

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 125/MP/2024 with IA No. 21/2024

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 21st March, 2024

In the matter of

Petition under Sections 79(1)(f) of the Electricity Act, 2003 read with Regulation 17 of CERC (Terms and Conditions of Tariff), Regulations, 2019--Interlocutory Application seeking interim order staying the demand raised by the Respondent NTPC vide invoice dated 22.12.2023 and restrain the Respondent from raising invoices on the Petitioner/ Applicant in rests of Dadri-I Plant for the period from 1.12.2020 onwards.

And

In the matter of

New Delhi Municipal Council (NDMC),
Palika Kendra, Sansad Marg,
New Delhi-110001

...Petitioner/Applicant

Vs

NTPC Limited,
NTPC Bhawan,
Scope Complex, 7-Institutional Area,
Lodhi Road, New Delhi-110003

...Respondent /Respondent

Parties Present:

Shri Anil K. Airi, Senior Advocate, NDMC
Shri Saad Shervani, Advocate, NDMC
Ms. Swapna Seshadri, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Shri Shiv Bhawan, NTPC



ORDER

The Petitioner, NDMC has filed the present Petition seeking the following reliefs:

- (a) *Admit the present Petition;*
- (b) *Set aside all the invoices raised by the Respondent /NTPC with respect to the Dadri-I station;*
- (c) *Direct NTPC to pay/adjust litigation costs and filing charges towards this case to NDMC;*
- (d) *Declare that w.e.f. 00:00 hrs of 1.12.2020, the Petitioner is not liable for nay costs towards NTPC's Dadri-I PLANT:*
- (e) *Pass such order which this Hon'ble Commission may deem fit.*

Submissions of the Petitioner

2. The Petitioner, in the Petition filed on 6.3.2024, has mainly submitted as under:

(a) Bulk Power Supply Agreement (BPSA) dated 31.01.1994 was executed between Respondent/NTPC and the Delhi Electricity Supply Undertaking (DESU), which inter alia provided that the said agreement would come into force from the date of signing and remain operative till 31.10.1997. Delhi Vidyut Board (DVB), the successor of DESU, was unbundled and restructured through the Delhi Electricity Reforms Act, 2000 (Delhi Act No.2 of 2001). On account of the privatization of the distribution of electricity in Delhi, the Petitioner/ NDMC, TPDDL, BRPL and BYPL succeeded the respective undertakings and business in their respective area of supply with effect from 01.07.2002, by operation of law.

(b) On 31.3.2007, the Delhi Electricity Regulatory Commission (DERC) re-assigned all the existing Power. Purchase Agreements entered with Delhi Transco Limited (DTL) among the distribution licensees operating in the NCT of Delhi, including the Petitioner, as per their respective load profile. Further, the responsibility for arranging power for their respective areas of supply was vested in the respective distribution licensees, including the Petitioner, with effect from 1.4.2007.

(c) Subsequently, the DERC vide order dated 7.3.2008 had re-allocated the power procurement of the Petitioner, as under:

Sl. No.		MW
1.	Badarpur Thermal Power Station	125
2.	Dadri Power Plant	125
3.	Pragati Power Plant	100



(d) The Petitioner entered into a PPA dated 06.05.2008 with the Respondent NTPC for procuring power from various generating stations of NTPC including Dadri-I. As per Article 12.1(A) of the PPA, the validity of the PPA for Dadri-I was up to 31.3.2012 or till the BPSA continues to operate or till the BPSA is formally renewed, extended or replaced.

(e) This Commission, vide its Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (the 2009 Tariff Regulations) stipulated that the useful life of coal-based generating stations would be 25 years from its commercial date of operation. Thus, in accordance with 2009 Tariff Regulations, 2009, the Respondent/ NTPC's Dadri-I plant, whose Commercial date of operation/ COD was 01.12.1995, completed its useful life of 25 years on 30.11.2020.

(f) Thus, the Petitioner, in terms of Clause 12.1(a) of the PPA, decided not to continue/ extend/ replace the existing PPA with Respondent NTPC Dadri-I under the provision of Clause 12.1 (A). The BPSA/PPA has neither been renewed/ extended nor replaced nor has the Petitioner received /scheduled from any power the above plant w.e.f. 01.12.2020 onwards. Hence, the PPA for the Dadri-I plant of Respondent/ NTPC ceased to exist from 1.12.2020.

(g) This Commission notified the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 (the 2019 Tariff Regulations) on 7.3.2019 for the period 2019-24. Regulation 17 of the 2019 Tariff Regulations, provided for special arrangements for tariffs in respect of thermal generating stations that have completed 25 years of operation from the date of commercial operation.

(h) On coming into effect of the 2019 Tariff Regulations, the PPA is also governed by the said regulations. That the Petitioner, vide its letter dated 10.12.2020, informed the Respondent NTPC that the useful life of the Dadri-I Plant had expired on 30.11.2020 and if the useful life of the said Plant has been extended by this Commission, to provide the details and documents of extension of the useful life of the Dadri-I which plant which had expired on 30.11.2020.

(i) The Respondent, vide its reply dated 13.12.2020, stated that the PPA is still subsisting and the allocation from Dadri-I Plant is still ongoing. This stand of the Respondent is contrary to the 2019 Tariff Regulations. The Respondent cannot also unilaterally decide the existence and subsistence of the agreement contrary to the PPA, the Act and the Regulations.

(j) The Petitioner, vide its letter dated 15.1.2021, informed the Respondent that since 1.12.2020, it has not received any power from the Dadri-I Plant because



the other two Discoms of Delhi viz., BRPL and BYPL are not scheduling any power from Dadri-I. The Respondent, vide reply letter dated 8.2.2021, again reiterated its earlier unlawful stand that the power allocated to the Petitioner would have to be paid. The said stand of the Respondent is also contrary to the 2019 Tariff Regulations, and the Respondent's unilaterally subsistence of the agreement was never agreed to or consented to by the Petitioner.

(k) The Petitioner, vide its letter dated 18.1.2021, informed the NRLDC that after the expiry of the useful life of the Dadri-I Plant on 30.11.2020, the Petitioner has decided to discontinue the PPA with the Respondent.

(l) On 20.2.2021, the two Discoms, i.e. BRPL and BYPL, had filed Petition Nos.60/MP/2021 and 65/MP/2021, challenging similar letters of rejection by the Respondent. On 16.3.2021, the DERC requested the Ministry of Power, GOI, for the de-allocation of Delhi's share of power in Dadri-I. On 22.3.2021, the MOP, GOI issued guidelines for the relinquishment of shares by the distribution licensees in the PPAs after the completion of 25 years from COD. After considering the written and oral submissions, the Commission vide its order dated 1.7.2021 in Petition Nos.65/MP/2021 and 66/MP/2021 rejected the prayers of BRPL and BYPL.

(m) Being aggrieved by the order dated 1.7.2021, BRPL and BYPL filed Appeal Nos. 239 and 240 of 2021 before the APTEL and APTEL vide its judgement dated 8.2.2022 set aside this Commission's order dated 1.7.2021 and allowed the appeals. Once the appeal of BRPL and BYPL were allowed, the Respondent had no right in law or otherwise to insist on the said payments. The Respondent has filed a Civil Appeal No. 1877/ 2022 before the Hon'ble Supreme Court challenging the judgment dated 8.2.2022, and the Hon'ble Supreme Court vide its order dated 13.4.2023 has stayed the operation of the judgment of APTEL as under:

"2. Since this Court is seized of the proceedings, pending further orders, there shall be a stay of the operation of the impugned judgment of the Appellate Tribunal for Electricity dated 8 February 2022. No fresh disputes shall be decided on the basis of the impugned judgment.

3. In the event that the appellants fail in the appeal, they would be bound by such directions as may be issued by this Court at the final hearing and disposal."

(n) Without prejudice to the fact that agreement between the parties has come to an end since the matter is sub-judice and the issue is pending adjudication before the Hon'ble Supreme Court, the Respondent should have, in all propriety, restrained itself from aggravating the situation and raising invoices for the expired PPA. As far as the case of Petitioner is concerned the DERC, vide its letter dated 16.3.2021, had requested the MOP, GOI to de-allocate the full quantum of the Delhi share of the Dadri-I plant. The direction of DERC has not been challenged by the Respondent.



(o) The Petitioner, vide its letter dated 19.3.2021 informed the PGCIL that since the PPA with the Respondent has not been extended beyond November 2020, the Letter of Credit may not be renewed. The Petitioner vide letter dated 5.7.2021 informed the SLDC that since the PPA has not been extended beyond November 2020, the Petitioner is not liable to pay any transmission / POSOCO charges to NRLDC or PGCIL.

(p) The Petitioner had also informed the Respondent vide letter dated 12.5.2021 that it has neither scheduled/ drawn any power from Dadri-I nor has given consent to schedule power from this plant beyond 30.11.2020. Further, the Petitioner had specifically conveyed to the Respondent that it should not raise any bill/invoice/ charges to the Petitioner from 1.12.2020 onwards and that the Petitioner will not be liable to make any payment to Respondent for Dadri-I Plant after 30.11.2020.

(q) The Petitioner, vide its letter dated 9.9.2021, had informed PGCIL that since PPA with the Respondent has not been extended beyond November 2020, it may withdraw all the bills/ invoices in this regard. In response to the Petitioner's request, the CEA, vide its letter dated 15.5.2022, reallocated a 100 MW share of Karnataka from the unallocated quotas of the Southern Region pool to the Petitioner for the period from 17.5.2022 to 15.10.2022. Further, the MOP vide its letter dated 12.10.2022 allocated 150 MW power (50 MW each from Northern Region Pool, Western Region Pool and Southern Region Pool) to the Petitioner for the period from 16.10.2022 to 30.11.2022.

(r) The MOP, GOI, vide its letter dated 28.11.2022, allocated 150 MW of power from the Northern Region Pool (50MW), Western Region Pool (50MW) and Southern Region Pool (50MW) to the Petitioner for the period from 1.12.2022 to 31.5.2023. Further, it was decided by the MOP, to allocate 150 MW of power of Karnataka's firm share surrender in Kudgi TPS to the Petitioner for the period from 1.6.2023 to 30.11.2023 on a round-the-clock basis.

(s) Tata Power Delhi Distribution Limited (TPDDL) also filed Petition No. 44/MP/2022 before this Commission, seeking quashing of the NTPC letter dated 30.11.2020 and direction to NTPC to declare that Dadri-I plant has completed its useful life of 25 years and the validity of the PPA qua Dadri-I has expired on 30.11.2020. This Commission vide its order dated 29.12.2022, had allowed TPDDL to exit the PPA and directed the Respondent to refund the amount paid by TPDDL after 30.11.2020.

(t) The Respondent has raised frivolous invoices for its Dadri-I Plant for the period from December 2020 to April 2023 in total. The Petitioner, vide its letter dated 21.2.2023, requested the Respondent to withdraw its supplementary bill



dated 1.2.2023. The alleged dues of Rs. 114,61,94,732/- pertain to fixed charges of Dadri-I Plant for the period from December 2020 onwards (beyond the PPA expiry date, i.e. 30.11.2020), which has been categorically denied by the Petitioner. Furthermore, as an interim measure to secure/ safeguard its LC from unwarranted encashment, the Petitioner/ NDMC vide its email dated 12.07.2023, letter dated 13.07.2023 and 18.07.2023 requested the concerned SBI bank to stop the encashment of said LC. Subsequently, the SBI has requested the Petitioner for closure of said LC.

(u) The Respondent is bound by the terms and conditions of the PPA and cannot be allowed to breach the same. The validity of the PPA qua Dadri-I was up to 31.3.2012 or till BPSA shall continue to operate or till the BPSA is formally renewed, extended or replaced. Since the BPSA (i.e. three major DISCOMs) have exited the agreement w.e.f 30.11.2020, the Petitioner, as per terms of PPA, shall also exit the said arrangement, and the Petitioner cannot be forced to carry on this PPA unilaterally, at the instance of Respondent.

Interlocutory Application No. 21/2024

3. During the pendency of the above petition, the Petitioner has filed an interlocutory Application seeking the following reliefs:

(a) Allow the present application;

a) Direct the Respondent/ NTPC to withdraw the disputed Invoice from PRAAPTI portal with immediate effect, thereby providing an interim relief to NDMC for procuring Power from Energy Exchange.

b) Stay the demand raised by Respondent/ NTPC vide Invoice from NTPC vide reference No. NTPC/COMMERCIAL/ENERGY BILL/12 2023 dated 22.12.2023.

c) To restrain the Respondent/ NTPC from raising unreasonable, unilateral, and illegal invoices on Applicant/ Petitioner/ NDMC in respect of Dadri-I plant for period 01.12.2020 onwards.

d) Pass any other order as this Hon'ble Commission may deem fit and proper in facts and circumstances of the present case.

Hearing dated 18.3.2024

4. During the hearing 'on admission', the learned Senior counsel for the Petitioner made detailed oral submissions as raised in the Petition/IA. He also submitted that the alleged dues for Rs 114.62 crore, pertaining to fixed charges of Dadri-I Plant raised by the Respondent for the period from 1.12.2020 was categorically denied by the Petitioner



on earlier occasion, as the PPA had already expired on 30.11.2020. The learned Senior counsel however, pointed out that the Respondent in violation of Regulation 17 of the 2019 Tariff Regulations, has raised the supplementary invoice dated 22.12.2023 for Rs 130.47 crores, even when there was no supply of power from Dadri-I Plant and the same has been uploaded on the PRAAPTI portal on 5.1.2024, against which it had registered its protest by submitting a brief note. The learned Senior counsel further submitted that when the matter is *subjudice* and pending adjudication before the Hon'ble Supreme Court, and Respondent should have retrained itself from raising the invoices for the expired PPA. Accordingly, the learned Senior counsel prayed that the demand raised by the Respondent may be stayed and the Respondent may also be directed to withdraw the disputed invoices from the said portal.

5. Per contra, the learned counsel for the Respondent objected to the reliefs sought by the Petitioner and submitted that the Respondent has been raising the invoices for the period from 1.12.2020 till the de-allocation of power from Dadri-I Plant the Petitioner, along with LPS. She also submitted that despite several communications between the parties and informal meetings, no payments had been made by the Petitioner. The learned counsel also submitted that the Petitioner could not be permitted to deny payments to the Respondent by seeking cover under the orders passed in respect of the other discoms. She clarified that the payments made by the other discoms viz., BRPL, BYPL and TPDDL, were refunded to them by the Respondent based on the judgment of APTEL dated 8.2.2022. The learned counsel stated that the dues payable by the Petitioner were uploaded on the PRAAPTI portal, as mandated under the LPS Rules notified by the Central Government, and hence, the Petitioner is not entitled to any interim reliefs. Accordingly, the learned counsel while stating that the Petitioner has not made



out a prima facie case and the balance of convenience also not being in its favour, prayed that the Petition may be rejected.

6. On a specific query of the Commission, the learned counsel for the Petitioner clarified that the trigger date of the invoices uploaded in the PRAAPTI portal is 20.3.2024.

7. We have considered the submissions of the parties. While the Petitioner, in terms of Regulation 17 of the 2019 Tariff Regulations, had discontinued the power supply from Dadri-I Plant of the Respondent power from 1.12.2020 onwards, on the ground that the BPSA /PPA ceased to exist from 1.12.2020, the Respondent, has, in terms of the LPS Rules notified by the Central Government, uploaded the dues payable by the Petitioner from 1.12.2020 onwards, on the PRAAPTI portal, with a trigger date of 20.3.2024. It is pertinent to mention that the issue of the discoms (BRPL & BYPL) exiting from the PPA/SPPA signed with the Respondent in respect of the Dadri-I plant after completion of its useful life, in terms of Regulation 17 of the 2019 Tariff Regulations, came up for consideration before this Commission in Petition Nos. 60/MP/2021 and Petition No.65/MP/2021 and the Commission, vide a common order dated 1.7.2021, had rejected the prayers of the said discoms as under:

“49. Accordingly, we answer that PPA/SPPA is still subsisting as the allocation of power by Ministry of Power, Government of India from Dadri-I generating station to the Petitioner is still subsisting as per the Share Allocation Revision No.1/2021-22 dated 1.4.2021 issued by NRPC; that the Petitioner may exit from the PPA/SPPA by approaching the Ministry of Power for de-allocating its share from Dadri-I generating station; and that as Dadri-I generating station has already completed 25 years on 30.11.2020 from its COD, the provisions of Regulation 17(2) related to first right of refusal would become effective once the Ministry of Power de-allocates share of the Petitioners from Dadri-I generating station”

8. Aggrieved by the order dated 1.7.2021, BRPL and BYPL had filed appeals (Appeal Nos. 239/2021 and 240/2021) before the APTEL, and the APTEL vide its judgment dated



8.2.2022 had set aside the order of the Commission and allowed the said appeals, as under:

“In the light of the above, we are of the considered view that the issues raised in the Appeals have merits and hence must succeed. The impugned order (common order dated 1.7.2021 in Petition nos. 60/MP/2021 and Petition No. 65/MP/2021 passed by the Central Electricity Regulatory Commission cannot be allowed and is set-aside.

82. The appellants are allowed to exit the PPA and SPPA signed with the Respondent No.2 the NTPC Ltd in respect of Dadri-I Generating Station from the date (1.12.2020, 00:00 hrs) of completion of 25 years of operation from the date of COD.

83. NTPC is directed not to raise any invoices with respect to any charges qua Dadri-I station w.e.f 1.12.2020 and the payment made by the Appellants under protest shall be refunded immediately by NTPC along with interest as specified in the PPA/SPPA.”

9. Thereafter, on a Petition (44/MP/2022) filed by TPDDL before this Commission seeking quashing of NTPC letter dated 30.11.2020 and direction to NTPC to declare that Dadri-I has completed its useful life of 25 years and the validity of PPA qua Dadri-I has expired on 30.11.2020, the Commission vide its order dated 29.12.2022 had allowed the TPDDL to exit the PPA and directed the Respondent to refund the amounts paid after 30.11.2020. Accordingly, in terms of the said judgment, the Respondent has refunded the amounts to the said discoms.

10. Against the judgment of APTEL dated 8.2.2022, the Respondent NTPC has filed a Civil Appeal (C.A No 1877/2022) before the Hon'ble Supreme Court, and the Court has passed an interim order on 13.4.2023 under:

“2. Since this Court is seized of the proceedings, pending further orders, there shall be stay of the operation of the impugned judgment of the Appellate Tribunal for Electricity dated 8 February 2022. No fresh disputes shall be decided on the basis of the impugned judgment.

4. In the event that the appellant fails in the appeal, they would be bound by such directions as may be issued by tis Court at the final hearing and disposal.”

11. In the present case, the Dadri-I plant of the Respondent, which achieved COD on 1.12.1995, completed its useful life of 25 years on 30.11.2020. Since 1.12.2020, the



Petitioner has not been scheduling any power from the said plant, in line with the other two discoms (BRPL and BYPL). Considering the fact that the disputes regarding the validity of the PPA/SPPA and the discoms exiting from the PPA (in respect of Dadri-I Plant) from 1.12.2020 and the payments thereof, as raised by the Petitioner in the present Petition, are pending consideration of the Hon'ble Supreme Court in the said Civil Appeal and keeping in view the directions of the Hon'ble Court that no fresh disputes shall be decided on the basis of the APTEL judgment, we find no reason to keep the present Petition pending, subject to a final decision of the Hon'ble Supreme Court. Accordingly, we dispose of the present Petition, with a direction that the Respondent shall not take any precipitative action against the Petitioner in respect of the invoices/bills raised and uploaded in the PRAAPTI portal till the disposal of the said civil appeals. We direct accordingly. The parties are at liberty to file fresh petitions, if any, based on the final decision of the Hon'ble Supreme Court in the aforesaid Civil appeals. The fees paid by the Petitioner to be adjusted in future petitions.

12. Petition No.125/MP/2024, along with IA, is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(Jishnu Barua)
Chairperson

