

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Review Petition No. 246/2010**

**in**

**Petition No.128/2010**

**Coram: Dr. Pramod Deo, Chairperson  
Shri S.Jayaraman, Member  
Shri V.S.Verma, Member  
Shri M.Deena Dayalan, Member**

**Date of Hearing: 7.12.2010**

**Date of Order: 24-1-2011**

**In the matter of:**

Review of the order of the Commission dated 2.8.2010 in Petition No.128/2010 pertaining to the approval of unit configuration change and consequential amendments to the Power Purchase Agreements (PPAs).

**AND**

**In the matter of:**

1. Andhra Pradesh Central Power Distribution Company Ltd, Hyderabad
2. Andhra Pradesh Southern Power Distribution Company Ltd, Tirupati
3. Andhra Pradesh Eastern Power Distribution Company Ltd, Vishakapatnam
4. Andhra Pradesh Northern Power Distribution Company Ltd, Warangal

**....Petitioners**

**Vs**

M/s Coastal Andhra Power Ltd.(CAPL), Mumbai

**....Respondent**

Bangalore Electric Supply Company Ltd, (BESCOM),  
Gulbarga Electric Supply Company Ltd, (GESCOM),  
Hubli Electric Supply Company Ltd, (HESCOM),  
Mangalore Electric Supply Company Ltd, (MESCOM),  
Chamundeshwari Electric Supply Company Ltd, (CESCO),  
Maharashtra State Electricity Distribution Company Ltd,  
Tamil Nadu Electricity Board, Chennai

**....Proforma Respondents**

**The following were present:**

1. Shri N. V. V. S. Chandrashekhar, APCPDCL
2. Shri Amit Kapur, Advocate, CAPL
3. Shri N. K. Deo, CAPL
4. Shri Abhimanyu Das, CAPL
5. Shri Anupam Verma, CAPL



## ORDER

This application has been filed under Section 94(f) of the Electricity Act, 2003 read with Regulation 103 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 by Andhra Pradesh Central Power Distribution Company Ltd and other three distribution companies of Andhra Pradesh (hereinafter referred to as “the Petitioners”) for and on behalf of all procurers which include the pro-forma respondents seeking review of order dated 2.8.2010 in Petition No. 128/2010.

2. Petition No.128/2010 was filed by M/s CAPL, the Respondent herein, for approval of the change in unit configuration in respect of the Krishnapatnam Ultra Mega Power Project (hereinafter referred to as the “project”) from 5 units of 800 MW each to 6 units of 660 MW each and for in-principle approval to the Supplemental Power Purchase Agreement to be entered into by the Respondent with the procurers of power from the project. The Commission by its order dated 2.8.2010 disposed of the petition with the following observations:

*“29. In the light of the conclusion reached in the para 25 above that the change in the unit configuration would not have affected the bid evaluation process and the selection of the petitioner as a successful bidder, we are inclined to approve the the proposed change in the unit configuration from 5x800 MW to 6x660 MW in respect of the project.*

*30. However, on the issue of raising the normative availability from 80% to 81.67% we are of the view that this would tantamount to interfering with the bid conditions and evaluation criteria in the RfP and therefore, we do not approve of the same. Similarly, corresponding increase in availability levels from 85% to 86.67% for the purpose of incentive and from 75% to 76.67% for the purpose of penalties would also constitute a change in bidding conditions and hence we are not inclined to accept the proposed change in this regard.*

*31. With regard to the concern of the procurers for ensuring energy neutrality, we do not expect that the Petitioner shall restrict its availability declaration to 80% merely because normative availability is specified as 80% and in all probability would declare availability in excess of 85% to earn incentive. Moreover, the procurers have the first right of refusal to the energy generated beyond the normative availability. Thus the concern of the procurers gets addressed.*



32 to 38.....

39. Accordingly, we accord our approval to the proposed change in the unit configuration of the project and direct the petitioner to enter into written agreement with the procurers in line with our directions and observations contained in this order as per the provisions of Article 18.1 of the PPA and submit the signed copy of the supplementary PPA along with the modified Format-3 of Annexure-6 of RFP, within one (1) month from the date of this order.

40. Further for the sake of transparency, the petitioner shall post the details of the change in the unit configuration of the project along with supplementary PPA and the modified Format-3 of Annexure-6 of RFP on its website for at least thirty days.”

3. Aggrieved by the above directions, the petitioners have sought review of the said order for the following reasons:

- (i) The Commission in the order has not fully addressed the issue of energy neutrality equivalent to the unit configuration of 5 x 800 MW as assured by M/s CAPL by letter dated 21.1.2009. With regard to the concern of the procurers to ensure energy neutrality, the Commission in para 31 of the order dated 2.8.2010 has observed as under:

*“With regard to the concern of the procurers for ensuring energy neutrality, we do not expect that it did not expect that “CAPL shall restrict its **availability declaration** to 80% merely because normative availability is specified as 80% and in all probability would declare availability in excess of 85% to earn incentives.”*

Considering that the imported coal prices are on the rise, there is a genuine risk of M/s CAPL not declaring availability greater than 80%, as the cost for which they would be compensated beyond 80% availability may not cover imported coal prices which are non-escalable as per the Power Purchase Agreement (PPA).

- (ii) The Commission in its order dated 2.8.2010 did not address the issue that there was no mechanism to ensure compliance in case the



assurance given by M/s CAPL on maintaining energy neutrality 3800 MW during the peak hours (i.e. upto 5 hours per unit in a day with the normative availability) in compliance with IEGC, ABT, UI regulations is not adhered to.

4. The Petitioners have also submitted that M/s CAPL while submitting petition No.128/2010 filed copy of the proposed Supplemental Power Purchase Agreement *inter alia* containing the contractual obligations providing energy equal to earlier contracted capacity so as to claim quoted capacity charges in full. But the draft Supplemental Power Purchase Agreement submitted by the Respondent to the Commission on 18.6.2010 did not contain any such contractual obligation as the order dated 2.8.2010 did not cast such obligations on M/s CAPL to claim the full quoted fixed charges. The petitioner has prayed before the Commission to admit the review petition and pass orders directing the respondent to incorporate contractual stipulation providing minimum availability declaration of 81.67% besides the normative availability by delivering energy of 26630 MUs per year to enable M/s CAPL to claim full capacity charges.

5. During the hearing on 19.10.2010, both the parties sought time to settle all outstanding issues through mutual discussion. The Petitioners also brought to the notice of the Commission that the Respondent by its letter to the Commission has prayed for extension of time for compliance of the directions contained in the Commission's order dated 2.8.2010 on the ground that the concerns of the petitioners are to be addressed. Based on the above submissions, the Commission directed the parties to explore the possibilities of settlement of all outstanding issues and to report compliance by 30.11.2010. The matter was directed to be listed for hearing on 7.12.2010.

6. The Petitioners in their affidavit dated 4.12.2010 have submitted that both parties have agreed and settled the issue raised in the review petition and thereupon, have executed the Amendment Agreement to the PPA in compliance with the order of the Commission dated 2.8.2010. The Petitioners have also placed on record a copy of the Amendment Agreement to the PPA duly executed by the parties. During the hearing on 7.12.2010, the representatives of the Petitioners and the Respondent submitted that all outstanding issues have been settled and the Amendment Agreement to the PPA have been signed between the parties and accordingly, the Commission may pass appropriate orders in the case.

7. After filing of the review petition, the Petitioners and Respondent had sought time to explore the possibility of settling outstanding issues through mutual negotiation. The parties have now reached a mutual settlement and accordingly, executed the Amendment Agreement to the PPA and sought appropriate orders in the case.

**Compliance of our directions in order dated 2.8.2010**

8. In our order dated 2.8.2010 in Petition No.128/2010, we had directed in para 39 as under:

*“Accordingly, we accord our approval to the proposed change in the unit configuration of the project and direct the petitioner to enter into written agreement with the procurers in line with our directions and observations contained in this order as per provisions of para 18.1 of the PPA and submit the signed copy of the supplementary PPA and the modified Format-3 of Annexure-6 of RFP, within 1(one) month from the date of this order.”*

The respondent had sought time for submission of the signed copy of the Amendment Agreement to the PPA which was granted by the Commission vide order dated 11.11.2010 in MA No. 31 of 2010. The Respondent has submitted



the signed copy of the Amendment Agreement to the PPA vide its letter dated 30.11.2010. Both the parties have submitted that the Amendment Agreement to PPA has been carried out in compliance with our directions in order dated 2.8.2010.

9. We have perused the Amendment Agreement to the PPA placed on record. We notice that our directions in the order dated 2.8.2010 has been incorporated in the Amendment Agreement to the PPA. However, a new concept, namely, “Normative Availability for Payment Purpose” has been introduced in the definition and Article 1.1.iv of Schedule 7 of the PPA has been modified as under:

*“The full capacity charges shall be payable based on the Contracted Capacity at Normative Availability for Payment Purpose and Incentive shall be provided for availability beyond eighty five percent (85%) as provided in this Schedule shall be given. In case of Availability being lower than the Normative Availability, the Capacity Charges shall be payable on proportionate basis in addition to the penalty to be paid by Seller as provided in this Schedule”.*

10. It is observed that the parties have maintained the Normative Availability at 80% availability for incentive at eighty-five per cent and for penalties at 75%. However, an additional obligation has been cast on M/s CAPL to claim full capacity charges based on the contracted capacity at Normative Availability for Payment Purposes which has been fixed at 81.67%. This has apparently been done in order to take care of the concern of the procurers with regard to ensuring energy neutrality of delivering 26630 MU during any given year. The Commission in para 31 of the order dated 2.8.2010 had observed that M/s CAPL would generate beyond 85% in order to claim incentive and that way the concern of the procurers for energy neutrality would be taken care of. The parties have agreed to an additional condition of normative availability for payment purposes

for claiming fixed charges without affecting the normative availability, availability for incentives and penalties as given in the RFP documents. The Commission does not have any objection to this additional condition in the PPA which does not affect the bid conditions. In terms of para 40 of our order dated 2.8.2010, we direct the Respondent to post the Amendment Agreement on its website for a period of 30 days, for information of all concerned.

11. The seller and the procurers shall remain bound by the terms and conditions of the PPA including the Amendment Agreement.

12. The Review Petition is disposed of in terms of the above directions.

Sd/-

**[M.DEENA DAYALAN]**  
**MEMBER**

Sd/-

**[V.S.VERMA]**  
**MEMBER**

Sd/-

**[S.JAYARAMAN]**  
**MEMBER**

Sd/-

**[Dr. PRAMOD DEO]**  
**CHAIRPERSON**