

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Review Petition No. 27/RP/2020
in Petition No. 57/AT/2020**

Subject : Petition under Section 94(1)(f) of the Electricity Act, 2003 read with Regulation 17 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking review of the order dated 24.2.2020 passed in Petition No. 57/AT/2020.

Date of Hearing : 18.6.2021

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

Review Petitioner : Punjab State Power Corporation Limited (PSPCL)

Respondents : NTPC Limited (NTPC) and 4 Ors.

Parties Present : Shri Anand Ganesan, Advocate, PSPCL
Ms. Swapna Seshadri Advocate, PSPCL
Shri Amal Nair, Advocate, PSPCL
Ms. Poorva Saigal, Advocate, NTPC
Ms. Tanya Sareen, Advocate, NTPC
Shri Ishpaul Uppal, NTPC
Shri Ayush Prasad, SB Energy

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Review Petitioner, PSPCL submitted that the present review petition has been filed seeking review of the order dated 24.2.2020 in Petition No. 57/AT/2020 (for short, 'Impugned order') on two grounds, namely (i) applicable trading margin, and (ii) inability of PSPCL to appear and represent before the Commission. Learned counsel mainly submitted the following:

(a) Prior to passing of the Impugned order, PSPCL and NTPC had participated in the proceedings before the Punjab State Electricity Regulatory Commission ('PSERC') in Petition No.23 of 2019 for approval of Power Sale Agreement ('PSA') between the parties. In the said petition, PSERC vide its order dated 13.1.2020 observed that since the draft Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2019 (for short, 'the draft Trading Licence Regulations') has proposed minimum trading margin of zero paise/kWh

and maximum trading margin of 1 paise/kWh in case of back to back contracts, approval of trading margin of 7 paise/kWh may not be appropriate and accordingly, directed the parties to agitate their respective stand before CERC.

(b) In the Impugned order, the Commission has observed that in terms of Regulation 8(f) of the Central Electricity Regulatory Commission (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 (for short, "the Trading Licence Regulations"), the trading margin cannot exceed 2 paise per unit for back to back contracts. In the instant case, PPA and PSA are back to back contracts and all aspects even including payment security mechanism and liquidated damages, etc. are on back to back basis and there are no independent obligations of NTPC. Accordingly, the trading margin in the present case ought not to exceed 2 paise/kWh.

(c) The Commission in the Impugned order has observed that as per proviso to Regulation 8(d) of the Trading Licence Regulations, in the contracts where escrow arrangement or irrevocable, unconditional and revolving letter of credit as specified in Regulation 9(10) is not provided by trading licensee in favour of seller, the trading licensee shall not charge trading margin exceeding 2 paise/kWh. However, the issue of interpretation of the said regulation is pending before the Appellate Tribunal for Electricity.

(d) Petition No.57/AT/2020 was listed for hearing on 12.2.2020 and order was reserved in the matter. However, NTPC did not forward the notice to the relevant office of PSPCL handling the matter i.e. Chief Engineer/Thermal Design despite being aware of the relevant office dealing with the matter and having exchanged the various communications with the relevant office. NTPC also mapped an incorrect office of PSPCL. Resultantly, PSPCL was not given an opportunity to represent itself before the Commission in the said petition.

3. Learned counsel for the Respondent, NTPC submitted that PSPCL was mapped on e-filing portal of the Commission on the basis of the e-mail id provided/registered by PSPCL itself. Learned counsel further submitted that in the Impugned order the Commission has clearly recognized that the Regulation 8(d) of Trading Licence Regulations gives choice to the contracting parties to mutually agree on trading margin for long-term transactions and that 7 paise/kWh trading margin has been agreed to by PSPCL in terms of signed PSA. It was also submitted that the contention that there are no independent obligations of NTPC is contrary to the provisions of the PPA and various orders issued by the Commission.

4. After hearing the learned counsels for the Petitioner and the Respondent, NTPC, the Commission reserved the order on 'admissibility' of the review petition.

**By order of the Commission
Sd/-**

**(T.D. Pant)
Joint Chief (Law)**