

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 160/MP/2013**

**Coram:**

**Shri Gireesh B.Pradhan, Chairperson**

**Shri M. Deena Dayalan, Member**

**Shri A.K.Singhal, Member**

**Date of Hearing: 26.11.2013**

**Date of order: 26 .12.2013**

**In the matter of**

Petition under section 62,79 (1) (a) (b) and (f) and other applicable provisions of the Electricity Act, 2003 read with the Indian Electricity Grid Code notified by Central Commission in scheduling and dispatch of electricity from the Indira Gandhi Super Thermal Power Project (STPP) of the petitioner at Jhajjar.

**And**

**In the matter of**

Aravali Power Company (P) Limited  
NTPC Bhawan, Core-7,  
SCOPE Complex, 7 Institutional Area,  
Lodhi Road, New Delhi-110 003

**....Petitioner**

**Vs**

1. BSES Yamuna Power Limited  
Shakti Kiran Building, Karkardooma,  
Delhi-110 092.
2. BSES Rajdhani Power Limited  
BSES Bhawan, Nehru Place,  
New Delhi-110 019
3. Power System Operation Company Ltd (POSOCO)  
Through Northern Regional Load Despatch Centre  
B-9, Qutab Institutional Area,  
Katwaria Sarai, New Delhi-110 016
4. Delhi Transco Limited  
Shakti Sadan, Kotla Marg,  
New Delhi-110002

**..Respondents**



**The following were present:**

1. Shri M.G.Ramachandran, Advocate for the petitioner
2. Shri Anil Nautiual, APCPL
3. Shri H.K.Chawala, APCPL
4. Shri V.K.Padha, APCPL
5. Shri Sadashivan, APCPL
6. Shri Aashish Gupta, Advocate, BYPL and BRPL
7. Shri Dushyant Manocha, Advocate, BYPL and BRPL
8. Shri Salmon Chaudhari, Advocate, BYPL and BRPL
9. Shri Ajit, Advocate, BYPL and BRPL
10. Shri Sunil Barnwal, BRPL
11. Shri Aditya Payasi, BYPL
12. Shri Abhishek Srivastava, BYPL
13. Shri Alok Shankar, Advocate, TPDDL
14. Shri Kumar Mihir, Advocate
15. Shri Avnesh Menon, Advocate
16. Shri Darshan Singh, DTL
17. Shri Mukhopadhyaya, NRLDC
18. Ms. Jyoti Prasad, NLDC
19. Ms. Supriya Singh, NRLDC

**ORDER**

The petitioner, Aravali Power Company (P) Limited has filed the present petition seeking direction to Respondent Nos. 1 & 2, namely, BSES Yamuna Power Limited (BYPL) and BSES Rajdhani Power Limited (BRPL) to pay the outstanding dues with delayed payment surcharge. The petitioner has made the following prayers to:

"(a) Entertain the present petition and adjudicate the disputes raised by the respondents 1 and 2 in regard to their liability to pay to the Petitioner the total tariff, namely, the capacity charges and energy charges for the power injected by the Petitioner into the Grid as per the instructions from NRLDC as well as the fixed charges for the quantum of electricity declared available by the Petitioner but not scheduled by NRLDC.

(b) Declare that the Respondents 1 and 2 shall be liable to pay the total tariff in respect of the power decaled available by the Petitioner for which NRLDC issues and dispatch instructions notwithstanding that the Respondents 1 and 2 have expressed their desire not to avail the said quantum from the generating station of the Petitioner;

(c) Declare that the Petitioner shall be entitled to fixed charges in respect of the quantum of power declared available by the Petitioner but not scheduled by NRLDC;

(d) Direct the Respondents 1 and 2 to pay the amount outstanding to the Petitioner as per the above with delayed payment surcharge immediately to sustain the operation of the Jhajjr Station; and

(e) Pass such further order or orders as this Hon`ble Commission may deem just and proper in the circumstances of the case."

2. The petitioner is joint venture company of NTPC Ltd., Haryana Power Generation Company Limited (HPGCL) and Indraprastha Power Generation Company Limited (IPGCL) with a share holding of 50%, 25% and 25% respectively. The petitioner has set up a power station namely, India Gandhi Super Thermal Power Project (IGSTPP) with capacity of 1500 MW (3X500 MW) in the district Jhajjar in the State of Haryana. The three units of the generating station have been declared under commercial operation on 5.3.2011, 21.4.2012 and 26.4.2013 respectively. Out of 1500 MW, Delhi has been allocated 693 MW. In accordance with the order of the Delhi Electricity Regulatory Commission dated 31.3.2007, power from the generating station has been reallocated among BRPL, BYPL and NDPL.

3. The petitioner has submitted that it has been supplying power to all the beneficiaries including BRPL and BYPL as per the allocation by the Central Government. The petitioner has submitted that the terms and conditions of supply of power to Respondents No. 1 and 2 are laid down in the Power Purchase Agreement (PPA) dated 5.8.2008 between the petitioner and Respondents No 1 and 2. As per the PPA, Respondent Nos.1 and 2 are bound to make regular payment of capacity charge and energy charges and surcharge to the petitioner and to maintain Letter of Credit.

4. The petitioner has submitted that since September 2011, Respondent Nos. 1 & 2 are irregular in making payment of capacity charge and energy charge. The petitioner has submitted that as on 21.8.2013, ₹104.02 crore and ₹195.02 crore were outstanding against BYPL and BRPL, respectively. BYPL and BRPL are raising the dispute on the ground that they have expressed their unwillingness to take the power from the generating station. The petitioner has submitted that it is entitled to recover the fixed and variable charges in respect of the power generated and injected in the system as per the Scheduling and Despatch instructions of NRLDC in regard to the quantum of power supplied and allocated by the Government of National Capital Territory of Delhi to BYPL and BRPL. The petitioner has submitted that there is significant cash outflow to the petitioner every month by which the operation of the generating station is being affected by not making the payment of the amount becoming due.

5. During the hearing of the petition on 19.11.2013, NRLDC raised the issue that since power is scheduled to Delhi Transco Ltd from the generating station, it would be appropriate to implead Delhi Transco Ltd. as a party to the petition. After considering the prayer of NRLDC, we had directed NRLDC to implead Delhi Transco Ltd. as a party to the petition and Delhi Transco Ltd. was directed to file its reply. The Respondents BYPL and BRPL were also directed to file their replies.

6. BYPL, BRPL and Delhi Transco Ltd. have filed their replies. NRLDC has also filed its reply to the petition. The petitioner has filed its rejoinder.

7. The respondents BRPL and BYPL in their joint reply dated 25.11.2013 have submitted that at the time of signing of PPA, the parties had an understanding that the project would be a cost effective one and being a project in which Delhi was one of the dedicated beneficiaries, the power from the project would be cheap power available to the respondents for a period of 25 years. However, the power from the project over a short period of time became one of the most expensive sources of long term power in the power portfolio of the respondents. It has been submitted that the petitioner, despite repeated requests from the respondents had failed to put in place a fuel supply agreement to ensure quality tied up reliable fuel for the purpose of the plant, which would have significantly contributed towards reduction in the cost of power. The respondents have further submitted that they have requested the petitioner and other concerned authorities not to allocate power from the generating station as the same is extremely expensive, and despite such request, the petitioner continued to supply power to the respondents. The respondents have further submitted that they are not in a position to procure power from the generating station and re-institute the Letter of Credit, in view of the precarious financial position of the respondents. The respondents have prayed to issue appropriate directions after taking into consideration the submissions made in the reply.

8. Northern Regional Load Despatch Centre (NRLDC) in its reply dated 30.9.2013 has submitted that the dispute raised in the petition pertains to non-payment of dues by the respondents, and not to the scheduling done by NRLDC. As regards, the non-payment of dues, NRLDC has submitted that on the request of the petitioner, it had drawn a schedule for power supply and implemented it with effect from 29.10.2011.

However, the petitioner during the regulation of power supply did not identify the alternate buyers for the regulated quantum. NRLDC has requested that the petitioner be directed to invoke the regulation of power supply on defaulting utilities with sale of regulated power through available market mechanism.

9. Delhi Transco Ltd in its reply dated 26.11.2013 has submitted that Govt. of Delhi vide its letter dated 31.10.2012 and 16.7.2013 has already requested the Central Govt. for reallocation of the entire allocation of power to Delhi from the project to the needy States. However, so far 25.13% of the capacity of IGSTPS could not be reallocated due to the lack of requirement from other States. DTL has submitted that the power from the generating station should be generate as per the requirement of Delhi`s Discoms and in case technical requirement is not met, the unit should be closed down to reduce the tariff impact on consumers of Delhi. DTL has further submitted that the petitioner is entitled for the recovery of fixed charges as per the allocation. However, the variable charges are payable for the scheduled generation strictly based on the requirement of the beneficiaries, particularly for such costly generation. DTL has further submitted that Delhi consumers should not be made to bear the high cost of power from the generating station for providing 'Must Run' status.

10. During the course of hearing on 26.11.2013, the representative of the petitioner submitted that the project was developed to meet the power requirement of Delhi and Haryana and as per the PPA, the respondents are obligated and liable to pray for the contracted capacities in accordance with CERC tariff orders. The respondents are liable to discharge their liabilities for capacity charge and energy charges/variable

charges corresponding to the scheduled energy as per NRPC's Regional Energy Accounts. The petitioner is raising the bills in strict compliance with REAs issued by NRPC from time to time as per the provisions of the Grid Code. The respondents have been from time to time scheduling power from IGSTPS even after surrendering their capacity share. The representative of the petitioner further submitted that IGSTPS has been assigned the role of supporting and rescuing the Delhi islanding scheme by continuing supply of 750 MW (commercial) capacity exclusively to Delhi in case of a grid disturbance. This 750 MW of load could be supported in case of any disturbance, only if two or more of 500 MW units of IGSTPS are on bus-bar. If Jhajjar is not on bus-bar, the Delhi island will be jeopardized. He further submitted that the outstanding dues to the petitioner from the respondents have accumulated to ₹462 crore, as on 20.11.2013, which includes about (i) ₹ 298 crore liability of Capacity Charge, (ii) ₹121 crore towards the Variable Charge dues and (iii) ₹41.5 crore on account of Late Payment Surcharge payable as per applicable Regulations. The representative of the petitioner requested to issue necessary directions to the respondents to immediately release the outstanding dues of ₹462 crore, to sustain the operations of the generating station.

11. We have perused the petition and have heard the learned counsel for the petitioner, BYPL and BRPL, and the representatives of the petitioner, NRLDC and DTL. The respondents have submitted that they have surrendered the power from the generating station as the DERC has not allowed them to go for procurement of expensive power. They have also disputed the claim of the petitioner regarding scheduling of technical minimum and the requirement to schedule the power from the generating station to support the Delhi Islanding scheme for supply of 750 MW load in

case of grid disturbance. Even Delhi Transco Limited has submitted that these are other sources of cheaper power which can be scheduled to support the islanding scheme in place of the expensive power for the generating station. However, it has been confirmed by DTL and the respondents during the hearing that the power scheduled from the generating station has in fact been consumed by the respondents. In our view, the claims and counter claims regarding scheduling and actual consumption of power, necessity of including the generation station in the Delhi islanding scheme, the grievances of the respondents regarding the lack of long term fuel supply to the generation station etc., need to be examined in detail after hearing the parties on merit.

12. The power from the generating station has been allocated to the beneficiaries including the respondents by Ministry of Power, Govt. of India. The tariff of the generating station is being determined by the Commission as the generating station has a composite scheme for generation and sale of electricity in more than one State. As regards the payment of charges, Note 2 under Regulation 32 of the CERC (Terms and Conditions of Tariff) Regulations, 2009 provides as under:

"Note 2

The beneficiaries may propose surrendering part of their allocated firm share to other States within/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 / outside the region for such transfers, the shares of the beneficiaries may be prospectively re-allocated by the Central Government for a specific period (in complete months) from the beginning of a calendar month. When such re-allocations 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.** Any such reallocation and its reversion shall be communicated to all concerned by the Member Secretary, Regional Power



Committee in advance, at least three days prior to such reallocation or reversion taking effect.”

From the above, it emerges that except for the period of reallocation of capacity by the Central Govt., the beneficiaries of the generating station shall continue to pay the full capacity charges as per the allocated shares. Further, para 6.5.7 of the PPA provides as under:

"6.5.7. However, BYPL shall continue to be liable to pay the Capacity Charges in proportion to its allocation during the period of regulation/diversion of power or till the power is reallocated to other Bulk Power Customer(s)."

13. In view of the clear cut statutory and contractual provisions for payment of capacity charges, we are of the view that BRPL and BYPL are liable to pay the capacity charges, even in cases where they choose not to schedule the power. Therefore, a clear case has been made out by the petitioner for grant of interim relief for payment of capacity charges. Accordingly, pending adjudication of the dispute between the parties as raised in the petition, we direct BYPL and BRPL to pay the outstanding capacity charges within a period of 15 days from the date of issue of this order. BYPL and BRPL should also continue to pay the current capacity charges as per the capacity allocated to them.

14. The petition shall be listed for hearing on merit on 13.03.2014.

**Sd/-**  
**(A.K.Singhal)**  
**Member**

**Sd/-**  
**(M. Deena Dayalan)**  
**Member**

**Sd/-**  
**(Gireesh B. Pradhan)**  
**Chairperson**

