

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 330/MP/2020

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

Date of Order: 2nd March, 2021

In the matter of:

Petition under Section 79(1)(f) of the Electricity Act, 2003 seeking appropriate orders for exemption in payment of Fixed Charges of Rs. 24,54,15,645.00 (Rs.24.54 crore) by AP DISCOMs to Unit-II of NTPC Dadri Stage-II Central Generating Station.

And

In the matter:

1. AP Southern Power Distribution Company Ltd (APSPDCL)
Behind Srinivasa Kaylayan Mandapam,
Kesavayanagunta Road,
Tirupati.
2. AP Eastern Power Distribution Company Limited (APEPDCL)
P & T Colony, Seetammadara,
Visakhapatnam

....Petitioners

Versus

1. National Thermal Power Corporation Limited
NTPC Bhawan, Core-7, Scope Complex
7, Institutional Area, Lodhi Road
New Delhi – 110013
2. The Secretary, Ministry of power
Government of India
Shram Shakti Bhavan, Rafi Marg
New Delhi

....Respondents

Parties Present

Shri S. Vallinayagam, Advocate, APDISCOMs
Shri Rohit Chhabra, NTPC
Shri A. S. Pandey, NTPC
Shri Vinay Garg, NTPC

ORDER

The present Petition is filed under clause (f) of sub-section (1) of Section 79 of the Electricity Act, 2003 (hereinafter referred to as “the Act”) seeking appropriate orders for exemption in payment of fixed charges of Rs. 24,54,15,645.00 (Rs.24.54 crore approx.) by AP Southern Power Distribution Company Ltd (APSPDCL) and AP Eastern Power Distribution Company Limited (APEPDCL) (jointly referred to as “the Petitioners” or “the AP Discoms”) in respect of Unit-II of Dadri Stage-II Central Thermal Generating Station of NTPC Limited (the Respondent No. 1). The Petitioners have made the following prayers:-

“(a) To direct NTPC to revise the bill claimed by it and deduct the said disputed amount and permit APDISCOMs to limit the fixed costs of Dadri Stage-II to Rs. 24,54,15,645/- only instead of Rs. 49,08,31,289/- as claimed by the respondent for the month of September’19 duly deducting the fixed charges of Rs. 24,54,15,645/- for unit-II of Dadri Stage-II which was under annual overhaul for whole month of Sep’19.

(b) To accord necessary instructions to the Secretary, MoP, GoI to revise the additional allocation for the month of September’19 to the Petitioner from Dadri Stage-II to 287.9 MW instead of 575.8 MW.

(c) To such other order or orders as this Hon’ble Commission may deem fit and proper in the facts and circumstances of the case.”

2. The Petitioners have submitted as under:

a) The State of Andhra Pradesh was facing power crisis and was in requirement of 24 MU per day (about 1000 MW) for the month of September 2019. In order to overcome the shortage and to maintain un-interrupted power supply to its consumers, the Petitioner came to know through Respondent No.1 (NTPC) that as per the data available in website of the Ministry of Power (MoP), Government of India, power from certain thermal stations of NTPC has been surrendered by some States and that the same was available for allocation by MoP. Accordingly, the Petitioners vide its letter dated 31.7.2019 requested the Respondent No. 1 to explore the possibility of dispatch 1000 MW of cheapest power to AP Discoms for the month of September 2019.

b) In furtherance of the Petitioners' letter dated 31.7.2019, the Respondent No. 1 vide its letter dated 2.8.2019 requested Ministry of Power (MoP) to consider the Petitioner's request for allocation of additional 1000 MW power from generating stations of the Respondent No.1, surrendered by the original beneficiaries, subject to signing of Power Purchase Agreement and after opening of Letter of Credit of requisite amount by the Petitioners. Further, the Respondent No. 1 vide its letter dated 7.8.2019 informed the Petitioners, the details of surrendered power available from the generating stations of Respondent No.1 along with indicative tariff and requested the Petitioners to indicate the requirement (thermal station-wise, MW-wise) to Ministry of Power.

c) The Petitioners vide letter dated 20.8.2019 requested the Secretary, Ministry of Power, to arrange for allotment of available power of about 1000 MW from the following generating stations of the Respondent No.1 for the month of September 2019:

Sl.No	Power Station	Power requisitioned (MW)
1.	Barh Stage-II	9.96
2.	Unchahar Stage-I	36.00
3.	Mouda Stage-II	211.60
4.	Mouda Stage-I	212.62
5.	Dadri Stage-II	529.82
Total		1000.0

d) However, due to non-availability of surrendered power from Barh Stage-II and Unchahar Stage-I, the Petitioners vide letter dated 23.8.2019 submitted revised request to the Secretary, Ministry of Power, for allocation of available power of about 1000 MW from the generating stations of Respondent No.1 as under:

Sl.No.	Power Station	Power requisitioned (MW)
1.	Mouda Stage-II	211.60
2.	Mouda Stage-I	212.60
3.	Dadri Stage-II	575.80
Total		1000.0

e) The Petitioner was expecting to get 1000 MW supply from the generating stations of NTPC at generator end with corresponding ex-bus generation of 940.38 MW w.e.f. 00:00 hrs of 1.9.2019. However, only 571.15 MW was scheduled instead of 940.38 MW, which was because of non-availability of one unit (500 MW out of 2X500 MW) from Mouda Stage-II and one unit (490 MW out of 2X490 MW) from Dadri Stage-II. Subsequently, the Petitioner came to know that unit-II of 490 MW capacity of Dadri Stage-II was under shutdown for annual overhaul and was not expected to be available throughout the month of September 2019. However, power supply from Unit-II of 500 MW capacity of Mouda Stage-II, was restored on 4.9.2019.

f) The Petitioners vide letter dated 5.9.2019 requested the Secretary, Ministry of Power, to permit the Petitioner to surrender power allocation from Unit-II of Dadri Stage-II due to non-availability of the unit taken for overhaul. Further, the Petitioner also endorsed that in case surrender of power from one unit is not possible, the Petitioner may be permitted to surrender entire allocation of 575.8 MW (2X287.9 MW) from the Dadri generating station. However, the Petitioner did not receive any reply in this regard.

g) Even though the Petitioners did not avail any power from unit-II, Dadri Stage-II during the month of September 2019 on account of the unit being

under annual overhaul, the Respondent No. 1 raised a bill for fixed charges of Rs.49.08 crore on the Petitioners, which also includes the fixed charge component (about Rs. 24.54 crore) of unit-II, Dadri Stage-II.

h) As per Minutes of Meeting of 163rd Operation Coordination Committee (OCC) of Northern Regional Power Committee (NRPC) held on 17.9.2019, Unit-II of Dadri-Stage-II plant was under outage with effect from 14.8.2019 on account of *“tripped due to rotor problem & subsequently taken under annual maintenance”*. Thus, at the time, when allocation was ordered by Ministry of Power on 30.8.2019, Unit-II of Dadri-Stage-II was already under annual overhaul, but the same was not brought to the notice of the Secretary, MoP. Thus, allocation of power was made to the Petitioners without ascertaining the status of the generating unit of Dadri Stage-II.

i) The Petitioner vide its letter dated 28.10.2019 requested the Respondent No. 1 and Secretary, Ministry of Power for waiver of fixed charge claim of about Rs. 24.54 crore since unit-II of Dadri Stage-II was under outage for the whole month of September 2019. In response, the Respondent No. 1, vide its letter dated 11.11.2019, informed the Petitioner that fixed charges of a station are billed based on the availability declared for the whole station and put its reliance on Regulation 42 of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (hereinafter referred to as “the 2019 Tariff Regulations”). However, as per clause (7) of Regulation 42 of the 2019 Tariff Regulations, clauses (1) to (6) of Regulation 42 came into effect from 1.4.2020 and, therefore, the reliance placed by the Respondent No.1 on Regulation 42 is misplaced.

j) The Petitioners, vide letter dated 26.11.2019, again requested the Respondent No.1 and the Secretary, Ministry of Power to pass an order cancelling the allocation of 287.90 MW (out of 575.80 MW) made to the Petitioners from unit-II of Dadri Stage-II for the month of September 2019 and

sought necessary directions for withdrawing the fixed charge component of about Rs. 24.50 crore of unit-II from the bill of September 2019. However, there was no reply from MoP in this regard.

k) The Petitioners have made the payment to the Respondent No. 1 for the month of September 2019 after deducting Rs. 24.54 crore from the total claim.

l) The Respondent No. 1 has intentionally concealed the information about the outage of the unit before the Ministry of Power, Government of India and did not try to correct the same even after allocation by Ministry of Power. The Petitioner has brought this fact to the notice of the officials of Respondent No. 1 on 5.9.2019 itself. However, the Respondent No.1 did not give any reply.

m) The Petitioners had requested to allocate power from generating stations of the Respondent No. 1 from Ministry of Power for the month of September 2019 to meet its urgent requirement of power. Ministry of Power granted allocation from the surrendered power by other utilities on the assurance of availability of power by the Respondent No. 1. Executive Director (Commercial), NTPC communicated a letter to CMD, APTRANSCO on 7.8.2019, the details of surrendered power available from NTPC generating stations along with indicative tariff.

n) The Petitioners would not have sought allocation of power from a generating station which was under annual maintenance. It was the act of omission on the part of the Respondent No. 1 in not communicating the fact of non-availability of the unit-II of Dadri Stage II to MoP. Therefore, the Respondent No. 1 cannot seek to get benefit from its own wrong doing.

3. The matter was heard on 20.8.2020. During the hearing, the Petitioners submitted that they did not avail any power from unit-II, Dadri Stage-II during the

month of September 2019 on account of the unit being under annual overhaul. Despite that the Respondent No.1 raised bill for fixed charges of Rs.49.08 crore on the Petitioners which also includes the fixed charge component (about Rs. 24.54 crore) of Unit-II, Dadri Stage-II.

4. During the hearing, the Respondent No. 1 has submitted that Ministry of Power vide its letter dated 21.1.2020 has advised CEA for cancellation of allocation of power from unit-II of Dadri Stage-II generating station to the Petitioners that was made through letter/order dated 30.8.2019 and to revise the schedule accordingly. Once the allocation to the Petitioners is revised by CEA, the issue involved in the Petition will no longer survive.

5. The Commission vide RoP of the hearing dated 20.8.2020 directed the Respondent No. 1 to place on record the letter of Ministry of Power as referred. Accordingly, the Respondent No. 1 vide affidavit dated 28.8.2020 has placed on record the letter dated 21.1.2020 of Ministry of Power directing CEA to revise the allocation of AP Discoms for the month of September 2019.

6. Since the Respondent No.2 has already taken action for revision/ cancellation of capacity allocation to the Petitioners for the month of September 2019, we do not find it necessary to go into the issue any further. Once the allocation is revised/ cancelled by CEA based on directions of the aforesaid letter dated 21.1.2020 of the Ministry of Power, the Respondent No.1 shall revise the bill raised on the Petitioners.

The Petitioners are free to approach the Commission again if the issue does not get resolved.

7. The Petition No. 330/MP/2020 is disposed of in terms of the above.

--Sd--

(Arun Goyal)
Member

--Sd--

(I. S. Jha)
Member

--Sd--

(P. K. Pujari)
Chairperson