

**Central Electricity Regulatory Commission  
New Delhi**

**RECORD OF PROCEEDINGS**

**Petition No. 125/2011**

Subject: Signing of PPA by NTPC Ltd during the period October, 2010 to 5.1.2011 for supply of 37000 MW of electricity abusing its dominant position thereby causing adverse effect on competition in electricity industry.

Date of Hearing: 7.7.2011

Coram: Dr. Pramod Deo, Chairperson  
Shri S.Jayaraman, Member  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member

Petitioner: Association of Power Producers, New Delhi

Respondent: NTPC, New Delhi

Parties present: Shri Ravi Shankar Pattnaik, Advocate, APP  
Shri M.G.Ramachandran, Advocate, NTPC  
Shri Anand K.Ganesan, Advocate, NTPC  
Shri V.K.Padha, NTPC  
Shri C.K.Mondal, NTPC  
Shri S.K.Samui, NTPC  
Shri Ajay Dua, NTPC  
Shri Sameer Aggarwal, NTPC

During the hearing, the learned counsel for the petitioner submitted that in terms of the proceedings held on 19.5.2011, copies of the Power Purchase Agreements (PPAs) entered into by the respondent NTPC with the beneficiaries for supply of 37000 MW of electricity has not been served on the petitioner. He also submitted that in terms of the directions of the Commission, amended memo impleading the beneficiaries of the respondent, NTPC in the matter have been filed and copies of the petition have been served on them and proof of service submitted.

2. The learned counsel for the respondent, NTPC clarified that in terms of the proceedings held on 19.5.2011 a list containing the details of projects and the capacity for which PPAs have been entered into by NTPC has been served on the petitioner and there was no direction by the Commission to serve copy of the PPAs. He also submitted that there is no question of serving copies of the PPAs entered into by NTPC with beneficiary utilities, to the petitioner as these documents are confidential commercial documents containing the terms and conditions of supply of power. The learned counsel further submitted that the petitioner should be mainly concerned with the details such as, the beneficiaries with whom agreements have been entered into by NTPC, the projects involved and the capacity contracted and not the commercial terms and conditions of the agreement. He further clarified that the said information has been provided to the petitioner by the respondent, NTPC as at Appendix-A of the affidavit dated 2.6.2011.

3. In response, the learned counsel for the petitioner submitted that in terms of Section 60 of the Electricity Act, 2003 (the Act), the Commission should be mainly concerned as to whether the PPAs entered into by the respondent NTPC is anti-competitive in nature and whether NTPC has abused its dominant position as a result of entering into PPAs for additional capacity. He also added that by entering into PPAs, the respondent NTPC has pre-empted the allocation of coal.

4. In reply to the above, the learned counsel for the respondent NTPC, objected to the contentions of the learned counsel for the petitioner and clarified that allocation of coal cannot be an issue to be considered under Section 60 of the Act and the PPAs have no relation to the coal linkage. He also submitted that the petitioners' have not been prevented by the respondent NTPC, to undertake the supply of power based on competitive bidding and that the PPAs entered into by NTPC were based on the Tariff Policy laid down by the Central Government. To this, the learned counsel for the petitioner submitted that two sets of markets were in operation to undertake supply of power, namely the Public Sector Units, by signing PPAs with distribution companies and the private developers through competitive bidding route.

5. The learned counsel for the respondent, NTPC prayed that the petitioner should also be asked to submit documents indicating the details of the capacity of its projects, the date of commercial operation of the projects, the reasons for not bringing up the projects into execution, the difficulties faced on this count and whether the same was brought to the notice of the Government, and if not, the reasons thereof. To this, the learned counsel for the petitioner submitted that the prayer in the petition relate to the signing of PPAs by NTPC during the period from 1.10.2010 to 5.1.2011.

6. On a specific query by the Commission as to whether the petitioner still insists on the copy of PPAs being served on it pursuant to the objections of the learned counsel for the respondent, NTPC, the learned counsel for the petitioner clarified that the respondent, NTPC be directed to provide information, as under, for the period from 5.1.2006 to 5.1.2011:

- (a) Date of signing of the PPAs/MoUs with the beneficiaries
- (b) Capacity contracted in the PPAs/MoUs
- (c) Time frame/duration of completion of the projects.

7. The learned counsel for the respondent, NTPC while submitting that it had no objection to provide the above said information, also prayed that the petitioner should also be asked to provide the said information for the period from 2006 to 5.1.2011 for scrutiny of the Commission.

8. The Commission after hearing the parties, directed the petitioner and the respondent, NTPC to submit the information as required at para 6 above, on affidavit, with advance copy to the other parties, on or before 29.7.2011.

9. Matter shall be listed for hearing on 9.8.2011.

Sd/-  
(T.Rout)  
Joint Chief (Law)