

**Before the**  
**MAHARASHTRA ELECTRICITY REGULATORY COMMISSION**  
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**CASE No. 186 of 2018**

**In the matter of**

**Petition of Maharashtra State Electricity Distribution Co. Ltd to Review certain issues  
in the Commission's Order dated 2 May, 2018 in Case No. 111 of 2017.**

**CORAM**

**Anand B. Kulkarni, Chairperson**  
**I. M. Bohari, Member**  
**Mukesh Khullar, Member**

Maharashtra State Distribution Company Ltd (**MSEDCL**)      ....Petitioner

V/s

Maharashtra State Power Generation Co. Ltd (**MSPGCL**)      : Impleaded Respondent No.1  
National Thermal Power Corporation (**NTPC**)      : Impleaded Respondent No.2  
Adani Power Maharashtra Ltd. (**APML**)      : Impleaded Respondent No.3  
GMR Energy Ltd (**GEL**)      : Impleaded Respondent No.4  
JSW Energy Ltd (**JSWEL**)      : Impleaded Respondent No.5  
Rattan India Power Ltd (**RIPL**)      : Impleaded Respondent No.6  
Brihanmumbai Electric Supply & Transport Undertaking (**BEST**) : Impleaded Respondent No.7  
Tata Power Company Ltd. (**TPC-D**)      : Impleaded Respondent No.8  
Adani Electricity Mumbai Ltd. (**AEML**)      : Impleaded Respondent No.9

**Appearance**

Petitioner      ....Shri Paresh Bhagwat

Respondent No.1      ....Shri S.B. Soni

Respondent No.2      ...Ms. Dipali Sheth (Adv.)

Respondent No.3  
Respondent No.5  
Respondent No.6  
Respondent No.7  
Respondent No.9

...Shri Jignesh Langalia  
....Shri Tushar Borse  
...Shri Nilesh Thakur  
...Shri Satish Jadhav  
...Shri Ghansham Thakkar

**Date: 24 October, 2018**

### **Order**

1. Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) filed a Review Petition on 6 July, 2018 under Section 94 (1) (f) of the Electricity Act (EA), 2003 seeking review on certain issues of the Commission's Order dated 2 May, 2018 in Case No. 111 of 2017.

2. *MSEDCL's main prayers are as follows:*

a) .....

b) *To consider positively on the MSEDCL's proposal for declaration of availability of generating unit/s along with the prayers in original petition.*

c) *To pass any other order/relief as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of justice;*

d) ....."

3. The issues raised by MSEDCL and its claims for review of the impugned Order are to be assessed considering the limited scope of review specified in Regulation 85(a) of the MERC (Conduct of Business) Regulations, 2004, which reads as follows:

*"85.(a) any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal is allowed, may, upon the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the direction, decision or order was passed or on account of some mistake or error apparent from the face of the record or for any other sufficient reasons, may apply for a review of such order, within forty five (45) days of the date of the direction, decision or order, as the case may be, to the Commission."*

4. MSEDCL in its Petition has stated that:

4.1. MSEDCL had filed a Petition in Case No. 111 of 2017 to regulate purchase and procurement process of Distribution Licensees, including the price at which electricity shall be procured from the Generating companies or from other sources through agreements for purchase of power for distribution and supply within the State.

4.2. The Commission issued an Order on 2<sup>nd</sup> May 2018 in Case No. 111 of 2017 (impugned Order), ruling that the Commission is not inclined to initiate the amendment of Regulations 44 and 48 of the MYT Regulations, 2015 as proposed by MSEDCL due to the following grounds:

- a) The Commission is separately initiating process of reviewing ABT order and FBSM applicable in the state.
- b) MSEDCL may also approach the Central Electricity Authority (CEA) for its inputs and views with regard to its contention for its monthly instead of annual normative availability.
- c) MSEDCL should put in place a system for monitoring not only the coal stocks available with the contracted Generators and shortfall or otherwise in coal supply.
- d) MSEDCL can request Maharashtra State Load dispatch Centre (MSLDC) to ask for demonstration of the declared capacity of the relevant Generating Stations or Units. A monitoring system for periodical assessment of declared capacity could also be put in place. If the Generator fails to demonstrate the declared capacity, the Regulations provide for the consequences.

4.3. However, in the impugned Order, there are certain apparent errors or the non-consideration of MSEDCL's submission and it has apprehension over the way certain issues have been dealt with by the Commission and therefore it is seeking review of the impugned Order.

4.4. It has come up with this review Petition with positive intention to provide quality, reliable and economical supply to the end consumers. Hence, it is contended to review and determine the minimum limit of monthly availability of a generation unit and has proposed 80% minimum availability.

4.5. After submitting the actual analysis of the generator's availability, it is also requested to the Commission for disallowing the fixed capacity charges on monthly basis instead of cumulative annual basis and to make necessary amendments in MERC MYT regulation 2015.

**4.6. Reason for Review Petition**

MSEDCL has stated that, in the impugned Order, the Commission has failed to address following concern:

- I. In spite of demonstrating by analysis of actual availability data by MSEDCL, the Commission has failed to redress the issue of gaming in declaring the capacity of generating stations/unit in lean demand period by the generator.
- II. The Commission has also failed to address the MSEDCL’s concern regarding the minimum monthly availability from the long term generators which is important and quintessential for providing the reliable and economic power supply to the consumers.
- III. The Commission has not considered MSEDCL’s concern regarding the capacity demonstrations and role of SLDC thereof; and
- IV. Compliance of the Commission directives regarding formation of Coal monitoring cell and proposed Generating Availability Committee.

**4.7. Provisions of Review:**

**a) EA 2003**

Section 94 (1) (f) of the EA 2003 allows the Appropriate Commission to review its own decisions, directions and orders. The relevant clause is reproduced below for reference:

“  
*94. Powers of Appropriate Commission*  
*(1) The Appropriate Commission shall, for the purposes of any inquiry or proceedings under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:--*  
.....  
*(f) reviewing its decisions, directions and orders;*  
.....”

**b) MERC Regulation:**

Regulation 85 (Review of Decisions, Directions & Orders) of MERC (Conduct of Business) Regulations, 2004, which is reproduced here below:

“

85 (a) – Any person aggrieved by a direction, decision or order of the Commission, from which (i) no appeal has been preferred or (ii) from which no appeal has been allowed, may, upon discovery of new & important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when direction, decision or order was passed or on account of some mistake or error apparent from the face of the record, or for any other sufficient reasons, may apply for a Review of such order, within forty-five (45) days of the date of the direction, decision or order, as the case may be, to the Commission.”

- 4.8. Based on the above Section of the EA, 2003 and the relevant Regulations issued by the Commission, MSEDCL has requested the Commission to admit the Petition without prejudice to its rights to seek redressal under the Appellate remedy provided in Section 111 of the EA, 2003 or by initiating any other proceedings as may be advised.
- 4.9. Regarding the review of the FBSM mechanism, in May 2012, CE (MSLDC) has filed a Petition in Case No. 56 of 2012 for removal of difficulties in operation and implementation of intrastate ABT order and FBSM. After a series of hearing, the Commission formed the committee in April 2013 to review FBSM under the chairmanship of Shri. Khaparde, Professor (Electrical Dept.), IIT, Mumbai. The committee after exhaustive deliberation and study submitted the detail report with recommendations to the Commission in August 2013. MSEDCL submits that even after the lapse of about 5 years, the Order in the matter to address the issues in FBSM is not issued by the commission till date.
- 4.10. As per the MYT Regulation 2015, the definition of “Declared Capacity” is as under:

*“Declared Capacity” means, in relation to a generating Station, the capability to deliver ex-bus electricity in MW declared by such generating Station in respect of any time-block of the day as defined in the State Grid Code or whole of the day, **taking into account the availability of fuel or water, and subject to further qualification in the relevant Regulation.**”*

- 4.11. In this regards, MSEDCL humbly submits that the definition of Declared Capacity is self-explanatory and it is expected that the thermal generating units should demonstrate the availability of its units/station. The availability has a wider scope and it is mandatory for the generators to provide continuous and reliable power from its thermal generating units to the distribution utility for the whole month. The generator

has to ensure the availability of the capacity out of the contracted capacity for the whole month and accordingly has to ensure adequate quantity of fuel/water etc. in order to provide the declared capacity consistently throughout the month, only with exceptions of breakdown if any.

- 4.12. Hence, considering the importance of the fuel to declare the consistent, reliable capacity, CEA has determined in its regulation the minimum coal stock availability with the thermal generating stations. Accordingly, CERC and this Commission after considering the needed inventory of the fuel, have allowed Interest on Working Capital (IoWC) for coal stock of 15 days for pithead generation and 30 days for non-pit head generating stations.
- 4.13. CEA periodically reviews the requirement of the coal for thermal generators and makes necessary amendments in coal stock requirements. Accordingly, recently, vide notification no. no. CEA/Yojana/FM/1/42/2017/6055-6113 dtd. 08.11.2017 has already issued the guidelines for maintaining the coal stock at the thermal generating stations for thermal power plants on the basis of the distance and location as under:

**Table No.1 Details of number of days of stock to be maintained by Power Plant**

Distance of Power Plant	Number of Days of Stock
Pit-head Station	15
Upto 500 kms from coal mine	20
Upto 1000 kms from coal mine	25
Beyond 1000 kms from coal mine	30

This amply clarifies the importance of availability of fuel and declaration of monthly capacity of the generating unit/station.

4.14. **Minimum Monthly Availability**

- a. The coal allocation against Fuel Supply Agreement (FSA) to a generating unit is distributed quarterly considering the seasonal variation in power demand as follows:

Q1 - 25%,                      Q2 – 22%,      Q3 – 25% and                      Q4 – 28%

Further, in case generating company fails to lift the coal in specific quarter, the balance un-lifted coal quantum is disallowed to the generator. Thus it is clear from this allocation that FSA also takes care of the variation power demand throughout the

year and also provides for the disallowance of the coal on none lifting of the allotted coal stock.

- b. MSEDCL further submits that in case of scheduling below Minimum Off take of 65%, there is the provision in PPA for compensation to the generators by procurers i.e. in case procurer provides schedule below 65% and because of such lower schedule generating station is unable to lift the coal from coal companies. Due to low lifting of coal from the coal companies i.e. Coal India Limited (CIL) or Singareni Collieries Company Limited (SCCL) as per FSA provision penalty is levied on thermal generating station which ultimately is recovered from the procurers i.e. Distribution Licensees.
- c. There should be similar provision of disallowance of capacity charges / or imposition of a penalty in such cases where procurer (Distribution Licensees) gives the schedule to the generators and generators is unable to supply pre-determined capacity (MSEDCL has proposed 80% of contracted capacity) for that month. Hence, MSEDCL has requested to consider this issue for declaring the availability and also to make the necessary changes in the Regulations.

#### 4.15. Compliance of the impugned Order

- 4.15.1. The Commission, vide its Daily Order dated 20.12.2017 of the impugned Order, has directed

*“The Commission observes that it is necessary to put in place a system for monitoring not only the coal stocks available with the Generators and the shortage or otherwise of coal to be supplied by CIL, but also if indenting for coal has been undertaken diligently by the Generators in lean periods so that sufficient stock is available for periods of high power demand and /or when there is a shortfall in coal supply by CIL. MSEDCL should inform the Commission of the actual or proposed monitoring system in 2 weeks.*

*“.....Further, the Regulations and PPAs provide for demonstration of Availability of Generating Units. This provision can be invoked by MSEDCL whenever it considers necessary.*

- 4.15.2. In compliance of the Commission directive, MSEDCL on 27.02.2018, had submitted that it has already constituted a Coal Monitoring Committee looking after following functions:

- Daily Coal Stock Report is gathered from all IPPs viz. APML, RIPL, GMR Warora and from MSPGCL.
- Monitoring of CEA website to keep record of Coal Stock Position of NTPC Stations
- Information on Transportation of coal such as availability of Rail Rakes
- Coal and Transportation Booking i.e. payments made by the generators having Long term PPA with the distribution licensee
- Correspondence with Govt. of Maharashtra on coal related issues faced by MSPGCL, IPPs and NTPC.
- Conducting periodic meeting with all IPPs, MSPGCL, NTPC to discuss power availability for the coming months and any issues related to coal supply, coal transport, etc.
- Whether indent placed as per FSA terms.
- Coal stock provision for the months in which there is maximum demand.

4.16. Considering the above, the MSEDCL in this review Petition has proposed for Constitution of Generation Availability Committee under the Chairmanship of the Chief Engineer (MSLDC). The other member of this committee will be Chief Engineer (Power Purchase), and one representative from the Long term PPA generators. It is proposed that the committee will meet every fort nightly to review and monitor the coal stock position. The prime responsibilities of the committee shall be as follows:

- a) To monitor demonstration of availability.
- b) Surprise demonstration of availability of thermal power station to verify its declared capacity and subsequently its payment of capacity charges.
- c) Whether coal is available for generation of declared capacity.
- d) To study the monthly consumption pattern of coal and assessment of the coal requirement for the generation.
- e) Month wise and capacity wise operation of plants as per MOD

4.17. The Committee will appraise the generation availability and crucial issues regarding coal periodically to the concerned stakeholder and the Commission.

- In fortnightly review committee will also check the completion of necessary activities regarding coal procurement i.e. Coal and Transportation Booking & their payments made by the Long term PPA generators.



- Even after completion of all the formalities for coal procurement by the generators, if generators are not getting the coal then committee will escalate the issue to the higher authorities.

#### 4.18. **MSEDCL proposal for demonstration of Declared Capacity**

4.18.1. MSEDCL has proposed a methodology for demonstration of Declared Capacity as under:

- i. When the situation arises, SLDC will ask the Generating utilities to demonstrate the declared capacity with intimation to concerned Distribution licensees.
- ii. For demonstration of the declared capacity, the unit's position in MOD shall not be considered as an exceptional case.
- iii. During demonstration of declared capacity, unforeseen problems/situations if any, shall be dealt within the frame work of scheduling and dispatch code.
- iv. While taking the unit on bar, notice will be issued by SLDC 24 Hrs in advance to the respective generating station.
- v. The SLDC shall carry out 72 hrs test for demonstration of declared capacity (DC) and such time line may be extended as per the system condition. The ramping up and ramping down at the specified rates shall be allowed for bringing back the unit on bar and the DC for this period shall be preserved.

4.18.2. In view of results of 72 hrs running test SLDC will determine the capacity for demonstration. For the demonstration of capacity the following parameters are quite important.

- Balance Coal Stock
- Coal Stock indented and Payment done for the respective month.
- Booking and Payment done for Rail Rakes
- Water availability
- Any other parameters

#### 4.19. **Declaration of Availability and subsequently payment of Capacity Charges**

MSEDCL has already proposed option No. 1 in its additional submission dtd. 27.02.2018, which is reproduced as below:

##### **a) For declaration of availability of the first unit of the station,**

The generator must have minimum coal stock of 3 days so as to have the continuous power supply for the further period considering the coal supply in transit.

**b) For declaration of 2nd unit/ onward units**

For the declaration of 2<sup>nd</sup> unit/onward units, generation should have the coal stock as prescribed by CEA in above table i.e. for pit head it is 15 days for the first/declared unit. And having 3 days coal stock only, generator shall declare his 2<sup>nd</sup>/onward unit.

- 4.20. MSEDCL has requested to consider its proposal for demonstration of declared capacity and accordingly make suitable changes in Regulation.
- 4.21. MSEDCL has submitted that this initiative will help to provide the continuous and uninterrupted supply to the consumers and will also facilitate MSEDCL and Long term PPA generators to plan and stream line their activities for supply of power.
5. NTPC vide its submission dated 1 October, 2018 has stated that:

- 5.1. By the notice issued in pursuance of the Daily Order dated 24.07.2018, National Thermal Power Corporation Limited (NTPC) has been impleaded as a Respondent in the above mentioned Petition with liberty to file a reply to the claims and reliefs sought for by MSEDCL.
- 5.2. NTPC is a Government of India Undertaking and a Company incorporated under the provisions of the Companies Act, 1956. It is a generating company within the scope of Section 2 (28) of the EA, 2003 and being a company owned and controlled by the Government of India is subject to the regulatory jurisdiction of the Central Electricity Regulatory Commission (CERC) as provided for in Section 79 (1) (a) of the EA, 2003. Section 79 (1) read as under:

***"79. Functions of Central Commission***

- (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;*
  - (c) to regulate the inter-State transmission of electricity ;*
  - (d) to determine tariff for inter-State transmission of electricity;*
  - (e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations.*

- (f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;*
- (g) to levy fees for the purposes of this Act;*
- (h) to specify Grid Code having regard to Grid Standards;*
- (i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees.*
- (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;*
- (k) to discharge such other functions as may be assigned under this Act.*

5.3. Accordingly, the State Commission does not have any jurisdiction either concurrently or otherwise to vary the terms and conditions contained in the Tariff Regulations notified by CERC and the PPA entered into between NTPC and MSEDCL.

5.4. CERC has the exclusive power to deal with the generating companies owned and controlled by the Central Government. In this regard, the Hon'ble Supreme Court in Central Power Distribution Company Et Ors vs. Central Electricity Regulatory Commission at Anr., (2007) 8 SCC 197, has held as under:

*"(15) The principal contention of the counsel for the appellants is founded on two grounds, (1) that the CERC did not have the jurisdiction to introduce ABT for generating stations supplying power within the State of Andhra Pradesh and (2) the CERC has failed to provide an opportunity of hearing to the appellants whose interests have been adversely affected by the impugned order.*

*(16) It is submitted that the order dated 4.7.2005 passed by the Commission in discharge of its power under Section 79(1)(a) of the Electricity Act, 2003 cannot be justified. It is further argued under Section 79(1)(c) the Central Commission can only regulate inter-State transmission of electricity. It is argued that Section 86(1)(c) of the Act confers the power of jurisdiction of facilitating intra-State transmission upon the State Regulatory Commission. It is also argued that the UI charges in respect of Simhadri could have only been imposed by the State Regulatory Commission, after due consultation with all other generators in the State and the transmission utility who has the responsibility to maintain the Grid.*

*(17) In our view, the aforesaid contention is thoroughly misconceived. Simadhri Station is owned and controlled by the NTPC which is a Government of*

*India undertaking. Section 79(1)(a) of the Act contemplates that the Central Commission has jurisdiction over generating companies owned or controlled by the Central Government. In view thereof, the provisions under Section 86 cannot be applied for NTPC station. The various sections under the Electricity Act would clearly show beyond any doubt the powers of Central Commission and jurisdiction in regard to the Grid, the scheduling and despatch.*

*(18) Under Section 79(1)(h) the Central Commission has the power to state Grid Code. It also provides that the function of the State Commission to specify State Grid Code under Section 86(1) (f) should be consistent with the Grid Code specified by the Central Commission and therefore the power of the State Commission is subservient to the power of the Central Commission. Section 2 (32) defines Grid as inter connected transmission lines. The expression used inter connected has a significant meaning. Sub-section (1) of Section 28 deals with the function of RLDC (Regional Load Despatch Centre) to ensure integrated operation of the power system in the concerned region. The term power system is of wide import. It is not confined to inter State Transmission Lines but extends to even supply lines, distribution, main service lines etc. However, sub-section (3) of Section 28 deals with duties of RLDC using the expression "within the region" or "in the region". Obviously it includes both "Inter State" and "Intra State" lines and is not restricted to inter State lines. Section 29 of the Act empowers the RLDC to give directions and exercise such supervision and control to any person for ensuring stability of grid operation. It also provides that the State Load Despatch Centre shall duly enforce such directions. Subsection (3) of Section 33 of the Act provides that the State Load Despatch Centre shall comply with the directions of RLDC.*

*(19) A fascicule reading of the above provisions would clearly show that the scheme of the Electricity Act is that RLDC is required to follow the principles, guidelines and methodologies specified by the Central Commission and all persons including the distribution licensees like the appellants herein are required to follow the directions of RLDC. RLDC can enforce such directions through SLDC. In turn SLDC is required to follow the directions of RLDC.*

*(20) Having regard the aforesaid mentioned provisions of law the contention that the Central Commission has no jurisdiction to deal with grid*

*discipline in regard to single State beneficiary station in our view, has no merit. As already noticed ABT is to ensure discipline in the integrated system. Further ABT is being introduced stationwise and it is the Central Commission alone who has the jurisdiction particularly, in regard to generating stations of NTPC, which is a Central Government, owned and controlled generating company."*

(Emphasis supplied)

5.5. In the Petition filed, MSEDCL has sought the following reliefs:

*"22.....In view of the above, MSEDCL humbly requests the Commission to consider our proposal for demonstration of declared capacity and accordingly make suitable changes in Regulation.*

Along with the above relief MSEDCL is seeking relief in the Prayers of the Original Petition.

5.6. NTPC was not the party in the impugned Order on various issues including the ones against which the review is being sought through the instant Review Petition. NTPC has been made the party in the instant Review Petition against the order of the Commission in the case not pertaining to NTPC.

5.7. NTPC is participating in the present proceedings to facilitate the decision on the matter raised by MSEDCL. Such participation is without prejudice to the rights and contentions of NTPC that the regulatory jurisdiction to be exercised under the provisions of the EA, 2003 qua NTPC is by CERC. This is particularly when the relief, as prayed for by MSEDCL would tantamount to modifying/altering the mode of payment and billing, as Laid down by the CERC in the Tariff Regulations, 2014 notified for the control period 1.04.2014 to 31.03.2019 which govern the terms and conditions for generation and sale of electricity from Central Generating Stations including NTPC. The Tariff Regulations, 2014 inter-alia provide for the payment of capacity and energy charges as under:

## **CHAPTER – 7**

### **COMPUTATION OF CAPACITY CHARGES AND ENERGY CHARGES**

*30. Computation and Payment of Capacity Charge and Energy Charge for Thermal Generating Stations:*

- 1) *The fixed cost of a thermal generating station shall be computed on annual basis, based on norms specified under these regulations, and recovered on monthly basis under capacity charge. The total capacity charge payable for a generating station shall be shared by its beneficiaries as per their respective percentage share I allocation in the capacity of the generating station.*
- 2) *The capacity charge payable to a thermal generating station for a calendar month shall be calculated in accordance with the following formulae:*
- 3) *The PAFM upto the end of a particular month and PAFY shall be computed in accordance with the following formula:*

.....

- 5) *The energy charge shall cover the primary and secondary fuel cost and limestone consumption cost (where applicable), and shall be payable by every beneficiary for the total energy scheduled to be supplied to such beneficiary during the calendar month on ex-power plant basis, at the energy charge rate of the month (with fuel and limestone price adjustment).*

*Total Energy charge payable to the generating company for a month shall be:*

.....

- 7) *The generating company shall provide to the beneficiaries of the generating station the details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel etc., as per the forms prescribed at Annexure-I to these regulations:*

*Provided that the details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal and the weighted average GCV of the fuels as received shall also be provided separately, along with the bills of the respective month:*

*Provided further that copies of the bills and details of parameters of GCV and price of fuel i.e. domestic coal, imported coal, e-auction coal, lignite, natural gas, RLNG, liquid fuel etc., details of blending ratio of the imported coal with domestic coal, proportion of e-auction coal shall also be displayed on the website of the generating company. The details should be available on its website on monthly basis for a period of three months.*

.....

## CHAPTER - 9

### **SCHEDULING, ACCOUNTING AND BILLING**

40. *Scheduling: The methodology for scheduling and dispatch for the generating station shall be as specified in the Grid Code.*
41. *Metering and Accounting: The provisions of the Grid Code shall be applicable.*
42. *Billing and Payment of charges: (1) Bills shall be raised for capacity charge, energy charge and the transmission charge on monthly basis by the generating company and the transmission licensee in accordance with these regulations, and payments shall be made by the beneficiaries or the long term transmission customers IDICs directly to the generating company or the transmission licensee, as the case may be.....*
- 5.8. Further, the process of declaration of availability, the Scheduling and Dispatch Mechanism etc. for a Central Generating Station is to be carried out in terms of the Indian Electricity Grid Code, 2010 (IEGC) notified by the CERC. The relevant extracts of the IEGC, 2010 read as under:

#### **Part 6: Scheduling and Despatch Code**

*This section deals with the procedure to be adopted for scheduling and Despatch of generation of the Inter-State Generating Stations (ISGS) and scheduling for other transactions through long- term access, medium- term and short- term open access including complementary commercial mechanisms, on a day-ahead and infra-day basis with the process of the flow of information between the ISGS, National Load Despatch Centre (NLDC), Regional Load Despatch Centre (RLDC), Power Exchanges and the State Load Despatch Centres (SLDCs), and other concerned persons*

#### **6.4 Demarcation of responsibilities:**

1. *The national interconnected grid is divided into control areas, like Regional 1513, States, DISC, etc. where the load dispatch centre or system operator of the respective control area controls its generation and/or load to maintain its interchange schedule with other control areas whenever required to do so and contributes to frequency regulation of the synchronously operating system. The Load Despatch Centre of a control area therefore is responsible for coordinating the scheduling of a generating station, within the control area, real-time monitoring of the station's operation, checking that there is no*

*gaming (gaming is an intentional rids-declaration of a parameter related to commercial mechanism in vogue, in order to make an undue commercial gain) in its availability declaration, or in any other way revision of availability declaration and injection schedule, switching instructions, metering and energy accounting, issuance of UI accounts within the control area, collections/disbursement of UI payments, outage planning, etc. The following clause gives the criteria for demarcation of control area jurisdiction.*

2. *The following generating stations shall come under the respective Regional ISTS control area and hence the respective RLDC shall coordinate the scheduling of the following generating stations*

*a) Central Generating Stations (excluding stations where full Share is allocated to host state);....*

5.9. Thus, the process of scheduling and dispatch of NTPC Generating Stations shall be carried out in terms of the IEGC notified by CERC in exercise of its powers under Section 79(1)(h) of the EA, 2003 and cannot be modified by this Commission.

5.10. The CERC Tariff Regulations, 2014 are applicable for NTPC stations. These Regulations prescribe for the payment of Capacity and Energy Charges to the Generating Company on a monthly basis, with the computation of norms on an annual basis. It is not open for MSEDCL to seek any review pertaining the same before the Commission.

5.11. In regard to the above, Rule 8 of the Electricity Rules, 2005 provides as under:

*"8. Tariffs of generating companies under section 79- The tariff determined by the Central Commission for generating companies under clause (a) or (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 subsection (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."*

5.12. Impleading NTPC in the case pertaining to the matter of amendment in Tariff Regulations of MERC is direct contravention of the above statutory rule. It is also relevant to mention that the term 'tariff' does not merely relate to a specified amount but also the terms and conditions related to payment and discharge, late payment surcharge, rebate etc. and more particularly, whether the revenue requirements, Target



Availability etc. should be computed on an annual basis or under any other periodical basis. All these form part of the matters to be decided by CERC, either by Tariff Regulations notified under Section 178 read with Section 61 of the EA, 2003 or by orders, approval or sanction given under Section 62, 64, 79 etc. of the EA, 2003. NTPC would crave reference to the following decision of the Hon'ble Tribunal for Electricity:

i. BSES Rajdhani Power Ltd. v/s. Delhi Electricity Regulatory Commission and Anr (Judgement dated 4.9.2012 in Appeal No. 94 of 2012 and batch); and

ii. Bhakra- Beas Management Board v/s Punjab State Electricity Regulatory Commission and Anr (Judgment dated 6.09.2017 in Appeal No. 251 of 2016 and 94 of 2017).

- 5.13. Further, under the guise of the present review petition, MSEDCL is seeking an amendment of the Regulations notified by the Commission. Quite apart from the fact that the billing and payment, declaration of availability etc. for the NTPC Generating Stations is governed by the Tariff Regulations, 2014 and/or the IEGC both notified by the CERC cannot be a subject matter of the review petition even before the CERC, much less a matter to be considered in a review Petition purporting to seek a review the impugned Order.
- 5.14. Without prejudice to the above submission and in any event, the procedure for amendment of the Regulations notified by the Commission is distinct and separate from the scope of the review proceedings initiated by MSEDCL. It is submitted that the framing of Regulations, including amendments to the Regulations are legislative functions of the Commission. This cannot be a subject matter of dispute to be settled by the Commission in a proceeding initiated.
- 5.15. The MYT Regulations, 2015 have been notified by the Commission after due deliberation of all the relevant aspects and after due process of publication of the Draft Regulations, inviting comments, suggestions, objections etc. and thereafter notifying the said Regulations as a statutory regulation in terms of the provisions of the EA, 2003. The MYT Regulations have been notified to give certainty to the determination of tariff and should not be varied from time to time at the instance of any party as it would destroy the continuity and predictability in the Electricity sector.
- 5.16. In any event, the grounds mentioned by MSEDCL do not constitute an 'error apparent on the face of record' or 'sufficient reason' so as to merit a review of the order dated 2.05.2018 passed by the Commission, in exercise of its functions under Regulation 85

of the MERC (Conduct of Business) Regulations, 2004. The Commission in the impugned order has decided the matters after taking cognizance of all the facts and figures presented by the Petitioner.

- 5.17. In the facts and circumstances mentioned hereinabove, it is submitted that the Review Petition filed is not maintainable, patently erroneous and is liable to be rejected in limine as being outside the scope of the jurisdiction of the Commission in view of the fact that the matter involves;
- a. Centre Sector Generating Units and Generating Companies having composite scheme falling within the scope of Section 79(1)(a) and (b) of the EA, 2003;
  - b. Matters concerning IEGC, Tariff Regulations, 2014 and other Regulations notified by the Central Commission;
  - c. The scheduling and dispatch in an integrated Grid involving various players, namely Generating Company who are regulated by the CERC, the operation of the power system regulated by the Commission through IEGC and operationally, by directions given by NLDC/RLDC in terms of Section 28, 29 of the EA, 2003 cannot be regulated, directly or indirectly by any order or direction given by the State Commissions. Further, in terms of Section 29, 32 and 33 of the EA, 2003, even the SLDC is required to comply with the direction of the RLDC. The issue of optimum scheduling and dispatch of electricity is under the overall control of RLDC. On view of the integrated nature of the Grid, there cannot be any difference in concepts and methodology adopted in a particular State in deviation from those adopted at the national level. It is for this reason that the Grid Code which can be notified by the Commission under 86(1) (h) of the Act has been made subject to the IEGC notified under Section 79(1) (h).
- 5.18. The aspects which MSEDCL purports to raise in these proceedings cannot be segregated for generating companies falling under the scope of Section 79(1) (a) and (b) of the EA, 2003, namely, under the jurisdiction of the CERC and generating companies falling within the jurisdiction of the Commission.
- 5.19. In view of the above, NTPC is not dealing with the various averments on merits alleged by MSEDCL except for stating that;
- 5.20. The relief has been sought by MSEDCL on the purported basis that it has been unable to cater to its load requirements during the peak season and to deal with the alleged instances of gaming by the Generating Companies. As stated hereinabove, the IEGC

provides for a comprehensive procedure to deal with the scheduling and dispatch of Central Generating Station including any alleged instances of gaming.

- 5.21. As regards the supply and availability of power depending upon the peak and off-peak period of MSEDCL, it is submitted that NTPC stations are the Inter-State Generation System (ISGS) stations having multiple beneficiaries. It is further submitted that all state beneficiaries are having the different Peak and off-Peak periods, as per their demand patterns during the year. NTPC stations try to cater to the Regional demand on the best effort basis.
- 5.22. The annual overhauls are the necessary requirements of the generating stations in view of the sustainable & reliable operations as well as the statutory requirements like boiler license renewal etc. The overhauls/planned outages for the NTPC stations pertaining to the Western Region, is planned in discussion with all the beneficiaries and necessary agreement/approvals in the Operation Coordination Committee Meetings conducted by Western Regional Power Committee (WRPC) on periodic basis.
- 5.23. Without prejudice to the fact that NTPC comes under the purview of CERC, it is submitted that the matter of review raised by MSEDCL regarding the monthly settlement of the availability/recovery of Fixed Charges of the generating stations does not take care of the planned overhauls required for any generating stations as brought out above. This methodology shall not only be a deterrent for the commercial wellbeing of a generating station, but it is also against the basic philosophy laid down in the National tariff Policy, as below:

#### **“4.0 OBJECTIVES OF THE POLICY**

The objectives of this tariff policy are to:

- a) Ensure availability of electricity to consumers at reasonable and competitive rates;
- b) Ensure financial viability of the sector and attract investments;
- c) Promote transparency, consistency and predictability in regulatory approaches across jurisdictions and minimise perceptions of regulatory risks;
- d) Promote competition, efficiency in operations and improvement in quality of supply."

*5.3(a) "Balance needs to be maintained between the interests of consumers and the need for investments while laying down rate of return. Return should attract investments at par with, if not in preference to, other sectors so that the electricity*

*sector is able to create adequate capacity. The rate of return should be such that it allows generation of reasonable surplus for growth of the sector."*

- 5.24. The Commission has to take the balance view on the matter of generation Tariff considering the development and efficiency of the overall Power Sector, wherein the Generators are one of the important stake holders and their reasonable return against their investment may not be hampered.
- 5.25. For an Inter State Generating Station like NTPC, there are multiple beneficiaries. It is not possible for NTPC to provide customized fuel data to one beneficiary in their prescribed format, to the exclusion of others. In the past, the beneficiaries had raised their concern before the Central Commission regarding the fuel data provided by the generator. Based on the same, a common format was devised and prescribed by the Central Commission for the fuel related data which are to be uploaded regularly on the company's website.
- 5.26. NTPC has been duly complying with the provisions of Regulation 30 (7) of the Tariff Regulations, 2014 and has been regularly updating the information on its website. In addition, the CEA also maintains a stock of the coal availability of the NTPC Generating Station and the same is readily available on the CEA website.
- 5.27. Insofar as the proposal of MSEDCL that the SLDC may carry out surprise inspections and call upon the generators to demonstrate availability, the same would not be applicable to NTPC Generating Stations, which falls within the purview of the RLDC.
- 5.28. NTPC reserves the right to file a detailed reply if required on the merits of the case. For the reasons mentioned above, the Petition filed by MSEDCL be dismissed with costs.

6. MSEDCL Additional Submission dated 27 August, 2018 states that:

6.1. It had proposed an option for Declaration of Availability and subsequently payment of Capacity Charges in its Review Petition as below:

**a) For declaration of availability of the first unit of the station,**

The generator must have minimum coal stock of 3 days so as to have the continuous power supply for the further period considering the coal supply in transit.

**b) For declaration of 2nd unit/ onward units**

For the declaration of 2<sup>nd</sup> unit/onward units, generation should have the coal stock as prescribed by CEA in above table i.e. for pit head it is 15 days for the first/declared unit. And having 3 days coal stock only, generator shall declare his 2<sup>nd</sup>/onward unit.

- 6.2. In this additional submission, an option is proposed by the petitioners to determine the annual recovery of fixed charges.
- 6.3. Recently, after exhaustive studies, the Central Electricity Regulatory Commission (CERC) has published the consultation paper dated 24.05.2018 on terms and conditions of tariff regulations for tariff period from 01.04.2019 to 31.03.2024. In the consultation paper, the CERC has taken cognizance the concerns of the Petitioners regarding the manipulation of the availability by the generators to achieve normative availability to recover the annual fixed charges. The observations of the consultation paper are as under:

*Principles of Cost Recovery - Approach towards Multi-Part Tariff*

*37.19 In the emerging scenario of slackness in demand, growing penetration of RE the overall utilisation of generation assets (PLF) has been decreasing, However, in the current circumstances, once the generator declares plant availability at the normative level of 85%, the distribution utilities are required to pay the AFC in full irrespective of scheduling of energy. There is a rationale behind this framework. The fixed cost is sunk as the asset is created to service the buyers on long term basis. Hence there is a need for certainty of recovery of investments. However, the changing circumstances have highlighted the need for a re-think on the approach of fixed cost recovery (based on uniform availability throughout the year). The proposition in the succeeding paras stems from this background.*

*37.20 The proposition is to introduce the system of differential AFC recovery linked to peak and off-peak periods in the following manner:-*

- a. Off-peak component of AFC: The generating station has to declare a PAF of 80% for the year, which allows recovery of 80% of the AFC. Any slippage to meet the above norm would result in reduction in 80% of AFC in proportionate manner.*

- b. Peak component of AFC: The remaining 20% of the AFC is recoverable from the beneficiaries, if the generating station achieves a PAF of 95% for the peak period, say of 4 months. During the currency of peak period, adherence to the norm of 95% PAF will be reconciled on monthly basis and slippages from this norm i.e. 95% upto the limit of 80%, would result in reduction in higher peak AFC for that month.*
- c. The peak and off-peak months for each generating station will be declared by the appropriate RLDC by considering load profile of beneficiaries*

6.4. In view of above, it has proposed an additional option in line with the consultation paper for declaration of the availability for recovery of the fixed charges as under:

#### Additional Option

- Off-peak component of AFC: The generating station has to declare a PAF of 80% for the year, which allows recovery of 80% of the AFC. Any slippage to meet the above norm would result in reduction in 80% of AFC in proportionate manner.
- Peak component of AFC: The remaining 20% of the AFC is recoverable from the beneficiaries, if the generating station achieves a PAF of 95% for the peak period; say of 6 months (i.e. April, May, October, November, December and March). During the currency of peak period, adherence to the norm of 95% PAF will be reconciled on monthly basis and slippages from this norm i.e. 95% up to the limit of 80% would result in reduction in higher peak AFC for that month.

6.5. In view of above, MSEDCL has requested to consider the proposal for declaration of capacity for recovery of fixed cost and accordingly make suitable changes in Regulation.

6.6. This initiative will help to provide the continuous and uninterrupted supply to the consumers and will also facilitate MSEDCL and Long term PPA generators to plan and stream line their activities for supply of power.

7. MSPGCL vide its submission dated 3 October, 2018 stated that:

7.1. MSEDCL in its review Petition for review of the impugned Order has stated to consider its proposal for declaration of Availability of generating unit/s along with

prayers of original Petition

- 7.2. Apart from reiterating the earlier submissions, MSEDCL has broadly discussed the various efforts, which can be taken for monitoring coal stock so as to forecast the possible availability of generation from these units.
- 7.3. As per MSPGCL, the Petition of MSEDCL is based on a prejudiced view that the issue of lower availability is due to manipulation of the availability by the generators to achieve the normative availability so as to recover the annual fixed charges. With this assumption, MSEDCL has concluded that the reason for lower availability during a certain period in recent times, which coincidentally was peak demand period, was a manipulative practice by the generators and hence it has approached the Commission with proposal for differential AVF norms for peak and off-peak period. This basic premise for the petition itself is totally wrong as the issues of lower availability are mainly related to availability of adequate fuel and are not by design.
- 7.4. While rejecting the earlier Petition, the Commission in the impugned Order has considered all angles related to the "Availability factor" achieved by the generation companies and has categorically mentioned that,
- "The entire capacity of MSPGCL's Generating Units is tied up with MSEDCL. Hence, under-declaring Availability during peak periods and higher Availability during slack period may not benefit MSPGCL."*
- 7.5. Thus, in the impugned Order the Commission has clearly ruled out possibility of any special benefit to MSPGCL by declaring lower Availability by MSPGCL during a certain period.
- 7.6. Even though, MSEDCL in its submission has mentioned that there is an error apparent, it has not specified the error. Also, here MSEDCL has also claimed that the Commission has not considered some of its submissions while issuing the order. However, going through the Order, it is very clear that all the submissions by MSEDCL are dealt with the Commission in the impugned Order.
- 7.7. Point No.5 is just reiteration of the earlier submission and MSEDCL has not brought any new facts. Point No. 6 is reproduction of provisions under Electricity Act, 2003 and MERC Regulations, point no. 7 is for request for admission of the petition.
- 7.8. Regarding the prayers for amendment of Regulations 44 and 48 of the MYT Regulations, 2015 as proposed by MSEDCL with reference to the proposed options

suggested by MSEDCL in the previous petition on the basis of differential AVF modalities, the Commission has specifically mentioned that there is no need for such amendment and has also mentioned that it does not agree that separate SoP Regulations are required for Generators in as much as these are, in effect, contained in the MYT and other Regulations such as the Grid Code, the PPAs and various Orders of the Commission along with the consequences for default.

- 7.9. Thus, contention by MSEDCL that its submissions are not considered is not true and fair. Thus, MSPGCL is strongly of the opinion that the Review Petition is devoid of any merit and is not maintainable & thus needs to be rejected.
- 7.10. Further by widely elaborating the need of coal stock monitoring, MSEDCL has indirectly accepted that the availability of coal is the root cause of issues related to thermal plant availability. It has also mentioned that there are chances that despite taking due steps to maintain coal stock the generators may face difficulties, but still MSEDCL is trying to blame only the generating companies.
- 7.11. Though the difficulties faced by MSEDCL in delivering the demanded power are not denied, solely blaming and penalizing the generating companies for this, may not resolve the issue.
- 7.12. It is pertinent to mention that MSEDCL has submitted that coal allocation against FSA provided to generating unit is distributed quarterly, considering the seasonal variation in power demand, as follows: Q1- 25%/ Q2 - 22%/ Q3 - 25% and Q4 - 28%. This itself indicates that as long as fuel supplies are as per the quarterly distribution, the generating companies have limited scope for so-called manipulation of the availability. As the fuel supply itself is limited during the low demand (Off-peak) season i.e. 22% (78% of the peak period coal allocation of 28%), the coal availability itself is limited during low demand period. Therefore, generation companies are generally not in a position to declare higher capacities during the Off-peak period.
- 7.13. The difficulties in managing the demand variations are a matter of co-ordination amongst the generating companies and distribution company and not a matter of stringent Regulations.
- 7.14. Therefore, as correctly mentioned by MSEDCL, there is need for better co-ordination and planning by way of routine monitoring and discussions through various Committees, as mentioned in the Review Petition. It is to submit that some of these actions are already being taken through regular coordination meetings between MSEDCL and MSPGCL. So, except for forced outages of the units, MSEDCL is



generally well aware of the planned outages of longer duration. MSPGCL agrees that there is a need for harmonized operations, not only of operational activities but also of financial activities, which also include timely payment of dues. MSEDCL has mentioned the need for daily monitoring of coal stock position including the coal procurement, coal quantity ordered vis-à-vis coal received etc. In this regard, if it is found that there is coal shortage in spite of due care taken by the generator, whether MSEDCL will agree to consider the situation as 'uncontrollable'?

- 7.15. MSEDCL has proposed some methodology for demonstration of Declared Capacity, wherein it is suggested that when situation arises SLDC will ask the generating utilities to demonstrate the declared capacity with intimation to the concerned distribution licensee. Here it is also proposed that while taking the unit on bar, notice will be issued by SLDC 24 Hrs in advance to the respective generating station and the SLDC shall carry out 72 Hrs test for demonstration of declared capacity and this time limit may be extended as per the system condition. The ramping up and ramping down at the specified rates shall be allowed for bringing back the unit on bar and the DC for this period shall be preserved.
- 7.16. In continuation to above proposal regarding demonstration of capacity, it is further submitted by MSEDCL that SLDC will determine the capacity for demonstration, in view of results of 72 Hrs running test and available inputs regarding balance Coal Stock, Coal Stock indented and Payment done for the respective month, Booking and Payment done for Rail Rakes, Water availability, any other parameters etc.
- 7.17. MSEDCL is mixing the philosophies of demonstration of declared capacity and demonstration of installed capacity. While the demonstration of declared capacity is for verifying the capacity declared by the generator itself, the demonstration of installed capacity is done by the generator in case of commissioning of a new power generation unit. The need for 24 hrs prior notice and 72 hrs trial run are specified under the procedure for demonstration of installed capacity for a new unit. There is no such need in case of demonstration of declared capacity for a unit already in service.
- 7.18. As per MSPGCL, it is clearly defined under the MERC MYT Regulations, 2015 that "declared capacity" is the capability to deliver ex-bus electricity in MW declared by such generating Station, considering the availability of fuel or water. Thus, once a station has declared a particular capacity for a particular period, it is its responsibility to see that the declared capacity is actually delivered. In order to ensure that generators are restrained from mis-declaration of capacity, the procedure for verifying the declared capacity of a generator is clearly laid down under Regulation 51 of MERC

MYT Regulations, 2015 which already empowers SLDC to ask the generator to demonstrate the declared capacity by actually delivering the same and in case of failure to demonstrate it, there is clear provision of financial penalty to the generator by way of reduction in AFC in geometric progression for each such mis-declaration.

- 7.19. Therefore, as per MSPGCL, adequate care is being taken in the Regulations regarding the procedures for demonstration of declared capacity as well as demonstration of installed capacity for newly commissioned unit whereas there is much ambiguity in MSEDCL's proposal regarding methodology for demonstration of Declared Capacity and hence the same need not be considered by the Commission.
- 7.20. MSEDCL has proposed minimum coal stock levels for declaration of unit-wise availability for a station. It is submitted that for declaration of availability of the first unit of the station, the generator must have minimum coal stock of 3 days so as to have the continuous power supply for the further period considering the coal supply in transit. For the declaration of 2<sup>nd</sup> unit/onward units, generation should have the coal stock as prescribed by CEA e.g. for thermal station at a distance of up to 500 km from the coal mine it is 20 days for the first/declared unit. And having 3 days coal stock only, generator shall declare his 2<sup>nd</sup>/ onward unit. The proposal again indicates confusion of MSEDCL regarding co-relation of coal stock and unit availability. From the experience of last few years, the coal stock level of more than 20 days was very rarely observed at MSPGCL's coal-based stations. In such case, as per MSEDCL's proposal, MSPGCL will never be able to declare the availability of the second unit. So again, if the generator is not allowed to declare full capacity because of coal stock based restricting provisions, Whether MSEDCL will agree to consider the situation as 'uncontrollable'.
- 7.21. Therefore, MSPGCL requests the Commission not to consider the proposal by MSEDCL regarding minimum coal stock levels for declaration of unit-wise availability for a station.
- 7.22. Vide its additional submission dated 24.08.2018, MSEDCL has submitted some more proposals regarding recovery of Annual Fixed Charges with respect to achievement of availability in peak period and off-period, taking a reference to the CERC Consultation paper. In this regard it is to submit that the referred Consultation Paper is part of the public interaction process adopted by CERC while finalizing the Tariff Regulations and the process is yet not concluded. These are not finalized CERC Regulations and thus need not be considered at this stage.
- 7.23. As elaborated earlier the fuel supply is reduced during the low demand (Off-peak)

season i.e. 22% (78% of the peak period coal allocation of 28%). Therefore, generation companies are generally not in a position to declare higher capacities during the Off-peak period. Moreover, there is a clear & stringent provision for verifying the declared capacity of a generator under Regulation 51 of MERC MYT Regulations, 2015 which empowers SLDC to ask the generator to demonstrate the declared capacity. In view of this, MSPGCL opposes the petitioner's demand for review of the impugned Order and has requested the Commission to reject the Petition being not maintainable and devoid of merit.

7.24. MSPGCL has prayed to reject the Petition by MSEDCL for review of impugned Order as neither is there any error apparent and nor is there any non-consideration of submissions in earlier petition and there are no new facts are brought by MSEDCL.

8. At the hearing held on 4 October, 2018,

8.1. MSEDCL reiterated its submission of the review Petition. MSEDCL cited a sample case for Day ahead Declared Capacity of Bhusawal Unit 4 and 5 for 1 August 2018. The Day ahead declared capacity given by MSPGCL from 0000 Hrs to 2400 Hrs for these Units was 940 MW. Based on the declared capacity MSEDCL had given certain scheduled, however during the peak period i.e. starting from 0600 Hrs to 1000 Hrs, MSEDCL requested for full pick of 940 MW, immediately MSPGCL revised its Declared Capacity from 940 MW to 874 MW, 808 MW and 846 MW respectively. Thus, MSEDCL had to resort for procurement from other resources at the last moment, which is also an additional burden on the consumers.

8.2. Ms Dipali Sheth Advocate of Respondent No.2 (NTPC), stated that it has filed its submission and NTPC is generating company within the scope of section 2(28) of the EA, 2003 and being a company owned and controlled by the GoI is subject to regulatory jurisdiction of the CERC. Hence the Commission does not have jurisdiction in Tariff determination and the PPA entered between NTPC and MSEDCL.

8.3. The representative of Respondent No. 9 (AEML) stated that, amendment to Regulations may be done by following the process of amendment. M/s AEML further stated that the issue of lower or mis declaration of availability does not arise in case of Dahanu TPS.

8.4. The representative of Respondent No. 3 (APML) stated that it is Section 63 generators and tariff has just been adopted by the Commission.

9. MSEDCL vide its submission dated 22 October, 2018 stated that:

9.1. In its review Petition, it has proposed options for declaration of Availability and subsequently payment of capacity charges at Para no. 22 of the review Petition. Further, in its additional submission dated 24 August, 2018 it proposed additional option about off peak component of AFC and peak component of AFC.

### **Mis-Declaration of Capacity by Thermal Generating Units**

- a. In regards to declaration of Availability, it is noticed that there are several instances of mis-declaration of DC, mainly during off-peak demand period i.e. normally during monsoon season when there is considerable demand drop and back down instructions are expected.
- b. The Regulation 6.4(17) of Indian Electricity Grid Code (IEGC), 2010 and amendments thereof, stipulate guidelines for declaration of DC in respect of Generating station for peak & off Peak period, which is reproduced below:

*“While making or revising its declaration of capability, the ISGS shall ensure that the declared capability during peak hours is not less than that during other hours. However, exception to this rule shall be allowed in case of tripping/re-synchronisation of units as a result of forced outage of units.”*

- c. The IEGC, 2010 is also applicable to the state thermal generating units (InSGS). However, it is observed that in case of intra state generators, higher DC is given on day-ahead basis, even though having knowledge of present and previous day generation scenario. After pick up instruction, it is observed that generation station is generating much below the day ahead capacity.
- d. The Higher DC is revised either after Load Management (LM) Cell, of MSEDCL points out deviation from schedule or during peak hours when generation as per Declared Capacity (DC) is not possible.
- e. It is submitted that in recent days such mis-declaration cases have been pointed out several times by MSEDCL Load Management Cell. MSEDCL has substantiated it with instances and communication done with MSLDC about mis-declaration.

## **Mis declaration of DC during RSD period**

- a. Mis-declaration of DC is also observed when units are withdrawn as per the system condition for Reserve Shut Down. The relevant provision of MSLDC regarding declared capacity in Final Reserve Shutdown is reproduced as under:

*12 Declared Capacity of unit under RSD shall not exceed the maximum DC (for minimum 3 hours period) for last 24 hours before commencement of RSD.*  
As per Final Reserve Shutdown Procedure (RSD), MSLDC

- b. MSEDCL submitted that when the thermal generating units of intra State generators are withdrawn, above provision is not followed. Further, some of the observations made by MSEDCL are also submitted along with additional submission.

- 9.2. Presently, Reserve Shutdown procedure is yet to be finalised by the Commission. It is necessary that declaration of Availability of units shall be linked to available coal stock particularly and basis for declaration of availability during reserve shutdown period also needs to be defined.

## **Demonstration of Declared Capacity**

The Commission in the impugned Order has noted the Para 51 of the MYT Regulations, 2015 which empowers MSLDC to ask the generators to demonstrate their declared Capacity. The relevant clause of MYT Regulation, 2015 is reproduced as under:

### ***51. Demonstration of declared capacity—***

*51.1. The Generating Company may be required to demonstrate the declared capacity of its Generating Station as and when asked by the MSLDC.*

*51.2. In the event of the Generating Company failing to demonstrate the declared capacity, the Annual Fixed Charges due to the Generating Company shall be reduced as a measure of penalty.*

*51.3. The quantum of penalty for the first mis-declaration for any duration/block in a day shall be the charges corresponding to two days fixed charges.*

51.4. For the second mis-declaration, the penalty shall be equivalent to fixed charges for four days and for subsequent mis-declarations in the year, the penalty shall be multiplied in the geometrical progression.

51.5. The operating logbooks of the Generating Station shall be available for scrutiny by the MSLDC, and these books shall keep record of machine operation and maintenance.

9.3. The Commission in the impugned Order has directed that

*“MSEDCL can request MSLDC to ask for demonstration of the declared capacity of the relevant Generating Stations or Units. A monitoring system for periodical assessment of declared capacity could also be put in place. If the Generator fails to demonstrate the declared capacity, the Regulations provide for the consequences...”*

9.4. In Order to establish the mis declaration of Declared Capacity by intra state generators, on one such instance of declaration of wrong DC by generator, its LM Cell vide email dated 3 July, 2018 requested to the chief engineer, MSLDC to demonstrate the Declared Capacity for MSPGCL’s Paras Units 3 and 4. However no action was initiated from MSLDC and generator in view of telephonic communication, revised its Declared Capacity. The sequence of events, along with communication, day ahead & final DC by generator is submitted along with this additional submission.

### **Deviation between Declared Capacity and Generation**

- a. Presently deviations between scheduled & actual generation/demand are settlement as per guidelines stipulated by the Commission n Final balancing & settlement Code and as per regulations 7.9 (d) (vii) of FBSM, the deviation by generators are required to be borne by concerned DISCOM who have PPA with those generator. The relevant clause of FBSM is reproduced below.

*“7.9 (b) (v) Net UI charges shall be divided into two parts (i) NET UI Charges -1 corresponding to aggregate deviation ‘of State Pool Participants, and (ii) Net UI charges -2 corresponding to ‘aggregate deviations’ of instate generators.*

.....

*7.9 (d) (vii) Net UI charges -2 shall be allocated only between the Pool*

*Participants whose contracted generators have the same deviations sign (Positive or negative) as the Gross UI Cost”.*

- b. There is no financial implication to generator for deviation from DC. The generators are getting fixed cost charges as per DC and on the other hand they don't have any financial implications for deviation between DC and actual generation. Generators are taking benefit of this to declare higher day ahead DC and later revising the same as per actual generation. Hence it in Petition of impugned Order had prayed

*“To make suitable amendment to Intra State ABT Order and FBSM Code to include generators as State Pool Participant in Order that any charges/ losses pertaining to deviations by the generator is borne by the generators;”*

- 9.5. The Commission in the impugned Order had taken cognizance of this issue and stated as under:

*“As regards MSEDCL's proposal o include Generators as SPPs for the sharing of charges and losses pertaining to their deviations, the Commission has separately initiated the process of reviewing its ABT Order and the FBSM applicable n Maharashtra.”*

- 9.6. Even now it is observed that there is huge variation between day ahead declared capacity and actual generations. MSEDCL has submitted illustrative observations in regards to declared Capacity. It has requested to issue suitable amendment Intra State ABT Order and FBSM Code to include intra State generators as State Pool Participants (SPP).

### **Commission's Analysis and Ruling**

10. The Commission had considered all the issues raised by MSEDCL in the impugned Order. However, MSEDCL in this Review Petition has contended that following issues were not addressed by the Commission.

- a) In spite of demonstrating by analysis of actual availability data, the Commission has failed to address the issue of gaming in declaring the capacity of generating stations/unit in lean demand period by the generator.

- b) The issue of minimum monthly availability from the long term generators which is important and quintessential for providing the reliable and economic power supply to the consumers.
- c) Capacity demonstrations and role of SLDC therein;
- d) Compliance of the Commission directives regarding formation of Coal monitoring cell and proposed Generating Availability Committee.

After examining the matter in detail we give our issue wise findings and directions in the following terms:

**11. Issue No.1 In spite of demonstrating by analysis of actual availability data, the Commission has failed to address the issue of gaming in declaring the capacity of generating stations/unit in lean demand period by the generator.**

11.1. MSEDCL in the Original Petition had submitted the details of month wise and PPA wise declared capacity of IPPs for April, 2016 to May, 2017. The data submitted was as below:

<i>Month</i>	<i>APML</i>				<i>RIPL</i>		<i>JSW</i>	<i>EMCO</i>	<i>CGPL</i>
<i>PPA</i>	<i>1200</i>	<i>125</i>	<i>1320</i>	<i>440</i>	<i>450</i>	<i>750</i>	<i>300</i>	<i>200</i>	<i>796</i>
	<i>% availability</i>								
<i>Apr-16</i>	99.72%	99.72%	81.02%		98.56%	98.56%	68.28%	52.44%	63.23%
<i>May-16</i>	66.37%	66.37%	21.11%		97.21%	97.21%	93.88%	35.60%	68.72%
<i>Jun-16</i>	44.81%	44.81%	0.64%		97.61%	97.61%	93.75%	98.44%	56.20%
<i>Jul-16</i>	95.64%	95.64%	97.53%		99.85%	99.85%	96.53%	97.60%	58.80%
<i>Aug-16</i>	97.17%	97.17%	92.04%		100.00%	100.00%	91.42%	94.65%	99.37%
<i>Sep-16</i>	98.25%	98.25%	99.04%		98.65%	98.65%	91.37%	100.00%	96.14%
<i>Oct-16</i>	99.46%	99.46%	99.75%		99.28%	99.28%	96.89%	94.52%	83.58%
<i>Nov-16</i>	77.66%	77.66%	94.57%		98.64%	98.64%	50.21%	89.52%	66.70%
<i>Dec-16</i>	81.90%	81.90%	80.71%		100.00%	100.00%	0.00%	100.00%	81.19%
<i>Jan-17</i>	85.77%	85.77%	81.07%		100.00%	100.00%	0.00%	100.00%	94.91%
<i>Feb-17</i>	89.23%	89.23%	99.15%	95.92%	100.00%	100.00%	63.47%	85.22%	92.94%
<i>Mar-17</i>	93.52%	93.52%	98.60%	94.02%	99.89%	99.89%	87.84%	91.29%	98.41%
<i>Apr-17</i>	66.74%	66.74%	59.38%	66.01%	60.81%	60.81%	73.07%	83.82%	69.46%
<i>May-17</i>	73.93%	73.93%	71.48%	74.49%	55.32%	55.32%	74.99%	85.44%	58.99%

11.2. The Commission in the impugned Order had analysed the data submitted by the MSEDCL, as the data set were for very small period, it was neither sufficient nor reliable to draw any conclusion. Therefore, the Commission couldn't draw any correlation or analyse actual availability data to address the issue of gaming in



declaring the capacity of generating stations/unit in lean demand period by the generator.

11.3. Further, MSEDCL in its additional submission had submitted the data from May, 2016 to August, 2018. Hence, the Commission is analysing this issue based on the additional facts as important evidence which was not produced by MSEDCL at the time of issuance of the impugned Order. Considering this additional information the issue qualifies for review.

11.4. Data submitted is summarized below:

Month	APML				RIPL		JSW	
	PPA	1200	125	1320	440	450	750	300
May-16	66.37%	66.37%	21.11%			97.21%	97.21%	93.88%
Jun-16	44.81%	44.81%	0.64%			97.61%	97.61%	93.75%
Jul-16	95.64%	95.64%	97.53%			99.85%	99.85%	96.53%
Aug-16	97.17%	97.17%	92.04%			100.00%	100.00%	91.42%
Sep-16	98.25%	98.25%	99.04%			98.65%	98.65%	91.37%
Oct-16	99.46%	99.46%	99.75%			99.28%	99.28%	96.89%
Nov-16	77.66%	77.66%	94.57%			98.64%	98.64%	50.21%
Dec-16	81.90%	81.90%	80.71%			100.00%	100.00%	0.00%
Jan-17	85.77%	85.77%	81.07%			100.00%	100.00%	0.00%
Feb-17	89.23%	89.23%	99.15%	95.92%		100.00%	100.00%	63.47%
Mar-17	93.52%	93.52%	98.60%	94.02%		99.89%	99.89%	87.84%
Apr-17	66.74%	66.74%	59.38%	66.01%		60.81%	60.81%	73.07%
May-17	73.93%	73.93%	71.48%	74.49%		55.83%	55.83%	76.99%
Jun-17	79.95%	79.95%	82.54%	81.09%		76.94%	76.94%	76.59%
Jul-17	96.96%	96.96%	72.21%	89.34%		0.00%	0.00%	82.44%
Aug-17	71.29%	71.29%	52.80%	74.51%		99.36%	99.36%	93.33%
Sep-17	66.79%	66.79%	63.23%	68.34%		74.95%	74.95%	93.67%
Oct-17	78.06%	78.06%	50.68%	80.22%		46.86%	46.86%	91.00%
Nov-17	71.95%	71.95%	61.42%	73.95%		48.08%	48.08%	85.64%
Dec-17	94.30%	94.30%	49.78%	96.03%		39.56%	39.56%	89.12%
Jan-18	89.97%	89.97%	33.93%	91.25%		82.44%	82.44%	93.38%
Feb-18	79.25%	79.25%	43.88%	80.88%		81.99%	81.99%	65.34%
Mar-18	63.12%	63.12%	43.47%	64.87%		57.54%	57.54%	0.00%
Apr-18	71.56%	71.56%	38.92%	72.75%		80.95%	80.95%	48.02%
May-18	58.30%	58.30%	66.04%	59.89%		53.66%	53.66%	87.06%
Jun-18	50.65%	50.65%	74.09%	61.27%		62.35%	62.35%	93.58%
Jul-18	94.74%	94.74%	84.20%	98.78%		61.06%	61.06%	88.67%
Aug-18	79.79%	79.79%	83.77%	80.60%		97.75%	97.75%	59.33%

11.5. Based on the submission, it is observed that during the peak demand period, the

Generators are giving lower availability and during the off Peak demand it is giving higher Availability i.e. more than 95%. Resultantly, as per Regulations 48.3 of MERC MYT Regulations these Generators are able to recover their full Annual Fixed Charges on monthly basis, based on cumulative Availability achieved with respect to the Target Availability till the respective month in the year, subject to adjustment at the end of the year.

- 11.6. M/s AEML stated that the issue of lower or mis-declaration of Availability does not arise in case of DTSP. It is observed that demand of M/s AEML is lesser and variation in demand is also monitored due to smaller geographical area. However, in case of MSEDCL the issue mis-declaration of Availability becomes multi fold as it has tied up with long Term Generators with MSPGCL, Central Sector, IPP's, UMPP, Other and Non-Conventional sources and has wide range variation and large geographical area.
- 11.7. Based on the bigger data set provided, it is amply clear to draw a conclusion that, during Peak Period these Generators are giving lower Availability and during off peak period the Generators are declaring higher Availability. Hence the contention raised by MSEDCL cannot be overlooked.
- 11.8. The Act empowers the Commission for the purpose of encouraging competition, efficiency, economical use of the resources, good performance and optimum investments also the Act empowers under 86 (i) specify or enforce standards with respect to quality, continuity and reliability of service by licensees. While addressing the issue of gaming in declaring the capacity of generating stations/unit in lean demand period by the generator, the Commission has relooked at the Availability achieved in past years.
- 11.9. The Commission under Section 178 of the Act has been vested with the power to make, amend and repeal the regulations on the subjects which have been authorized under various provisions of the Act. The Commission in exercise of its power conferred under Regulation 101 "*Power to amend*" considers revising the methodology of recovery of Annual Fixed Cost.
- 11.10. It would be appropriate to work out methodology to keep the balance of interest between Generator and Distribution licensee so as to curb/limit the possible gaming. Commission feels that to achieve such a balance it would be just and fair if the Computation and billing of Annual Fixed Charges is kept on monthly basis in proportion to Contracted Capacity based on the cumulative Availability achieved with respect to the Target Availability, subject to adjustment at the end of year.

11.11. Various scenarios considered for amendment of Regulations:

- a) MSEDCL has proposed to introduce the system of differential AFC recovery linked to peak and off peak periods i.e. during the off peak 80% of AFC will be recovered. Any slippage to meet the said norm would result in reduction in 80% of AFC. In Peak Period i.e. remaining 20% of AFC is recoverable from the beneficiaries, if the generating station achieves a PAF of 95% for the period, say of 4 Months. Similarly by reduction of availability, if the Generating Companies is unable to achieve 95% Availability in peak Period then proportionate reduction will be done as per the discussion paper of CERC for MYT control Period of 1.04.2019 to 31.3.2024.

In summary, CERC is proposing two different Availabilities i.e. for Peak Period and for Off Peak Period. Evaluating these options with respect to the issue faced by the MSEDCL relating to gaming in availability, it is observed that these options may not be appropriate, as in Maharashtra we have peak period in April, May and June and further in months of September and October. Further, the demand fluctuation during the day also varies by about 3000 to 4000 MW. Also the monitoring of target Availability for some of the MSPGCL station will be difficult as some of MSPGCL Station/Units are having different Availability (72% for Koradi TPS, 80% to Chandrapur, Nashik Bhusawal, Parli 6 and 7 and new Units of MSPGCL are 85%). Anyways, the proposal mooted by CERC is at discussion stage. Hence it will be appropriate to wait for the CERC's Final terms and Conditions of Tariff Regulations.

- b) The Commission also considered having the actual Availability or monthly cumulative Availability to recover the Full Fixed Cost, however the declaration of Availability depends upon various factors such as availability of fuel, water and machine capability to deliver depending upon annual overhauls and other requirements. Hence, the Generators may not able to recover their AFC during such annual or capital Overhauls.
- c) After analysis of various options, the Commission is of the view that, it will be appropriate to reduce the time period for cumulative adjustment from one year to smaller periods to arrest the possible gaming. The Commission after considering the 2 peak periods, different Availability for MSPGCL Station/Units feels that it will be appropriate to adjust the cumulative availability at the end of each trimester of the year, instead of adjustment at the end of the year. (i.e. adjustment of availability with respect to Target Availability, till the respective month, subject to adjustment at July, November

and March of that years).

**12. Issue No. 2 Minimum monthly Availability from the long term generators which are important and quintessential for providing the reliable and economic power supply to the consumers.**

12.1. MSEDCL has long term PPA's with MSPGCL, APML, JSW, RIPL and EMCO

12.2. The Commission in the impugned Order had addressed the issue of Generators under section 63.

*“.....Moreover, in the case of PPAs under Section 63 of the EA, 2003, in case an IPP had bid a tariff whose underlying basis is higher recovery of variable costs and lower recovery of fixed costs, it would have an incentive to maximise the supply and offtake of power. The Commission also notes that the PPAs entered into under Section 63 of the EA, 2003 on the basis of the CBG notified by GoI would not be subject to amendments, if any, in the MYT Regulations in this regard without the consent of the Generators. Such arrangements with CGPL would, in any case, concern the CERC.*

12.3. MSEDCL has contended that the Commission has failed to address the issue raised on Minimum monthly Availability from the long term generators which is important and quintessential for providing the reliable and economic power supply to the consumers.

12.4. NTPC has contended that this Commission does not have any jurisdiction either concurrently or otherwise to vary the terms and conditions contained in the Tariff Regulations notified by CERC and the PPA entered into between NTPC and MSEDCL.

12.5. MSEDCL in regards to the long term Generators under IPP stated that recent Order in Civil Appeal No. 5399-5400, 5347, 5348, 5346, 5364 of 2016 on the Appellate Tribunal for Electricity (APTEL) Judgment dated April 7, 2016, Supreme Court has provided clarification on the adjudicatory powers of the Appropriate Commission as under:

*“It is important to note that the regulatory powers of the Central Commission, so far as tariff is concerned, are specifically mentioned in Section 79(1). This regulatory power is a general one, and it is very difficult to state that when the Commission adopts tariff under Section 63, it functions de hors its general regulatory power under Section 79(1)(b). For one thing, such regulation takes*

*place under the Central Government's guidelines. For another, in a situation where there are no guidelines or in a situation which is not covered by the guidelines, can it be said that the Commission's power to "regulate" tariff is completely done away with? According to us, this is not a correct way of reading the aforesaid statutory provisions. The first rule of statutory interpretation is that the statute must be read as a whole. As a concomitant of that rule, it is also clear that all the discordant notes struck by the various Sections must be harmonized. Considering the fact that the non-obstante clause advisedly restricts itself to Section 62, we see no good reason to put Section 79 out of the way altogether. The reason why Section 62 alone has been put out of the way is that determination of tariff can take place in one of two ways – either under Section 62, where the Commission itself determines the tariff in accordance with the provisions of the Act, (after laying down the terms and conditions for determination of tariff mentioned in Section 61) or under Section 63 where the Commission adopts tariff that is already determined by a transparent process of bidding. In either case, the general regulatory power of the Commission under Section 79(1)(b) is the source of the power to regulate, which includes the power to determine or adopt tariff. In fact, Sections 62 and 63 deal with "determination" of tariff, which is part of "regulating" tariff. Whereas "determining" tariff for inter-State transmission of electricity is dealt with by Section 79(1)(d), Section 79(1)(b) is a wider source of power to "regulate" tariff. It is clear that in a situation where the guidelines issued by the Central Government under Section 63 cover the situation, the Central Commission is bound by those guidelines and must exercise its regulatory functions, albeit under Section 79(1)(b), only in accordance with those guidelines. As has been stated above, it is only in a situation where there are no guidelines framed at all or where the guidelines do not deal with a given situation that the Commission's general regulatory powers under Section 79(1)(b) can then be used."*

- 12.6. Thus, as per Supreme Court clarification, the Regulatory powers of the Central Commission under Section 79(1) being general, adoption of tariff under Section 63 could not be de hors Section 79(1) (b) of EA, 2003. It was held that the non obstante clause in Section 63 being limited to Section 62, the general powers of the Central Commission to "regulate" tariff under Section 79(1) (b) were not excluded. Thus, with respect to IPPs with whom the PPAs were signed and the tariff were adopted under Section 63 of the EA, 2003, the powers of the Commission under Section 86 of the EA, 2003 are general powers and cannot be excluded. Thus, the Commission may exercise its general power under Section 86 of the EA, 2003 for the purpose of the making suitable amendments in the PPA for Availability of the Generating Stations in

order to ensure that there is consistency in the monthly Availability of the Generating Stations and the power planning of MSEDCL is not jeopardized.

- 12.7. The Commission notes that, these Generators having Long Term PPAs under the Section 63 are giving their Day Ahead Schedules to MSLDC. Further, it is also brought to the notice of the Commission that these Generators are also giving Lower Availability during Peak Period and higher Availability during off Peak Period. MSEDCL has also stated that the methodology for Recovery of Annual Fixed Cost is similar to those of Section 62 Generators. Hence, the Commission is of the view that, the revised treatment shall also be equally applicable to Generators having Long Term PPAs under Section 62 (for those generators Tariff determined by the Commission) and Section 63 i.e. MSPGCL, APML, JSW, RIPL and EMCO.

### 13. Issue No. 3 Capacity demonstrations and role of SLDC thereof;

- 13.1. The Commission in the impugned Order had categorically stated that,

*“.....MSEDCL can request MSLDC to ask for demonstration of the declared capacity of the relevant Generating stations or Units. A monitoring system for periodical assessment of declared capacity could also be in place. If the Generator fails to demonstrate the declared capacity, the Regulations provide for the consequence.”*

- 13.2. The Commission, vide its Daily Order dated 20.12.2017 of the impugned Order, has directed MSEDCL that,

*“The Commission observes that it is necessary to put in place a system for monitoring not only the coal stocks available with the Generators and the shortage or otherwise of coal to be supplied by CIL, but also if indenting for coal has been undertaken diligently by the Generators in lean periods so that sufficient stock is available for periods of high power demand and /or when there is a shortfall in coal supply by CIL. MSEDCL should inform the Commission of the actual or proposed monitoring system in 2 weeks.*

*“.....Further, the Regulations and PPAs provide for demonstration of Availability of Generating Units. This provision can be invoked by MSEDCL whenever it considers necessary.*

- 13.3. The Commission in the impugned Order also held that the Regulations 51 of MERC

MYT Regulations, 2015 empowers MSLDC for seeking demonstration of the declared capacity of its Generating Station as and when asked by MSLDC. This Regulation also has penalizing provisions in case of mis-declaration of Availability and the Penalty is multiplied in terms of geometrical progression for its mis-declaration of Availability. The relevant extract of this Regulations are reproduced below:

*51.2 In the event of the Generating Company failing to demonstrate the declared capacity, the Annual Fixed Charges due to the Generating Company shall be reduced as a measure of penalty.*

*51.3 The quantum of penalty for the first mis-declaration for any duration/block in a day shall be the charges corresponding to two days fixed charges.*

*51.4 For the second mis-declaration, the penalty shall be equivalent to fixed charges for four days and for subsequent mis-declarations in the year, the penalty shall be multiplied in the geometrical progression.*

*51.5 The operating log books of the Generating Station shall be available for scrutiny by the MSLDC, and these books shall keep record of machine operation and maintenance.”*

13.4. In its review Petition MSEDCL has proposed to form a Generation Availability Committee under the Chairmanship of the Chief Engineer (MSLDC). The other member of this committee will be Chief Engineer (Power Purchase), and one representative from the generators having Long term PPAs with MSEDCL. The committee will meet every fort nightly to review and monitor the coal stock position. The prime responsibilities of the committee shall be as follows:

- i. To monitor demonstration of availability.
- ii. Surprise demonstration of availability of thermal power station to verify its declared capacity and subsequently its payment of capacity charges.
- iii. Whether coal is available for generation of declared capacity.
- iv. To study the monthly consumption pattern of coal and assessment of the coal requirement for the generation.
- v. Month wise and capacity wise operation of plants as per MOD.

13.5. The Regulations 51 empowers MSLDC for seeking demonstration of declared capacity, therefore the Commission doesn't find any problem in constitution of Generation Availability Committee under the Chairman ship of CE MSLDC along with Generators having long term PPAs with MSEDCL to address the issue of mis-declaration of availability. SLDC shall exercise its power vested under Regulations 51 of MYT Regulations, 2015 for demonstration of declared capacity.

#### **14. Issue No. 4 Compliance of the Commission directives regarding formation of Coal monitoring cell and proposed Generating Availability Committee**

- 14.1. The variation or uncontrollable fluctuations in declaring lower Availability is causing MSEDCL to pay the full fixed cost, consequently MSEDCL has to procure short term Power in peak demand period.
- 14.2. MSPGCL in its reply has stated that the FSA provides the coal allocation to the Generating in a distributed quarterly manner, considering the seasonal variation in demand as Q1 -25%, Q2- 22%, Q3- 25% and Q4-28%. Such distributed allocation only indicates that fuel supplies are low during low demand period. Therefore there is limited scope for co-called manipulation of the Availability. The Commission in the impugned Order had addressed the issue of coal shortage and accordingly, MSEDCL in the Review Petition has submitted the proposal of establishing Coal monitoring Committee.
- 14.3. MSEDCL in compliance of the Commission directives, has formed a Coal Monitoring Committee looking at following parameters:
- Daily Coal Stock Report is gathered from all IPPs viz. APML, RIPL, GMR Warora and from MSPGCL.
  - Monitoring of CEA website to keep record of Coal Stock Position of NTPC Stations
  - Information of Transportation of coal such as availability of Rail Rakes
  - Coal and Transportation Booking i.e. payments made by the generators having Long term PPA
  - Correspondence with Govt. of Maharashtra for coal related issues faced by MSPGCL, IPPs and NTPC.
  - Conducting periodic meeting with all IPPs, MSPGCL, NTPC to discuss power availability for the subsequent months and any issues related to coal supply, coal transport, etc.
  - Whether indent placed as per FSA terms.
  - Coal stock provision for the months in which there is maximum demand.
- 14.4. The Commission notes the initiative taken by MSEDCL for monitoring of Coal Stock, as it will be helpful in longer run for taking precise decision for scheduling of Power.




## ORDER

- 1) The Case No. 186 of 2018 is partly allowed.
- 2) The Commission directs all concerned including MSLDC to consider cumulative availability adjusted at the end of each trimester of the year, instead of adjustment at the end of the year. (i.e. adjustment of availability with respect to Target Availability, till the respective month, subject to adjustment at July, November and March) starting from the last trimester of the Year i.e. 1 December, 2018 to 31 March, 2019.
- 3) The Commission directs constitution of Generation Availability Committee under the Chairman ship of CE MSLDC along with long term Generators to address the issue of mis-declaration of availability. SLDC shall exercise its power as per Regulations 51 of MYT Regulations, 2015 for seeking demonstration of declared capacity.
- 4) MSLDC to submit the Availability Certificate based on the revised norms for Truing Up purpose.

Sd/-  
(Mukesh Khullar)  
Member

Sd/-  
(I.M.Bohari)  
Member

Sd/-  
(Anand B. Kulkarni)  
Chairperson

  
(Abhijit Deshpande)  
Secretary

