

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 132/MP/2017**

Subject : Petition under Section 79 (1)(f) of the Electricity Act, 2003 read with Regulations 44 and 45 of the CERC (Terms and Conditions of Tariff), Regulations 2014 seeking adjudication of dispute between petitioner and NTPC Limited.

Date of hearing : 13.7.2017

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

Petitioner : Tata Power Delhi Distribution Limited (TPDDL).

Respondent : NTPC Limited.

Parties present : Shri Sanjay Sen, Senior Advocate, TPDDL  
Shri Rahul Kinra, Advocate, TPDDL  
Shri Vishal Anand, Advocate, TPDDL  
Ms. Shimpy Mishra, TPDDL  
Shri Uttam Kumar, TPDDL  
Shri Sumit Sachdev, TPDDL  
Shri M.G. Ramachandran, Advocate, NTPC  
Ms. Poorva Saigal, Advocate, NTPC  
Shri E.P. Rao, NTPC  
Shri Vivek Kumar, NTPC

**Record of Proceedings**

Learned senior counsel for the petitioner submitted that the present petition has been filed restraining NTPC from enforcing payment of monthly invoices on the last working day of the month contrary to Regulations 44 and 45 of the CERC (Terms and Conditions of Tariff) Regulations, 2014 (2014 Tariff Regulations) and for direction to NTPC to amend the PPA dated 8.5.2008 in terms of the amendments proposed by the petitioner. Learned senior counsel further submitted as under:

a). On 31.5.2017, NTPC issued thirteen default notices to the petitioner on account of the petitioner's failure to honour payment due on 31.5.2017 in relation to the energy supplied to the petitioner for the period of April 2017 and requested the petitioner to pay

the amount due within 24 hours of receipt of the default notices, failing which NTPC will be entitled to obtain payment through the invocation of the Letter of Credit (LC).

b). The Default Notices are in clear violation of Regulations 44 and 45 of the 2014 Tariff Regulations and contrary to the invoice dated 8.5.2017 issued by NTPC which categorically provides 7.6.2017 as the last date of payment. Regulations 44 and 45 deal with treatment of rebate and the incidence of late payment surcharge beyond a period of 60 days from the date of billing.

c). The petitioner vide its letter dated 1.6.2017 informed NTPC that the billing by NTPC is governed by the 2014 Tariff Regulations and the last date of invoice has to be computed in terms of 2014 Tariff Regulations which provides 60 days to the petitioner to make payment of any invoice raised by NTPC. As such, the default notices dated 31.5.2017 issued by NTPC are premature and illegal.

d). In response, NTPC vide letter dated 3.6.2017 informed the petitioner that the 2014 Tariff Regulations do not deal with payment security mechanism/LC provided in the PPA and accordingly, the petitioner is bound by the terms and conditions of PPA executed with NTPC and is obligated to pay fixed and variable charges as per Article 6.1.1 of the PPA. NTPC further stated that the petitioner having complied with agreed terms of the PPA dated 8.5.2008 for 9 years cannot now dispute the payment mechanism.

e). On 3.6.2017, the petitioner paid all the amounts due to NTPC in respect of all generating stations which supply power to the petitioner, the same was intimated to NTPC vide e-mail. On 8.6.2017, the petitioner submitted three proposals to NTPC seeking amendment in terms of the PPA dated 8.5.2008. However, NTPC vide its letter dated 9.6.2017 rejected all the proposals and directed the petitioner to continue making payment by the last Bank working day of the calendar month in which the energy invoices raised by NTPC as per the agreed provisions of the PPA and provide unconditional, irrevocable, revolving, consolidated Letter of Credit of requisite amount in a format acceptable to NTPC as agreed by the petitioner in PPA.

f). If the petitioner is entitled to rebate of 1% in accordance with 2014 Tariff Regulations, then in any event the petitioner cannot be said to be in default till 30 days and further more so till 60 days as no LPSC is payable upto 60 days from the issue of bill.

g). NTPC is entitled to late payment surcharge at the rate of 1.50% per month only after the expiry of 60 days. NTPC has been consistently following the same approach of providing 30 days to the petitioner to pay its dues, which is also evident from the bills raised by NTPC for last one year. Accordingly, any insistence of payment by NTPC prior to expiry of 30 days is illegal. In any event, LC cannot be invoked prior to 60 days by NTPC. NTPC has acted contrary to its own invoice.

h). It is a settled law that a regulation overrides the existing contracts between the regulated entities in as much as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulation.

2. Learned counsel appearing for NTPC accepted the notice and submitted that the petitioner is bound by the terms and conditions of the PPA dated 8.5.2008 signed with NTPC and accordingly, it is liable to pay the bills by the last bank working day of the calendar month in which bill is raised and if the payment is not made by the due date, then a right accrues to NTPC to realize the payment through LC. Learned counsel further submitted that the petitioner having complied with the provisions of the PPA insofar as the payment of dues is concerned for 9 years, it is now not open to the petitioner to dispute the payment mechanism. In any event, the terms of the PPA are not contrary to the provisions of Regulations 44 and 45 of the 2014 Tariff Regulations but the 2014 Tariff Regulations do not deal with LC or payment mechanism or the date of payment. In support of his arguments, learned counsel placed reliance upon the Hon'ble APTEL's judgment dated 24.1.2013 in Appeal No. 82 and 90 Of 2012 (BSES Rajdhani Vs. CERC) and the Commission's order dated 26.3.2012 in Petition No. 177/2011.

3. After hearing the learned senior counsel for the petitioner and learned counsel for NTPC, the Commission admitted the petition and directed to issue notice to the respondent.

4. The Commission directed the petitioner to serve the copy of the petition on the respondent immediately, if not served already. The respondent was directed to file its reply, on affidavit, by 28.7.2017 with an advance copy to the petitioner, who may file its rejoinder by 11.8.2017. The Commission directed that due date of filing replies and rejoinder should be strictly complied with. No extension shall be granted on that account.

5. The petition shall be listed for hearing on 22.8.2017.

**By order of the Commission**

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