

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 60/MP/2021 along with IA No.12/2021**

Subject : Petition under Sections 60, 61, 79(1)(f), 86(1)(e) and 29(5) of the Electricity Act, 2003 read with Regulation 17 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 seeking adjudication of dispute with NTPC Limited and Northern Regional Load Despatch Centre.

Petitioner : BSES Yamuna Power Limited (BYPL)

Respondents : NTPC Limited (NTPC) and Anr.

**Petition No. 65/MP/2021 along with IA Nos.31/2021 and 33/2021**

Subject : Petition under Sections 60, 61, 79(1)(f), 86(1)(e) and 29(5) of the Electricity Act, 2003 read with Regulation 17 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 seeking adjudication of dispute with NTPC Limited and Northern Regional Load Despatch Centre.

Petitioner : BSES Rajdhani Power Limited (BRPL)

Respondents : NTPC Limited (NTPC) and Anr.

Date of Hearing : 8.4.2021

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

Parties Present : Shri Amit Kapur, Advocate, BYPL and BRPL  
Shri Anupam Varma, Advocate, BYPL and BRPL  
Shri Rahul Kinra, Advocate, BYPL and BRPL  
Shri Aditya Gupta, Advocate, BRPL and BYPL  
Shri M. G. Ramachandran, Sr. Advocate, NTPC  
Ms. Poorva Saigal, Advocate, NTPC  
Ms. Megha Bajpeyi, BRPL  
Shri Anjum Khurshid, NTPC  
Shri Somara Lakra, NRLDC  
Ms. Anisha Chopra, NRLDC  
Shri Ashok Rajan, NRLDC

**Record of Proceedings**

Cases were called out for virtual hearing.

2. Learned counsel for the Petitioners submitted that the instant Petitions have been filed, *inter alia*, seeking adjudication of disputes with NTPC and Northern Regional Load Despatch Centre (NRLDC) with regard to supply of power from



Stage-I National Capital Thermal Power Station at Dadri (in short, 'Dadri-I generating station'). Learned counsel submitted the following:

(a) As per the Commission's order dated 11.4.2017 in Petition No. 330/GT/2014, the commercial operation date of Dadri-I generating station was 1.12.1995. Accordingly, in terms of Regulation 3(73) of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (in short, 'the 2019 Tariff Regulations'), it has completed its useful life of 25 years on 30.11.2020.

(b) On 23.11.2020, a week prior to completion of useful life, the Petitioners requested NTPC, *inter alia*, for making an arrangement under Regulation 17 of the 2019 Tariff Regulations for Dadri-I generating station.

(c) Subsequently, on 30.11.2020, the Petitioners once again wrote to NTPC clearly stating that by virtue of operation of Regulation 17 of the 2019 Tariff Regulations, the Power Purchase Agreement (PPA) and Supplemental PPA (SPPA) would lapse on 1.12.2020 unless mutually agreed to extend the supply from the Dadri-I generating station. Therefore, w.e.f. 1.12.2020, the Petitioner would be under no obligation to schedule the power from the Dadri-I station and consequently to bear any costs thereof.

(d) In terms of Regulations 17(1) and 17(2) of the 2019 Tariff Regulations, upon completion of 25 years of operation from commercial operation date, the generating company and the beneficiary are to mutually agree on an arrangement should they wish to continue to supply power under the PPA and that the beneficiary has the right of first refusal. Upon refusal of the beneficiary to enter into an arrangement, the generating company is free to sell electricity in any manner as it deems fit.

(e) However, NTPC vide its letter dated 30.11.2020 refused to consider the Petitioners' letters, *inter alia*, on the grounds that PPA/SPPA is composite agreement and that Regulation 17 of the 2019 Tariff Regulations is a special dispensation provided to the generating company to propose an arrangement and that it is not open to the beneficiary to seek an arrangement.

(f) Vide its letter dated 16.3.2021, Delhi Electricity Regulatory Commission (DERC) has also taken cognizance of the issue of non-scheduling of power from Dadri-I generating station by Delhi Discoms, including the Petitioners, in discharge of its function under Section 86(1)(b) of the Act and after deliberation with the stakeholders (including NTPC and SLDC), DERC has requested the Ministry of Power (MoP) for de-allocation of Delhi's full share of power from Dadri-I generating station.

(g) In the said letter dated 16.3.2021, DERC has also observed that as per Regulation 17 of the 2019 Tariff Regulations, the first right of exiting the PPAs from the generating station completing useful life of 25 years is conferred to beneficiaries and all the Delhi Discoms have confirmed to exit PPA for Dadri-I generating station w.e.f. 1.12.2020.

(h) On 22.3.2021, Ministry of Power has issued the Guidelines for enabling the distribution companies to either continue or exit from PPAs after completion of the term of PPA i.e. beyond 25 years or a period specified in the PPA and to allow flexibility to the generators to sell power in any mode after the State/distribution companies' exit from PPA.

(i) Despite the PPA with respect to Dadri-I generating station having lapsed, NTPC is coercing the Petitioner to schedule power from the Dadri-I generating station and raising invoices towards fixed charges levied for the deemed generation to the tune of approximately Rs. 35 crore per month even when the Petitioners are not availing any power from Dadri-I generating station. The Petitioners are being forced to make payment of the invoices under protest. This is causing a burden on tariff of the consumers of the Petitioners, essentially for a generating station from which no actual power is being scheduled and is shut. Even though the Petitioners have duly exercised their right of first refusal under Regulation 17 of the 2019 Tariff Regulations, the consumers of the Petitioners are making payments of approximately Rs. 35 crore per month.

(j) The Petitioners have also filed IA Nos.12/2021, 31/2021 and 33/2021 seeking interim reliefs and are praying for restraining NTPC from taking any coercive actions including invocation of LC/ imposition of regulation of power supply from NTPC generating station/ non-levy of LPSC on account of non-payment of deemed generation /capacity charges pertaining to Dadri-I generating Station and further to restrain NTPC from seeking payment of invoices with respect to Dadri-I generating station after 30.11.2020 till the disposal of the present Petitions.

3. Learned senior counsel for the Respondent, NTPC circulated note of arguments and reiterated the submissions made therein. Learned senior counsel mainly submitted the following:

(a) Regulation 17 of the 2019 Tariff Regulations does not compel the generating company to definitively invoke this Regulation or gives any right to the beneficiaries to unilaterally decide to terminate the PPA in view of the Regulation 17.

(b) Regulation 17 of the 2019 Tariff Regulations is a special provision for tariff of thermal generating station which have completed 25 years of operation from the date of commercial operation, which is not in derogation of other provisions in the Regulations, namely, Regulation 27 dealing with Renovation and Modernization (R&M) and Regulation 28 dealing with Special allowance, both of which envisage continued operation of the generating station beyond 25 years of commercial operation.

(c) Proviso to Regulation 3(73) i.e. definition of 'Useful life' in the 2019 Tariff Regulations itself deals with the extension of life of the Project beyond 25 years to be decided by the Commission from time to time.

(d) Scope of Regulation 17 has been explained in Explanatory Memorandum issued along with draft Tariff Regulations for 2019-24 period and Statement of Object and Reasons issued along with the 2019 Tariff Regulations, according to which Regulation 17 has been envisaged as an alternative to the generators who have not availed R&M and Special Allowance under Regulations 27 and 28 of the 2019 Tariff Regulations. If the generating company opts for R&M or Special Allowance, it will foreclose the invocation of Regulation 17.

(e) Regulation 17 of the 2019 Tariff Regulations envisages that the generating company and its beneficiary(ies) may agree on the arrangement. If there is no mutual agreement in regard to the alternative scheme provided in

Regulation 17, the provision cannot be triggered at all i.e. it does not come into effect. Regulation 17 is an optional arrangement and does not lead to an automatic termination of the PPA at the expiry of 25 years.

(f) In terms of clauses A and B of the SPPA dated 29.3.2012, the parties have duly agreed that the PPA will continue till the end of the useful life, as considered in the Tariff Order or Regulations of this Commission or Government allocations, whichever is later.

(g) The 2019 Tariff Regulations (as also the Tariff Regulations for earlier tariff periods) provide for grant of Special Allowance and continued supply of power from the generating Station to the allocated beneficiaries. This is beyond 25 years of the initial useful life and the Respondent has availed the Special Allowance in respect of Dadri-I generating station.

(h) Also, the allocation of capacity from Dadri-I generating station by the Government of India, continues as before and there is no change as of today.

(i) The obligation of the Petitioners can be foreclosed only if the Government of India reallocates the power from Dadri-I generating station to any other procurer. In support of this contention, reliance was placed on the orders of the Commission dated 17.4.2017 in Petition Nos. 301/MP/2015 and 302/MP/2015, dated 9.3.2017 in Petition No.20/MP/2017 and pleading of the Petitioner before DERC in Review Petition No. 44/2017.

(j) As regards the communication of DERC dated 16.3.2021, the process and procedure, the conditions to be satisfied and other aspects of the communications are a separate matter and have no bearing to the plea taken in the present Petitions. Also, the communication also did not provide for the termination of the PPA ipso facto on the expiry of 25 years.

(k) PPA/ Supplementary PPA is a composite agreement in respect of the procurement of power by the Petitioners from a number of generating stations of NTPC including Dadri-I generating station and, therefore, the rights and obligations of the respective parties are to be considered on a uniform and composite basis with reference to all such generating stations. It is not open to the Petitioners to selectively act with regard to any one of the generating stations.

(l) MoP's Guidelines dated 22.3.2021 cannot be relied on by the Petitioners in the instant case as the Guidelines themselves provided for the "...25 years or a period specified in the PPA" and in the present case PPA/SPPA continues to remain in operation beyond 25 years.

4. In rebuttal, the learned counsel for the Petitioners submitted that no extended life has been determined by the Commission in respect of Dadri-I generating station as provided for in Regulation 3(24) of the 2019 Tariff Regulations which defines the expression 'Extended Life'. Further, the Special Allowance for Dadri-I generating station was allowed limited to the year 2018-19 and that there is no subsequent order of the Commission allowing or continuing the said allowance for control period 2019-24. It was also submitted that while the SPPA has been entered into in a composite manner, its validity in respect of a generating station was to be considered till the end of the life of the respective generating station. Also, in terms of decision of the Hon'ble Supreme Court in PTC. v. CERC, (2010) 4 SCC 603, it is settled law that the terms of PPA/SPPA cannot be in contravention or override the provisions of the Regulations. Learned counsel also submitted that as regards the

Govt. of India allocation, it does not provide that the allocation will continue even after the useful life of the station and that after the enactment of the Electricity Act, 2003 only the Commission is empowered to determine the useful life/ extension of the life of the generating station.

5. After hearing the learned counsel for the Petitioner and the learned senior counsel for the Respondent, NTPC, the Commission reserved the orders in the Petition No. 60/MP/2021 along with IA No.12/2021 and Petition No. 65/MP/2021 along with IA Nos.31/2021 and 33/2021.

**By order of the Commission**

**Sd/-  
(T.D. Pant)  
Joint Chief (Law)**