

**Central Electricity Regulatory Commission
New Delhi**

Petition No.212/MP/2011

**Coram: Dr. Pramod Deo, Chairman
Shri S.Jayaraman, Member**

Date of Hearing: 20.12.2011

Date of Order: 22.3.2012

In the matter of

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

And

In the matter of

North Delhi Power Limited (NDPL)

... Petitioner

Vs

1. NTPC Limited, New Delhi
2. Aravali Power Company Private Limited, Noida
3. Damodar Valley Corporation, Kolkatta

.... Respondents

Present:

1. Shri Sakya Singha Chaudhuri, Advocate, NDPL
2. Shri Anijeet Kumar Lala, Advocate, NDPL
3. Shri Anand K. Shrivastava, NDPL
4. Shri Anurag Bansal, NDPL
5. Shri Shaswat, NDPL

ORDER

The petitioner, NDPL has filed this petition with specific prayers as under:

(a) Admit the present petition;

(b) Allow the present petition and issue appropriate directions to respondents No.1 to 3 to provide documentary proof of the basis of variable charges duly audited by

the statutory auditors along with the monthly energy bills of the respective stations;

(c) Pass appropriate ad-interim orders in terms of prayer (b) above; and

(d) Pass such other and further orders/directions as the Hon'ble Commission may deem appropriate in the facts and circumstances of the case.

2. The petitioner is a joint venture company between Tata Power Company Ltd. (TPCL) and the Government of National Capital Territory of Delhi (GNCTD), registered under the Companies Act, 1956, with 51% shareholding by TPCL. The petitioner is a distribution licensee in Delhi in terms of Section 14 of the Electricity Act, 2003 (the Act) read with the Delhi Electricity Reforms Act and the Distribution and Retail tariff supply license issued by the Delhi Electricity Regulatory Commission (DERC). The petitioner undertakes the distribution and retail supply of electricity in the North and West Districts of GNCTD based on the Power Purchase Agreements (PPAs) entered into with the central generating stations and the tariffs determined by DERC in terms of Section 86(1)(a) and (b) of the Act.

3. The respondents Nos. 1 to 3 herein are the central generating companies supplying power to the distribution licensees in the State of Delhi including the petitioner, in terms of the proportionate allocation made on re-assignment of the PPAs. The tariff of these central generating stations for supply of electricity to the distribution licensees are determined by the Central Commission in terms of Section 79(1)(a) read with Section 62(1)(a) of the Act.

4. During the hearing on 20.12.2011, the learned counsel for the petitioner made his submissions on the question of 'maintainability' of the petition and

clarified that the present petition has been filed in terms of Section 79(1)(a) of the Electricity Act, 2003 read with Regulations 111 and 113 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999. The learned counsel submitted that in Petition Nos. 22 to 24 of 2010 filed before DERC by the distribution licensees of Delhi including the petitioner seeking implementation of Power Purchase Price adjustment formula on quarterly basis for true-up of variance between the estimated power purchase cost and actual power purchase costs, the DERC by its order dated 26.8.2011 had allowed the adjustment between the actual and variable fuel cost on quarterly basis, applicable in respect of all thermal power generating stations having long term PPAs and has accordingly approved the implementation of a quarterly Fuel Price Adjustment formula with effect from the quarter October-December, 2011. He also submitted that based on the above, DERC in its order dated 26.8.2011, had observed as under:

"32. The Fuel Price Adjustment (FPA) on Quarterly basis shall be implemented on the following basis:

xxxxxx

*d) The Distribution licensee shall submit to the Commission the details in respect of changes in Variable Cost of the thermal plants listed in the Schedule for (n-1)th quarter. Further, Auditor s Certificate along with statement indicating plant-wise details of Variable Charges and units purchased from each thermal plant listed in the **Schedule**, for (n-1)th quarter shall be furnished alongwith the proposal of FPA submitted for the Commission's approval.*

5. The learned counsel has submitted that pursuant to the above directions of DERC, the petitioner is to implement the quarterly Fuel Price Adjustment with effect from the quarter of October, 2011 to December, 2011 and for this reason it

has sought through this petition, appropriate directions on the respondents 1 to 3, who supply power to the petitioner, to provide audited documents in support of the variable cost/charges billed by these respondents on monthly basis, to the petitioner. To substantiate, the learned counsel for petitioner submitted that in terms of Regulation 21 of the 2009 Tariff Regulations notified by the Central Commission, any variation in the cost of fuel is a pass through for the generating companies in terms of the Energy Charge Rate (ECR) formula specified thereunder and is payable by the distribution licensees including the petitioner, in the monthly energy bills. He also submitted that the calculation of ECR is dependent upon various values and numerous actual parameters of the generating station, which cannot be verified by the petitioner in the absence of any supporting audited documents of the values claimed in the monthly bills for calculation of ECR by the generating company. The learned counsel further submitted that the petitioner has been paying the amounts claimed by the respondents even though no audited statements on the calculations of the variable charges billed are furnished by the respondents and added that in view the directions of DERC vide order dated 26.8.2011 and in the general interest of consumers, it is imperative for the respondents to provide supporting audited documentary proof, as stated above, so that the petitioner could effectively comply with the order of DERC in a transparent manner. The learned counsel has prayed that the present petition is maintainable and the Central Commission in exercise of its functions under Section 79 (3) of the Act and keeping in view the objectives of the National Tariff Policy may direct the respondents to furnish documentary proof of the basis of

variable charges duly audited by their statutory auditors along with the monthly energy bills of the respective generating stations of the respondents.

6. The respondent No.1, NTPC has filed its reply vide affidavit dated 19.12.2011 and has objected to the above prayers of the petitioner. It has contended that the petitioner has only been directed in terms of the order of DERC dated 26.8.2011, to submit the auditor certificate based on the bills raised by the respondents and there was no requirement for the respondent generating companies supplying power to the petitioner, to provide back-up auditor certificate. The said respondent has also submitted that in terms of DERC order dated 26.8.2011, the ECR and quantity of energy supplied have been indicated and details of both are made available to the petitioner in the bills, which are authenticated by the officials of the respondent company. It has further submitted the tariff for its generating stations including the energy charges/variable charges are claimed from the beneficiaries like the petitioner, in terms of the various orders of the Commission for 2009-14 based on the 2009 Tariff Regulations notified by the Central Commission and the details for computation of energy charges are given along with the bills as required under Regulation 21 of the said regulations, which do not envisage the production of auditor certificate. The respondent has submitted that being a central PSU it is subjected to statutory audit and is answerable to the Parliament and thus the issue of transparency and accountability is duly safeguarded. The respondent has reiterated that submission of auditor's certificate by it is neither envisaged in the order of DERC nor warranted, since the details, duly authenticated by its officials are made available in the bills raised on the

petitioner, and it is for the petitioner to submit the audited certificate based on the details available with it. It has thus prayed for rejection of the petition as not maintainable, since the prayer of the petitioner is beyond the scope of the 2009 Tariff Regulations specified by the Central Commission.

7. Heard the parties. It is observed from the order of DERC dated 26.8.2011 that the petitioner has been directed to submit the audited certificate along with plant wise details of variable charges and units purchased from each of the thermal generating stations for approval of FPA by DERC. Admittedly, this order does not mandate the submission of auditor's certificate on this count, by the suppliers of electricity (i.e the respondents) for consideration. Even though the petitioner, in its petition has alleged that the respondents herein have not been submitting documentary proof for its claim for energy charges, it has submitted that the respondent No.1 has been providing the said details (as per audited accounts of the company) under the signature of its official on a quarterly basis (Annexure-P/4 of the petition). We are of the view that the authenticated information provided by the said respondent as above, could be utilized by the petitioner for compliance with the directions of DERC. Accordingly, there arises no necessity for issuance of any directions on the respondents for submission of auditor's certificate, as prayed for by the petitioner. The prayer of the petitioner fails on this count.

8. Regulation 21 of the 2009 Tariff Regulations notified by the Central Commission provides for the computation and payment of Capacity charge and Energy Charge for Thermal Generating Stations as under:

"(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 / allocation in the capacity of the generating station.

(2) The capacity charge (inclusive of incentive) payable to a thermal generating station for a calendar month shall be calculated in accordance with the following formulae:

(3) xxxx

(4) xxxx

(5) The energy charge shall cover the primary 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:

(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the month in kWh.}

(6) Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined to three decimal places in accordance with the following formulae:

(a) For coal based and lignite fired stations

xxxxxxxx

(7) The landed cost of fuel for the month shall include price of fuel corresponding to the grade and quality of fuel inclusive of royalty, taxes and duties as applicable, transportation cost by rail / road or any other means, and, for the purpose of computation of energy charge, and in case of coal/lignite shall be arrived at after considering normative transit and handling losses as percentage of the quantity of coal or lignite dispatched by the coal or lignite supply company during the month as given below :

Pithead generating stations : 0.2%

Non-pithead generating stations : 0.8%

(8) The landed price of limestone shall be taken based on procurement price of limestone for the generating station, inclusive of royalty, taxes and duties as applicable and transportation cost for the month

9. The tariff of the generating station of the respondents are determined by the Central Commission in exercise of its power under Section 79 (1)(a) of the Act read with Section 62(1)(a) of the Act for supply of power to the distribution licensees, based on the 2009 Tariff Regulations notified by it. Regulation 21 of the 2009 Regulations allows a generating company, the energy charges as pass through, with Fuel Price Adjustment (FPA) in the monthly bills raised on the distribution

licensees like the petitioner. There exists no provision/clause which mandates the submission of auditor's certificate by a generating company in support of its claim for energy charges computed by it. It is noticed that the respondent No.1, in support of its claim for monthly FPA has submitted documents to the petitioner certifying that the FPA figures are as per quarterly audited accounts. This, according to us, constitutes sufficient compliance with the above regulations. We are of the view that the petitioner can comply with the directions of DERC by submitting certificate from its auditor, based on the authenticated quarterly bills provided by the respondent. Therefore, there is no requirement to issue any directions to the respondents to provide monthly bills duly certified by auditor as prayed for in the petition. Accordingly, the prayers of the petitioner stands rejected and the petition is dismissed as not maintainable.

10. We also notice that during the pendency of the petition, some of the consumers namely, Shri Arun Kumar Dutta, Delhi Shri Surya Prakash Loonker of M/s Jago party and Anil Sood, President of M/s Chetna, New Delhi (a registered society) have through their letters dated 13.12.2011 addressed to the Central Commission, as stakeholders, prayed for impleadment in the above petition during the hearing. However, none was present during the hearing on 20.12.2011. All these consumers have raised similar issues which are extracted as under:

(a) The Central Commission never tried up the tariff at the end of the year or at the end of the multi tariff year period for all these years because of which generators and licensees are piling up huge unjust profit at the cost of the consumers.

(b) It is observed that the State utilities/Discoms also never insisted for trueing-up which is mandatory as per the Electricity Act, 2003 and the National tariff policy.

(c) It is a regular practice of generators to keep minimum coal reserve so that IWC on fuel can be kept as profit;

(d) The Central Commission should look into these matters and should true up the operational and financial performances with the audited and performance parameters in the interest of public.

11. It appears from the above that the issues pertain to the determination of tariff of the generating stations of the respondents. In this connection, it is clarified that as per provisions of the CERC (Procedure for making of application for determination of tariff, publication of application and other related matters) Regulations, 2004, the generating company makes publication in the newspaper regarding the filing of tariff petitions inviting objections and suggestions on the tariff petitions. Moreover, any person who has filed suggestions/objections may be given the opportunity of hearing by the Commission, in its discretion, before issuing the tariff orders. The consumers who intend to be heard may file their responses and participate in the proceedings for determination of tariff of the generating stations of the respondents. The issues raised by the consumers are not covered under the ambit of the present petition which has been filed for a direction to the respondents for submission of auditor's certificate in respect of variable charges. In any case, none of the consumers participated in the hearing, even though they were aware of the date of hearing. In the light of the above, the issues raised by these consumers have not been considered in the present petition and consequently, their prayer for impleadment is rejected as not maintainable. However, the consumers are at liberty to raise the above issues at the time of

hearing of the petitions for determination of tariff of the generating stations of the respondents.

12. Petition No. 212/MP/2011 is disposed of in terms of the above.

Sd/-
[S.JAYARAMAN]
MEMBER

Sd/-
[DR. PRAMOD DEO]
CHAIRPERSON