

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

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

**Coram:**

**Shri Gireesh B. Pradhan, Chairperson**

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

**Shri A.S. Bakshi, Member**

**Dr, M.K.Iyer, Member**

**Date of Hearing: 05.5.2015**

**Date of Order : 29.2.2016**

**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.  
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:**

Shri Ramachandran, Advocate for the petitioner  
Ms. Poorva Saigal, Advocate for the petitioner  
Shri Shankar Saran, APCPL

Shri Amit Kapoor, Advocate, BRPL  
Shri Vishal Gupta, Advocate, BRPL  
Shri Nishant Gupta, BYPL

## ORDER

The petitioner, Aravali Power Company (P) Limited has filed the present petition seeking direction to Respondent Nos. 1 and 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 declared 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 petition was admitted on 17.9.2013. After hearing the parties on 26.11.2013, the Commission, vide order dated 26.12.2013 issued the following directions:

"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 13.3.2014.”

3. During the hearing of the petition on 20.3.2014, learned counsel for BRPL and BYPL informed the Commission that against the order dated 26.12.2013, BRPL and BYPL filed Appeal No. 53 of 2014 before the Hon`ble Appellate Tribunal for Electricity and that order was reserved in the said appeal. Learned counsel further informed that Appellate Tribunal directed to DERC to decide a road map for liquidation of the accepted regulatory assets keeping in view the interest of the consumers and distribution licensees. It was further submitted that BRPL and BYPL had filed Writ Petition Nos. 104 and 105 of 2013 before the Hon`ble Supreme Court seeking direction not to take any coercive step against them pending disposal of the Writ Petitions. The Commission directed BRPL and BYPL to submit a firm plan for liquidation of the outstanding dues and current dues payable to the petitioner, and the details of outstanding dues specifying the amount of capacity charge and energy charge and the period for which the outstanding amounts were pending.

4. Meanwhile, Appellate Tribunal vide its judgment dated 28.3.2014 dismissed Appeal No. 53 of 2014 filed by BRPL and BYPL.

5. During the next hearing on 1.4.2014, learned counsels for the petitioner, BRPL and BYPL made their respective submission with regard to the outstanding amount due for payment to the petitioner. As regards the firm plan for liquidation, learned counsel for BRPL and BYPL submitted that after issue of the amortization schedule for liquidation of regulatory assets by DERC, the respondents would be able to pay outstanding dues to the petitioner.

6. During the next date of hearing on 13.5.2014, learned senior counsel for BRPL and BYPL submitted that in compliance with the directions of the Hon`ble Supreme Court, DERC has submitted an amortization schedule. Learned senior counsel further submitted that after the approval of the amortization schedule by the Hon`ble Supreme Court, BRPL and BYPL would be able to give a clear road map for liquidation of outstanding dues of the petitioner.

7. During the hearing of the petition on 5.8.2014, learned senior counsel for BYPL and BRPL submitted that after the amortization schedule is approved by the Hon`ble Supreme Court, BYPL and BRPL would be able to approach the banks and financial institutions for financing the payment of outstanding dues of the petitioner. The Commission directed the petitioner to place on record the outcome of the hearing before the Hon`ble Supreme Court.

8. The petition was listed for hearing on 16.2.2016 in order to ascertain the present position of the matter before the Hon`ble Supreme Court and to take a decision on the present petition which is pending since 2013. During the hearing, learned counsel for BRPL and BYPL submitted that the matter was finally heard by the Hon`ble Supreme Court and order is awaited and the petition be taken up after the decision of the Hon`ble Supreme Court. Learned counsel for the petitioner submitted that the capacities of the generating station which was earlier allocated to BRPL and BYPL have been re-allocated to the States in the Southern Region. Learned counsel for the petitioner further submitted that it was in the process of filing an affidavit for withdrawal of the petition with liberty to approach the Commission at the subsequent date, if the need so arise.

9. The petitioner vide its affidavit dated 15.2.2016 (filed on 19.2.2016) has submitted that as regards the payment of outstanding dues, the issue is also a subject matter of WP Nos. 104/2014 and 105/2014 before the Hon`ble Supreme Court wherein the matter was heard and judgment was reserved on 10.3.2015. The petitioner has further submitted that in terms of the orders of the Hon`ble Supreme Court dated 26.3.2014, 6.5.2014 and 3.7.2014, BRPL and BYPL are liable to pay the outstanding amount becoming due and payable to the petitioner in terms of the PPA dated 5.6.2008. The petitioner has submitted that the following amounts remain payable by BRPL and BYPL to the petitioner as on 15.2.2016:

	Principal outstanding dues (Rs in crore)	Outstanding surcharge (Rs in crore)	Total outstanding dues (Rs in crore)
BRPL	413.74	117.87	531.61
BYPL	198.82	74.54	273.36

10. The petitioner has made the following submission in para 7 of the affidavit dated 15.2.2016:

“7) In the circumstances mentioned above, it is respectfully submitted that this Commission may be pleased to permit the Petitioner to withdraw the petition without prejudice to its rights and contentions and with liberty to approach the Commission, based on the orders that may be passed by the Hon`ble Supreme Court in W.P.No. 104 of 2014 and W.P.No. 105 of 2014.”

11. It is noted that the petitioner as well as the respondents are awaiting the judgment of the Hon`ble Supreme Court for settlement of the outstanding dues. In view of that matter, no useful purpose will be served to keep the petition pending

before the Commission. Accordingly, we accept the request of the petitioner and dispose of the petition as withdrawn. The petitioner is granted liberty to approach the Commission if any outstanding amount remains unpaid after settlement of the dues in terms of direction that may be passed by the Hon`ble Supreme Court in Writ Petition Nos. 104 and 105 of 2014.

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

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

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

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