

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 223/MP/2015

Subject : Adjudication of dispute between the parties involving the termination of PPAs due to high average power purchase cost of NPTC, NHPC and THDC plants, seeking surrender of power allocation from the stations and requesting issuance of statutory advise to Ministry of Power recommending surrender, reallocation of the petitioner's share from these PPAs in the interest of consumers of petitioner's licensed area of supply in NCT of Delhi

Petition No. 182/MP/2015

Subject : Dispute between TPPDL and NTPC Ltd in relation to failure of NTPC to get power reallocated from generating stations which have been delayed for several years and generating stations which have outlived their useful life and are operating at high cost

Petitioner : Tata Power Delhi Distribution Limited

Respondents : NTPC Limited & others

Petition No. 301/MP/2015

Subject : Adjudication of disputes and seeking analogous reliefs under Section 79 (1) (a), Section 79 (1)(f) of the Electricity Act, 2003 and the CERC (Regulation of Power Supply) Regulations, 2010.

Petitioner : BSES Yamuna Power Limited

Respondents : NTPC Limited & 2 others

Petition No. 302/MP/2015

Petitioner : BSES Rajdhani Power Limited

Respondents : NTPC Limited & 2 others

Date of Hearing : **1.2.2016**

Coram : Shri Gireesh B. Pradhan, Chairperson
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member
Dr. M.K. Iyer, Member

Parties present : Shri Gopal Jain, Sr. Advocate, TPDDL
Shri Alok Shankar Advocate, TPDDL
Shri Sumit Sachdev, TPDDL
Ms. Shimpy Mishra, TPDDL
Shri Sarosh Majid Siddiqui, TPDDL
Shri Anurag Bansal, TPDDL
Shri Buddy Ranganathan, Advocate, BRPL & BYPL



Shri Arijit Mitra, Advocate, BRPL & BYPL
Shri Hasan Murtaza, Advocate, BRPL & BYPL
Ms. Malavika Prasad, Advocate, BRPL & BYPL
Shri Haridas Maity, BYPL
Shri Nishant Grover, BYPL
Shri Abhishek Srivastava
Shri G. Swain
Ms. Ranjitha Ramachandran, Advocate, NTPC & THDC
Ms. Poorva Saigal, Advocate, NTPC & THDC
Shri Manoj Mathur, NTPC
Shri Prashant Chaturvedi, NTPC
Shri Shankar Saran, NTPC
Ms. Shubhalakshmi Gupta, NHPC
Shri Amit Gupta, PTC
Shri Gaurav Nand, Consumer Representative

Record of Proceedings

These petitions were taken up for hearing on the question of “maintainability”.

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2. The learned Senior counsel for the respondent TPDDL, circulated note for arguments on maintainability and mainly submitted as under:

(i) The liability to pay capacity charges by the petitioner in relation to the generating stations cannot arise after the direction to the contrary has been issued by the State Commission (DERC). The PPAs have been terminated or have been discharged by operation of law.

(ii) The expression ‘Power to regulate’ is of a wide import and cannot be given a restricted meaning. (*Judgments of the Hon’ble Supreme Court in PTC-v-CERC, BSNL-v-TRAI, U.P. Co-op Cane Unions Federations -v- West U.P. Sugar Mills Association was referred to*)

(iii) The functions of the Central Commission under Section 79 (1) (a) of the Electricity Act, 2003 (the Act) is not limited to the determination of tariff but *inter alia* include ‘regulation of tariff’ of the generating companies owned or controlled by the Central Government. Unlike the TRAI Act, 1997 and the Airport Economic Regulatory Authority Act, 2009 which use the expression ‘determination’ of tariff, the expression used in the Electricity Act is ‘regulation’ of tariff.

(iv) In terms of Section 79(1)(a) read with Section 79(1)(f) of the Act, disputes in relation of tariff includes issues such as terms and conditions of tariff payments, payment security, liability to pay capacity charges and are all subject to the jurisdiction of the Central Commission.

(v) The respondent NTPC has taken a consistent stand that all disputes in relation to the terms and conditions of tariff are outside the regulatory scope of the State Commission and the said stand of the respondent has been upheld by the Appellate Tribunal for Electricity. (*Order of DERC dated 27.12.2011 in Petition No.69/2011 & 71/2011 and Judgment of the Tribunal dated 4.9.2012 in Appeal No.94/2012 (BRPL-v-DERC) were referred to*). The respondent cannot now take a contrary stand before this Commission.

(vi) Section 79(2) (ii) and (iii) of the Act provides the mandate to the Central Commission to advise the Central Government on matters with respect to efficiency in the activities of electricity industry and promotion of investment in electricity industry. Therefore statutory advice may be considered to be given since all efforts made by the petitioner for re-allocation of power have not yielded any result and several representations made to Central Govt have remained unaddressed.



(vii) The rights and obligations of the generating company and the distribution licensees have to be adjudicated in the event of dispute between the parties and the jurisdiction in relation to Central generating stations vests exclusively with this Commission for adjudication of disputes.

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3. The learned counsel for BRPL & BYPL adopted the above submissions of the respondent TPDDL. He however made additional submissions in the matter mainly as under:

(i) PPA is a statutory contract which is subject to approval/disapproval by the Regulatory Commission. The cost of procurement of power from the generating stations of the respondent NTPC (Anta, Auraiya and Dadri) have been disallowed by DERC in its earlier PPAC order dated 12.6.2015, against which an appeal has been filed before the Tribunal. As future procurement from these stations is to be discontinued and the respondent has threatened action under the CERC (Regulation of Power Supply), Regulations, 2010 notwithstanding the order of DERC, there exists a dispute between the parties which may be adjudicated by this Commission.

(ii) Some of the projects of the respondent, NTPC (wherein PPAs have been assigned to the petitioner) are yet to achieve COD and has been delayed significantly. The non-commissioning of the projects within a reasonable time (in terms of Section 46 of the Indian Contract Act, 1872) of execution of the PPAs amounts to breach of the obligations of the respondent NTPC under the said PPAs.

(iii) The contention of the respondent, NTPC that the petitions are not maintainable before this Commission is contrary to the submissions of NTPC and the findings of the Appellate Tribunal for Electricity that all disputes in relation to terms and conditions of tariff of the respondent NTPC are outside the regulatory scope of DERC (*Judgment of the Tribunal dated 4.9.2012 in Appeal No.94/2012 (BRPL-v-DERC) was referred to*)

(iv) The Tribunal in some of its judgments have observed that in matters covered under Section 61 read with Section 79(1) of the Act, the Appropriate Commission have the power to issue necessary directions to the Central Government. Accordingly, this Commission may consider issuance of necessary directions to the Central Government for re-allocation of power.

4. On being pointed out by the Commission that Meja Urja Vidyut Power station does not pertain to the respondent, NTPC and that the said station was not a party to the proceedings, the learned counsel submitted that it may be permitted to implead them as party to the proceedings. The Commission accepted the prayer and directed the petitioner to serve them the copy of the petitions and file affidavit of service.

5. Shri Gaurav Nand, Consultant of some of the HT consumers of Delhi namely, M/s Shiva Alloys (P) Ltd, Avdhut Swami Metal Works and Asian Hotels (North) Ltd submitted that he may be permitted to make submissions as a Consumer representative based on the authorisation letters issued. These HT consumers are not parties to the proceedings before this Commission. As the said Consultant has been authorised to appear only on behalf of these HT consumers, the Commission permitted the Consultant to make his submissions during the next date of hearing.

6. Due to paucity of time hearing in the matter was adjourned. The learned proxy counsel for the respondent NTPC prayed that it may be permitted to make reply submissions in the matter during the next date of hearing. The Commission accepted the prayer and accordingly listed the matter for hearing on **8.2.2016 at 2.30 p.m.**

By Order of the Commission

Sd/-
(T. Rout)
Chief (Legal)

