

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

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

Coram:

**Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member**

Date of order: 20th March, 2025

In the matter of

Petition under Sections 79(1)(f) of the Electricity Act, 2003 read with Regulation 17 of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019

And

In the matter of:

New Delhi Municipal Council,
Palika Kendra, Sansad Marg,
New Delhi-110001

.... Petitioner

Vs

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

.....Respondents

Parties Present:

Shri Anil K. Airi, Senior Advocate, NDMC
Shri Saad Shervani, Advocate, NDMC
Shri Amal, Advocate, NDMC
Shri Mudit Ruhella, Advocate, NDMC
Ms. Swapna Seshadri, Advocate, 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, has mainly submitted the following:

(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 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) The 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 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.

(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 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 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, 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 the quashing of the NTPC letter dated 30.11.2020 and direction to NTPC to declare that the 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. 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 continues 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, NDMC filed the interlocutory Application seeking the following reliefs:

“(a) Allow the present application;

(b) 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.

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

(d) 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....”

4. The Commission, after hearing the parties, disposed of the Petition and IA vide order dated 21.3.2024, as under:

“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.”

5. Aggrieved by the above order, NTPC filed an appeal (Appeal No.234/2024) before the Appellate Tribunal for Electricity (APTEL). In the said appeal, NDMC filed an IA seeking a stay of the demand raised by NTPC and to restrain them from raising invoices in respect of the Dadri-I plant from 1.12.2020 onwards. Thereafter, APTEL, vide its order dated 9.7.2024, set aside the Commission's order dated 21.3.2024 and directed to re-examine the petition (Petition No. 125/MP/2024) afresh and in accordance with law. The relevant portion of the APTEL order is extracted below:

The case of the second Respondent before us, however, is that the PPA, executed by them with the Appellant herein, expired on 30.11.2020; unlike BRPL and BYPL, they did not enter into any Supplementary PPA with the Appellant; and, after expiry of the PPA on 30.11.2020, the Appellant could not insist on the 2nd Respondent procuring power from them from 01.12.2020 onwards. Since this Tribunal, in its judgement in Appeal Nos. 239 and 240 of 2021 dated 08.02.2022, had expressed its opinion on the applicability of Regulation 17 also, the second Respondent had relied on the said judgment to contend that they could also not be forced to procure power from the Appellant from 01.12.2020 onwards.

The case of the Appellant, on the other hand, is that, even though the second Respondent had not executed a Supplementary PPA with them, the original PPA must be held to continue to remain in force till the allocation by the Government of India remained in operation; it is only on 25.03.2022 that the Government of India had re-allocated power, which was hitherto allocated to the second Respondent, to two other distribution licensees; and the bills raised by the Appellant on the second Respondent is only for the period from 01.12.2020 till 25.03.2022, and not thereafter.

Among the several issues which may necessitate adjudication is whether the second Respondent is justified in its submission that they were no longer obligated to procure power from the Appellant with effect from 01.12.2020 consequent upon expiry of the earlier PPA on 30.11.2020 and as they had not entered into a Supplementary PPA, or whether the Appellant was justified in its submissions that the earlier PPA continue to govern the contractual relationship between the parties (ie the appellant and the second respondent) till the Government of India re allocated power, hitherto allocated to the second Respondent, to two others. Since this issue did not arise for consideration in Appeal Nos. 239 and 240 of 2021 filed by BRPL and BYPL before this Tribunal, the CERC ought to have, while adjudicating Petition No. 125/MP/2024, independently considered and recorded its opinion on this issue, before directing the Appellant to stay its hands till Civil Appeal No. 1877 of 2022 was finally disposed of by the Supreme Court.

Since Civil Appeal No. 1877 of 2022 filed by the Appellant before the Supreme Court is against the order passed by this Tribunal earlier in Appeal Nos. 239 and 240 of 2021 dated 08.02.2022, and as counsel on either side are in agreement that the issue referred to hereinabove, as to whether or not the PPA, executed by the second Respondent with the Appellant, expired on 01.12.2020, was not examined by the CERC while passing the impugned order in Petition No. 125/MP/2024 dated 21.03.2024, we are of the view that the impugned order under Appeal must be set aside.

The impugned order under appeal is set aside, and the CERC is directed to re-examine Petition No. 125/MP/2024 afresh and in accordance with law. Mrs. Swapna Seshadri, Learned Counsel for the Appellant, submits that the Appellant would file its reply both to Petition No. 125/MP/2024, and the IA filed by the second respondent therein, within four weeks from today. The CERC shall, after pleadings are complete and after giving both parties a reasonable opportunity of being heard, pass orders afresh in the IA filed in Petition No. 125/MP/2024 with utmost expedition.

With a view to protect the interest of the second Respondent, in the interregnum, we direct the Appellant not take coercive steps for recovery of the amounts, in terms of the invoices raised by them on the 2nd Respondent, till IA No. 21 of 2024, filed by the second Respondent in Petition No. 125/MP/2024, is heard and decided by the CERC.

The Appeal and the IA stand disposed of accordingly”

Reply of NTPC

6. In terms of the above order, NTPC, vide reply affidavit on 8.8.2024, submitted the following:

- (a) NDMC misled the Commission in the first round of hearing of the Petition. NDMC had claimed parity with the other distribution licensees (BRPL & BYPL, and TPDDL) to exit the PPA post 30.11.2020 as per APTEL judgment dated 8.2.2022 and that no bills should be raised on it after 1.12.2020. However, before APTEL in Appeal No. 234/2024, NDMC took a stand that its case was different and independent of the case of BRPL, BYPL, and TPDDL, and since the validity of the original PPA dated 6.5.2008 expired on 1.12.2020 (after which it had not scheduled any electricity), the invoices raised by NTPC should be set aside and de hors the judgement dated 8.2.2022, it has no liability from 1.12.2020. In case NDMC is similarly placed (as in the BRPL & BYPL case), then it is bound by the interim order of stay of the Hon'ble Supreme Court. On the other hand, the case of NDMC that the validity of the original PPA dated

6.5.2008 expired on 1.12.2020, after which it had not scheduled any electricity and, thus, was not liable to pay any fixed charges, is denied.

Validity of the PPA dated 6.5.2008

- (b) Dadri-I Station is covered by Article 12.1(A) of the PPA and the agreement would continue to operate if NDMC continues to get power from the generating station even after 31.3.2012. As opposed to this, in Article 12.2(D), there were other generating stations with whom the duration of the PPA was to be 25 years from the COD of the last unit of the respective station. Thus, the intention of both NTPC and NDMC, in so far as the Dadri-I Station is concerned, was to continue the PPA even, without a renewable or formal extension till the period NDMC would continue to get the power. The power continued to remain allocated to NDMC even after 30.11.2020 and till its re-allocation by MOP, GOI on 25.3.2022. Thus, there can be an artificial cessation of PPA on 30.11.2020. The Commission has continuously accepted the position that in the case of a central sector generating company, it is the allocation by MOP which decides the share of the beneficiaries

Binding validity of the GOI allocation

- (c) The PPA in respect of the Dadri-I station, as in the case of other generating stations supplying power to NDMC, were all entered into pursuant to the allocation of power by the MOP, GOI, and a Bulk Power Supply Agreement (BPSA) was entered into on 31.1.1994. In terms of the BPSA and the PPA, the procurement of power is envisaged till the period NDMC would continue to get power, and the only way in which any beneficiary of any NTPC station would 'get power' is by way of allocation by the MOP, GOI. The power continued to remain allocated to NDMC even after 30.11.2020 and till its re-allocation by MOP, with effect from 25.3.2022. Thus, the obligation of NDMC can be foreclosed only if the MOP reallocates/deallocates the power from the Dadri-I station to any other Procurer, as per the scheme of the Tariff Regulations.
- (d) From the very inception (the 2004, 2009, 2014, and the 2019 Tariff Regulations), the GOI allocation has been given statutory recognition, in terms of the Tariff Regulations notified by this Commission. In fact, APTEL, in para 37 of its judgment dated 8.2.2022, has also recognised that the allocation/ reallocation / de-allocation is the prerogative of the Central Government. MOP is the sovereign authority through which the Central Government exercises the power for the allocation of electricity from the central generating stations. MOP from time to time, publishes a list of States which wish to surrender their share of allocation on its website, which is available for reallocation to other States. As and when an appropriate request is received, the MOP reallocates the power. Such allocation/reallocation/de-allocation is in the realm of policy decisions of the Central Government depending on where there is a need for electricity.

- (e) The Right of the MOP, GOI, to allocate/reallocate/deallocate as a sovereign function under Article 73 of the Constitution of India has been recognized by the Hon'ble Delhi High Court in its interim order dated 1.6.2022 in W.P. No. 5340/2022. The scheme of allocation evolved by the Central Government of the share in the Central Sector Generating Stations to serve generally more than one State, and investment made pursuant thereto for the common benefit of consumers in many states will get seriously impaired. It is in the larger public interest that the power to allocate and re-allocate/de-allocate was retained by the Central Government, at least in so far as the Central Generating stations are concerned. It is of particular importance that the GOI does not prescribe an outer limit or a specific period of duration of the contract between the CSGS and the Procurer states. So long as the allocation subsists, the parties have a continued obligation under the PPA entered into. The binding validity and the methodology/purpose behind the allocation process have been dealt with in the clarification by the Minister of State (Power), Lok Sabha, in 2012.
- (f) The CGS is planned in a manner so as to continue with sustained operation beyond the period of 25 years from the COD. In the circumstances, it is not that at the precipice of the 25th year from COD, the entire investment made by the generator stands serviced. The relationship between a generating company and the distribution licensee is, in any event, co-extensive with the allocation of power by the MOP, GOI. Such allocation is not dependent on the COD of the generating station or any other parameter except the request of the State to reallocate the existing allocation. The Commission and the APTEL have constantly recognized this position (CERC order dated 17.4.2017 in Petition Nos 301/MP/2015 & 302/MP/2015, CERC order dated 31.3.2017 in Petition No. 182/MP/2015 (TPDDL v NTPC), CERC order dated 9.3.2017 in Petition No. 20/MP/2017 (KBUNL v CTU) and CCI order dated 12.10.2017 in Case No 20/2017 (TPDDL v NTPC & ors). So long as the Central Government allocation subsists, the parties would continue to be bound by the terms of the PPA entered into read with the applicable provisions of the 2019 Tariff Regulations.
- (g) The continued obligation between the parties stems not merely from the contract entered into but from the Central Government allocation, pursuant to which the PPA was entered into at the first instance read with the applicable regulations notified by the Commission. The allocation made by the GOI did not restrict the liability of the parties till the 25th year from the commercial operation date of the generating station. In the BPSA dated 31.1.1994 (Clause 2.1) entered into between NTPC and the Delhi Electric Supply Undertaking, it had been specifically recognized that the power should be utilized as allocated by the GOI from time to time. The BPSA also recognizes that the energy accounting shall be as per the GOI orders for power allocation. NDMC is bound by the stipulations contained in the said agreement.

Miscellaneous

- (h) NDMC never initiated any litigation even though it was well aware of the litigation related to Regulation 17, which was ongoing between NTPC and the other discoms. NDMC was aware that MOP had issued Guidelines for exit from the allocation after 25 years from the COD of a generating station, both on 22.3.2021 and 5.7.2021. However, NDMC neither followed the guidelines nor approached any authority for a declaration that the PPA was over. DERC, by order dated 30.9.2011 in Petition No. 7/2021, filed by NDMC (for approval of true up of tariff for 2019-20 along with the Aggregate Revenue Requirement (ARR) and determination of tariff for 2021-22), while approving the Power Purchase cost of NDMC, considered Rs. 73.80 crores as per the claim of NDMC, as fixed cost payable to Dadri-I Station. This power purchase cost approved by DERC is for the period after the completion of 25 years of Dadri-I Station.
- (i) The contrast in the words used in Article 12.1(A) and (D) is crucial, and the intention of both NTPC and NDMC, in so far as the Dadri-I station is concerned, was to continue the PPA even without a renewable or formal; extension till the period NDMC would continue to get power. The only way in which any beneficiary of NTPC station would 'get power' is by way of official allocation by the MOP, GOI. The power continued to remain allocated to NDMC even after 30.11.2020 and till its re-allocation by the MOP, with effect from 25.3.2022. There can be no artificial cessation of the PPA on 30.11.2020, as contended by NDMC. The payment of fixed charges is for the period from 1.12.2020 to 30.11.2023. The power from NTPC has been reallocated to the State of Gujarat from 25.3.2022. Thereafter, NTPC has not billed NDMC for any amount.

Hearing dated 13.8.2024

7. Pursuant to the directions of the Commission vide hearing dated 13.8.2024, NDMC has filed its rejoinder, vide affidavit dated 11.9.2024.

Rejoinder of NDMC

8. NDMC, in its rejoinder dated 11.9.2024, mainly submitted the following:
- (a) The COD of the Project was 1.12.1995, and the useful life of the plant (25 years) expired on 1.12.2020. There is no dispute that there is no order passed by any forum extending the useful life of the Dadri-I plant. Various letters (dated 30.11.2020, 15.1.2021, 18.1.2021, 5.7.2021, 12.5.2021, 21.2.2023, and 9.9.2021) had been issued by NDMC informing NTPC that they wish to discontinue the PPA. After 1.12.2020, no power has been received by NDMC from NTPC. In terms of Article 12.1(A) of the PPA, since the BPSA/PPA has neither been renewed /extended nor replaced, nor has NDMC received/scheduled any power from the plant w.e.f 1.12.2020 onwards, the PPA ceased to exist from 1.12.2020. In terms of Regulation 17, no such arrangement was agreed upon by NDMC and NTPC.

Re: NTPC claims that there is a contradiction in the stance of the Petitioner before the Commission and APTEL

(b) The facts that were presented by NDMC before this Commission and before APTEL were the same and there was absolutely no change of stance of the Petitioner as alleged by NTPC. NDMC has simply pleaded that there were other discoms apart from NDMC, who were consuming power from the Dadri Plant prior to the expiry of its useful life on 30.11.2020. NDMC for the sake of full disclosure, apprised the Commission of the proceedings initiated against NTPC and the outcome thereof. The mere fact that NDMC apprised the APTEL that BRPL and BYPL executed a Supplementary Agreement, whereas, the terms between NDMC and NTPC continued to be governed by the original PPA, cannot be construed to be a 'change in stance' by NDMC. The said submission was made in response to the contention of NTPC and to demonstrate that the same was untenable.

(c) The fact of the matter is that in terms of Article 12.1(A) of the PPA since the BPSPA/ PPA has neither been renewed /extended nor replaced nor had NDMC received /scheduled any power from the said Plant w.e.f 1.12.2020 onwards, the PPA ceased to exist from 1.12.2020. Even otherwise, in terms of the mandate of Regulation 17 of the 2019 Tariff Regulations, since the Dadri-I plant admittedly completed 25 years of operation from COD and there is admittedly there is no arrangement agreed upon by and between the Petitioner and the Respondent, the PPA stood expired w.e.f 1.12.2020 onwards.

Re: NTPC has misinterpreted Article 12.1(A) of the PPA to contend that the PPA continued to exist even after 1.12.2020 (expiry of the useful life of plant)

(d) NTPC claims that in terms of Article 12.1(A) of the PPA, the same would continue to operate if NDMC continues to 'get power' from the generating station, even after 31.3.2012. NTPC, in an attempt to mislead the Commission has deliberately put forth a gross misinterpretation of the said Article to support its contention that the PPA was valid. From a bare reading of said article, the phrase 'get power' used in the article means 'consumption' of power and not mere allocation of power. After 30.11.2020, NDMC did not consume power from the plant of NTPC. The same is also evident from the fact that all invoices raised by NTPC, which is the subject matter of the present petition, are for fixed charges. NDMC cannot be burdened with or called upon to pay any other charges or fixed charges under the garb of mere alleged allocation.

(e) It is a settled position of law as laid out in the case of PTC V CERC (2010 4 SCC 603), that the provisions of the PPA cannot be derogatory to the Tariff Regulations as also the life of any generating station defined under the regulations. Moreover, the intention of NDMC was always made clear to NTPC, wherein, NDMC wrote various letters dated 30.11.2020, 15.1.2021, 18.1.2021, 5.7.2021, 12.5.2021, 21.2.2023 and 9.9.2021, informing NTPC that PPA has expired and that NDMC is not liable to pay any charges or amounts after

30.11.2020. Thus, it cannot in any manner be said that there was any mutual extension of the PPA. There cannot be any mutual extension of the contract between the parties, and NTPC, in law or otherwise, cannot force any unilateral extension on NDMC to suit itself. In view of the above, NDMC decided not to continue/extend/replace the existing PPA with NTPC under the provision of Article 12.1(A).

Re: NTPC's contention that the power continued to be allocated to NDMC till its reallocation by MOP

(f) The argument of NTPC that since power remained allocated to NDMC from 30.11.2020 till 25.3.2022 by the Central Government, NDMC is liable to make payments of the invoices is in the teeth of the settled position that any executive action of the Central Government of allocation/reallocation of power cannot be in defiance of the provisions of the Electricity Act, 2003 or the Tariff Regulations. The allocation by the Central Government can, at best, be considered as a guideline or advisory, which is not binding upon NDMC, specifically since the same is contrary to the statutory provisions of the Tariff Regulations.

(g) No such arrangement as envisaged under Regulation 17 of the 2019 Tariff Regulations was entered into by NDMC and NTPC. It is admitted position that the useful life of the Dadri Plant has not been extended by the Commission.

Re: Misleading contention of NTPC with regard to the DERC order dated 30.9.2021 in a petition filed by NDMC for approval of true up for 2019-20 and ARR and determination of tariff for 2021-22

(h) NTPC has contended that DERC, while approving the PPA cost of NDMC considered Rs 73.8 crores as the claim of NDMC as fixed cost payable to Dadri-I station. It is clear and evident from paras 2.131, 4.28(d), and para 4.29 of the order as recorded by DERC that the stand of NDMC has been that the PPA with NTPC stood expired on 30.11.2020 and subsequent thereto, NDMC is not liable to pay any amounts to NTPC.

Hearing dated 27.9.2024

9. The Commission, after hearing the learned Senior counsel for the Petitioner and the learned counsel for the Respondent for some time, enquired if the issue involved in the present case, related to a non-tariff dispute to be referred to arbitration, in terms of the APTEL judgment dated 28.8.2024 in Appeal No.309/2019. Accordingly, the Commission permitted the parties to file their written submissions on this issue. In compliance with the aforesaid directions, the Petitioner filed its written submissions

vide affidavit dated 23.10.2024 and the Respondent filed its written submissions vide affidavit dated 25.10.2024.

Written submissions of NDMC

10. In deference to the directions vide ROP dated 27.9.2024, the Petitioner filed its written submissions stating as under:

- (a) The issues raised by the Petitioner relate to a 'tariff' dispute which falls solely within the jurisdiction of the Central Commission under Section 79(1) of the 2003 Act and, as such, ought not to be referred to as 'arbitration'. As mentioned in Article 10.1 of the PPA, the parties have specifically excluded from the purview of the arbitration clause the disputes which fall under the provisions of the 2003 Act.
- (b) From a composite reading of Section 79(1)(a) & (f) of the 2003 Act, it is evident that this Commission has the jurisdiction to adjudicate upon disputes involving generating companies or transmissions licensees in regard to matters connected with the regulation of tariff, more specifically in case of NTPC, which is admittedly a company owned and controlled by the Central Government.
- (c) The term 'regulation of tariff' has been interpreted by APTEL in its judgment dated 4.9.2012 in Appeal Nos.94 & 95/2012 (BRPL v DERC & ors), wherein, APTEL held that this Commission has wide powers under Section 79(1) which is not merely confined to determination of tariff but also to adjudicate disputes in respect of the terms and conditions of tariff.
- (d) As detailed in the petition, since the PPA stood expired upon completion of COD, which was communicated to the Respondent, the Respondent could not have issued any invoices upon the Petitioner. The Respondent has opposed the Petitioner by alleging that there was no artificial cessation of the PPA and that the power continued to be allocated to the Petitioner from the plant. Apart from the issue involving disputes on the terms and conditions of tariff, the dispute also involve the interpretation of the Tariff Regulations issued by the Commission.
- (e) APTEL, in its judgment dated 28.8.2024, held that all the matters that would have a bearing upon the tariff for a generating company would constitute 'tariff disputes' and such disputes would fall solely within the jurisdiction of the Commission under Section 79(1)(f) of the 2003 Act. The issue ought **not** to be referred to arbitration.

Written submissions of NTPC

11. NTPC, in its written submissions dated 25.10.2024, mainly stated as under:

- (a) The only dispute to be adjudicated in the present case is on the validity of the invoices raised by NTPC on NDMC for recovery of its tariff (fixed charges) determined by this Commission order for the period from 1.11.2020 to 25.3.2022 (i.e. the period when electricity remained allotted to NDMC). This is a dispute for the recovery of charges under Section 79(1)(a) between a Central Government Company and a Licensee. This dispute cannot be referred to arbitration since it is directly related to tariff. (APTEL

judgments dated 4.9.2022 in Appeal No.94 & 95/2012 (BRPL v DERC & ors) NTPC and 24.1.2023 in Appeal No. 82 and 90/2012 (BRPL v CERC & ors relied upon)

- (b) As per the APTEL judgment dated 28.8.2024, all disputes having a direct or indirect impact on tariff would have to be adjudicated by this Commission alone. Since the dispute is whether NDMC should pay the tariff to NTPC for the period from 1.11.2020 to 25.3.2022, there can be no question of arbitration, and it is this Commission that would adjudicate the dispute.
- (c) Without prejudice, the matter is related to the recovery of tariff for the energy scheduled in line with the prevailing regulatory provisions of IEGC 2010, 2019 Tariff Regulations, energy accounts issued by NRPC etc. The governing regulations in respect of the supply of power from central generating stations, that is, the 2019 Tariff Regulations (Regulation 55) issued by this Commission provide that liability of the payment of tariff is linked with the allocation of power from the GOI.
- (d) NTPC has raised bills in accordance with the Tariff Regulations, tariff orders of this Commission, the energy accounts issued by RLC/SLDC, and the allocation of power by GOI. This matter cannot be considered as anything other than a 'Tariff matter/dispute' and squarely falls under the power of adjudication of this Commission.

Hearing dated 6.11.2024 and 30.12.2024

12. Pursuant to the hearing on 6.11.2024, the Commission permitted both parties to file their written submissions. Thereafter, the matter was heard on 30.12.2024, and the Commission, after hearing both the parties, reserved its order in the matter, after permitting both the parties to file their written note of arguments on merits.

Written submissions of NDMC

13. NDMC, in its written submissions dated 17.1.2025, after giving a brief list of dates, mainly submitted as under:

- (a) In terms of Article 12.1(A) of the PPA, since the BPSA/PPA has neither been renewed/extended nor replaced nor had the petitioner received/scheduled any power from the plant w.e.f 1.12.2020 onwards, the PPA ceased to exist from 1.12.2020.
- (b) Even otherwise, in terms of Regulation 17 of the 2019 Tariff Regulations, since the Dadri Plant has admittedly completed 25 years of operation from COD and admittedly there is no arrangement agreed upon by and between the Petitioner and the Respondent, the PPA stood expired w.e.f 1.12.2020 onwards.
- (c) A bare reading of Article 12.1(A) of the PPA, the phrase 'get power' used in the said article means 'consumption' of power and not mere allocation of power. It is an undisputed act that after 30.1.2020, NDMC did not consume

any power from the Plant of the NTPC. The same is evident from the fact that all invoices raised by NTPC, which is the subject matter of the present petition, are for fixed charges.

- (d) The same is also evident from the petitions filed by NDMC before the DERC for approval of the Power Purchase Adjustment Cost, wherein NDMC has consistently disclosed that they have zero units billed from the consumers. The argument of NTPC that NDMC is liable to make payment of the invoices for the period from 30.11.2020 till 25.3.2022 as power remained allocated to NDMC is in teeth of the settled position of law that any executive action of the Central Government of allocation /reallocation of power cannot be in defiance of the statutory provision of the Electricity Act, 2003 or the Tariff Regulations.

Written submissions of NTPC

14. NTPC, in its written submissions dated 20.1.2025, mainly submitted the following:

(a) NDMC, before the APTEL, argued that its case was different from the other Discoms like BRPL, BYPL, and TPDDL since the validity of the PPA dated 6.5.2008 had expired on 1.12.2020 and unlike the other Discoms no supplementary PPA was signed with NTPC by NDMC, which question it contended, was never raised before this Commission by the other Discoms and therefore stood undetermined. However, now it has again argued that in terms of the mandate of Regulation 17 of the 2019 Tariff Regulations, the PPA dated 6.5.2008 expired on 31.11.2020 by virtue of the completion of 25 years of operation of NTPC Dadri-I Power Plant from COD. This makes it clear that NDMC is choosing to approbate and reprobate on the same issue before the APTEL and the Commission. In any case, the applicability of Regulation 17 cannot be tested at this stage, firstly because NDMC did not follow the procedure laid down by the MOP guidelines pursuant to Regulation 17 and secondly, considering the existence of the Supreme Court's stay order dated 13.4.2023 on the subject.

(b) NDMC entered into the Bulk Power Supply Agreement (BPSA) with NTPC on 31.1.1994, which was valid only till 31.10.1997, and the same was neither renewed nor extended. Subsequently, the PPA was also entered into between the parties on 6.5.2008, which was valid only till 31.3.2012 and has since neither been extended nor renewed by the parties. Therefore, as per the contention of NDMC, in the interregnum between the end of the validity of the BPSA on 31.10.1997 and the entering into the PPA on 6.5.2008, there was no valid agreement between the parties, and therefore, NDMC should not have been able to 'get power' from NTPC. Contrary to this, NDMC continued to procure power from NTPC during the aforementioned interregnum period. The procurement of power from NTPC was made possible since there existed an allocation of power by the MOP, GOI.

- (c) Furthermore, both the BPSA and the PPA had provisions in the validity clause that said that even in the absence of an extension or renewal of the BPSA/PPA, if NDMC were to continue to get power, the BPSA/PPA would continue to be valid. Similarly, NDMC should not have been able to get power from NTPC after 31.3.2012 since the validity of the PPA had ended, but the factual position is that NDMC procured power from NTPC till 2020, by virtue of the subsisting MOP allocation, which continued till 25.3.2022.
- (j) NDMC cannot choose to selectively read one half of a PPA provision PPA and thereon misconstrue the same without any regard to the original intent inherent in the provision in its entirety. Moreover, when compared and contrasted with the other sub-clauses of Article 12.1 of the PPA, it becomes completely free from any doubt that the PPA/ BPSA would remain valid in the case of Article 12.1. (A) until NDMC gets power from NTPC, i.e., till 25.03.2022, when the power from NTPC was reallocated.
- (k) NDMC cannot claim that there exists no valid agreement between the parties when it is clear on a perusal of Article 12.1. (A) of the PPA dated 6.5.2008 that even after the expressly mentioned validity period, the PPA shall be valid as long as NDMC continues to '*get power*' from NTPC, despite any possible failure to formally extend/ renew the BPSA. Therefore, it is evident that contrary to NDMC's contention, the BPSA/PPA was valid, despite any formal extension or renewal by the parties, till NDMC was getting power from NTPC.
- (l) NDMC is also wrong in contending that '*get power*' is used in Article 12.1. (A) of the PPA shall only mean 'actual consumption' of power from NTPC. Such contentions are completely inconsistent with the fact that the generator in the present case is run by NTPC, a Central Government Public Sector Undertaking. Under the Electricity Act, and under the sovereign power vested with the Union Executive under Article 73 of the Indian Constitution, the power generated from all the CGS is allocated to different states based on their differential demand and their application to the MOP, for such allocation/ deallocation/ reallocation. Multiple Tariff Regulations of this Commission have also been capturing the same position and have been giving effect to the power, enabling MOP to perform the allocation of such power, amongst the State Discoms.
- (m) The prerogative of the MOP to allocate power to the different states was discussed in detail by this Commission in its order dated 31.3.2017 in Petition No. 182/MP/2015 (TPDCL v NTPC & ors). Therefore, it is beyond any doubt that the MOP, GOI has the power to allocate/ deallocate/ reallocate power. Therefore, as long as the allocation of power to NDMC from NTPC was subsisting, NDMC was continuing to '*get power*' from NTPC, and irrespective of the validity of the PPA, NDMC is liable to make payment accordingly for the period of allocation.

- (n) In this context, it is apparent that 'get power' under the PPA means the allocation of power by MOP which is synonymous with 'getting the power' from NTPC. Therefore, the BPSA/ PPA, even after the expiry of the period expressly mentioned, by virtue of the allocation of power by MoP and the language used in the BPSA/ PPA, remains valid since NDMC continued to 'get power' from NTPC even in the absence of the renewal/ extension of the same. NDMC, thus is undoubtedly liable to pay capacity charges towards the power allocated as long as the allocation from NTPC subsisted. The bills have also only been raised by NTPC on NDMC for the period of allocation.

15. Based on the above submissions and the documents on record, the issue which emerges for consideration is:

Issue A: Whether the validity of the PPA dated 6.5.2008 in respect of the Dadri-I generating station of NTPC expired after the completion of 25 years on 30.11.2020 or continued till the re-allocation of power by MOP, GOI on 25.3.2022?

Issue B: Relief(s) to be granted.

Analysis and Decision

16. Before proceeding, we take note that pursuant to the directions of the Commission to the parties to file their submissions on the question as to whether the dispute relates to tariff or non-tariff, to be referred to arbitration in terms of the APTEL judgment dated 28.8.2024 in Appeal No.309/2019, both the parties, have, in their written submissions contended that the disputes raised is directly related to 'tariff', which fall solely within the jurisdiction of the Commission under Section 79(1)(f) read with Section 79(1)(a) of the 2003 Act. NDMC has also added that under Article 10.1 of the PPA, the parties have specifically excluded from the purview of the 'arbitration clause,' the disputes which fall under the provisions of the 2003 Act. We agree with the submissions of the parties. It is noticed that APTEL, in the said judgment, has categorised the disputes as 'tariff' and 'non-tariff' and that every matter which would have a bearing on tariff, either directly or indirectly, has been categorised as a tariff dispute. As the dispute to be decided in the present case is whether NDMC, based on the interpretation of the provisions of the PPA and the Tariff Regulations, is liable to

pay the fixed charges for the period from 1.10.2020 till 25.3.2022, the power of the Commissions to adjudicate the same, fall within the scope of Section 79(1)(f) read with Section 79(1)(a) of the 2003 Act.

17. It is pertinent to mention that NDMC had submitted before APTEL that its case was different from the other discoms like BRPL, BYPL & TPDDL, and unlike these discoms, no supplementary PPA had been executed by it with NTPC and that it continued to be governed by the original PPA dated 6.5.2008, whose validity expired on 1.12.2020. On the other hand, NDMC, in its petition, has submitted that since the BPSA (with three major discoms) has exited the agreement with effect from 30.11.2020, NDMC, as per the terms of the PPA, shall also exit the said agreement and the Petitioner cannot be forced to carry on the PPA unilaterally. Further, in its written submissions, NDMC has contended that even otherwise, in terms of Regulation 17 of the 2019 Tariff Regulations, since the Dadri plant has completed 25 years of operation from COD and admittedly there is no arrangement between the parties, the PPA stood expired on 30.11.2020. However, considering the fact that the Hon'ble Supreme Court vide its interim order of stay dated 13.4.2023 in Civil Appeal No 1877/2022 (filed by NTPC) directed that 'no fresh disputes shall be decided on the basis of the APTEL judgment dated 8.2.2022 (*subject of Regulation 17*), the applicability of the said regulation is not being tested in the present case.

Issue A. Whether the validity of the PPA dated 6.5.2008 in respect of the Dadri-I generating station of NTPC expired after the completion of 25 years on 30.11.2020 or continued till the re-allocation of power by MOP, GOI on 25.3.2022?

18. NDMC has submitted that since the validity of the PPA expired in terms of Article 12.1(A) and since NDMC has not scheduled /received any power from NTPC after 1.12.2020 from the Dadri-I Plant, any invoice raised by NTPC after the said date is untenable and deserves to be set aside. Pointing out that the phrase 'get power' used

in the said Article means 'consumption' of power and not mere allocation of power, NDMC has argued that since no power was consumed from the Dadri-I Plant after 30.11.2020, NDMC cannot be burdened with or called upon to pay any charges or fixed charges, under the garb of alleged allocation. NDMC stated that it decided not to continue /extend /replace the existing PPA with NTPC under Article 12.1(A) since the BPSA/PPA has neither been renewed/extended nor NDMC revised the schedule from the Plant with effect from 1.12.2020, argued that the PPA for the said plant ceased to exist from 1.12.2020. Further, NDMC, while contending that the executive action of the Central Government (MOP, GOI) of allocation/re-allocation of power cannot be in defiance of the statutory provisions of the Electricity Act, 2003 or the Tariff Regulations, has stated that the allocation by the Central Government can at best be considered as a guideline or advisory, which is not binding on NDMC and since the useful life has not been extended by the Commission, the PPA stood expired on 30.11.2020, and NDMC is not liable to pay any amounts to NTPC. In its rebuttal, NTPC argued that the Dadri-I plant is covered by Article 12.1(A), and the intention of both parties was to continue the PPA even without a renewable or formal extension till the period NDMC would continue to get power. Pointing out that the only way in which any beneficiary of the NTPC station would continue to 'get power' is by way of allocation by the MOP, GOI, NTPC has contended that power continued to remain allocated to NDMC even after 30.11.2020, till its re-allocation by the MOP, with effect from 25.3.2022. NTPC, while submitting that the obligation of NDMC can be foreclosed only if the MOP re-allocates/de-allocates the power from the Dadri-I plant to any other procurer as per the scheme of the Tariff Regulations, contended that NDMC is therefore liable to make payment of the invoices raised by NTPC.

19. We have examined the rival submissions. BPSA was executed between NTPC and Delhi Electricity Supply Undertaking (DESU) on 31.1.1994, which inter alia

provided that the said agreement would come into force from the date of signing and remain operative till 31.3.1997, provided that this agreement may be mutually extended, renewed or replaced by another agreement on such terms and for such other period, as the parties may agree. On account of the privatization of the distribution of electricity in Delhi, NDMC, TPDDL, BRPL & BYPL succeeded the respective undertakings and businesses in their respective areas of supply with effect from 1.7.2002, by operation of law. DERC, on 31.3.2007, reassigned all the existing PPAs with DTL amongst the distribution licensees in NCT of Delhi, including the Petitioner NDMC, as per their respective load profile. Based on a Petition filed by NDMC before DERC, seeking the modification of allocation, DERC vide its order dated 7.3.2008 allowed NDMC the re-allocation of 125 MW power each from the Badarpur TPS and Dadri Plant of NTPC. Thereafter, NDMC entered into a PPA with NTPC on 6.5.2008, for procuring power from the various generating stations, including the Dadri-I plant of NTPC. The COD of the Dadri-I Plant is 1.12.1985, and in terms of the 2009 Tariff Regulations, the said plant completed its useful life of 25 years on 30.11.2020, in terms of the 2009 Tariff Regulations. The useful life of a thermal generating station, as per the successive Tariff Regulations notified by this Commission, is 25 years. The relevant provisions of Article 12.1 with regard to the validity of the PPA dated 6.5.2008 are as under:

“

12. DURATION OF THE AGREEMENT

12.1 Validity of this Agreement for power supply from different stations shall be as follows:

<p><u>(A) Station:</u> (i) Singrauli Super Thermal Power Station Stage-I (2000 MV). (ii) Rihand Super Thermal Power Station Stage-1 (1000 MV). (iii) Anta Gas Power Station (419.39 MW) (iv) Auriaya Gas Power Station (663.35 MV) (v) Dadri Gas Power Station (829.78 MW) (vi) Feroze Gandhi Unchahar Thermal Power Station Stage-I</p>	<p><u>Validity:</u> From 01.04.2007 upto 31st March 2012, provided the BPSA may be mutually extended renewed or replaced by another Agreement on such forms and for such further period as the parties may mutually agree. In case the Bulk Power Customers) continue to get power from the NTPC station(s) even after 31.03.2012 without further renewal</p>
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(420 MW) (vi) **National Capital Thermal Power Station (840 MW).**

or formal extension of the BPSA then the BPSA shall continue to operate till the BPSA formally renewed, extended or replaced. However, the terms and conditions of this PPA shall apply

(B) Stations: (i) Rihand Super Thermal Power Station Stage-I (1000 MW) (ii) Feroz Gandhi Unchahar Thermal Power Station Stage-II (420MW) (iii) Feroze Gandhi Unchahar Thermal Power Station Stage-III (210MW) (V) Kahalgaon Super Thermal Power Station Stage-II (1500 MW) (vi) North Karanpura Super Thermal Power Station (1980 MW), (vi) Barh Super Thermal Power Station Stage-I (1980 MW) (vii) National Capital Thermal Power Station, Dadri Stage- II (980 MW)

Validity: 25 years with effect from the Date of Commercial Operation of the last unit of the respective Stage/Station.

(C) Stations: (i) Anta Gas Power Station Stage-II (650 MW) and (ii) Auraiya Gas Power Station Stage-I (650 MW)

Validity: 15 years with effect from the Date of Commercial Operation of the last unit of the Stage-II

(D) Stations: Koldam Hydro Electric Power Station (800 MW)

Validity: Up to completion of 35 years with effect from the date of signing of the PPA i.e. from 24.06.2002.

(E) Stations: Badarpur Thermal Power Station (705 MW)

Validity: Until phasing out of the units.

20. As per Article 12.1(A) above, the validity of the PPA for the supply of power in respect of various generating stations, including the Dadri-I generating station of NTPC, was from 1.4.2007 up to 31.3.2012, provided the BPSA is mutually extended /renewed or replaced by another agreement on such forms and for such further period as the parties may mutually agree. It also provides that in case the Bulk Power Customers continue to get power from the NTPC stations even after 31.3.2012, without further renewal of formal extension of the BPSA, then the BPSA shall continue to operate till the same is formally renewed, extended, or replaced. However, the terms and conditions of this PPA shall apply. In other words, the PPA would continue to operate if the Bulk Power Consumers (like NDMC) continue to get power from the

generating station even after 31.3.2012. It is pertinent to note that while Article 12.1(A) in respect of some of the generating stations, including the Dadri-I plant of NTPC, specifically provided for continuation of the PPA even after 31.3.2012, the other provisions of the said Article viz., (B) to (E), as opposed to Article 12.1(A), specifically restricts the duration of the PPA in respect of the other generating stations, i.e to 15 years/25 years from the COD of the last unit of the respective generating station or 35 years from the date of signing of the PPA. Thus, in so far as the Dadri-I plant of NTPC is concerned, the intention of the parties was to continue the PPA, even in the absence of any formal extension/renewal, till such time the power supply continued as per allocation. In other words, NDMC was well aware that the supply of power under the PPA was not co-terminus with the useful life of the generating station. It is pertinent to mention that in some of the coal-based generating stations of NTPC viz, Singrauli and Rihand covered under Article 12.1(A) of the PPA, and which have completed the initial useful life of 25 years, the beneficiaries therein, based on the PPA executed, continue to procure power, as per the Central Government allocation and make payments as the tariff determined by this Commission in terms of the Tariff Regulations. Even in the present case, we note that during the interregnum period between the expiry of the BPSA (31.10.1997) and the execution of the PPA (6.5.2008) and even after 31.3.2012 (expiry of PPA), NDMC, in the absence of any formal extension/renewal of the said BPSA/ PPA, was supplied power from the Dadri-I Plant, based on the subsisting MOP allocation which continued till 25.3.2022. Thus, even in the absence of any formal extension of BPSA/PPA, if NDMC continues to get power based on the subsisting allocation, then the PPA would continue to be valid. Therefore, the validity of the PPA, in the absence of any formal extension/renewal, does not get extinguished with the expiry of the useful life of the plant (25 years), so long as it continues to remain allocated for the supply of power.

21. NDMC has contended that the phrase 'get power' used in Article 12.1(A) of the PPA shall only mean the actual consumption of power from NTPC and not a mere allocation of power. It has accordingly submitted that since no power was consumed after 30.11.2020, no liability can be imposed upon it, for the payment of fixed charges. In our considered view, the said phrase cannot be read in isolation and is required to be read in the context of the scheme of allocation of power by the Central Government to the States, of the share in the Central Generating stations. It is pertinent to mention that the allocation/de-allocation of power amongst the beneficiaries of the Central Generating stations is vested with the MOP, GOI. Even clause 2.1 of the BPSA dated 31.1.1994 executed by NTPC and DESU recognises that the energy accounting shall be as per the GOI orders for power allocation. The relevant portion is extracted below:

2.1 ALLOCATION OF POWER FROM NTPC STATION(S)

Allocation of power from thermal stations at Singrauli, Rihand, Feroze Gandhi Unchahar Thermal Power Station and National Capital Thermal Station at Dadri and Gas stations at Anta, Suraiya and Dadri amongst the bulk power customers shall be made in accordance with the decisions of the Government of India Ministry of Power from time to time.

22. With regard to the prerogative of the MOP, GOI, to allocate power from the Central Generating Stations to the different States, the Commission, in its order dated 31.3.2017 in Petition No.182/MP/2015 (TPDCL v NTPC & ors) had taken note of the submissions of the MOP vide its reply affidavit as under:

"16. Ministry of Power has submitted its reply on merits in its affidavit dated 8.1.2016. The Ministry has stated that allocation of power from the Central Sector Generating Stations, which have been set up considering the long-term PPAs entered into by the procurers, is made at the instance of the State Governments/Procurers. According to the Ministry, the procurers are not entitled to unilaterally terminate the PPAs, except in accordance with the provisions thereof. The Ministry has pointed out that the purported cancellation or termination of the PPAs by the Petitioner on unilateral basis was not contemplated at the time of allocation of power by the Central Government. The cancellation or termination of the PPAs executed based on allocation of power made by the Central Government seriously affects the scheme of investment in the infrastructure such as power generation by Central Public Sector Units (CPSUs). The Ministry has pointed out that investments made by the CPSUs are to be serviced and that when a procurer decides to unilaterally terminate the PPAs, the CPSUs are seriously prejudiced. According to the Ministry, the Petitioner as the procurer has a right to the allocated capacity under the PPAs at all times and correspondingly, has the obligation to pay the fixed charges for the power allocated even in case of non-scheduling of power of its own volition.

17. The Ministry has urged that the claim of the Petitioner to seek enforcement of the termination of PPAs entered into on long-term basis on the ground that the power supplied from the generating stations is costlier ought not to be entertained. However, the Ministry has added that determination of tariff and terms and conditions, including the issue of delay in the completion of the projects, consequential effect on IDC etc. to be allowed are matters entirely within the domain and jurisdiction of this Commission under the Electricity Act.

18. Explaining the process of reallocation of power, the Ministry has stated that the Central Power Sector Units can approach it for reallocation to any other procurer in case the procurer to whom power has been allocated decides to surrender it at any time during the operation of the long-term PPA. It has been explained that release of the procurer from its obligations under the PPA would be subject to the Ministry being able to reallocate the power, fully or partially, to any other person and would be limited to the period for which reallocation fructifies. The Ministry has argued that the procurer who has surrendered power continues to be bound by the obligations incurred under the PPA till such time and to the extent other procurer undertakes to honour the obligations of the procurer surrendering power.”

23. Also, APTEL, in its judgement dated 8.2.2022 in Appeal Nos. 239 & 240/2021 also recognized that the allocation/reallocation/deallocation is the prerogative of the Central Government *inter-alia* holding as under”

“37. To our mind, it is clear that there was no dispute on whether the allocation or de-allocation of power from the Central Generating Stations (CGS) is vested upon the Central Government. All agreed that the power of allocation or de-allocation is vested with the Central Government but such power doesn’t provide any delegation of power to the Central Government for extension of the life of Generating Station through an order for allocation, re-allocation or de-allocation of power and in case the useful life of a generating station is completed, further, extension of life can be extended by the Central Commission for CGS...”

24. It is pertinent to mention that the original allocation was made by the Central Government on 5.7.1991, pursuant to which the BPSA/PPA was executed by the parties. The allocation made by the MOP, GOI does not restrict the liability of the parties till the 25th year from the COD of the generating station. Also, the relationship between a generating company and the distribution licensee is co-extensive with the allocation of power by the MOP, and such allocation is not dependent on the COD of the generating station or any other parameter except the request of the State to reallocate the existing allocation. To us, the continued obligation between the parties arises from the MOP allocation, pursuant to which the PPA has been entered in to by the parties, read with the applicable tariff regulations notified by the Commission. Thus, irrespective of the validity of the PPA, NDMC continued to get power so long as

the MOP allocation to NDMC subsisted. The phrase 'get power' in this backdrop means the allocation of power by MOP, by virtue of which NDMC, even in the absence of any extended/renewed BPSA/PPA, continued to get power till its de-allocation. The non-consumption of power by NDMC from the Plant after 30.11.2020, in the backdrop of the subsisting MOP allocation, cannot be the basis to declare that the PPA ceased to exist after 30.11.2020. Also, this submission of NDMC, if accepted, would not only result in the generating station getting stranded, since the investments made by it are to be served through long-term periods agreed to by the parties, but would also set a wrong precedence. NDMC, therefore, is liable to pay the capacity charges for the period of allocation of power till its de-allocation/re-allocation.

25. Further, the contention of NDMC that since the executive action of the Central Government of allocation/re-allocation of power, cannot be in defiance of the statutory provisions of the Electricity Act, 2003 or the Tariff Regulations, the same is not binding on it, is not tenable. It is observed that the Tariff Regulations notified by the Commission, since the very inception from the period 2004-19, have given a statutory recognition to the MOP allocation/re-allocation of the share of power from the Central Generating Stations, including the payment of full fixed charges by the beneficiaries, in terms of the said allocation/re-allocation. In this regard, the provisions of the 2019 Tariff Regulations notified by the Commission for the period from 2019-24 are extracted below:

Regulation 42 (Payment of Capacity Charges) and Regulation 55 (Billing and Payment) of the 2019 Tariff Regulations provide as under:

42. Computation and Payment of Capacity Charge for Thermal Generating Stations:

(1) The fixed cost of a thermal generating station shall be computed on annual basis based on the norms specified under these regulations and recovered on monthly basis under capacity charge. Payment of the capacity charge for a thermal generating station shall be shared by the beneficiaries of the generating station as per their percentage shares for the month (inclusive of any allocation out of the unallocated capacity) in the installed capacity of the generating station...

xxx

55. Billing and Payment of charges:

(2) Payment of the capacity charge for a thermal generating station shall be shared by the beneficiaries of the generating station as per their percentage shares for the month (inclusive of any allocation out of the unallocated capacity) in the installed capacity of the generating station.....

xxx

Note 1

Shares or allocations of each beneficiary in the total capacity of Central sector generating stations shall be as determined by the Central Government, inclusive of any allocation made out of the unallocated capacity. The shares shall be applied in percentages of installed capacity and shall normally remain constant during a month. Based on the decision of the Central Government, the changes in allocation shall be communicated by the Member-Secretary, Regional Power Committee in advance, at least three days prior to beginning of a calendar month, except in case of an emergency calling for an urgent change in allocations out of unallocated capacity. The total capacity share of a beneficiary would be sum of its capacity share plus allocation out of the unallocated portion. In the absence of any specific allocation of unallocated power by the Central Government, the unallocated power shall be added to the allocated shares in the same proportion as the allocated shares.

Note 2

The beneficiaries may propose surrendering part of their allocated firm share to other States within or outside the region. In such cases, depending upon the technical feasibility of power transfer and specific agreements reached by the generating company with other States within or outside the region for such transfers, **the shares of the beneficiaries may be re-allocated by the Central Government** for a specific period (in complete months) from the beginning of a calendar month. **When such reallocations are made, the beneficiaries who surrender the share shall not be liable to pay capacity charges for the surrendered share.** The capacity charges for the capacity surrendered and reallocated as above shall be paid by the State(s) to whom the surrendered capacity is allocated. **Except for the period of reallocation of capacity as above, the beneficiaries of the generating station shall continue to pay the full capacity charges as per allocated capacity shares...**

26. Note 2 to Regulation 55, as quoted above, is squarely applicable in the present case. Similar provisions have been notified under Regulations 30 and 42 of the 2014 Tariff Regulations, Regulations 21 and 32 of the 2009 Tariff Regulations, and Regulation 30 of the 2004 Tariff Regulations. Accordingly, the parties are bound by the terms of the PPA read with the provisions of the Tariff Regulations, so long as the Central Government allocation subsists. In other words, the obligation of NDMC stands foreclosed only if the MOP reallocates/de-allocates the power from the Dadri-I plant of NTPC to any other procurer, as per the above provisions of the Tariff Regulations. The claim of NTPC for the fixed charges is, therefore, in line with the statutory provisions of the Tariff Regulations.

27. NDMC has submitted that since there has been no arrangement agreed upon by the parties after the completion of 25 years of operation, in terms of the mandate of Regulation 17 of the 2019 Tariff Regulations, the PPA expired on 1.12.2020. We note that the Ministry of Power, Government of India, vide its guidelines dated 22.3.2021, has enabled the distribution companies to either continue or exit from PPAs after completion of the term of PPA, i.e., beyond 25 years or the period specified in PPA and to allow flexibility to the generators to sell power in any mode after the State/distribution companies exit from PPA. Admittedly, the aforesaid guidelines have not been followed by NDMC. It is, however, noticed that DERC, vide its letter dated 16.3.2021, requested the MOP, GOI to de-allocate the full quantum of Delhi share of the Dadri-I plant of NTPC. In terms of this, the MOP, GOI, has re-allocated the said quantum of power of NDMC to the State of Gujarat on 25.3.2022. Thus, the PPA stands foreclosed with effect from 25.3.2022. Accordingly, NDMC is liable to pay the fixed charges to NTPC for the period from 1.12.2020 to 25.3.2022 in terms of the applicable Tariff Regulations.

Issue B: Relief(s) to be granted

28. We have, in this order, decided that there is no cessation of the PPA dated 6.5.2008 on the expiry of the useful life of 25 years from the COD of the Dadri Plant (i.e, 30.11.2020), as power continued to remain allocated to NDMC, even after 30.11.2020, till the same was re-allocated by MOP to the State of Gujarat, with effect from 25.3.2022. In this background, the reliefs(s) sought by NDMC (as in para 1 above) stand rejected. NTPC is, therefore, entitled to the payment of fixed charges for the period from 1.12.2020 to 25.3.2022 as per the invoices raised by it on NDMC, along with the Late Payment Surcharge (LPS) in terms of the LPSC Rules 2022, as amended from time to time. We direct accordingly.

29. NDMC, in its petition, submitted that the invoices in respect of the Dadri-I plant have been raised on it by NTPC amounting to Rs 1146194732/- for the period 1.12.2020 to 30.4.2023. NTPC, in its reply, submitted that it had raised invoices for payment of fixed charges by NDMC for the period from 1.12.2020 till 30.11.2023, including LPS. Be that as it may, NDMC shall make the payment of fixed charges for the period from 1.12.2020 till 25.3.2022, along with LPS, to NTPC within **three** months from the date of this order. We note that APTEL, in its order dated 9.7.2024 in Appeal No.234/2024 (as quoted in para 5 above), directed NTPC (appellant therein) not to take coercive steps for the recovery of the amounts in terms of the invoices raised on NDMC, till a final decision is taken by the Commission, in this petition. Needless to say, in case of any non-payment of the amount by NDMC as directed above, NTPC is at liberty to proceed against NDMC in accordance with law.

30. It is pertinent to mention that the tariff of the generating station for the period 2019-24 was approved vide Commission's order dated 14.4.2024 in Petition No. 439/GT/2020, and the same is subject to the truing-up exercise, in terms of the 2019 Tariff Regulations, for which a petition has been filed by NTPC before this Commission and is pending consideration. We, therefore, make it clear that the payments to be made by NDMC to NTPC with LPS, in terms of our directions above, will be subject to revision/adjustment based on the final outcome of the truing up tariff petition filed by NTPC. We order accordingly.

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

Sd/-
(Harish Dudani)
Member

Sd/-
(Ramesh Babu V.)
Member

Sd/-
(Jishnu Barua)
Chairperson