

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 212/MP/2011

Subject: Petition under Regulation 111 read with regulation 113 of the CERC (Conduct of Business) Regulations, 1999 seeking appropriate directions to the respondents/generating companies to provide the audited documents in support of the variable cost/charges billed by the respondents on monthly basis to the petitioner.

Date of hearing: 20.12.2011

Coram: Dr. Pramod Deo, Chairperson
Shri S.Jayaraman, Member

Petitioner: NDPL

Respondents: NTPC Ltd. and others

Parties present: Shri Sakya Singha Chaudhuri, Advocate, NDPL
Shri Avijeet Kumar Lala, Advocate, NDPL
Shri Ananad K. Srivastava, NDPL
Shri Anurag Bansal, NDPL
Shri Shashwat, NDPL
Shri Sameer Aggarwal, NTPC
Shri C.K.Mondol, NTPC
Shri Ajay Dua, NTPC
Shri Rohit Chhabra, NTPC

Record of Proceedings

This petition has been filed by , NDPL, seeking appropriate directions to the respondents/generating companies to provide the audited documents in support of the variable cost/charges billed by them on monthly basis to the petitioner.

2. During the hearing of the matter '*on admission*', the learned counsel for the petitioner was requested by the Commission to make his submissions on the question of 'maintainability' of the petition.

3. In response, the learned counsel for the petitioner submitted as under:
- (i) The petition has been filed in terms of the power of the Commission under Section 79(1)(a) of the Electricity Act, 2003 read with Regulations 111 and 113 of the CERC (Conduct of Business) Regulations, 1999.
 - (ii) Pursuant to the order dated 26.8.2011 of the Delhi Electricity Regulatory Commission (DERC), the petitioner seeks to implement the quarterly Fuel Price Adjustment (FPA) and hence, the petitioner as a beneficiary of these generating companies, has prayed for a direction on the generating companies to furnish duly audited documents of the variable charges billed by them.
 - (iii) The tariff of the generating stations of the respondent Nos. 1 to 3 is determined by the Commission and the variable charges are adjusted on month to month basis in terms of the provisions of the 2009 Tariff Regulations. Hence, the Commission has the power to issue necessary directions.
 - (iv) Though the generating companies have been submitting the information on a quarterly basis, but the same is not under the signature of duly authorized statutory auditor. Hence, in order to comply with the order of DERC and as a procedural requirement, the respondents may be directed to provide audited documentary proof in support of the variable charges computed by it.
4. The representative of respondent no.1 submitted as under:
- (i) The petition is not maintainable since the petitioner (a distribution licensee) has only been directed by DERC in terms of paragraph 32 (d) of the order dated 26.8.2011 to submit the auditor's certificate along with details as to the variable charges.
 - (ii) The petitioner has been providing the petitioner with statement indicating plant-wise details of variable charges and units purchased from each thermal plant, on quarterly basis, along with FPA and there was no requirement under the provisions of the 2009 Tariff Regulations, for submission of audited documentary proof to the petitioner, for justification of its claim.
 - (iii) This respondent has been submitting additional information / documents as per directions of the Central Commission with regard to its claim for capitalization based on audited certificate,

without insisting on the audited statement from its suppliers. Hence, there is no requirement for this respondent for production of documentary proof based on the directions of DERC on the petitioner. It is for the petitioner to provide auditor certificate based on the billing details provided by this respondent.

- (iv) Notwithstanding the above, it has been acknowledged by the petitioner in its petition (*at para 10*) that the respondent has been submitting the certificate based on audited certificate. Hence, the petitioner is not maintainable.

5. On being pointed out by the Commission that the order of DERC was a direction on the petitioner to submit auditor's certificate, the learned counsel for petitioner clarified that it would not be possible for the auditor's of the petitioner to verify/certify the details of variable costs/charges billed by the generating companies, except for the purchases made by the petitioner.

6. On being further pointed out by the Commission that the tariff of the generating companies are being audited and tariff of the said generating companies are determined by the Commission based on the audited statement, the learned counsel clarified that it was for the first time the provision has been made by DERC by its order dated 26.8.2011 to allow variable charges on quarterly basis. The learned counsel further submitted that the Commission may give liberty to the petitioner to approach DERC, in case the matter is not admitted.

7. The Commission, after hearing the parties, reserved its orders on the question of maintainability of the petition.

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