

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 119/MP/2019

Subject : Petition under Section 79(1)(a) and Section 79(1)(f) of the Electricity Act, 2003 read with the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 for relief on account of a 'Change in Law' affecting Stage II of the Badarpur Thermal Power Station

Petitioner: NTPC Limited

Respondents: BRPL & Ors

Date of Hearing: 21.5.2020

Coram: Shri P.K. Pujari, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member

Parties present: Shri Sitesh Mukherjee, Advocate, NTPC
Shri Aryaman Saxena, Advocate, NTPC
Shri E.P.Rao, NTPC
Shri Rohit Ladha, NTPC
Shri Hasan Murtaza, Advocate, BRPL & BYPL

Record of Proceedings

The matter was heard through video conferencing.

2. During the hearing, the learned counsel for the Petitioner, NTPC, submitted the following:

- (a) Badarpur Thermal Power Station (BTPS) has been permanently shut down with effect from 15.10.2018. Prior to this, the Delhi Pollution Control Committee (DPCC) vide its direction dated 3.10.2017 had ordered the closure of the units of BTPS for the period from 17.10.2017 to 15.3.2018 on account of severe ambient air pollution levels in Delhi. Thereafter, DPCC by order dated 1.3.2018 revoked the said direction and allowed the units of BTPS to operate with effect from 1.3.2018.
- (b) The suspension of operation of the units and the revocation of the same by DPCC as aforesaid, prevented the units from operation during the period from 17.10.2017 to 28.2.2018, though the units were compliant with the emission norms. The directions of DPCC therefore constitute a 'change in law' event for which the Petitioner is entitled for capacity charges for the said period.
- (c) Similar issue came up for consideration in Petition No. 14/MP/2017 filed by the Petitioner in respect of BTPS and the Commission by its order dated



21.8.2018 held that the DPCC directions dated 6.11.2016 & 16.11.2016 resulting in the closure of Stage-II units for the period from 7.11.2016 to 14.3.2017 fall within the scope of 'change in law' under the 2014 Tariff Regulations and the Petitioner would be entitled for relief for the said period. The Commission in the said order had also directed the Delhi SLDC to accept the DC issued by BTPS and publish the same in the periodical Energy Accounts for the purpose of billing the Respondents. Accordingly, the prayer of the Petitioner in the present case may be allowed.

- (d) The Commission in the said order dated 21.8.2018 had observed that the Change in law provided under Regulation 8 of the 2014 Tariff Regulations was in the context of additional capitalisation of the expenditure and not for payment of capacity charges. It had however relaxed the proviso to Regulation 30(2) of the 2014 Tariff Regulations and allowed part of the capacity charges in the form of O & M expenses and interest on loan for the period from 7.11.2016 to 14.3.2017.
- (e) The Commission, in some of its orders pertaining to the claim for additional expenditure towards installation of FGD and transportation of Fly ash, had granted the reliefs in exercise of its 'regulatory powers'. As the directions of DPCC relating to BTPS had already been considered as a 'change in law' event, the Commission may, in the present case, exercise its 'regulatory powers' and allow the capacity charges as prayed for.
- (f) The Consent to Operate BTPS was granted by DPCC on 2.1.2014 and the same was valid till 31.1.2018. Based on the Petitioner's letter dated 1.2.2018, the Consent to Operate BTPS was renewed by DPCC on 25.6.2018 and valid till 15.10.2018.

3. The learned counsel for the Respondents, BRPL & BYPL submitted that the claim of the Petitioner for the period from 1.2.2018 to 28.2.2018 cannot be considered, since the Consent to Operate BTPS, which was valid till 31.1.2018, was renewed only on 25.6.2018. The learned counsel further submitted that it may be granted time to file its written submissions on the affidavit filed by the Petitioner on 20.5.2020. In response, the learned counsel for the Petitioner clarified that the Consent to Operate granted on 25.6.2018 would be retrospectively applicable, considering the time taken by DPCC for processing the application of the Petitioner. He however prayed for time to file its response to the written submissions of the Respondents.

4. The Commission after hearing the parties directed the Respondent BRPL & BYPL to file its written submissions on or before 1.6.2020, with advance copy to the Petitioner, who may file its response by 8.6.2020. Subject to this, order in the Petition was reserved.

By order of the Commission

Sd/-
(B.Sreekumar)
Deputy Chief (Legal)

