

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 154/MP/2016

Subject : Petition under Section 79 (1) (a) of the Electricity Act, 2003 for relief on account of Force majeure events affecting the Farakka Super Thermal Power Station Stage-I and II (1600 MW) and Stage-III (500MW).

Date of hearing : 24.1.2017

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

Petitioner : NTPC Limited

Respondents : West Bengal State Electricity Distribution Co. Ltd. & Others

Parties present : Shri Sitiesh Mukherjee, Advocate, NTPC
Shri Gautam Chawla, Advocate, NTPC
Ms. Akanksha Tyagi, NTPC
Shri Rohit Venkat, Advocate, WBSEDCL
Shri R.B. Sharma, Advocate, GRIDCO
Shri Madhusudan Sahoo, GRIDCO
Shri Manish Garg, UPPCL

Record of Proceedings

Learned counsel for the petitioner submitted that the petitioner has filed the information called for.

2. Learned counsel for WBSEDCL entered appearance and requested for three weeks' time to file reply to the petition. Learned counsel for the petitioner had no objection in this regard.

3. In response to the Commission's query as to how the Indo-Bangla Treaty, 1996 affected the availability of water to Farakka STPS during lean period to constitute Force Majeure and how the Commission in the presence of a Treaty is the appropriate authority to adjudicate the issues raised in the present petition, learned counsel for the petitioner submitted that in the months of February and March 2016, the water available at the Ganga Feeder Canal was already diminished and inadequate due to unforeseeably low levels of precipitation and flow of water from the upstream regions of

the Ganges. Learned counsel further submitted that such diminished levels of water in the Ganga Feeder Canal were further aggravated by operation of the Indo-Bangla Treaty, 1996 which required a minimum of 35,000 cusecs of water to be diverted to Bangladesh in alternate 10 days period between 11th march and 11th May every year and left only 15,000 cusecs of water in the Ganga feeder Canal and consequently, all units of FSTPS had to be shut down as the resultant low level of water was insufficient to cater to the cooling water needs of FSTPS which it is submitted is a Force majeure event.

4. The representative of UPPCL submitted that the Indo-Bangla Treaty, 1996 was never taken into consideration as the petitioner itself has stated in its additional affidavit dated 2.1.2017 that the water requirement for FSTPS which included Stage-II was confirmed by the Ministry of Water Resources, Government of India in July, 1987.

5. After hearing the learned counsels for the petitioner, WBSEDCL and the representative of UPPCL, the Commission directed WBSEDCL to file its reply by 15.2.2017 with an advance copy to the petitioner, who may file its rejoinder, if any, by 27.2.2017.

6. The Commission directed the petitioner to file the following information/clarification on affidavit by 20.2.2017:

(a) Copy of Water Supply Agreement entered into between Farakka Barrage Authority or any other agency for the Farakka STPS;

(b) Comments/views of the Farakka Barrage Authority regarding reasons for low level of water in the Ganga Feeder Canal for the period 22.2.2016 to 23.3.2016. Whether such low level of water in Ganga Feeder canal is a normal phenomenon during lean season or it was an unprecedented occurrence in the recent years.

(c) As per clause 9 of the PPA, no party is liable for any claim for any loss or damage whatsoever arising out of failure to carry out the terms of the Agreement to the extent that such a failure is due to force majeure events. Justify the claim in the light of clause 9 of the PPA.

7. The Commission directed the petitioner and the respondents that due date of filing the information, replies and rejoinder should be strictly complied with. No extension shall be granted on that account.

8. The petition shall be listed for hearing on 16.3.2017.

By order of the Commission

Sd/-

**(T. Rout)
Chief (Legal)**