

**JOINT ELECTRICITY REGULATORY COMMISSION
FOR THE STATE OF GOA AND UNION TERRITORIES
GURGAON**

Quorum
Shri S.K.Chaturvedi, Chairperson
Petition No. 189/2015
Date of Order: 02.05.2016

In the matter of

Application for the direction that the action of the respondent revising the Fuel and Power Purchase Cost Adjustment is against the FPPCA formula notified by the Joint Electricity Regulatory Commission in petition No. 79 of 2012.

And in the matter of

Application dated 10.12.2015 for stay of the levy of Additional FPPCA pertaining to period between April, 2012 to March, 2015.

And in the matter of

Application dated 13.01.2016 for stay of the levy of additional FPPCA as according to regulations pertaining to period between April 2012 and March 2015.

Silvassa Industrial Association, Silvassa

.....**Petitioner**

DNH Power Distribution Corporation Limited

.....**Respondent**

Present:

For Petitioners

Shri Rohit Rao, Advocate

For Respondent

Shri Anand Ganeshan, Advocate

ORDER

The Commission heard at length Ld. Counsel Mr. Rohit Rao, for the Petitioner and Ld. Counsel Mr. Anand Ganeshan for the Respondent at length.

Ld. Counsel for the Petitioner submitted that the FPPCA formula does not empower the Respondent to recover bills and credits for the earlier period. The said formula also provides that the Commission shall supervise the addition of FPPCA if it is charged for an earlier period. The amount which was due to NTPC for the period April, 2012 – March, 2015 cannot be levied by the Respondent on the bill raised in November for the quarter July – Sept., 2015 since the FPPCA formula notified by the Commission does not permit charge of FPPCA for an earlier period. The Respondent has violated the order and procedure laid down by the Commission and the additional FPPCA charged by the Respondent is not according to the FPPCA formula and is totally illegal.

Ld. Counsel further submitted that the Commission has approved a surplus in the True up for FY 2012-13 and FY 2013-14. The increase of 2 paise per unit charged by the Respondent as additional FPPCA ought to be adjusted from the surplus mentioned above. It is not out of place to mention here that such a view was taken by the Commission in the case of Union Territory of Chandigarh where additional FPPCA was not permitted in view of the surplus available with the Utility.

Ld. Counsel further submitted that FPPCA allows the adjustment only against the actual purchase cost of power. However, there is no material on record to establish that NTPC's demand for the past period is only for purchase of power cost.

Ld. Counsel further submitted that FPPCA requires the distribution licensee to send the certified copy of FPPCA calculations to the Commission and also place all related data summary on the licensee's website. However, it is noticed that the Respondent has not forwarded certified copy of FPPCA calculations to the Commission.

Ld. Counsel for the Respondent vehemently opposed the contentions raised by the Petitioner. He submitted that the Petitioner has tried to create doubts about the proper application of the FPPCA formula without any legal basis.

Ld. Counsel for the Respondent submitted that the FPPCA formula provides that:

1. "For the purpose of Fuel & Power Purchase Cost Adjustment, all the bills admitted and credits, if any received by the distribution licensee during the period in consideration, irrespective of the period to which they pertain, shall be considered.

The bills or credits for earlier period will not be considered for the purpose of FPPCA.

2. The Designated Officer shall send a certified copy of FPPCA calculations immediately to the Joint Electricity Regulatory Commission.”

Ld. Counsel further submitted that the period in consideration for the purpose of levy of FPPCA is the previous quarter and all bills that are admitted during the period in consideration, irrespective of the period to which the bills pertained to, are required to be considered for the FPPCA adjustment. In this matter, the bill of NTPC was received in the month of Sept., 2015 which is within the period of consideration of July – Sept., 2015 for the purpose of levy of FPPCA for the quarter October – December, 2015. Strictly in terms of the FPPCA formula, so long the bills are received during the period of consideration (July – Sept, 2015) the same shall be considered, irrespective of the period to which the bills pertained (April 2012 to March, 2015). The Respondent has also provided detailed calculations for the consideration of the Commission within the time Further, the bills of the consumers have been revised and FPPCA was levied strictly as per FPPCA formula for the period Oct. - Dec., 2015. It is clear from the above that the formula as notified by the Commission has been implemented correctly without any ambiguity.

Ld. Counsel further submitted that at the outset the Petitioner has unequivocally mentioned that it was not disputing the liability regard to the amount of Rs 31.097 crore. However, the Petitioner was aggrieved on the following issues:-

- a. The levy of FPPCA requires the prior approval of the Hon`ble Commission every time (for every quarter) and not mere intimation of the calculations as directed in the Order dated 27.06.2012.
- b. The levy can only be for the bills pertaining to the period July to September, 2015 and not for the bills pertaining to the previous period. Such bills pertaining to the previous period though received during July to September, 2015 can be recovered only in the truing up process.

Ld. Counsel further submitted that these issues are devoid of any merit and are also legally not sustainable. The contention of the Petitioner regarding prior approval of the Commission for levy of FPPCA every quarter is legally not correct. This contention of the Petitioner is contrary to the order passed by the Commission wherein the Commission directs the licensee to send a certified copy of the FPPCA calculations to it. Even under

the terms of the formula specified by the Central Commission, no approval is required to be taken every time the formula is implemented.

Ld. Counsel further submitted that the Petitioner has not disputed the amount of Rs 31.097 crores, which is the bill levied by NTPC and which has been paid for by the Respondent. Even assuming (but not admitting) the case of the Petitioner, it would result in a situation wherein the amount of Rs 31.097 crores which has been paid to NTPC by the Respondent and collected from the consumers through the FPPCA formula is to be refunded to the consumers and this very same amount will then be included in the Annual Revenue Requirements and truing up process, together with carrying cost to be again recovered from the consumers. In fact this amount of Rs 31.097 crores if recovered in the truing up process would be with carrying cost, which will only further add to the burden on the consumers. In fact, it is for this very purpose that the FPPCA formula is specified to ensure timely recovery of dues and not burden consumers subsequently with carrying cost.

The Commission has considered the detailed submissions of the Petitioner and the Respondent, the FPPCA formula and the entire record placed before it. The Commission is not convinced with the contentions of the Petitioner. On the other hand, the Commission is inclined to accept the submissions made by the Respondent. The Commission is of the considered view that the power purchase cost inclusive of fuel cost of the distribution licensee should not be postponed for recovery in future, but it should be speedily recovered.

This view of the Commission is based on the Appellate Tribunal for Electricity (APTEL) Order dated 11.11.2011 in O.P. No. 1 of 2011 wherein it had directed Regulatory Commissions to notify and have in place a FPPCA formula. The APTEL observed that the fuel and power purchase cost adjustment mechanism provided in most of the States is after completion of the Financial Year through a separate proceeding which takes a long time. The fuel and power purchase cost is also uncontrollable and it has to be allowed as quickly as possible according to the Tariff Policy. Further the Electricity Act, 2003 under Section 62(4) has specific provisions for amendment of the tariff more frequently than once in any Financial Year in terms of fuel surcharge formula specified by the Regulations. The APTEL directed that every State Commission must have in place a mechanism for fuel and power purchase cost in terms of Section 62 (4) of the Act. The fuel and power purchase cost adjustment should preferably be on monthly basis on the lines of Central Commission's Regulations for the generating companies but in no case exceeding a quarter.

The National Tariff Policy also provides that uncontrollable cost should be speedily recovered and it should not be postponed for recovery in the future.

The Commission observed that in compliance with the APTEL directions, the Commission notified the FPPCA formula which provides that:-

1. For the purpose of Fuel & Power Purchase Cost Adjustment, all the bills admitted and credits, if any received by the distribution licensee during the period in consideration, irrespective of the period to which they pertain, shall be considered. The bills or credits for an earlier period will not be considered for the purpose of FPPCA.
2. The Designated Officer shall send a certified copy of FPPCA calculations immediately to the Joint Electricity Regulatory Commission.

In this matter on perusal of the records the Commission noticed that the impugned bill was received from NTPC in the month of Sept., 2015 and it was considered by the Respondent for the quarterly FPPCA charges to be levied on the consumers during Oct. - December, 2015 which is in accordance with the FPPCA formula notified by the Commission. It is further noticed by the Commission that the Respondent has submitted the certified copy of calculations in time for the consideration of the Commission. Thus the Commission is of the considered view that the Respondent has recovered additional FPPCA as per the FPPCA formula duly notified by the Commission and there is no error and illegality in the recovery of additional FPPCA.

On the issue of adjusting the FPPCA charges with the ARR surplus of the respective year, the Commission is of the view that the appropriate treatment of ARR surplus was given in the Tariff Orders of the DNHPDCL. Further, the Commission has also recently reduced the tariff for certain categories of the consumers in view of the surplus in ARR. As truing up for the Transmission Business of ED, DNH is pending and in view of the shortfall in RPO compliance, the Commission has kept some surplus in ARR for necessary adjustments in future. As explained above, the Commission has considered the different treatment for ARR surplus in the case of Respondent and hence, it is not possible for the Respondent to adjust the FPPCA expenses with the ARR surplus.

The Commission is of the view that the revised bills issued by the Respondent to the consumers for recovery of additional FPPCA are in accordance with the FPPCA formula duly approved by the Commission.

In view of the above, the Commission dismissed the Petition.

Ordered accordingly.

Sd/-

(NEERJA MATHUR)
MEMBER

Sd/-

(S.K.CHATURVEDI)
CHAIRPERSON

Certified Copy



(KEERTI TEWARI)
SECRETARY