

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**I.A. No 18/2016**  
**&**  
**IA No.19/2016**  
**In**  
**Petition No. 83/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 Hearing: 10.6.2016**  
**Date of Order : 10.6.2016**

**In the matter of**

In the matter of Petition under Section 79 of the Electricity Act, 2003 read with Article 17 of the Power Purchase Agreement dated 7.8.2007 between Sasan Power Limited and the M.P. Power Management Company Limited.

**I.A. No.18/2016**

**And**  
**In the matter of:**

Application on behalf of Punjab State Power Corporation Limited under Section 94 (2) of the Electricity Act, 2003 filed under Section 79 of the Act read with Article 17 PPA dated 7.8.2007 between Sasan Power Limited and various procurers including Punjab State Power Corporation Ltd.

**And**  
**In the matter of:**

Punjab State Power Corporation Ltd.  
Shed C-3, Shakti Vihar, Patiala,  
Punjab- 147001

.....**Applicant**

**Vs**



- 1) Sasan Power Limited  
1<sup>st</sup> Floor, H-Block, North Wing  
Dhirubhai Ambani Knowledge City,  
Navi Mumbai-400 709  
Maharashtra
- 2) Western Regional Load Despatch Centre,  
Power System Operation Corporation Limited  
F-3, M.I.D.C. Area, Marol,  
Andheri (EAST),  
Mumbai-400093
- 3) Paschimanchal Vidyut Vitran Nigam Limited  
Victoria Par, Meerut,  
Uttar Pradesh- 250001
- 4) Purvanchal Vidyut Vitran Nigam Ltd.  
Hydel Colony, Varanasi,  
Uttar Pradesh- 221004
- 5) Madhyanchal Vidyut Vitran Nigam Ltd.  
4-A, Gokhale Nagar, Lucknow  
Uttar Pradesh- 226001
- 6) Dakshinanchal Vidyut Vitran Nigam Ltd.  
220, KV Vidyut Sub-station  
Mathura-Agra Bypass Road,  
Sikandra Agra  
Uttar Pradesh- 282007
- 7) Punjab State Power Corporation Ltd.  
Shed C-3, Shakti Vihar, Patiala,  
Punjab- 147001
- 8) Tata Power Distribution Ltd.  
Tata Power DDL House,  
Hudson Line,  
New Delhi-110009
- 9) BSES Rajdhani Power Ltd.  
BSES Bhawan, Nehru Place,  
New Delhi- 110019
- 10) BSES Yamuna Power Ltd.  
BSES Bhawan, Nehru Place,  
New Delhi- 110019



11) Haryana Power Generation Corporation Ltd.  
Shakti Bhawan, Panchkula,  
Haryana- 134109

12) Ajmer Vidyut Vitran Nigam Ltd.  
Hathi Bhata, Ajmer,  
Rajasthan- 305001

13) Jaipur Vidyut Vitran Nigam Ltd.  
Vidyut Bhawan, Jaipur,  
Rajasthan- 302205

14) Jodhpur Vidyut Vitran Nigam Ltd.  
New Power House, Jodhpur,  
Rajasthan- 342003

15) Uttarakhand Power Corporation Ltd.  
Urja Bhawan, Dehradun,  
Uttarakhand- 248001

.....Respondents

**I.A. No.19/2016**

**And  
In the matter of:**

Application on behalf of Rajasthan Distribution Utilities.

Ajmer Vidyut Vitran Nigam Ltd,  
Jaipur Vidyut Vitran Nigam Ltd  
Jodhpur Vidyut Vitran Nigam Ltd...

.....Applicants

**Vs.**

1) Sasan Power Limited  
1<sup>st</sup> Floor, H-Block, North Wing  
Dhirubhai Ambani Knowledge City,  
Navi Mumbai-400 709  
Maharashtra

2) Western Regional Load Despatch Centre,  
Power System Operation Corporation Limited  
F-3, M.I.D.C. Area, Marol,  
Andheri (EAST),  
Mumbai-400093



- 3) Paschimanchal Vidyut Vitran Nigam Limited  
Victoria Par, Meerut,  
Uttar Pradesh- 250001
- 4) Purvanchal Vidyut Vitran Nigam Ltd.  
Hydel Colony, Varanasi,  
Uttar Pradesh- 221004
- 5) Madhyanchal Vidyut Vitran Nigam Ltd.  
4-A, Gokhale Nagar, Lucknow  
Uttar Pradesh- 226001
- 6) Dakshinanchal Vidyut Vitran Nigam Ltd.  
220, KV Vidyut Sub-station  
Mathura-Agra Bypass Road,  
Sikandra Agra  
Uttar Pradesh- 282007
- 7) Punjab State Power Corporation Ltd.  
Shed C-3, Shakti Vihar, Patiala,  
Punjab- 147001
- 8) Tata Power Distribution Ltd.  
Tata Power DDL House,  
Hudson Line,  
New Delhi-110009
- 9) BSES Rajdhani Power Ltd.  
BSES Bhawan, Nehru Place,  
New Delhi- 110019
- 10) BSES Yamuna Power Ltd.  
BSES Bhawan, Nehru Place,  
New Delhi- 110019
- 11) Haryana Power Generation Corporation Ltd.  
Shakti Bhawan, Panchkula,  
Haryana- 134109
- 12) Ajmer Vidyut Vitran Nigam Ltd.  
Hathi Bhata, Ajmer,  
Rajasthan- 305001
- 13) Jaipur Vidyut Vitran Nigam Ltd.  
Vidyut Bhawan, Jaipur,  
Rajasthan- 302205



14) Jodhpur Vidyut Vitran Nigam Ltd.  
New Power House, Jodhpur,  
Rajasthan- 342003

15) Uttarakhand Power Corporation Ltd.  
Urja Bhawan, Dehradun,  
Uttarakhand- 248001

.....Respondents

**Parties present:-**

Shri M.G. Ramachandran, Advocate, Rajasthan utilities  
Ms. Ranjita Ramachandran, Advocate, Rajasthan utilities  
Shri Swapna Seshadri, Advocate, PSPCL  
Shri Amit Kapoor, Advocate, SPL  
Shri V. Mukherjee, Advocate, SPL  
Shri N.K. Deo, SPL  
Shri S.S. Barpanda, NLDC / WRLDC  
Ms. Pragya Singh, WRLDC  
Ms. Abiha Zaidi, NLDC

**ORDER**

I.A. No.18/2016 has been filed by Punjab State Power Corporation Limited (PSPCL) seeking directions/orders to (i) stay the notices/letters dated 4.6.2016, 6.6.2016 and 8.6.2016 of Sasan Power Limited (SPL) read with notice dated 31.5.2016 regarding regulation of power supply to PSPCL (ii) direct SPL to act strictly as per terms of the order dated 3.6.2016 in Petition No. 83/MP/2016 and as requested by PSPCL vide its letter dated 6.6.2016 (iii) direct SPL not to insist on an illegal and unconditional undertaking despite the fact the Commission has given detailed timelines and terms in the order dated 3.6.2016 (iv) direct WRLDC not to regulate power supply to PSPCL as sought by SPL and (iv) pass ad interim and ex parte orders with respect to prayers at (i) to (iv) above.



2. I.A. No.19/2016 has been filed by Rajasthan Distribution Utilities, namely Ajmer Vidyut Vitran Nigam Ltd., Jaipur Vidyut Vitran Nigam Ltd. Jodhpur Vidyut Vitran Nigam Ltd. (Rajasthan Utilities) seeking direction to SPL to (i) accept the letter dated 4.6.2016 of the Rajasthan Utilities in light of the Commission's order dated 3.6.2016, (ii) restrain SPL from proceeding with the regulation of the power supply to Rajasthan Utilities and (iii) direct to Western Regional Load Despatch Centre (WRLDC) not to implement the regulation of power supply requested by SPL.

3. Madhya Pradesh Power Management Company Limited (MPPMCL) had filed Petition No.83/MP/2016 seeking relief inter alia against the notices issued by SPL to WRLDC for regulation of power supply on account of non-payment of outstanding dues which inter-alia, related to the amounts claimed by SPL for the past period in pursuance of the Hon'ble Appellate Tribunal for Electricity judgment dated 31.3.2016 holding the commercial operation date of the first unit of Sasan UMPP to be 31.3.2013. The Commission, vide order dated 3.6.2016 issued directions with regard to the payment of dues and regulation of power supply in para 15 as under:-

“15. Considering the submission of the parties, we issue the following directions:

- (a) All outstanding dues on account of orders for change in law events shall be liquidated in weekly installments by 30.6.2016.
- (b) The principal amount (excluding the late payment surcharge) covered under the notice dated 20.5.2016 (on account of change in COD) shall be paid in three equal monthly installments by 5.7.2016, 5.8.2016 and 5.9.2016.
- (c) As regards late payment surcharge, we direct SPL and the petitioner to make efforts to settle the issue amicably. In case of dispute, either party is at liberty to approach the Commission for adjudication and appropriate direction.
- (d) In case of default in payment as per our directions in sub-para (a) & (b) above, SPL will be at liberty to act in terms of the RPS Regulations read with the provisions of the PPA.”



With regard to the other procurers, the Commission in para 3 of the order issued the following directions:-

“16. Learned counsel for UP (respondent nos. 3 to 6) submitted that the arrangement made in case of MP may be extended to UP. Learned senior counsel for SPL opposed the prayer and submitted that the direction issued in case of MP cannot be extended in the case of other procurers in the absence of appropriate applications for relief. We are of the view that SPL has issued notices to other procurers on account of default in payment. However, none of the other procurers have filed petitions against the notices for regulation of power. In the absence of proper petition seeking specific relief, no direction can be issued in favour of other procurers. However, considering the fact that other procurers have been arrayed as respondents in the present petition, we direct that if other procurers approach SPL for accommodation, SPL may consider their case in the light of our directions in para 15 above.”

Further, in para 18 of the order dated 3.6.2016, the Commission made the following observations/directions:-

“18. Learned counsel for the petitioner submitted that the petitioner has filed a Civil Appeal in the Supreme Court against the judgment of the appellate Tribunal for Electricity dated 31.3.2016 in Appeal No.233 of 2014 and the directions to be issued by the Commission in the present petition may be made subject to the directions of the Hon’ble Supreme Court in the Civil Appeal. It is clarified that our directions in para 14 above are subject to such modification as may be considered necessary in the light of the directions to be issued by the Supreme Court in Civil appeal No. 5246 of 2016.”

4. Rajasthan Utilities have submitted that in pursuance to para 16 of the order dated 3.6.2016, the Rajasthan Urja Vikas Nigam Limited on behalf of the Rajasthan Utilities wrote a letter dated 4.6.2016 to SPL with copy to WRLDC accepting the same terms and conditions as application to MPPMCL. However, SPL vide its letter dated 4.6.2016 sought an undertaking from the procurers for payment and a specific agreement not to seek any stay against the payment of the amount. Rajasthan Utilities have submitted that there is no requirement in the Commission’s order dated 3.6.2016 for any such undertaking or agreement not to seek stay. Therefore, SPL cannot impose additional conditions while complying with the Commission’s directions. Rajasthan Utilities have



submitted that the conduct on part of the SPL asking such an undertaking from the procurers not to seek appropriate orders from the Hon`ble Supreme Court as a condition for implementing the Commission`s order is not only objectionable but an abuse of process of the court, particularly in the light of the observations in para 18 of the order dated 3.6.2016. Rajasthan Utilities have further submitted that SPL mentioned the matter before the Commission on 8.6.2016 requesting for a specific directions to be given to the procurers to give an undertaking that they would pay the money on the due date as per the order dated 3.6.2016 and the same was required so that the procurers would not ask for any stay from the Hon`ble Supreme Court in the Civil Appeal filed and scheduled to be heard on 29.6.2016. However, the Commission did not pass any order. Rajasthan Utilities have submitted that SPL vide its letter dated 8.6.2016 claimed that the procurers have not approached them or failed so submit an acceptable proposal despite Rajasthan Utilities accepting the order dated 3.6.2016. Rajasthan Utilities have submitted that vide their letter dated 8.6.2016 Rajasthan Utilities requested WRLDC not to act upon the request of SPL. However, WRLDC vide its letter dated 9.6.2016 proceeded with the request of SPL and approved an implementation plan, inter alia for regulation of power supply by SPL to the Rajasthan Utilities. Rajasthan Utilities have submitted that SPL is acting contrary the Commission`s order dated 3.6.2016 and is seeking to add terms and conditions which are not only contrary to law but have been specifically rejected by the Commission. Rajasthan Utilities have submitted that SPL cannot seek such an undertaking from Rajasthan Utilities for not seeking any order from the Hon`ble Supreme Court when the Commission`s order specifically clarifies that direction in para 15 of the order are subject to such modifications as may be considered





necessary in the light of the directions to be issued by the Supreme Court in Civil No. 5246 of 2016.

5. PSPCL has submitted that SPL had issued similar notices for regulation of power supply to PSPCL on 10.5.2016, 16.5.2016 and 20.5.2016. In response, PSPCL vide its letter dated 24.5.2016 informed SPL that the invoices raised by it are wrong and no case was made out for regulation of power supply. PSPCL has submitted that SPL issued notices to PSPCL on 31.5.2016, 3.6.2016 and 4.6.2016 for regulation of power supply. PSPCL has submitted that SPL in its letter dated 4.6.2016 stated as under:-

“6. We, therefore, advise that we shall consider postponement of the proposed regulation of supply of power of the other Defaulting Procurers subject to your confirmation on or before 7<sup>th</sup> June 2016 that you agree to unconditionally liquidate the entire amount including the Late Payment Surcharge upto the date of payment without any conditions or reservation of rights (a) by way of a single payment within 3 weeks from today, or (b) in three equal monthly installments and agree not to seek any stay against payment of such amount. Needless to say, any payment made will be subject to the final outcome of appeals pending against the APTEL order dated 31.03.2016.”

PSPCL has submitted that SPL insisted on PSPCL for giving an unconditional and illegal undertaking not to press for stay and putting restraint on the legal rights of PSPCL. PSPCL has submitted that PSPCL had already approached the Hon`ble Supreme Court on 11.5.2016 vide Diary No. 17090/2016 against the judgment of the Hon`ble Appellate Tribunal for Electricity dated 31.3.2016 in Appeal No. 233 of 2014 in which PSPCL has also sought stay of the judgment.

6. PSPCL has submitted that in accordance with the Commission's order dated 3.6.2016, PSPCL vide its letter dated 6.6.2016 requested SPL not to proceed with any of the notices issued for regulation of power supply or take any further steps in the matter. Subsequently, SPL issued letter dated 8.6.2016 addressed to WRLDC stating



that despite opportunity given to the procurers vide letter dated 4.6.2016, they have either not approached SPL or have failed to submit an acceptable proposal for payment of their respective dues. Therefore, SPL is constrained to proceed with sale of part of the contracted capacity under the provisions of Article 11.5 of the PPA as already notified by notice dated 31.5.2016 and requested the WRLDC to implement the regulation of power supply effective from 0.00 hrs of 10.10.2016. PSPCL has submitted that despite PSPCL acting as per the terms of the Commission's order dated 3.6.2016, SPL is insisting on an unconditional and illegal undertaking from PSPCL to not seek stay from the Hon`ble Supreme Court. PSPCL has submitted that PSPCL cannot be forced to create prejudice to its legal rights by being asked to give such an illegal undertaking demanded by SPL in its letter dated 4.6.2016.

7. During the hearing, learned counsels for the Rajasthan Utilities and PSPCL clarified that unlike the case of MPPMCL, they do not have any outstanding dues on account of orders for change in law events. Rajasthan Utilities and PSPCL are seeking accommodation in payment of the dues arising out of the implementation of the judgement of Appellate Tribunal for Electricity dated 31.3.2016 on the same terms and conditions as given in para 15 of the Commission's order dated 3.6.2016. Learned counsels submitted that the condition imposed by SPL vide para 4 of its letter dated 4.6.2016 is extraneous to the Commission's order dated 3.6.2016 and therefore, has no legal basis. Learned counsels submitted that the word "accommodation" occurring in para 15 of the Commission's order cannot be construed to confer liberty on SPL to include any condition for the purpose of deciding the request of PSPCL and Rajasthan Utilities.



8. Learned counsel for SPL submitted that the Commission vide order dated 3.6.2016 granted relief to MPPMPCL based on its financial constraint. In the present cases, neither Rajasthan Utilities nor PSPCL have pleaded financial constraint. He further submitted that during the hearing on 2.6.2016, counsel for Rajasthan Utilities was present but did not ask for any relief. Learned counsel submitted that the applicants are not entitled for same relief as granted to MPPMPCL. Learned counsel for SPL submitted that the applicants' grounds for seeking relief are different and they have no parity of conduct, claims and facts. Learned counsel for SPL informed that aggrieved by the Commission's order dated 3.6.2016, SPL has filed an appeal before Appellate Tribunal which is listed for hearing on 13.6.2016.

9. The representative of NLDC/WRLDC submitted that based on the implementation plan for regulation of power, SPL has bid at the power exchange and a quantity of 461 MW has been cleared. Since the matters are listed for hearing, NLDC has deferred release of confirmation regarding availability of transmission corridor. The representative of NLDC/WRLDC sought guidance of the Commission with regard to the bids of SPL, in view of the applications filed by PSPCL and Rajasthan Utilities.

10. We have considered the submissions of the learned counsel for Rajasthan Utilities, PSPCL, SPL and representatives of WRLDC. In our order dated 3.6.2016, we had given the directions that if any procurer other than MPPMCL approached SPL for accommodation, their requests should be considered in the light of our directions in para 15 of the order dated 3.6.2016. It is evident from record that PSPCL and Rajasthan Utilities among the other procurers have approached SPL for similar accommodation as



in case of MPPMCL i.e. to pay in three installments, i.e. by 5.7.2016, 5.8.2016 and 5.9.2016. However, SPL is demanding an undertaking as under:-

“.....you agree to unconditionally liquidate the entire amount including the Late Payment Surcharge upto the date of payment without any conditions or reservation of rights (a) by way of a single payment within 3 weeks from today, or (b) in three equal monthly instalments and agree not to seek any stay against payment of such amount.....”

11. We find that the above undertaking sought by SPL is not in conformity with our directions in para 15 of our order dated 3.6.2016. First of all, the Commission had directed payment of only principal amount in three installments. The question of late payment surcharge was left to the parties to amicably resolve and in case of dispute to approach the Commission for directions. Secondly, the condition of “agree not to seek any stay against payment of such amount” is purely extraneous to our order dated 3.6.2016. In our view, any aggrieved party has right under the Electricity Act, 2003 to seek remedy from the appropriate judicial forum and therefore, the condition sought to be imposed by SPL is not in consonance with the provisions of the Electricity Act, 2003. Therefore, no such condition can be imposed by SPL while granting accommodation of payment to the procurers.

12. Consequently, we direct WRLDC not to give effect to the regulation of power issued vide SPL’s letter dated 8.6.2016 in respect of Rajasthan Utilities and PSPCL. Since the parties have not been able to agree to a payment plan for liquidation of outstanding dues, the Commission considers it appropriate to issue directions in the interest of the seller as well as the procurers (ultimately the consumers in the respective States). There is a difference between the case of MPPMCL and Rajasthan



Utilities/PSPCL. In case of MPPMCL, it was directed to liquidate the entire dues arising out of Change in Law events by 30.6.2016. In case of PSPCL and Rajasthan Utilities, there are no outstanding dues for Change in Law events and only outstanding dues relate to the COD. Accordingly, we issue the following directions with regard to PSPCL and Rajasthan Utilities:-

- (a) The principal amount (excluding the late payment surcharge) outstanding against Rajasthan Utilities and PSPCL (on account of change in COD) shall be paid in four equal monthly installments by 25.6.2016, 5.7.2016, 5.8.2016 and 5.9.2016.
- (b) As regards late payment surcharge, we direct SPL and Rajasthan Utilities/PSPCL to make efforts to settle the issue amicably. In case of dispute, either party is at liberty to approach the Commission for adjudication and appropriate direction.
- (c) In case of default in payment as per our directions in sub-para (a) above, SPL will be at liberty to act in terms of the RPS Regulations read with the provisions of the PPA.

13. WRLDC shall act in accordance with RPS Regulations in respect of PSPCL and Rajasthan Utilities if any request is received from SPL in terms of para 12(c) above.

14. The above directions are issued without prejudice to the rights of either party to pursue the remedy available to them under the Electricity Act, 2003 and shall be subject



to directions/orders in various appeals pending before the Appellate Tribunal for Electricity and Hon'ble Supreme Court of India.

15. The IAs are disposed of in terms of the above directions.

sd/-  
**(M.K. Iyer)**  
**Member**

sd/-  
**(A.S. Bakshi)**  
**Member**

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

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

