

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 311/MP/2015

Subject : Petition for appropriate directions restraining the respondent from recovering the energy charge rate strictly in terms of the Tariff Regulations framed by the Commission.

Petitioner : Tata Power Delhi Distribution Company Limited.

Respondent : NTPC Limited

Petition No. 64/MP/2016

Subject : Petition under Section 79 (1) (f) of the electricity Act, 2003 read with Regulation 30(7) of CERC (Terms and Conditions of Tariff), Regulations, 2014 seeking adjudication of dispute between petitioners i.e. BSES Rajdhani Power Limited and BSES Yamuna Power Limited with NTPC Ltd.

Petitioners : 1. BSES Rajdhani Power Limited
2. BSES Yamuna Power Limited

Respondent : NTPC Limited

Date of hearing : 8.12.2016

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Parties present : Shri Sanjay Sen, Senior Advocate, BRPL & BYPL
Shri Anupam Verma, Advocate, BRPL & BYPL
Shri Rahul Kinra, Advocate, BRPL & BYPL
Shri Vishal Anand, Advocate, BRPL & BYPL
Shri Abhishek Srivastava, BYPL
Shri Gagan B. Swain, BYPL
Shri Kanishk, BRPL
Shri Sunil Kakkar, BYPL
Shri Alok Shankar, Advocate, TPDDL
Shri Uttam Kumar, TPDDL
Shri Mithun Chakroborty, TPDDL
Shri Shimpy Mishra, TPDDL

Shri Sitiesh Mukherjee, Advocate, NTPC
Shri Deep Rao, Advocate, NTPC
Shri A Basu Roy, NTPC
Shri E.P. Rao, NTPC
Shri Nishant Gupta, NTPC

Record of Proceedings

Learned counsel appearing on behalf of BRPL and BYPL submitted that the present petition has been filed seeking refund of excess amount billed by NTPC on account of measurement of GCV at incorrect place i.e secondary crusher end which is in violation of the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 and various orders of the Commission. Learned counsel further submitted as under:

(a) The Commission in its orders dated 25.1.2016, 19.2.2016 and 30.7.2016 in Petition No. 283/GT/2014, 33/MP/2014 and Review Petition No. 11/2016 in Petition No. 279/GT/2014 respectively clarified that energy charges shall be calculated on the basis of GCV on as received basis by taking samples from the wagons at the unloading point. However, NTPC had been taking samples from the stage of secondary crusher for calculation of GCV on as received basis which resulted in excess energy charge.

(b) During the last hearing on 6.10.2016, the representative of NTPC submitted that it has installed facility for measurement of GCV on as received basis in its generating stations at door-step of its generating stations from October, 2016. However, NTPC has neither produced/submitted any supporting document in this regard before the Commission nor it could be verified from the current bills/Form-15 of NTPC. While the mechanism to arrive at the value of GCV of coal on as received basis has been implemented recently, the NTPC in its reply has wrongly stated that NTPC has complied with the provisions of 2014 Tariff Regulations and is billing petitioners by taking value of GCV on as received basis.

(c) As per Regulation 30 (8) of 2014 Tariff Regulations, for the purpose of computation of energy charge, the price of coal as well as the quantum of coal consumed for generation of electricity should correspond the GCV of coal measured on as received basis. In support of its contention, learned counsel for the petitioners relied upon the Statement of Reason of the Tariff Regulations and submitted that NTPC has been charging the petitioners for the coal of higher GCV band rather than the GCV band values used for generation of electricity.

(d) As per Form 15 for July 2016 in respect of Rihand Stage-I, NTPC is charging excess energy charges upto 53 paise.

2. Learned counsel for NTPC submitted as under:

- (a) The petitioners have calculated the purported excess Energy Charges levied by NTPC on the basis of Gross Calorific Value of coal (GCV) as notified by Coal India Limited (CIL) and not the GCV of coal measured on 'as received' basis for coal supplied to its generating stations.
- (b) The petitioners have not used exact corresponding price of coal for the GCV billed by the Coal company as it has not excluded the taxes and charges levied on coal.
- (c) Regulation 30(6) of the 2014 Tariff Regulations categorically provides that Energy charges are to be calculated on the basis of GCV measured on 'as received' basis i.e. at the station end and not on the basis of the GCV of coal measured at the loading point at the mine end. Accordingly, NTPC has been billing the petitioners for Energy Charges based on GCV measured on 'as received' basis.
- (d) NTPC has regularly provided relevant information in compliance of Regulation 30 (7) to all the beneficiaries including the petitioners.
- (e) NTPC has no control whatsoever over the grade and GCV of coal received at its various generating stations and any grade slippages between the mine mouth and the site of its generating stations. Such variations in GCV are an admitted reality across the country. Accordingly, the cost of any slippage in the grade of coal between the loading point and the sites of NTPCs generating stations is to be borne by NTPC's beneficiaries such as the petitioners, which is the import of the Tariff Regulations, 2014.
- (f) NTPC has always billed the petitioners by taking into consideration amounts actually paid to the coal companies and has calculated the landed cost of coal on as 'as received' basis.
- (g) The coal supplied to NTPC's generating stations, which supply power to the petitioners, is not sourced from WCL's mines. The petitioner's calculations based on the said data notified by CIL are without basis and erroneous.
- (h) The prices notified by the CIL are run-of-the-mine prices whereas the Tariff Regulations, 2014 provide that energy charges should be calculated based on the landed price of coal.
- (i) There are a host of charges over and above the base price of coal notified by CIL which comprise the landed price of coal, as contemplated under the Tariff Regulations, 2014. The inclusion of such charges would naturally result in a landed cost of coal which is much higher than the base price notified by CIL.

The petitioners have overlooked the fact that the CIL notified prices are only a base price and not the landed price of coal.

- (j) Since the petitioners have not challenged the order dated 19.2.2016 in Petition No. 33/MP/2014 before any higher judicial forum, it has attained finality. Therefore, the Commission may not decide to deal with the matter regarding the grade slippage once again when the same has already been decided.

3. After hearing the learned counsels for the petitioners and respondent, the Commission directed NTPC to provide the following information/clarification on affidavit by 27.1.2017 with an advance copy to the petitioners who may file their responses, by 20.2.2017:

- (i) Details of landed price of coal giving breakup of base price of coal, royalty, green energy cess, excise duty, railway transportation and any other charges giving the details of each generating stations for the period 2015-16 on monthly basis supported by one month invoices for each generating station;
- (ii) Computation of energy charges specifying the GCV considered during each month on 'as fired' and 'as received' basis for the year 2015-16 and reasons for difference from as billed GCV for the month; and
- (iii) Provide proof of implementation of direction of Commission of measuring GCV on as received basis from October, 2016.

4. The Commission directed the petitioners and the respondents that due date of filing the information and responses should be strictly complied with. No extension shall be granted on that account.

5. The petitions shall be listed for hearing in due course.

By order of the Commission

**Sd/-
(T. Rout)
Chief (Legal)**