

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.82/MP/2016

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri A.K. Singhal, Member

Shri A.S Bakshi, Member

Dr. M. K. Iyer, Member

Date of Order: 10th of November, 2016

In the matter of

Petition under Section 79 (1) (a) of the Electricity Act, 2003 read with the Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 for extension of Power Purchase Agreement dated 22.12.1995 with erstwhile Haryana State Electricity Board for 10 years beyond 31.12.2015.

And

In the matter of

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

....Petitioner

Vs

Haryana Power Purchase Centre
2nd Floor, Sakti Bhawan
Sector-6, Panchkula
Haryana

...Respondent

Parties Present:

Shri Sitesh Mukherjee, Advocate, NTPC

Shri A.K.Bisnoi, NTPC

Shri R.K.Sood, NTPC

Shri Ajay Dua, NTPC

Shri S.K.Jain, NTPC

Shri G. Umapathy, Advocate, HPPC

Ms. R. Mekhala, Advocate, HPPC

ORDER

The petitioner, NTPC Limited has filed the present petition seeking extension of PPA entered into with erstwhile Haryana State Electricity Board (now Haryana Power Purchase Centre) for a period of ten years beyond 31.12.2015.

Background of the Case:

2. The petitioner has set up a Faridabad Gas Power Station (431.586 MW) (generating station) comprising of two Gas Turbine (GT) units of 140.827 MW each and one Steam Turbine (ST) unit of 149.932 MW in the State of Haryana. On 22.12.1995, the petitioner entered into a Power Purchase Agreement (PPA) with erstwhile Haryana State Electricity Board (now Haryana Power Purchase Centre) for sale of power from the generating station for a period of 15 years from the date of commercial operation of the last unit provided that the PPA was mutually extended, renewed or replaced. As per the PPA, it continues to operate in case HSEB continues to avail power from the generating station. The generating station was declared under commercial operation with effect from 1.1.2001. The tariff of the generating station is being determined by the Commission as per the provisions of the Electricity Act, 2003 and Tariff Regulations issued by the Commission from time to time. The generating station has completed 15 years of life on 31.12.2015.

3. As per Regulation 3(42) of the Tariff Regulations, 2009, the "useful life" in relation to a unit of a gas/liquid fuel based thermal generating station was defined as 25 years from the date of commercial operation. The Commission while determining the tariff for the generating station, vide order 14.9.2012 in Petition No. 280/2009, dealt with the issue of extension of the life of the generating station by increasing the life from 15 years to 25 years. While dealing with the depreciation, the Commission proceeded on the basis that

the balance useful life as on 1.4.2009 is 15.99 years under 2009 Tariff Regulations instead of 5.99 years under 2004 Tariff Regulations. The Commission vide order dated 18.9.2015 in Petition Nos. 253/GT/2013 and 333/GT/2014 further reiterated that the balance useful life of the generating station as on 1.4.2009 is 15.99 years.

4. The petitioner vide its letter dated 25.3.2015 forwarded a copy of the draft Supplementary Agreement to HPPC and informed that PPA needs to be extended in view of the definition of "useful life" under the 2009 Tariff Regulations. Subsequently, the petitioner vide its letters dated 31.3.2015 and 2.7.2015 requested HPPC to expedite the approval of the draft Supplementary Agreement with the concerned authorities. HPPC vide its letter dated 31.1.2015 informed the petitioner that the extension of the PPA has not been approved by learned HERC and therefore, HPPC would neither consider the availability of nor the scheduling from the generating station after 1.1.2016. Subsequently, HERC, vide letter dated 29/31.12.2015 extended the PPA for a period of six months i.e 1.1.2016 to 30.6.2016. On 16.2.2016, the petitioner filed a petition before HERC seeking clarification and for direction on the extension of the PPA. HERC vide order dated 30.3.2016 dismissed the petition on the ground of maintainability.

5. Against the above background, the petitioner has filed the present petition with the following prayers:

"(a) Direct that the Power Purchase Agreement dated 22.12.1995 entered into between the parties shall be valid for a duration of 25 years from 1.1.2001, namely, till 31.2.2025 and respondent liable to pay tariffs per orders/Regulations of Hon'ble Commission issued from time to time;

(b) Pass such other and further order(s) and/or directions as this Hon'ble Commission may deem just, fit and proper in the fact and circumstances of the case and in the interest of justice."

6. HPPC in its reply dated 12.7.2016 has submitted that the petitioner vide its letter

dated 31.3.2015 sought extension of the PPA for a further period of 10 years. HPPC approached HERC under Section 86 (1) (b) of the Electricity Act, 2003 for extension of PPA for a further period of 10 years before executing the PPA. HPPC has submitted that HERC vide letter dated 31.12.2015 extended the PPA for a period of 6 months from 31.12.2015 to 30.6.2016 and vide its letter dated 30.6.2016 extended the PPA upto 31.12.2016.

7. During the hearing of the petition, it was brought to our notice that learned HERC has fixed a public hearing on 11.8.2016 for considering the request of HPPC and NTPC for extension of the life of the PPA upto 25 years. The petitioner vide its affidavit dated 24.10.2016 has submitted that learned HERC has extended the PPA upto 31.12.2025 in respect of Faridabad Gas Power Station vide order dated 5.10.2016. The petitioner has placed a copy of the learned HERC`s order dated 5.10.2016 on record.

8. On perusal of the said order, it is noted that learned HERC has approved the PPA upto 31.12.2025 as proposed by HPPC/NTPC. The excerpts of the said order are extracted as under:

“7. The Commission has examined comments/objections of the stakeholders/general public, petition submitted by NTPC and replies of HPPC thereon. The Commission observes that the PPA under consideration should have been expired on 31.12.2015 considering its initial envisaged life of 15 years, however, the Central Electricity Regulatory Commission amended the ‘Useful Life’ of the generating station to 25 years from 15 years vide its Terms and Conditions of Tariff Regulation, 2009 notified on 19.1.2009, in exercise of its powers under Section 178 read with Section 61 of the Electricity Act, 2003 and other applicable provisions. The Commission observes that a change in statute has necessitated the instant case. The change in useful life of plant from 15 years to 25 years has resulted to lower annual fixed cost and the benefit thereof has already accrued to the consumers of Haryana and can be reaped for the remaining life of the plant. The Commission further observes that the plant, if operated on APM Gas, in current scenario is fairly placed in merit order dispatch of HPPC. The Commission also recognizes the technical benefits that the plant offers in comparison to conventional coal based plant.

8. In view of the above, the Commission considers it appropriate to approve the PPA with Faridabad Gas Power Plant (NTPC) up to 31st December, 2025, as proposed by the

HPPC/NTPC subject to the following conditions:-

- a) Draft PPA for the above period shall be amended suitably as per the observations communicated by the Commission in the matter.
- b) HPPC/Discoms shall schedule power on APM Gas only.
- c) NTPC shall be free to sell, to a third party outside Haryana, any power that may be generated by NTPC using fuel other than APM Gas. To that extent, the fixed cost liability of HPPC shall be accordingly reduced. The condition 4.0 (Para 4) of the PPA shall be modified suitably.”

9. In view of the above development, the prayer of the petitioner has become infructuous. Accordingly, Petition No. 82/MP/2016 is disposed of.

Sd/-
(Dr. M. K. Iyer)
Member

sd/-
(A.S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson