

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No 89/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: 2nd of November, 2017

In the matter of

Petition under Section 79(1) (f) of the Electricity Act, 2003 Seeking adjudication of dispute between Petitioners, i.e., BSES Rajdhani Power Limited (BRPL) and BSES Yamuna Power Limited with Pragati Power Corporation Limited (PPCL) regarding declaration of Availability by Pragati –III Combined Cycle Power Project.

And in the matter of

- 1) BSES Rajdhani Power Limited
BSES Bhawan, Nehru Place
New Delhi-110 019

- 2) BSES Yamuna Power Limited
Shakti Kiran Building
Karkardooma
New Delhi-110 092

.....Petitioners

Vs

- 1) Pragati Power Corporation Limited
Himadri Rajghat Power House Office Complex
New Delhi-110 002

- 2) State Load Despatch Centre (SLDC)
Delhi Transco Limited
33 kV sub-station Building
Minto Road
New Delhi-110 002

.....Respondents



Following Were Present

Shri M.G. Ramachandran, Advocate, PPCL
Shri Shubham Arya, Advocate, PPCL
Shri R.K. Yadav, PPCL
Shri Amarjyoti Badgaiyan, PPCL
Shri Surendra Kumar, PPCL
Sri Buddy A. Ranganadhan, Advocate, BRPL & BYPL
Shri Vishal Anand, Advocate, BRPL, BYPL & TPDDL
Shri Anupam Varma, Advocate, BRPL, BYPL & TPDDL
Shri Rahul Kinra, Advocate, BRPL, BYPL & TPDDL
Shri Sanjay Srivastav, BRPL
Shri Nishant Grover, BYPL
Shri Abhishek Srivastava, BYPL
Shri Kanishk, BRPL
Ms. Megha Bajpeyi, BRPL
Shri Gagan Swain, BYPL

ORDER

The Petitioners, i.e. BSES, Rajdhani Power Limited ("BRPL") and BSES Yamuna Power Limited ("BYPL") are distribution licensees supplying electricity in their respective area of supply in NCT of Delhi. The present petition has been filed for adjudication of dispute with the Delhi Generating Company Pragati Power Corporation Ltd. (hereinafter referred to as "**PPCL**") on the issue of declaration of availability of the Pragati-III Gas fired Combined Cycle Power Station (1371 MW) (hereinafter referred to as "**PPCL-III**") of PPCL.

2. The Petitioners have submitted that in terms of the Regulations notified by this Commission in 2009 and 2014, while declaring availability of the Plant, the Generating Company has to duly take in to account the availability of fuel. However, in present case PPCL-III has acted in violation of the aforesaid Regulations while declaring availability from the date of commission of individual units (first unit on 27.12.2011) till March, 2015 since it does not have sufficient fuel for declaring availability and is taking inconsistent



stands in its Tariff filings before this Commission and in the letters issued to the Petitioner. Accordingly, the Petitioners have made the following prayers:

"(1) Admit the present Petition

(2) Declare that PPCL-III has been wrongly declaring availability in contravention of Regulations notified by this Hon'ble Commission in 2009 and 2014 and the PPAs entered into between the Petitioners and PPCL.

(3) Direct PPCL-III to refund excess fixed cost charges from 27.12.2011 along with suitable applicable interest.

(4) Pass any other order which this Hon'ble Commission may deem fit. "

3. The matter was heard on 14.2.2017 and order was reserved by the Commission. We now proceed to consider the issues raised by the parties in the petition taking into consideration the documents available on record and the submissions of the parties.

Submission of the Petitioners

4. On 13.08.2009, Petitioner No.1 and Petitioner No.2 respectively executed Power Purchase Agreement ("PPA") with PPCL for procurement of power from PPCL-III. The NCT of Delhi was allocated 60.89% of 1371 MW which is 834.80 MW. Out of 834.80 MW, BRPL's share was 43.58% and BYPL's share was 27.24%. However, as on date BRPL has an allocation of 425 MW i.e. (31.3 %) and BYPL has an allocation of 247 MW i.e. (18%) out of 1371 MW.

5. Clause 5.5 of the PPA has provided, as under:

"5.5 Fuel/Gas Agreement:

5.5.1 The Seller has tied-up Re-gasified Liquid Natural Gas (R-LNG) as fuel for the Station. The 'Gas Sale Agreement' (GSA) has been signed on 09.10.2007.



5.5.2 The Procurer hereby agrees that all the terms & conditions of GSA signed on 09.10.2007 shall be binding on then and agrees to pay the Seller additional charges payable by the Seller to the gas suppliers under the GSA in proportion to their allocated share of the generation capacity of the station. The scheduling of power by the Procurer shall be in line with the terms & conditions of the GSA. The Agreement of GSA is for 15 years. The Seller shall make out all efforts to renew the agreement beyond the contracted period or arrange the fuel from available alternative sources.

5.5.3 The Procurer also agrees that in the event that GAS is not supplied to the Seller on account of Force Majeure conditions under the GSA, non-supply of power from the Station as a consequence shall also be treated as Force Majeure for the purpose of this Agreement and the Seller shall be held indemnified from the events, circumstances and consequences, thereby arising from non-supply of power to the Procurer"

Accordingly, Clause 5.5 of the PPA inter-alia provides that the scheduling of power by the Petitioners would be in line with the terms & conditions of the GSA dated 9.10.2007.

6. On 15.9.2010, PPCL-III filed a Petition No. 257 of 2010, before this Commission seeking determination of tariff from the date of COD of Block-I and Block-II (i.e. First and Second Block) till 31.3.2014, in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 (hereinafter referred to as the 2009 Tariff Regulations), wherein PPCL-III at Para 3.2.2 had submitted as under:

"3.2.2 Gas Supply

Natural gas will be used as fuel for power generation. The petitioner has executed the Gas Sales and Purchase Agreements (GSPA) as per the following details:-

Table 2: Gas Sales and Purchase Agreement

Company	Source	Quantity (MMSCMD)	Period	Transportation
GAIL	RLNG	2.0	3 Years	By GAIL
IOCL	RLNG	2.0	3 Years	By GAIL
BPCL	RLNG	2.0	3 Years	By GAIL

However, as per recent developments, there has been change in Gas supply arrangements. The quantum of 0.93 MMSCMD gas has been allocated to the project from KG-D6 basin. The contracted quantity of gas as reflected in **table 2** has been reduced to 1



MMSCMD from each source. Accordingly, 3.93 MMSCMD gas has been tied up.

In order to source the balance requirement of gas, the matter is being pursued with Government of India for additional allocation of gas from KG-D6 basin. Alternatively, RLNG quantity will be enhanced. While the petitioner will endeavor his best to source the gas in the best possible manner the availability of gas and its price are beyond the control of the petitioner. These are uncontrollable elements to be allowed on actual basis as a pass through."

7. The PPCL-III was commissioned in Stages. Commercial Operation of the Station was declared on 27.3.2014. The capacity configuration of the different blocks of the generating station along with their scheduled date of commercial operation is as under:

	Unit	Capacity	Scheduled date of commercial operation
Block-I	GT-I	216 MW	27/12/2011
	GT-II	216 MW	16/7/2012
	GT-I with HRSG-I (ST-I)		1/4/2012
	GT1 & II with HRSG-I & II (ST-I)	253.60 MW	14/12/2012
	Total	685.60 MW	
Block-II	GT-III	216 MW	28/10/2013
	GT-IV	216 MW	27/2/2014
	ST-II	253.6 MW	27/3/2014
	Total	685.60 MW	
	Grand Total	1371.20 MW	

8. On 2.5.2014, PPCL issued a letter to this Commission regarding Petition No. 257 of 2010 and submitted revised forms as directed by this Commission. PPCL in its revised submissions had inter-alia submitted that due to scarcity of Natural Gas there has been many changes in gas supply Agreements. The contracted quantity of gas submitted in Original Petition has now been reduced to zero. The quantum of 0.836 MMSCMD gas has been allocated to PPCL-III from KG-D6 basin but the supply from the same has stopped due to non-availability of gas. Moreover 1.564 MMSCMD non-APM gas



has also been allocated by Ministry of Petroleum and Natural Gas (MoP & NG), Government of India (Gol) vide letter dated 30.09.2011 whose allocation varies on day to day basis. Therefore, the total availabilities of gas is only 2.40 MMSCMD as against total requirement of 5.6 MMSCMD. Further, in order to source the balance requirement of gas, the matter is being pursued with Gol for additional allocation of gas from KG-D6 basin. Alternatively, RLNG quantity has been enhanced. While PPCL-III has made all its efforts to source the cheaper gas in the best possible manner, the availability of gas and its price are beyond the control of PPCL-III, and are uncontrollable and are to be allowed on actual basis as a pass through.

9. Further, in the tariff Petition No. 221/GT/2015 filed by the petitioner before this Commission for determination of generation tariff for the period 2014-19, in terms of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 (hereinafter referred to as the 2014 Tariff Regulations), PPCL-III in its petition has inter-alia submitted as under:

"(a) The various sources from where PPCL proposes to procure gas for PPCL-III are provided herein below:-

Company	Source	Quantity (MMSCMD)	Period
GAIL	Non- APM	1.564	15 years
KG -D6 Basin	R-LNG	0.836	15 years
GAIL	Spot R-LNG	2.000	As and when required
Total		4.400	

(b) Apart from the above, PPCL-III has also proposed to cater the shortfall in the required gas by way of swapping of gas from its other gas power plant, i.e., PPCL-I at times when the scheduling from the station is less than the available gas. "

10. Though the quantum of 6 MMSCMD gas was available to PPCL on long term basis from the gas supplies in terms of the PPA, the same was reduced to zero before



commissioning of the plant. Due to scarcity of natural gas there has been a change in gas supply agreements. The quantum of 2.4 MMSCMD of gas was later reduced to 1.564 MMSCMD with effect from March 2013 since 0.836 MMSCMD of gas allocated vide MoP & NG/GoI letter dated 03.04.2012 from KG-D6 basin was reduced to zero. Accordingly, out of 2.4 MMSCMD only 1.564 MMSCMD of firm gas was available with PPCL.

Further, PPCL has entered into Master Sales Spot of Gas Agreement (MSSG) with GAIL on purchase of spot RLNG executed on 28.9.2010 which is valid till date. However, PPCL's right over the gas is only when it executes Gas Sales Purchase Sales notice with GAIL. On the basis of MSSG, PPCL cannot declare its availability which has to be intimated on day ahead basis. Hence, PPCL could not have had firm fuel commitment to show 85% availability.

11. On the contrary when information was sought from PPCL by the Petitioners, PPCL has stated that it requires 4.97 MMSCMD of gas for generating 85% of target availability at design heat rate of 1758.23 Kcal/Kwh. This is contrary to the submissions made by PPCL in Petition No. 257/2010 wherein, it had submitted that the total requirement of gas for this generating station is 5.6 MMSCMD against which it had only 2.40 MMSCMD of gas available. It is evident that PPCL has only firm arrangement of 2.40 MMSCMD gas for generation against the requirement of 4.97 MMSCMD at 85% availability which contributes to 48% of the total requirement of fuel to meet the normative generation of 85%.



12. The Petitioners have analyzed the monthly bills of PPCL-III, documents and information provided by PPCL-III vide its letters dated 03.09.2015 and 02.11.2015, in terms of the 2009 Tariff Regulations and the 2014 Tariff Regulations so as to scrutinize the claims of PPCL-III and it was found out that the claim of PPCL-III for declaring 85% or more availability is baseless and to substantiate the same Petitioners have calculated the month wise gas requirement of PPCL-III from date of commission of individual units till March, 2015 for two scenarios viz.:

(a) Scenario I - at normative NAPAF i.e. at 85% NAPAF, in accordance with the 2009 Tariff Regulations and the 2014 Tariff Regulations; and

(b) Scenario II - at declared Plant availability factor (PAFM).

In both the cases, the Petitioners have found that apart from first few months , the plant has always been in a gas deficit state. The availability declared by the PPCL-III is much higher than the gas availability for most of the months.

13. The Petitioners have submitted that it is evident from the 'Power for All documents for Delhi' report of Delhi Government (December 2015), against the gas requirement of 9 MMSCMD only 2.4 MMSCMD gas is available and the shortfall in availability of gas is adversely affecting the availability of the full capacity in the various state generating stations of Delhi. This substantiates the contention of the petitioner that PPCL does not have adequate fuel to declare 85% availability.

14. In the absence of adequate gas , as evident from the PPCL-III's own tariff filing , PPCL cannot declare 85 % availability of PPCL-III as claimed by it.



15. The petitioner has submitted that in terms of the 2009 Tariff Regulations and the 2014 Tariff Regulations, while declaring availability of the Plant, the Generating Company has to duly take in to account the availability of fuel. However, in present case PPCL-III has acted in violation of the aforesaid Regulations while declaring availability since it does not have sufficient fuel for declaring availability and is taking inconsistent stands in its Tariff filings before this Commission and in the letters issued to the Petitioner.

16. On 28.10.2014, Petitioner No. 1 issued a letter to PPCL in reference to the fixed costs being charged by PPCL-III, inter-alia stating that:

(a) This Commission has approved provisional tariff for PPCL-III from its COD upto 31.03.2014.

(b) The COD of the plant has been declared, however, PPCL-III has generated only around 300 MW to 500 MW, as against capacity of 1371 MW.

(c) The average fixed costs paid by the Petitioner No. 1 for PPCL-III is ₹6.00/kWh, if the Plant had sufficient fuel tie ups and generated power according to its installed capacity then the fixed cost would be in the range of ₹1.25/kWh to ₹1.50/kWh in comparison to the other similarly placed power plants. Accordingly, non-availability of economic fuel should be treated as non-availability of plant and accordingly fixed costs charged by PPCL should be moderated.

(d) Consequently, the Petitioner No. 1 has to bear fixed cost of around ₹31



crore per month for PPCL-III although there is negligible generation. The same is leading to an unnecessary burden on the consumers and if the fixed cost is charged on realistic basis, then there will be a reduction of 15 to 25 paise from long terms sources.

In view of the same, Petitioner No. 1 requested PPCL to take steps for reduction of fixed costs of the power plant as per the availability of fuel/generation till the plant starts generating as per its installed/Designed capacity.

17. On 31.08.2015, Petitioners issued a letter to PPCL seeking refund of excess fixed costs charged by PPCL -III on account of lower plant availability since its COD, whereas, PPCL-III has been declaring Availability of 85% or more. Thereafter, from 31.03.2015 the declared Availability of PPCL-III was reduced to 50%. Accordingly, fixed costs to tune of ₹827 crore have been charged by PPCL-III from BRPL and ₹497 crore from BYPL. In contrast PPCL-III has been generating power around 300 to 500 MW which is 22% to 37% percent of the total installed capacity. Based on the same the proportionate fixed/capacity costs comes out to be ₹317crore for BRPL and ₹198 crore for BYPL. Accordingly, an excess of ₹510 crore has been charged by PPCL-III from BRPL and ₹299 crore from BYPL.

18. The Petitioner has submitted that in view of all the facts and figures as stated hereinabove, PPCL has been misleading the Commission as well as the Discoms including the Petitioners and consumers of Delhi by way of incorrectly declaring the availability of the plant at 85% despite insufficient gas supply arrangement and thereby burdening the consumers.



Reply of Respondent (PPCL)

The Respondent (PPCL) vide affidavit dated 30.8.2016 has submitted its reply as under:

19. The attempt made by the Petitioners is to create issues in an attempt to avoid payment of the legitimate dues of PPCL accruing in terms of the provisions of the Power Purchase Agreement dated 13.8.2009.

20. The separate Gas Supply Agreements referred to in Article 5.5 of the PPA was entered into between PPCL (of the one part) and GAIL (India) Limited, Indian Oil Corporation and Bharat Petroleum Limited (of the other part) on 9.10.2007 which deals with the source of gas as under:

“2.2 Source

The Seller shall supply Gas to the Buyer, which it is obligated to supply under this Agreement based on its purchase arrangement with PLL under the GSPA. However, the Seller may supply such Gas from any other source (including from the re-gasification of LNG from another source) in the event that re-gasified LNG is not available to the Seller in appropriate quantities under the GSPA or for any other reason.

The Specifications for Gas hereunder shall be modified by mutual agreement of the Parties to reflect the specification of such other source of LNG or Gas, as the case may be.”

21. In terms of the above, PPCL was to generate and supply electricity to the Petitioner Companies and other Procurers from its Combined Cycle Gas Power Station by use of Re-gasified Liquefied Natural Gas (RLNG). RLNG to be supplied under the GSA was not confined to sources initially identified at the time of the execution of the GSA but could be from any other source.

22. In terms of the above GSAs entered into by PPCL, a quantum of 6 MMSCMD



Gas was available to PPCL on long-term basis from the gas suppliers for generation and supply of electricity from its Gas Power Station.

23. In the course of time, PPCL had arrangements for procurement of gas from Gas Companies, namely, procurement of RLNG as per spot contracts, allocation of non-APM domestic gas, allocation of RIL – KGD6 gas, allocation by the Ministry of Petroleum and Natural Gas, by diverting the gas from Ratnagiri Gas and Power (P) Limited, and clubbing of APM and RLNG and Non- APM Gas, proposal to give gas at a cheaper price under the scheme for PSDF (Power Sector Development Fund)/market-determined-priced RLNG.

24. In accordance with the above, during the financial years 2011-12 to 2018-19 the quantum of gas that has been available and will be available to PPCL are summarized in the table here under:

Sl. No	Referred documents for allocation diversion, accumulation and swapping of gas	Amount of gas allocated (MMSCMD)	Duration	Total available quantity (MMSCMD)
(1)	Gas sale agreement on 09.10.2007 for supply of R-LNG	6.00 later reduced to 3.00	09.10.2007 to 14.09.2010	6.0 3.0
(2)	MoPNG Order dt.18.09.2009 for allocation of KG D-6 basin gas	0.93	18.09.09 to till 03.04.12 as vide order dt. 03.04.2012 the quantity reduced to 0.836 MMSCMD.	0.93
(3)	Master sales spot agreement of PPCL with GAIL, on purchase of spot R-LNG signed on 28.09.2010 for contract quantity, supply period, start date, daily contract price is to be signed separately in each GSPN	The quantity and duration as and when required basis.	28.09.2010 till date	Any amount of spot R-LNG to be decided in each GSPN to be signed on fortnightly basis



	as per clause 2 of the said document.			
(4)	MoPNG order dated 30.09.2011	1.564 non APM Gas allowed by Govt	16.10.2011 till date	1.564
(5)	MoPNG Order dated.03.04.2012 for allocation of KG D-6 basin gas from earlier allocation of 0.93 to 0.836 MMSCMD	0.836, the quantity later reduced to zero w.e.f. March, 2013 due to guidelines of MoPNG	9 TH July, 2012 till date	0.836
(6)	MoPNG order dated June, 2014 for diversion of 0.9 MMSCMD gas of Ratnagiri Power Plant	0.9 non-APM Gas later reduced to zero and returned to the original power plant due to non-consumption/ requirement at the station	June, 2014 till July, 2015	0.9
(7)	MoPNG order dated May, 2013 for swapping and clubbing of APM, R-LNG, Non- APM gas	3.64 (considering maximum diversion of all gases from GTPS & PPS-I to PPS-III)	May, 2013 till date (from various dates starting from May, 2013)	3.64
(8)	Scheme for PSDF fund utilization for reducing cost of purchase of gas for gas based power plants	Not availed due to refusal by petitioner and other beneficiaries of the station	September, 2015 till date	As per scheme target
(9)	Market Determined Price R-LNG (MDP)	As per requirement	01.01.2016 to 31.12.2016	As per requirement
(10)	LT R-LNG for PPS-III Bawana only	As per requirement	Up to 2028	As per requirement
(11)	Availability of total all gases as on date	1.564 (Non-APM) + 0.836 (KG D-6 Basin) + 3.64 (Maximum clubbing and diversion from GTPS & PPS-I) + MDP + LT R-LNG (offered but refused by petitioners) + unlimited spot R-LNG		

25. PPCL has further submitted that in terms of the above, sufficient quantum of gas has been available to PPCL for generation and supply of electricity from the Gas Power Station. The quantum of gas required for generating 85% of the Targeted Availability of electricity from the Gas Power Station, taking into account the designed heat rate of 1757.28 (to meet out the normative availability) is 4.97 MMSCMD. If the Petitioners and other Procurers had given the schedule for taking electricity to the extent of declaration



of availability made by PPCL from time to time, PPCL would have been able to arrange for the delivery of the gas required and generate and supply electricity of the required quantum, with the exception of the time when the generating unit of the Gas Power Station was not available due to repair, shutdown etc.

26. The Respondent has filed the Statement from the records of the State Load Despatch Centre giving details of Plant Availability for the period from 27.12.2011 (COD of First Unit) till July, 2016 which would show that the Petitioners did not schedule the quantum of electricity declared available. Due to such failure on the part of the Petitioners to schedule the available power , PPCL could not utilize full arranged gas up to declared generation capacity rather it arranged gas only up to scheduled generation.

27. Due to non-scheduling of power, even on the Non – APM gas during June, 2014 to July, 2015, the 0.9 MMSCMD cheaper gas diverted from Ratnagiri Power could not be fully utilized. The PSDF scheme launched by Ministry of Power, GOI, could not be availed by power plant due to the refusal by the Petitioners and other beneficiaries.

28. That as per Delhi Grid Code, SLDC is empowered to issue the energy account thereby certifying the availability of various generating stations, SLDC is also empowered to check and verify the genuineness of declared capacity and any mis-declaration. Therefore, Petitioners have no jurisdiction to question energy account issued by SLDC, on ground that PPCL has declared DC even though there is no gas allocation for the said capacity declaration.

29. As regards the allegation of Petitioners that PPCL-III has declared capacity



in excess of 22-37% even without availability of gas is baseless and one of another examples of crossing judicial limits by the Petitioners. PPCL-III has declared availability only after arranging full quantum of gas required for declaring the said capacity.

30. The Respondent has mentioned that another beneficiary of the Gas Power Station, namely TPDDL had raised similar issues vide its letter dated 12.10.2015. PPCL responded to the queries of TPDDL vide its letter no. Commercial/OD/F-14/158 dated 15.10.2015 relying upon the same facts and figures as communicated to the Petitioners. TPDDL, on being satisfied with the explanation and justifications provided by PPCL, raised no further objections.

31. The Petitioners vide affidavit dated 21.10.2016 has filed Rejoinder to the reply of PPCL filed vide affidavit dated 30.8.2016.

Analysis and Decision

32. The Petitioners in the instant petition have submitted that the respondent generating company (PPCL) has declared the availability of the gas based plant PPCL-III during the period 27.12.2011 to 31.3.2015 in violation of the provisions of the 2009 Tariff Regulations and the 2014 Tariff Regulations since it does not have adequate fuel for declaring availability and is taking inconsistent stands in its Tariff filings before this Commission and in the letters issued to the Petitioner.

33. We have considered the issues raised. We have also considered the submissions of the parties made during the course of hearing as also the written arguments filed.



34. The primary fuel of the station as per the PPA dated 13.08.2009 is R-LNG based on the long term Gas Supply Agreement dated 09.10.2007 between PPCL and GAIL. However, the initial long term RLNG contract did not materialise and the respondent had to arrange gas from other sources including spot RLNG. The respondent tried to arrange cheaper gas in place of RLNG as the prices of RLNG are significantly higher than the prices of domestic gas. The prices of RLNG supplies being linked to crude are inherently volatile. Under these circumstances, the following issues arises for our considerations:

- (i) Whether the respondent has made arrangements for supply of gas to the station to declare capacity as per normative target availability.
- (ii) What are the provisions in the Tariff Regulations and Indian Electricity Grid Code regarding the declaration of capacity of the generating station.

The above issues are discussed in subsequent paragraphs.

Issue No.1 Whether the respondent has made arrangements for supply of gas to the station to declare capacity as per normative target availability.

35. The Commercial Operation Date (COD) of different GTs and the Blocks –I &II of Pragati–III, (4x 216 MW GTs + 2x253.6 MW STGs) = 1371 MW power plant of PPCL are given as under :

	Unit	Capacity(MW)	COD
Block-I	GT-I	216	27/12/2011
	GT-II	216	16/7/2012



	ST-I	253.60	14/12/2012
	Total	685.60	
Block-II	GT-III	216	28/10/2013
	GT-IV	216	27/2/2014
	ST-II	253.6	27/3/2014
	Total	685.60	
	Total Station Capacity	1371.20	

It could be observed from above table that, the GT& STs/ Blocks were commissioned in phases at different point of time from 27.12.2011 to 27.3.2014. Accordingly, the gas requirements in different periods would be different based on the capacity under commercial operation as the disputed period here in the instant petition is from 27.12.2011 to 31.3.2015.

36. Article 5.5 of the PPA dated 13.8.2009 states as under:

“Fuel/Gas Supply Agreement:

Seller has tied-up Re-gasified Liquid Natural Gas (RLNG) as fuel for the Station. The ‘Gas Sale Agreement’ (GSA) (placed at Annexure-II) has been signed on 09.10.2007.

The Procurer hereby agrees that all the terms and conditions of GSA signed on 09.10.2007 shall be binding on them and agrees to pay the Seller additional charges payable by the Seller to the gas suppliers under the GSA in proportion to their allocated share of the generation capacity of the station. The scheduling of power by the procure shall be in line with the terms and conditions of GSA. The agreement of GSA is for 15 years. The seller shall make out all efforts to renew the agreement beyond the contracted period or arrange the fuel from available alternative sources.

The procurer also agrees that in the event that Gas is not supplied to the seller on account of Force Majeure conditions under the GSA, non-supply of power from the station to the procurer as a consequence shall also be treated as Force Majeure for the purpose of this Agreement and the Seller shall be held indemnified from the event, circumstances and consequences, thereby arising from non-supply of power to the Procure.”

37. The separate Gas Supply Agreements (‘**GSA**’) referred to in Article 5.5 of the



PPA was entered into between PPCL (of the one part) and GAIL (India) Limited, Indian Oil Corporation and Bharat Petroleum Limited (of the other part) on 9.10.2007 which deals with the source of gas as under:

“2.2 Source

The Seller shall supply Gas to the Buyer, which it is obligated to supply under this Agreement based on its purchase arrangement with PLL under the GSPA. However, the Seller may supply such Gas from any other source (including from the re-gasification of LNG from another source) in the event that re-gasified LNG is not available to the Seller in appropriate quantities under the GSPA or for any other reason. The Specifications for Gas hereunder shall be modified by mutual agreement of the Parties to reflect the specification of such other source of LNG or Gas, as the case may be.”

38. Accordingly, in terms of the above, RLNG to be supplied under the GSA was not confined to sources initially identified at the time of the execution of the GSA but could be from any other source. Further, in terms of the above GSAs entered into by PPCL, a quantum of 6 MMSCMD Gas was available to PPCL on long-term basis before the CODs of the GTs and the Station as a whole which subsequently was reduced to 1 MMSCMD due to shortage of gas.

39. From the records it appears that the respondent has tied up with various gas suppliers including the Long term GSA, the Non- APM Gas, the Spot R-LNG and diversion of gas from Pragati-II and IP GTS for supply of gas to PPCL-III with help of GNCTD and with the intervention of Government of India as given under:

Sl. No	Referred documents for diversion, accumulation and swapping of gas allocation	Amount of gas allocated (MMSCMD)		Presently available quantity as per agreement (MMSCMD)
(1)	Gas sale agreement on 09.10.2007 for supply	6.00		1



	of R-LNG			
(2)	MoPNG order dated 30.09.2011	1.564 non APM Gas allowed by Govt	16.10.2011 till date	1.564
(3)	MoPNG Order dated.03.04.2012 for allocation of KG D-6 basin gas from earlier allocation of 0.93 to 0.836 MMSCMD	0.836, the quantity later reduced to zero w.e.f. March, 2013 due to guidelines of MoPNG	9 TH July, 2012 till date	0.836
(4)	MoPNG order dated May, 2013 for swapping and clubbing of APM, R-LNG, Non-APM gas	3.64 (considering maximum diversion of all gases from GTPS & PPS-I to PPS-III)	May, 2013 till date (from various dates starting from May, 2013)	1.4
(5)	MoPNG order dated June, 2014 for diversion of 0.9 MMSCMD gas of Ratnagiri Power Plant	0.9 non-APM Gas later reduced to zero and returned to the original power plant due to non-consumption/ requirement at the station	June, 2014 till July, 2015	0.9
(6)	Master sales spot agreement of PPCL with GAIL, on purchase of spot R-LNG signed on 28.09.2010	The quantity and duration as and when required basis.	28.09.2010 till date	Any amount of spot R-LNG to be decided in each GSPN to be signed on fortnightly basis
(7)	Availability of total gas		1.00 (cheaper gas) + 1.564 (Non APM) Ratnagiri diversion 0.9 (cheaper gas) + 0.836 (KG D-6 Basin) + 1.40 (cheaper gas diversion from GTPS & PPS-I) + Spot R-LNG	

40. The daily requirement of gas for the station is 5.6MMSCMD. The respondent generator has submitted that gas required is 4.97 MMSCMD for generating 85% of the Targeted Availability. We have examined the gas requirements at different periods of time corresponding to capacity under commercial operation and the gas/R-LNG arranged by the respondent for meeting gas requirements as tabulated below:



Sl. No.	Unit	Capacity (MW) installed	COD	Total Capacity (MW)	Period	Gas requirement @ 85% NAPAF (MMSCMD)	Total Cheaper Gas Available (MMSCMD)
(1)	GT-1	216	27/12/2011	216	27.12.2011 to 15.7.2012	1.2694	2.564 + SPOT R-LNG
(2)	GT-2	216	16/7/2012	432	16.7.2012 to 13.12.2012	2.5389	3.4 + SPOT R-LNG
(3)	ST-1	253.60	14/12/2012	685.60	14.12.2012 to May-2013	2.6433	3.4 + SPOT R-LNG
	Block-I (Total)	685.60	From May, 2013 onward	685.60	May-2013 to 27.10.2013	2.6433	4.8 + [1.0 (R-LNG+1.564 (Non-APM) + 0.836 (KG D6 Basin) + 1.40 (Diversion from GTPS and PPS-I) + SPOT R-LNG]
(4)	GT-III	216	28/10/2013	901.60	28.10.2013-26.2.2014	3.9128	4.8 + SPOT R-LNG
(5)	GT – IV	216	27/2/2014	1117.60	27.2.2014-26.3.2014	5.1822	4.8 + SPOT R-LNG
(6)	ST-II	253.60	27/3/2014	1371.20	27.3.2014 onward	5.2867	4.8 + SPOT R-LNG
	Block-II (Total)	685.60	27.3.2014	1371.20	27.3.2014 onward	5.2867	4.8+ 0.9(Diversion from Ratnagiri Power Plant during June, 2014 to July,2015)+ SPOT R-LNG

41. It appears from the submissions and also from the record as tabulated above that the petitioner has about 4.9 MMSCMD of gas excluding allocation of 0.836 MMSCMD from KG D-6 Basin which has now become zero. 4.90 MMSCMD comprises of 2.40 MMSCMD from allocation to Delhi Gas based Stations (which includes IP GTPS + PPS-I+PPS-III) diverted and being used in PPCL-III, 1.564 MMSCMD (Non-APM gas) and 0.9 MMSCMD diverted from Ratnagiri during June,2014 to July, 2015. Further there is arrangement of gas through Master Sales Spot Gas



Agreement (MSSG) of PPCL with GAIL for purchase of spot R-LNG on the basis of requirement to be decided in each Gas Sale & Purchase Notice (GSPN), one such Notice (GSPN) has been observed of dated 27.3.2014. GSAs contain restrictive clauses regarding minimum gas consumption. PPCL signed GSAs with Suppliers and Transporters containing the clauses of minimum consumption of gas on monthly/ annual basis with Take or Pay/min Ship or Pay/ Imbalance clauses in the FSAs.

42. PPCL is required to declare its requirement of gas in advance as per the agreements with the Gas suppliers for capacity declaration as per the Tariff Regulations. It may be appreciated that due to shortage in domestic gas there is no single source which can supply required gas on long term basis. Therefore, the petitioner has to arrange gas from different sources in different terms & conditions to cater to the requirement of gas. In view of above, we are of the view that the respondent has made adequate arrangements of gas for the station as per the requirement.

Issue No. 2: What are the provisions in the Tariff Regulations and Indian Electricity Grid Code regarding the declaration of capacity of the generating station.

43. The 2009 Tariff Regulations and the 2014 Tariff Regulations do not lay down any restriction in regard to the source of fuel or price of fuel to be used by the generating station and full recovery of fixed charges for availability of the generating station at or above the threshold levels, irrespective of whether availability is declared on natural gas or RLNG or liquid fuel. Therefore, the generating company may make declaration of its capacity based on Natural Gas or RLNG or liquid fuel. The beneficiaries have the option to dispatch or refuse to dispatch the capacity on natural gas, RLNG or liquid fuel. In this



context the scheduling procedure specified under IEGC Regulations, 2010 in clauses 6.4.9 and 6.4.16 (extracted below) need also to be noticed:

"6.4.9 The ISGS, other generating stations and sellers shall be responsible for power generation/ power injection generally according to daily schedules advised to them by the RLDC/SLDC on the basis of the contracts /requisition received from the SLDCs/Buyers/Power Exchanges.

6.4.16 The ISGS shall make an advance declaration of ex-power plant MW and MWh capabilities foreseen for the next day i.e. from 0000 hrs. to 2400 hrs. During fuel shortage condition, in case of thermal stations, they may specify minimum MW, maximum MW, MWh capability and declaration of fuel shortage. The generating stations shall also declare the possible ramping up/ ramping down in a block. In case of gas turbine generating station or combined cycle generating station shall declare the capacity for units and modules on APM gas, RLNG and liquid fuel separately, and shall be scheduled separately."

Therefore , as per Tariff Regulations and IEGC provisions , the generators can declare capacity based on single fuel or combination of fuels and the beneficiaries have the options to schedule the power or not.

44. The Commission in its order dated 6.2.2007 in Petition No.148/2005 in case of PSPCL Vs. NTPC has deliberated the issue of supply position of RLNG/additional gas on long term basis and observed as follows:

"14. The Commission is concerned with liquid fuel capacity remaining unutilized and is of the view that the respondent should make all out efforts for augmenting supply of gas/RLNG. The Commission vide order dated 31.1.2006 allowed the respondent three months' time to finalize detailed time schedule for augmenting supply of gas to its gas-based generating stations. The respondent gave a detailed presentation on 17.3.2006 at NRPC Forum, dwelling upon the efforts being made for augmenting gas/RLNG supplies to Anta GPS, Auraiya GPS and Dadri GPS. As per the presentation, the total gas availability in the country, at present, is around 91 MMSCMD, all of which is tied up. As against the requirement of about 10.1 MMSCMD gas for full capacity utilization at Dadri, Anta and Auraiya, the present linkage of the respondent from GAIL is only 5.8 MMSCMD. The respondent is making efforts to arrange additional gas/RLNG from GAIL through spot markets and to tie up arrangements for RLNG from all available sources like Petronet – LNG, IOCL, BPCL, Shell etc. The beneficiaries have appreciated the efforts made by the respondent being made for augmentation of gas supplies. During the subsequent hearing on 12.9.2006, the respondent submitted that it was continuously



pursuing with Govt. of India for maintaining supply of APM gas as per allocation. To augment the gas supply further, the respondent has been procuring RLNG from spot market since June 2006 through open tenders and as a result declaration from gas-based generating stations on gas has significantly improved. The respondent informed that it was in discussion with major gas suppliers viz., PMT Consortium, Petronet LNG Ltd., GSPCL for supply of gas on long-term basis. However, the supply position of RLNG/ additional gas on long-term basis was very fluid and any commitment at this stage was not possible. The picture is expected to become clear by 2009 when gas from new gas field starts flowing. In view of the above, the Commission seeks to impress upon the respondent to make all endeavors to arrange additional gas/RLNG to maximize generation on gas/RLNG. However, we are not inclined to fix any time limit knowing that additional gas/RLNG is not easily available on long-term basis. Similarly, it would not be appropriate to link the availability of 80% to the availability of gas alone. Therefore, the prayers at Nos. (1) and (2) above cannot be allowed, except for a general direction to the respondent for arranging gas/RLNG supply to the extent possible, and in a cost-effective manner. "

45. It is evident from the above provision in IEGC, Tariff Regulations and as held by the Commission in order dated 6.2.2007 in Petition No. 148/2005 that the generator in case of any restriction/reduction in the supply of cheaper gas, can declare the availability on the basis of the higher cost alternate fuel (RLNG) and if the beneficiaries feel the cost of electricity generated from such costly fuel is not affordable then they are at liberty not to schedule such power and has to pay the capacity charges based on the availability declared and certified by SLDC/RLDC. Therefore, we hold that the responsibility of arranging fuel for declaring the capacity of the station rests with the generator and in case of shortage of cheaper fuel the generator can declare the capacity as per the normative target availability even if it can arrange costlier fuel. Though in the latter case, the beneficiary can decide not to schedule power, but responsibility to bear fixed cost remain.

46. We have examined the Provisional Energy Accounts for the month of March, 2012 to March, 2016 prepared by Delhi SLDC. The Plant Availability Factor achieved in the year 2011 -12, 2012-13, 2013-14, 2014-15 and 2015-16 are tabulated below:



Sl. no.	Year	Plant Availability Factor achieved
(1)	2011-12	69%
(2)	2012-13	92%
(3)	2013-14	95%
(4)	2014-15	92%
(5)	2015-16	65%

47. Further, it is observed from the data of SLDC regarding Declared Capacity (DC) and Scheduled of Generation (SG) for the period from 27.12.2011 (COD of First GT) to 31.3.2016 that the Scheduled Generation is much lower compared to DC as tabulated below :

Year	Declared Capacity (MU)	Scheduled Generation (MU)
2011-12	275.329000	123.677617
2012-13	7104.958000	1375.643500
2013-14	8607.727500	597.671375
2014-15	10779.293	2131.483688
2015-16	7568.46375	1824.646134

The reason for lower scheduled generation compared to DC was due to small quantum of cheaper gas available as most of the quantum of gas supply arranged was from costly Spot –RLNG. As a result of non-availability of full quantity of cheaper gas, the beneficiaries of this station including the Petitioners have been giving less prioritization in scheduling from this station due to higher tariff. Therefore, most of the capacity remains idle and unutilized. As observed earlier, the beneficiaries are free to schedule or not to schedule power depending on the cost of fuel. Whether the respondent has arranged adequate fuel for declaring capacity to 85% or more can't be construed based on the actual consumption of gas as the actual consumption of gas depends on the Schedule of Generation given by the beneficiaries to the State Load Despatch Centre. The Petitioners have not mentioned anything in the petition or in the submissions to make out a case that the actual generation was less than the schedule given by the Petitioners. Having failed to Schedule power based on



DC or equivalent to DC given by the generator respondent, the Petitioners cannot allege that availability of generating station of the respondent fell short of 85%. Data of SLDC clearly states that plant availability during 2012-13 to 2014-15 was above 85%.

48. The Petitioners would appreciate the fact that in the existing scenario of shortage of cheaper gas, no gas based station can operate full capacity on cheaper fuel. The respondent arranged gas from different sources including spot-market but actually did not consume spot RLNG as the Petitioners were Scheduling power substantially lowered than the capacity declared (DC) by the respondent. The Commission in the order dated 6.2.2007 in Petition No. 148/2005 (PPCL Vs. NTPC) and in the order dated 30.07.2013 in Petition No. 166/MP/2012 (RGPPL Vs. MSEDCL) has acknowledged the fact that the gas based stations are facing shortage of domestic gas and consequently use of costly RLNG/ spot RLNG are being used for declaration of capacity. The Commission in the order dated 30.07.2013 in Petition No. 166/MP/2012 has observed as follows:

"25. According to RGPPL, it had made all efforts within its power and control to source natural gas required for the operation of the generating station at the full capacity, but without any fruitful results. Therefore, RGPPL entered into contract for purchase of RLNG on 'take and pay' basis. MSEDCL has relied upon Article 5.9 of the PPA which inter alia provides that contracting terms and price of gas supply to RGPPL have to be agreed to between RGPPL and MSEDCL. Therefore, MSEDCL is not agreeable to requisition power generated by using RLNG or to compute the capacity so declared towards APAF. In our view, the interpretation placed by MSEDCL on Article 5.9 is not sustainable since it negates the provisions of Article 4.3 of the PPA. It is established principle of interpretation of contracts that the contract is to be read as a whole and the different provisions of the contract are to be harmoniously interpreted so that effect is given to each one of them and no part of the contract becomes otiose. This principle needs to be adhered to while interpreting Articles 4.3 and 5.9 of the PPA. When Article 5.9 is so interpreted it would mean that consent of MSEDCL on the contracting terms of supply of gas and its price is needed to enable it examine the implications on payment of variable charge. The agreement between RGPPL and MSEDCL on the contracting terms and price for supply of fuel to RGPPL, as provided under Article 5.9 is not a necessary condition for declaration of capacity of the generating station under Article



4.3 of the PPA. The declaration of capacity under Article 4.3 of the PPA is independent of the provision of Article 5.9 and is not dependent on any other factor, such as price of fuel, etc. The recovery of fixed charges is to be governed by the declared capacity of the generating station. It is true that making arrangement for supply of fuel for the generating station is the responsibility of RGPPL. RGPPL has made arrangements for supply of RLNG since it was not able to arrange supply of domestic gas because of the overall shortage of gas in the country. MSEDCL in its discretion may not schedule the capacity declared on RLNG since it has implications on the variable charges. However, it cannot disown its liability to pay the fixed charges when RGPPL declares capacity based on RLNG as the primary fuel in accordance with Article 4.3 of the PPA.

26. In the light of the above discussions, any declaration of capacity by RGPPL based on RLNG as the primary fuel qualifies for the computation of availability of the generating station for recovery of the fixed charges and accordingly the fixed charge recovery be made by the petitioner based on availability after accounting for declaration of capacity on RLNG.”

49. In view of above, we are unable to accept the argument of the Petitioners that the fixed cost payable to the respondent should be reduced based on the actual generation. The fixed cost is payable on the basis of the availability of units/station which is dependent on the declared capacity and the availability achieved during 2012-13 to 2014-15 is more than Normative Availability of 85%. Therefore, we do not find any merit in the allegation made by the Petitioners and accordingly, the prayers of the Petitioners are rejected.

50. The petition is disposed of in terms of above.

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

sd/-
(A. S. Bakshi)
Member

sd/-
(A. K. Singhal)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson

