>TSDISCOMs to re-assess the details:</p> <p>i) Any revision in the estimated cost. Has NTPC filed any petition for projected cost approval with CERC</p>	<p>The present cost is within the Investment approval accorded by NTPC.</p> <p>NTPC has not yet filed petition at CERC for determination of capital cost and tariff. The same will be filed before Unit-I COD.</p>
	<p>ii) The Status of Project Financing.</p>	<p>NTPC makes general purpose borrowings for capacity addition. Financing of NTPC project is done on the NTPC Balance sheet and its capacity to raise debt. Financial closure is accorded with investment approval of the project.</p>
	<p>iii) Has the NOC from AAI, valid till 2018 been revalidated?</p>	<p>The NOC from AAI is for Chimney the construction of which was started within the validity period and already completed.</p>
	<p>iv) Status of the Environmental Clearance from MoEF for the new Coal Linkage.</p>	<p>MoEF vide OM dated 11.11.2020 has clarified that Power Plants can change the coal source without seeking the amendment in Environment Clearance.</p>
	<p>v) What is the current zero date for the project.</p>	<p>The zero date of the project is 29.01.2016.</p>
	<p>vi) The current expected COD.</p>	<p>Unit-I COD tentative date May 2022, Unit-II COD is September 2022.</p>
2	<p>2.1 Compliances by TSDISCOMs of other issues identified by TSERC</p> <p>2.1.1 100% Capacity allocation appears to be fait accompli as per TSDISCOMs due to evacuation of power by TSTRANSCO. We request the TSDISCOMs to tabulate the relative differences between today costs of evacuation from STU instead of CTU. We further request TSDISCOMs to explain paragraph i) of their</p>	<p>In the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019, Chapter-13, Article 55 i.e., Scheduling Accounting and Billing note-1 it is read as <i>“in absence of any specific allocation of unallocated power by the Central Government, the unallocated power shall be added to allocated share in the same proportion as the allocated shares”</i>.</p> <p>It is to submit that, in case if it is connected to STU then there</p>

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	<p>submissions dated 18th April 2021 for OP.No. 10 of 2016 as under:</p> <p>“Thus, the CERC Tariff Regulations, have facilitated the 100% capacity allocation out of NTPC Telangana STPP Phase-I (2x800 MW) to TSDISCOMs”</p> <p>We are unable to be as sanguine as TSDISCOMs on the above reasoning, as we are not clear under which clause of which regulations this being inferred. We request the Honourable Commission to suitably direct the TSDISCOMs to explain the basis of their conclusion, as HINGED on this regulation will be the foundation for the economics of Transmission charges Phase-2 of NTPC (3x800 MW).</p> <p>2.2 Issue - Allocation of coal linkages from Odisha Coal Mines (reference paragraph vi) of Additional Submission dated 18.04.2021).</p> <p>For a thermal generation power plant to be cost efficient, design specified calorific value of coal should be 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 oil & coal (including royalty, cess, taxes and transportation) is almost 55% of the revenue in the case of TSGENCO.</p> <p>Coal India/SCCL coal prices are fixed by them and not, as of now, not negotiable and is outside the purview of any regulatory process, unfortunately. So, the location of the mine and rail connectivity decides the logistics costs (about 35% today on an average).</p> <p>This Honourable Commission in the interim order for OP-10</p>	<p>would be a saving of around 56 paisa/kwh as the POC charges and losses of CTU would not be imposed.</p>

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	<p>dated 30.07.2016 in paragraph 34 gave their view:</p> <p>The variable cost of generation depends on the cost of coal delivered at the site. As stated by the DISCOM, if 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 the TSTPP.</p> <p>As per additional submission of TSDISCOMs dated 18th April 2021 paragraph (vi) under TSDISCOM's submission sub-para (b),</p> <p>The coal requirement for NTPC would be 8 MTPA (Million Tons per annum) based on estimated GCV of coal between 3200 to 3900 kcal/kg.</p> <p>It is to be noted that in OP-10 of 2016 in the additional submissions of TSDISCOMs dated 18th April 2021 under paragraph (vi) NTPC views - "No comments furnished by NTPC".</p> <p>We request the honourable commission to direct NTPC and TSDISCOMs to submit their views on above as both quality and quantity and economic issues arise.</p>	
	<p>2.2.1 The transportation costs variance analysis between mandakini-B coal block and the re-allotted SCCL mines, the primary reason as cited above for change in mines.</p>	<p>The transportation cost from Mandakini-B Coal Mine located in Odisha would be approximately Rs. 2000 more than the cost of transportation from SCCL mines.</p>
	<p>2.2.2 is the required 8 MTA/year of coal with required GCV (3200 -3900 kcal/kg of coal) based on a written report from SCCL.</p> <p>While transportation costs are an important to consider, the</p>	<p>TSDISCOMs have already taken steps in this regard with MoC, Gol through GoTS.</p> <p>NTPC vide letter dated 30.03.2021 has stated that they have requested</p>

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	<p>primary basis we believe is the availability of the required grade of coal.</p> <p>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 MTA/year.</p> <p>We request this honourable commission to direct TSDISCOMs to get such a report from SCCL and submit it to commission and upload after the commission scrutiny in the TSDISCOMs website. TSDISCOMs are a distribution company and the actual PPA for Generation is with NTPC. As a leader in power generation the on us of responsibility of ensuring quantity and quality should with NTPC and TSDISCOMs, with due respect to their expertise cannot be expected to do this role</p> <p>We request this honourable commission to advise SCCL and NTPC to be present and explain their position on the points are raised herein above.</p>	<p>Ministry of Coal for surrender of Mandakini-B Coal Mine at Odisha and once it is approved by Ministry of Coal they would take up with Ministry of Power, Gol for grant of firm coal linkage for the plant through standing linkage committee long term. SCCL has also communicated their willingness to supply coal to NTPC Telangana Plant under long term linkage</p> <p>Approximately Rs. 2000/Ton is being saved in transportation cost, if the coal is re-allocated to SCCL instead of Mandakini-B Coal Mine.</p>
	3.0 our prayers	
1.	To direct the TSDISCOMS to file a revised cost estimate, if any	The present cost is within the Investment approval accorded by NTPC board.
2.	A review of the project status including project financial closure from NTPC, status of NOC from AAI, EC from MoEF for new coal linkage from TSDISCOMs.	<p>NTPC makes general purpose borrowings for capacity addition. Financing of NTPC project is done on the NTPC Balance sheet and its capacity to raise debt. Financial closure is accorded with investment approval of the project.</p> <p>The NOC from AAI is for Chimney the construction of which was started within the validity period and already completed.</p>

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		MoEF vide OM dated 11.11.2020 has clarified that Power Plants can change the coal source without seeking the amendment in Environment Clearance.
3.	The Zero date now and COD as on July 2021.	The zero date of the project is 29.01.2016. The tentative COD date for Unit-I is May 2022 and Unit-II is September 2022.
4.	A note on cost benefit arising out of change of Mines from Odisha to SCCL, from TSDISCOMs.	Approximately Rs. 2000/Ton is being saved in transportation cost, if the coal linkage is re-allocated to SCCL instead of Mandakini-B Coal Mine.
5.	A cost comparison in transmission costs between CTU and now revised to STU from TSDISCOMs.	It is to submit that, in case if it is connected to STU then there would be a saving of around 56 paisa/kwh as the POC charges and losses of CTU would not be imposed.
6.	A confirmation from SCCL regarding availability of required grade of coal both in terms of quantity (8 MTA/year & 3200-3900 kcal/kg). The Annexure V, forming part of minutes of the standing linkage committee dated 18 th August 2020, in page 6 of 10 is not clear to us. We request TSDISCOMs to clarify.	SCCL has also communicated the willingness to supply coal to Telangana plant under long term linkage. Once the request of NTPC to Ministry of Coal for surrender of Mandakini-B coal mine is approved and Ministry of Power, Govt grants firm coal linkage for the plant through standing linkage committee (long term), SCCL would supply coal from their mines.
7.	We be allowed to make any additional submissions and be allowed to present our objections/suggestion during the virtual public hearing.	