

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.114/MP/2018**

**Coram:**

**Shri P.K. Pujari, Chairperson**

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

**Shri I.S. Jha, Member**

**Date of Order: 4<sup>th</sup> of February 2020**

**In the matter of**

Petition seeking issuance of consequential directions to the respondents for complying with the Detailed Operating Procedure qua Reserve Shut Down of the Unit(s) of the 2x660 MW Mahatma Gandhi Thermal Power Plant at Matenhali, District Jhajjar, Haryana.

**And**

**In the matter of**

Tata Power Delhi Distribution Limited  
NDPL House, Hudson Lines,  
Kingsway Camp,  
Delhi - 110 009.

**.....Petitioner**

**Vs**

- 1) Jhajjar Power Limited (JPL)  
Village Khanpur, Tahsil Matenhali  
District Jhajjar,  
Haryana- 124142
- 2) Dakshin Haryana Bijli Vitran Limited  
Vidyut Sadan,  
Vidyut Nagar,  
Hisar -125005
- 3) Uttar Haryana Bijli Vitran Limited  
Vidyut Sadan,  
Plot No. C-16, Sector-6, Panchkula,  
Haryana (India)
- 4) Tata Power Trading Company Limited  
Shatabdi Bhawan  
2nd Floor, B-12 &13  
Sector-4, Noida 201301
- 5) Haryana Vidyut Prasaran Nigam Limited  
Shakti Bhawan, Sector-6

- Panchkula, Haryana- 134109
- 6) Haryana State Load Despatch Centre  
Behind BBMB Power house,  
Sewah, Panipat,  
Haryana 132103
- 7) Northern Regional Load Despatch Centre  
18-A, Shaheed Jeet Singh Sansanwal Marg,  
Katwaria Sarai,  
New Delhi -110016

... Respondents

**Parties Present:**

Shri Gopal Jain, Sr. Advocate, TPDDL  
Ms. Molshree Bhatnagar, Advocate, TPDDL  
Ms. Jyotsana Khatri, Advocate, TPDDL  
Ms. Shefali Sobti, TPDDL  
Shri Anoop Pandey, TPDDL  
Shri Sumit Sachdev, TPDDL  
Shri Anurag Bansal, TPDDL  
Shri Ramanuj, Advocate, JPL  
Shri Manpreet Lamba, Advocate, JPL  
Ms. Anushree Bardhan, Advocate, Haryana Discoms/HPPC  
Ms. Tanya Sareen, Advocate, Haryana Discoms/HPPC  
Shri Vikas, HVPNL  
Shri Gajendra Singh, NRLDC  
Ms. Kavita Parihar, NRLDC  
Shri Ashok Rajan, NRLDC

**ORDER**

The Petitioner, Tata Power Delhi Distribution Limited, has filed the present Petition under Section 79(1)(b), 79(1)(c) and 79(1)(f) of the Electricity Act, 2003 (hereinafter referred to as “the Act”), read with the relevant provisions of the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations, 2010 (hereinafter referred to as “the Grid Code” or “IEGC”) for implementation of the Commission`s Order No. L-1/219/2017/CERC dated 5.5.2017 and seeking issuance of consequential directions to the Respondents for complying with the Detailed Operating Procedure (hereinafter referred to as “DOP”) qua Reserve Shut Down of the Unit(s) of the 2 x 660 MW Mahatma Gandhi Thermal Power Plant (hereinafter

referred to as “the Project” or “the generating station”) at Matenhali, District Jhajjar in the State of Haryana.

2. The Petitioner, Tata Power Delhi Distribution Limited (TPDDL), is a distribution licensee. The Respondent No.1, Jhajjar Power Limited (JPL), is a generating company. The Respondent No. 2 (Dakshin Haryana Bijli Vitran Nigam Limited) and Respondent No.3 (Uttar Haryana Bijli Vitran Nigam Limited) are distribution licensee supplying electricity in the State of Haryana. The Respondent No. 4, Tata Power Trading Company Limited (TPTCL) is a trading licensee within the meaning of Section 14 of the Act. The Respondent No.5, Haryana Vidyut Prasaran Nigam Limited (HVPNL) undertakes purchase of electricity on behalf of distribution licensees of Haryana. The Respondent No.6 is State Load Despatch Centre in the State of Haryana within the meaning of Section 32 of the Act and the Respondent No.7 is Regional Load Despatch Centre of Northern Region within the meaning of Section 28 of the Act.

### **Background of the case**

3. Brief facts of the case are as under:

a) The Respondent No. 4 has entered into Power Purchase Agreement (PPA) with the Respondent No.1 to supply electricity to the Petitioner from the Project. Respondents No. 2 and 3 (hereinafter also referred to as the Haryana Discoms or Haryana Utilities) have also entered into a PPA with the Respondent No.1.

b) As per the above PPAs, 90% power from the Project is being supplied to the Respondents No. 2 and 3 and 10% power is being supplied to the Petitioner through the Respondent No.4.

- c) As per the PPA executed with Respondent No. 1, the contracted capacity of 61.86 MW each from unit 1 and unit 2 of the Project is allocated to the Petitioner.
- d) Respondents No. 2 and 3 are not scheduling their entire contracted capacity from the Project and are keeping one unit of the Project under Reserve Shut Down (RSD) thereby having consequential effect on power available to the Petitioner through Respondent No.4.
- e) When any one unit is under RSD due to low demand or cannot be operated due to technical minimum condition, the Respondent No.4 gets power only up to 61.86 MW from the other running unit as it cannot get rightful quantum of power from the unit under RSD.
- f) Respondent No.4 despite making payment of capacity charges for full allocated capacity to Respondent No. 1 i.e. for 123.72 MW, is not in a position to schedule more than 61.86 MW when one unit is under RSD.
- g) The Petitioner is beneficiary of power contracted by the Respondent No.4 and has made different proposals to resolve the issues for coordination and scheduling, but the Respondents No.2 and 3 have disagreed with the same.
- h) On 5.5.2017, the Commission, in furtherance of the Fourth Amendment to the Central Electricity Regulatory Commission (Indian Electricity Grid Code) Regulations 2010, issued DOP for smooth scheduling during RSD of unit.
- i) Subsequent to issuance of DOP, the Petitioner vide its letter dated 12.5.2017 informed TPTCL and JPL regarding consequential ramifications of DOP in the instant case.
- j) The Petitioner has relied on Para 5.10 of the DOP which provides that when a Unit is under RSD, in case the total requisitioned power can be supplied through other Units of the same generating station on bar, the generator shall be scheduled according to the requisition of power received.

k) The Petitioner has approached the Respondents No.1, 2 and 3 for enforcing the DOP but could not succeed. Therefore, the Petitioner has filed the instant Petition seeking directions to the Respondents to comply with the directions under Para 5.10 of the DOP dated 5.5.2017.

4. The Petitioner has made the following prayers:

*(i) Issue necessary directions to the Respondents herein to comply with the DOP approved by Commission in a time bound manner, and in light of the same allow the Petitioner to avail the complete and maximum contracted capacity from the running Unit of the Project, in case another Unit is under RSD and there is non-off take of power up to its allocated contracted capacity of 556 MW by the Haryana Utilities;*

*(ii) Declare that TPDDL is not responsible to pay additional Capacity Charges for power up to 123.72 MW when such power is supplied to it from the running Unit of the Project in terms of the DOP; and*

*(iii) Grant such order, further relief(s) in the facts and circumstances of the case as Commission may deem just and equitable in favour of the Petitioner.*

#### **Submissions of the Petitioner**

5. The Petitioner has advanced its claim on the following grounds:

(a) DOP as approved by the Commission lays down a detailed and comprehensive methodology which makes it clear that in case one unit of a generating station is under RSD, the generator thereto would be obligated to schedule to the procurers, their maximum contracted capacity (subject to less/non-requisition of power by the other beneficiary), from the another Unit which is in operation.

(b) Unit-wise allocation of contracted capacity from the Project cannot remain as an obstacle in providing power if required capacity to meet the demand of the Petitioner is available from the running unit of the Project since one set of beneficiaries is taking power below their allocated contracted capacity.

(c) In terms of Para 5.10 of the DOP, the Petitioner is entitled to avail the total contracted capacity of power from the running unit of the Project when the

other unit is under RSD if Haryana Utilities are not availing power up to its allocated contracted capacity from such operating unit.

(d) The Petitioner has through its various communications to the Respondents requested for implementation of the provisions of the DOP. In response, HVPNL, vide its letter dated 6.11.2017 informed the Petitioner that it would be required to pay all charges i.e. fixed and variable charges subject to recall of power as per the Grid Code and Haryana Discoms will get relief from payment of fixed charges and penalty due to non-lifting of coal on account of less scheduling. The said understanding of HVPNL is flawed, devoid of merit and in stark contravention to the mandate of Para 5.9 of the DOP, which provides that even after taking unit(s) under RSD, procurer will continue to pay only such capacity charges which is corresponding to its allocation in the total declared capacity.

(e) The Petitioner has been paying full capacity charge for the entire contracted capacity (123.72 MW), even though number of times, only one unit has been running and therefore, only 61.86 MW being available to the Petitioner and is scheduled by the Petitioner. Accordingly, for any additional capacity that would be scheduled from the running unit, no fixed charges should be paid by the Petitioner upto its contracted capacity i.e. 123.72 MW.

(f) When one unit of Project is put under RSD, it is solely based on instructions from Haryana Utilities. In such a scenario, Petitioner pays capacity charges for its allocated contracted capacity from such unit under RSD. Therefore, Petitioner in any event is paying capacity charges till 123.72 MW even when it is effectively receiving only 61.86 MW. Therefore, when Petitioner receives power up to 123.72 MW from one running unit, when another unit is under RSD, it cannot be made to again pay capacity charges to the extent of 123.72 MW.

(g) The Petitioner has approached the Respondents seeking implementation of the DOP and approval for scheduling maximum available quantum from the generating station to TPDDL and Haryana Utilities respectively. However, no steps have been taken by the Respondents in this

regard. The implementation of the Commission's directions as elucidated in the DOP, would be mutually beneficial for the Petitioner, Haryana Utilities and JPL and would improve overall efficiency and functioning of the Project.

(h) If JPL fails to meet the required capacity, despite payment of fixed charges up to its contracted capacity by the Petitioner, the Petitioner would continue to face difficulty in meeting the additional power requirements. In order to avoid the same, it would be necessary to schedule power from JPL in a coordinated and cost-effective manner, which can be ensured by allowing the Petitioner to take the complete share upto its capacity of 123.72 MW (after Auxiliary consumption) from the running unit in the event of non-off take of power up to its allocated capacity of 556 MW from the unit (after Auxiliary consumption) by the Haryana Utilities.

(i) The Project is an Inter-State Generating Station (ISGS) in terms of Regulation 2(pp) of the IEGC and is covered under Regulation 6.3 of IEGC which deals with Scheduling and Dispatch Code. Accordingly, the norms qua RSD as provided in DOP are squarely applicable to it in terms of Para 3 of DOP.

### **Submission of Respondents**

6. The Respondent No.1, JPL, has submitted as under:

(a) Disputes/ issues raised in the present Petition pertain to the inability or unwillingness of the Petitioner and Respondent Nos. 2 to 4 to arrive at a mutual agreement among themselves to off-take their full shares of contracted capacity from one running unit of the Project, if the Haryana Discoms have not requisitioned their full contracted capacity (556.75 MW net) from that unit. JPL has already expressed its willingness to supply up to 123.72 MW (i.e. total contracted capacity with Respondent No. 4 in respect of both the units) from the one running unit of the Project if the power scheduled by Haryana Discoms is less than their full contracted capacity and vice versa, subject to despatch instructions meeting with the technical minimum requirement and necessary approval granted by the Haryana Power Purchase Centre (HPPC) as per the PPA with the Haryana Discoms.

(b) In absence of mutual agreement among the two sets of beneficiaries/off-takers (i.e. Haryana Discoms and the TPDDL/ TPTCL), JPL is prevented from implementing the directions contained in the DOP for supplying the full requisitioned power to the Respondent No. 4 (for onward sale to the Petitioner) in case one of the units is under RSD.

(c) The obligation of scheduling power in accordance with the DOP is mainly on the Haryana SLDC and the procurers/beneficiaries of the generating station. JPL cannot be held responsible for allegedly not implementing the DOP since it has complied with the schedule received from HVPNL and/or the Haryana SLDC in accordance with the applicable provisions of the Grid Code.

(d) In any event, neither the Petitioner nor the Respondent No. 4 has any right to Project capacity beyond the contracted capacity of 123.72 MW under the PPA signed between them (hereinafter referred to as “the Trading PPA”). Any sale of capacity or energy by the Respondent No. 1 beyond the contracted capacity falls under Article 4.4 of the Haryana PPA and the Petitioner is entitled to sell capacity not availed by any of the procurers to any person without losing the right to receive capacity charges from the concerned procurers.

(e) JPL has no contractual obligation with the Petitioner since the Trading PPA is executed with the Respondent No. 4, namely, TPTCL only. In addition, JPL has been supplying contracted power to the Respondents 2 and 3 and the Respondent No. 4 as per the terms of the respective PPAs, subject to the technical minimum of units being maintained. The issue of apportionment of any un-requisitioned or excess power (in case of low demand from the Haryana Discoms or from the Respondent No. 4) from the Project is a matter to be resolved and settled among the Petitioner and the Respondent Nos. 2, 3 and 4 subject to right of JPL to receive (i) full capacity charge payments under the respective PPAs, and (ii) penalty, if any, paid to the fuel supplier under the Fuel Supply Agreement on account of failure of the Procurers to off-take energy corresponding to the Minimum Off-take Guarantee stated in the respective PPAs.

(f) JPL had already communicated to TPTCL vide its letters dated 5.5.2017 as well as 24.5.2017 (written in response to the Petitioner's letter dated 12.5.2017) that it was willing to supply up to 123.72 MW power from one unit to TPTCL (for onward sale to TPDDL/Petitioner) subject to despatch instructions meeting the technical minimum requirements and approval of HPPC as per the Haryana PPA.

(g) TPTCL should approach HPPC to seek necessary approvals from the Haryana Discoms and Haryana SLDC and JPL has expressed its willingness to join tripartite meeting, if any, to arrive for mutually acceptable solution. However, the Petitioner and TPTCL have failed to take requisite steps in this regard.

(h) TPTCL (and consequently, the Petitioner) has not been paying the legitimate dues of JPL in relation to its failure to off-take energy corresponding to the Minimum Off-take Guarantee stated in the Trading PPA and as a result, Respondent No. 1 suffers penalties levied by the coal supplier under the FSA.

(i) JPL has been operating the Project in terms of the PPAs and as per the despatch schedule received from Haryana SLDC. The Petitioner's grievances can only be addressed through a mutual agreement among the Respondent Nos. 2, 3 and 4.

(j) JPL has no obligation to schedule any capacity to the Petitioner under the Trading PPA. JPL is a party to the Trading PPA which clearly sets out the allocated contracted capacity from each unit of the Project and JPL has scheduled power in full compliance of the same. In case, one of the units of the Project is under RSD, JPL is bound to comply with the despatch instructions issued by Haryana SLDC (for the power requisitioned by the Respondent Nos. 2 and 3) and in absence of mutual agreement among the procurers to requisition any excess power not requisitioned by one of the beneficiaries or procurers, the Respondent No. 1 is obligated to comply with the terms of the respective PPAs.

(k) JPL has not in any manner acted in violation of the regulations issued by the Commission at any stage. TPDDL and TPTCL are well aware that the PPAs and Grid Code provide for the technical operating constraints within which JPL has to operate the Project. Contrary to the Petitioner's assertions, JPL has always supplied power up to the contracted capacity under the terms of the Trading PPA.

7. The Respondent No. 7, NRLDC vide affidavit dated 14.8.2018 has submitted that NRLDC is neither a party to the disagreement nor any specific prayer has been made against NRLDC. It has submitted that the Commission may pass such orders as deemed fit in the circumstances of the case.

8. The Respondent Nos. 2 and 3, Haryana Discoms, vide affidavit dated 14.8.2018 have submitted as under:

(a) The Petitioner is not the procurer of power from JPL. The Petitioner is not a contracting party with JPL and has no cause of action to file the present Petition, particularly, in regard to the contracting capacity from the power plant over and above 10% share allocated to TPTCL. Therefore, the present Petition is not maintainable and is liable to be rejected *in limine*.

(b) The rights and obligation of Haryana Discoms in regard to the capacity contracted in respect of the JPL's Project cannot in any manner be subjected to such directions as prayed for by the Petitioner in the present proceedings. The contracted capacity of Haryana Discoms cannot be dealt with by JPL in any manner other than as specifically provided for in the Power Purchase Agreement dated 7.8.2008.

(c) The provisions of DOP for taking units under RSD do not in any manner authorize for any direction to be given in regard to Haryana Discoms' contracted capacity with JPL at the instance of the Petitioner.

(d) Clause 5.10 of the DOP provides that when the power generating unit/machine is going under RSD, the power can be supplied through other units in the same generating station if it is possible to be supplied to the extent

of the power requisitioned by the Procurer. Clause 5.10 of the DOP in the later part itself recognizes that in case of more than one beneficiary, the power supply from the other units shall be reduced in the ratio of the requisitioned power. However, in the present case, the allocation being in the ratio of 90:10, the rights of 90% allocated beneficiary (Haryana Discoms) cannot be in any manner affected by the Petitioner or Respondent No. 4 requisitioning the capacity in excess of 10% in the other generating unit.

(e) Clause 5.10(i) of the DOP has to be given a purposive and contextual interpretation, namely, if after adjusting for all the contracted capacity of different procurers, the surplus capacity is available in a generating unit and another generating unit is taken to RSD, the beneficiaries of the other generating units can seek supply of power from such surplus capacity. It cannot be extended to depriving the contractual right of the existing beneficiaries of the other generating unit and making the same available to the beneficiaries of the first generating unit which is taken for RSD.

(f) The interpretation advanced by the Petitioner is patently erroneous and the Petitioner cannot urge such an interpretation when Clause 5.10 (ii) of the DOP speaks about that the capacity in the other generating unit to be allocated to more than one beneficiary who has requisitioned the surplus power. Accordingly, even if there is surplus capacity in the second generating unit and the beneficiaries of the first generating unit which is taken to RSD requisition surplus capacity, the same cannot be allocated selectively to one beneficiary. It is to be allocated proportionately to all such beneficiaries. Accordingly, Haryana Discoms will also have the right to demand surplus capacity in the second generating unit.

(g) Any claim made by the Petitioner in unit-II, in which Haryana Discoms have 90% allocation, need to be rejected. The issue of utilization of 90% of the contracted capacity is entirely at the discretion of Haryana Discoms. Haryana Discoms are required to decide the quantum of power to be scheduled out of the above contracted capacity on a daily basis. Further, Haryana Discoms are entitled to vary the scheduled power qua the power declared available at any time during the course of the day by giving prior notice of four time blocks i.e.

one hour. These are absolute prerogative of the beneficiaries who has contracted power, namely, to take power at any time they desire.

(h) The generating company is required to make available the quantum of electricity being generated from the generating station to the extent of the proportionate contracted capacity at any given time. The Petitioner`s prayers are contrary to the above rights recognized of the Procurer of electricity such as Haryana Discoms. Haryana Discoms are liable to pay the fixed charges to JPL irrespective of the total quantum of power scheduled by them i.e. non-utilisation of the declared capacity. Accordingly, JPL cannot supply power to the Petitioner out of the contracted capacity of Haryana Discoms in running unit of the Project. The agreement to pay the capacity charges by Haryana Discoms vests in them the right to ensure that their shares of electricity contracted is not dealt with for JPL in any manner whatsoever.

(i) The claim of the Petitioner would marginalize the contracted rights of Haryana Discoms and give undue advantage to itself with an obligation remaining with Haryana Discoms to pay fixed charges. Therefore, the Petition is liable to be dismissed with exemplary cost.

(j) There cannot be direction or mandate given to Haryana Discoms to deal with the electricity contracted by them in any manner. It is, therefore, open to Haryana Discoms to mutually discuss and deal with any third party including the Petitioner or Respondent No. 4.

9. The Respondent No.4, TPTCL vide affidavit dated 31.8.2018, has submitted as under:

(a) Since the Respondent is a trading licensee whose role is to facilitate the process of supply of electricity, it does not have any specific comment in the instant Petition.

(b) The contracted capacity qua the Petitioner is 132 MW (123.72 MW ex bus after auxiliary consumption) from the two units of the Project. Regardless of whether one of the units of the Project is on mandated RSD, the Petitioner is

required to pay capacity charges for both units, and receive only part of the power supply for which it is entitled to.

(c) From a conjoint reading of the DOP as approved by the Commission, and facts of the present case, prayers sought by the Petitioner may be considered by the Commission.

(d) Full effect must be given to the DOP, particularly, Para 5.10.

### **Response of the Petitioner**

10. The Petitioner vide affidavit dated 26.6.2019 has submitted the rejoinder to replies of Haryana Discoms and JPL and has mainly reiterated the submissions made in the Petition.

### **Analysis and Decision**

11. Based upon submissions of the parties, the following issues emerge for our consideration:

**Issue No. 1: Whether the claim of the Petitioner is maintainable taking into consideration that it has no direct agreement with the Respondent No.1 and that it is getting supply of power through a trading licensee?**

**Issue No. 2: Whether in terms of the provisions of the DOP, the Petitioner can avail maximum contracted capacity (up to 123.72 MW) from the running Unit of the Project, in case another Unit is under RSD and there is non-off take of power up to its allocated contracted capacity of 556.75 MW by the Haryana Discoms?**

We discuss the issues one by one.

**Issue No. 1: Whether the claim of the Petitioner is maintainable taking into consideration that it has no direct agreement with the Respondent No.1 and that it is getting supply of power through a trading licensee?**

12. JPL and Haryana Discoms have submitted that there is no PPA between the Respondent No.1 and the Petitioner. It has been further submitted that since the Respondent No.1 has contractual arrangement only with Respondent 4, TPTCL,

there is no privity of contract between the Petitioner and the Respondent 1. Accordingly, the present Petition is not maintainable.

13. The question arises as to whether there is a privity of contract between JPL and TPDDL when there is no direct contractual relationship between them. In the present case, JPL is supplying power to TPTCL through a PPA and TPTCL is supplying power to TPDDL under the PSA. In this case, since electricity is being supplied from the generating station of JPL to TPDDL through TPTCL through back to back arrangements, the dispute regarding such supply of power shall be adjudicated by this Commission. On the similar contention regarding privity of contract between the Petitioner and JPL, the Commission in its order dated 18.4.2016 in Petition No. 319/MP/2013 had examined the provisions of the Tata PPA and PSA and observed that both Tata PPA and PSA are inextricably intertwined and there is a contractual relationship between JPL and TPDDL. Therefore, TPDDL can bring a claim against TPTCL/JPL in the event of failure of TPTCL under the provisions of the PSA or failure of JPL under the provisions of the Tata PPA to discharge their obligations for supply power to TPDDL. The relevant portion of the order dated 18.4.2016 is extracted as under:

*“20. We have considered the submissions of JPL. In our view, the provisions of the Tata PPA and PSA need to be read in entirety in order to understand the true nature of contractual relationship emerging from these agreements. Perusal of the judgement of the Appellate Tribunal as quoted above reveals that the Appellate Tribunal held both the PPA and PSA as distinct and separate on consideration of the fact that the obligation of the generator (Lanco Amarkantak) to supply power under the PPA was solely to the trading licensee (PTC India Limited) who is independently responsible to sell power to one or more purchasers and accordingly independently liable to supply to such purchasers. In that case, though the sale of power was to take place between PTC India Limited and MP Power Trading Company Limited, the Appellate Tribunal came to the conclusion that there was no certainty that the power would be sold by PTC India Limited to Madhya Pradesh. The present case stands on a different footing. As already discussed in para 18 above, recitals in both Tata PPA and PSA refer to the supply of power from JPL to TPDDL. Both the Agreements further stipulate that TPDDL would get the PSA approved from the appropriate Commission and provide a copy of the same to JPL through TPTCL to enable JPL to claim the benefits under Mega Power Policy. Further, in the PSA, there are references to the obligations to be*

*discharged by TPTCL/JPL. In the PSA, Project has been defined as “the power station undertaken for design, financing, engineering, procurement, construction, operation, maintenance, repair, refurbishment, development and insurance by the JPL in accordance with the terms and conditions of this agreement.” Allocated contracted capacity has been defined as “the portion of the contracted capacity allocated to NDPL as provided in Schedule 13 subject to adjustment as per the terms of this Agreement”. Schedule 13 of the PSA shows the allocated contracted capacity to TPDDL is 61.86 MW each from Unit 1 and Unit 2 of MGTPP. Under Article 4.1.4 of the PSA, it is the obligation of TPTCL to sell the allocated contracted capacity to NDPL (TPDDL) at the delivery point. These provisions clearly establish that both Tata PPA and PSA are inextricably intertwined and there is a contractual relationship between JPL and TPDDL. Therefore, TPDDL can bring a claim against TPTCL/JPL in the event of failure of TPTCL under the provisions of the PSA or failure of JPL under the provisions of the Tata PPA to discharge their obligations for supply power to TPDDL.”*

In view of the above finding of the Commission, the contentions of Respondents No. 1, 2 and 3 regarding privity of contract between the Petitioner and JPL and contention that the Petition is not maintainable, is rejected.

**Issue No. 2: Whether, in terms of the provisions of the DOP, the Petitioner can avail maximum contracted capacity (up to 123.72 MW) from the running Unit of the Project, in case another Unit is under RSD and there is non-off take of power up to its allocated contracted capacity of 556.75 MW by the Haryana Discoms?**

14. The Petitioner has submitted that in terms of Para 5.10 of DOP, the Petitioner is entitled to avail (without payment of capacity charges) up to total contracted capacity of power (123.72 MW) from the running unit of the generating station when the other unit is under RSD and the Haryana Discoms are not availing the power up to their contracted capacity. It has also been submitted that the provisions of DOP need to be given effect to which would prevail over provisions of the PPA which allocates the contracted capacity from the Project unit-wise.

15. *Per contra*, Haryana Discoms have submitted that in terms of the PPA with JPL dated 7.8.2008, they have exclusive right to contracted capacity therein, i.e. 90% of the net available capacity and no part of the said contracted capacity can be diverted or used for any other purpose except as provided in the PPA. They have also submitted that DOP does not in any manner authorize any direction to be given

in respect to the aforesaid contracted capacity contrary to the contractual rights of the existing beneficiary and the capacity contemplated under Para 5.10(i) of DOP is only the surplus capacity available in the generating unit, if any.

16. JPL has submitted that it has no problem in supplying power to the Petitioner provided there is mutual agreement between the procurers i.e. Haryana Discoms and TPTCL/TPDDL and as long as it receives the full capacity charges and any damages payable to coal companies for non-offtake of minimum guaranteed power in terms of the PPAs. It has submitted that the PPA executed with TPTCL clearly sets out the allocated contracted capacity from each unit of the Project and JPL has scheduled the power in full compliance of the same and has not violated the provisions of the DOP.

17. Section 28 of the Act provides as under:

**“Section 28. Functions of Regional Load Despatch Centre:** (1) The Regional Load Despatch Centre shall be the apex body to ensure integrated operation of the power system in the concerned region.

(2) The Regional Load Despatch Centre shall comply with such principles, guidelines and methodologies in respect of the wheeling and optimum scheduling and despatch of electricity as the Central Commission may specify in the Grid Code.

(3) The Regional Load Despatch Centre shall –

(a) be responsible for optimum scheduling and despatch of electricity within the region, in accordance with the contracts entered into with the licensees or the generating companies operating in the region;

(b)…”

Thus, as per the Act, the RLDCs have been vested with the responsibilities for optimum scheduling and dispatch of electricity within the region in accordance with the contract entered into with the licensees or generating companies operating in the region. RLDCs have also been given the responsibility to monitor grid operation, keep account of the quantity of electricity transmitted through the regional grid, exercise supervision and control over the inter-State transmission system and carry

out real time operation for grid control and dispatch of electricity within the region in accordance with Grid Code. Thus, the scheduling and dispatch of electricity within a region shall be in accordance with the principles, guidelines and methodologies as specified in the Grid Code and in accordance with the contract entered into by the licensees or generating company operating within the region.

18. Some of the relevant provisions of the PPAs dealing with the contracted capacity, scheduling and despatch, etc. are necessary to refer to. The PPA dated 7.8.2008 executed between the Respondent No. 1 and Respondents 2 and 3 (Haryana Discoms) provides as under:

*“Availability Based Tariff” or “ABT”: Means the regulations contained in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2004, as amended or revised from time to time, to the extent applied as per the terms of this agreement.*

*“Scheduled Energy or Scheduled Generation”: means scheduled generation as defined in the ABT.*

#### 8.3 AVAILABILITY:

*The seller shall comply with the provisions of the applicable law regarding Availability including, in particular, to the provisions of the ABT and Grid code relating to intimation of Availability and the matters incidental thereto.*

#### 8.4 DESPATCH

*The seller shall comply with the provisions of the applicable law regarding Dispatch instructions, in particular, to the provisions of the ABT and Grid code relating to Dispatch and the matters incidental thereto.*

#### SCHEDULE 6: AVAILABILITY FACTORS

*The following matters shall be determined as per the provisions of the Grid Code and ABT:*

- a) *Availability declaration and calculation of Availability or Availability Factor;*
- b) *Requirement for Spinning Reserves;*
- c) *Procedure for revision of Availability;*
- d) *Consequences of failure to demonstrate capacity or mis-declarations of capacity; and*
- e) *Other matters which may be related to Availability or Availability Factor.*

#### SCHEDULE 13: CONTRACTED CAPACITY

*Contracted Capacity allocated to each of the Procurers shall be as under:*

<b>Name of the Procurer</b>	<b>Allocated Contracted Capacity (MW)</b>
Uttar Haryana Bijli Vitran Nigam Limited	Five hundred fifty six and point seven five (556.75)
Uttar Haryana Bijli Vitran Nigam Limited	Five hundred fifty six and point seven five (556.75)

19. The Trading PPA dated 20.1.2009 executed between the Respondent No. 1 and the Respondent No. 4, TPTCL provides as under:

*“F. TPTCL has expressed interest to purchase from JPL, the remaining 10% of the Available Capacity (“Allocated Contracted Capacity”) at the Delivery point (defined hereunder).*

*H. Consequently, TPTCL and JPL have entered into the Power Purchase Agreement on 20<sup>th</sup> January, 2009 to purchase 10% of the Available Capacity from the Project (“TPTCL PPA”)*

As per the above provision, TPTCL is entitled for the entire 10% of the available capacity of the Project.

20. “Contracted Capacity” defined under clause 1.1 of Article 1 of the Trading PPA provides as under:

*“Contracted Capacity” (a) means the rated net capacity expressed in MW of each Unit in the entire Power Station, as the case may be, at the Interconnection Point of the Power Station, as specified in Schedule 16;*

*(b) in case JPL exercise its option as per Article 3.1.1A, the rated capacity expressed in MW of each Unit and Power Station upto the maximum of the Allocated Contracted Capacity;*

*Or such rated capacities as may be determined in accordance with Article 6.3.4 and Article 8.1 of TPTCL PPA or this agreement”*

The above definition provides for the capacity both unit-wise and plant-wise. Thus, it does not restrict the capacity only to plant-wise.

21. ‘Scheduled generation’, ‘Availability’ and ‘Despatch’ have been defined as under in the Trading PPA:

*“Availability Based Tariff” or “ABT”:* Means the regulations contained in the Central Electricity Regulatory Commission (terms and conditions of tariff) Regulations, 2004, as amended or revised from time to time, to the extent applied as per the terms of this agreement.

*“Scheduled Energy or Scheduled Generation”:* means scheduled generation as defined in the ABT.

#### **SCHEDULE 6: AVAILABILITY FACTORS**

*The following matters shall be determined as per the provisions of the Grid Code and ABT:*

- a) *Availability declaration and calculation of Availability or Availability Factor;*
- b) *Requirement for Spinning Reserves;*
- c) *Procedure for revision of Availability;*
- d) *Consequences of failure to demonstrate capacity or Mis-declarations of capacity; and*
- e) *Other matters which may be related to Availability or Availability Factor.*

#### **8.3 AVAILABILITY**

*JPL shall comply with the provisions of the applicable Law regarding Availability including in particular, to the provisions of the ABT and Grid Code relating to intimation of Availability and the matters incidental thereto.*

#### **8.4 DESPATCH**

*JPL shall comply with the provisions of the applicable Law regarding Despatch Instructions, in particular, to the provision of the ABT and Grid Code relating to despatch and the matters incidental thereto.*

As per the above provisions, the generating station is required to comply with the provisions of the ABT and Grid Code relating to despatch and the matters incidental thereto.

22. Accordingly, relevant provisions of the ABT and the Grid Code regarding scheduling of contracted capacity of the PPAs under consideration are extracted as under:

- (a) Sub-clause (u) of Clause (2) of the Grid Code defines Despatch Schedule as under:

*“(u) Despatch Schedule means ex-power plant net MW and MWh output of a generating station, scheduled to be exported to the Grid from time to time;”*

(b) Para 16 of Clause 6.4 of the Grid Code talks about declaration to be submitted to the RLDC or SLDC, as the case may be, as under:

*“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 a gas turbine generating station or a combined cycle generating station, the generating station shall declare the capacity for units and modules on APM gas, RLNG and liquid fuel separately, and these shall be scheduled separately.”*

(c) Para 2 of Clause 6.3 of the Grid Code provides for the apportionment of the declared capability in terms of their allocated capacity as under:

*“2.Each State shall be entitled to a MW despatch up to (foreseen ex-power plant MW capability for the day) x (State’s Share in the station’s capacity) for all such stations. In case of hydro-electric stations, there would also be a limit on daily MWh despatch equal to (MWh generation capacity for the day) X (State’s Share in the station’s capacity).”*

23. Perusal of the provisions of the PPA, with reference to the Grid Code, reveals that it deals with ex-power plant capacity, and not with allocation of capacity based on individual unit. There is no provision in the PPA with respect to unit-wise scheduling.

24. Schedule 13 of the PPA executed by JPL with TPTCL provides for the allocated contracted capacity. The relevant provision of Schedule 13 is extracted as under:

*“Schedule 13: Allocated Contracted Capacity*

*Contracted capacity allocated to TPTCL shall be as under.*

<i>TPTCL</i>	<i>Allocated contracted capacity (MW)</i>
<i>Unit-1</i>	<i>Sixty one point eight six (61.86)</i>
<i>Unit-2</i>	<i>Sixty one point eight six (61.86)</i>

25. As per the above Schedule, unit-wise contracted capacity allocated to the Petitioner is 61.86 MW each from unit-I and unit-2 of the Project. Thus, though in terms of the PPA executed between JPL and TPTCL, a specific capacity has been

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allotted to the Petitioner from each the units of the Project, it does not guide the scheduling from each unit separately. The scheduling and despatch is governed by the provisions of the Grid Code and Availability Based Tariff (ABT) as agreed by the parties in Para 8.3 of the PPA.

26. It is noted that JPL and TPTCL entered into PPA for supply of power from the Project complying with relevant provisions of Grid Code and ABT as per Para 8.3 of the PPA, though at the same time, indicating individual unit-wise capacity in Schedule 13. We are of the view that since the provisions of the Grid Code deal with station-wise capacity and the provisions of PPA refer to the provisions of Grid Code, the RLDC and SLDC are required to undertake the scheduling based on ex-power plant capacity, irrespective of unit-wise capacity allocation. Accordingly, the scheduling is required to be carried out station-wise in terms of the provisions of the PPA.

27. The Petitioner has contended that in terms of the provisions of the DOP, it is entitled to avail its contracted capacity from the running unit of the Project when other unit of the Project is under RSD and Haryana Discoms are not off taking the power to its allocated contracted capacity therein. This contention of the Petitioner needs to be examined in terms of the provisions of the DOP issued under Regulation 6.3 B.6 of the Grid Code, as amended from time to time.

28. The Commission, *inter-alia*, considering the concerns of generators in operating their units at low schedules (corresponding to 55% of Installed capacity) due to various technical constraints, had taken a view that the generator should be adequately compensated for the loss of operational parameters due to operation of units below the normative operational level of 85%. The generator was provided with

option of RSD in case of schedules below technical minimum of 55%. Accordingly, the Commission vide notification dated 6.4.2016 issued Central Electricity Regulatory Commission (Indian Electricity Grid Code) (Fourth Amendment) Regulations, 2016 entrusting certain responsibilities on National Load Despatch Centre and Regional Power Committees as under:

*“6. NLDC shall prepare a Detailed Operating Procedure in consultation with the generators and beneficiaries at RPC forums within 2 months’ time and submit to the Commission for approval. **The Detailed Operating Procedure shall contain the role of different agencies, data requirements, procedure for taking the units under reserve shut down and the methodology for identifying the generating stations or units thereof to be backed down upto the technical minimum in specific Grid conditions** such as low system demand, Regulation of Power Supply and incidence of high renewables etc., based on merit order stacking.*

*7. The RPCs shall work out a mechanism for compensation for station heat rate and auxiliary energy consumption for low unit loading on monthly basis in terms of energy charges and compensation for secondary fuel oil consumption over and above the norm of 0.5 ml/kWh for additional start-ups in excess of 7 start-ups, in consultation with generators and beneficiaries at RPC forum and its sharing by the beneficiaries.”*

29. In line with the above direction of the Commission, ‘Detailed Operating Procedure for Backing Down of Coal/Lignite/Gas unit(s) of the Central Generating Stations, Inter-State Generating Stations and other Generating Station and for taking such units under Reserve Shut Down on scheduling below Technical Minimum Schedule’ was framed by NLDC, which was approved by the Commission in its order dated 15.5.2017. The DOP lays down a detailed and comprehensive methodology with regard to taking generating station or units under RSD and corresponding compensatory mechanism. Relevant provisions of the DOP are extracted as under:

*“5.9. Before taking unit(s) under RSD, the generating station shall revise the On Bar DC (with due consideration to ramp up/down capability), Off Bar DC, DC and Ramp UP/RAMP Down rate. The generator shall ensure that the Off Bar DC is not more than the MCR less Normative Auxiliary Consumption of the machines under RSD. The beneficiaries shall continue to bear the capacity charge corresponding to Total DC.*

*5.10. When the machine is going under RSD :*

*i. In case the total requisitioned power can be supplied through other units in the same generating station on bar, the generator shall be scheduled according to the requisitions received.*

*ii. In case total requisitioned power cannot be supplied through other units in the same generating station on bar, the requisition from the beneficiaries shall be reduced in the ratio of requisitioned power.*

*iii. In the special case of a generating station where the only running machine is going under RSD, the beneficiaries who have requisitioned power will not get any power from that generating station. In such cases, the beneficiaries may make arrangement from alternative sources.”*

30. A bare perusal of paragraph 5.10 of the DOP makes it abundantly clear that in case one unit of a generating station is under RSD, the generator thereto would be obligated to schedule to the procurers, their maximum contracted capacity (subject to less/ non-requisition of power by the other beneficiary), from the another unit which is in operation. Further, in terms of Para 5.9 of DOP, the generator will continue to receive the capacity charges corresponding to total declared capacity from the procurer/ beneficiary.

31. It is settled law that the provisions of regulations will prevail over the terms of the agreements. Regardless of the unit-wise allocation of the contracted capacity of the Petitioner, the regulatory scheme as noted in foregoing paragraphs does not recognise unit-wise scheduling. Even otherwise, the PPAs themselves recognize compliance with provisions of IEGC and in terms of IEGC, once a plant has declared COD of its entire capacity, scheduling is to be done station-wise.

32. Therefore, there is no bar in existing applicable laws that restricts scheduling of requisitioned power by the Petitioner from the on-bar unit (if the same can be accommodated considering the requisition made by Haryana Discoms). Further, the contractual terms as per PPA executed between JPL and TPTCL also do not contain any such prohibition on *unit-wise scheduling*, while recognizing the right of TPTCL for contracted capacity unit-wise. Therefore, even contractually, it is open for JPL to allow scheduling of the Petitioner's power from either of the on-bar unit.

33. However, Haryana Discoms have contended that direction sought by the Petitioner in terms of Para 5.10 of DOP is in violation of their contractual rights under the PPA with JPL and will curtail/ encroach upon the power being supplied to Haryana Discoms. Also, HVPNL, vide its letter dated 6.11.2017, has informed that in case of scheduling more than 10% of contracted capacity from the running unit (in case other unit is under RSD), the Petitioner would be required to pay all charges i.e. fixed and variable charges (for the capacity in excess of 61.86 MW) subject to recall of power by Haryana Discoms as per the Grid Code. In such a case, HVPNL has informed that the Haryana Discoms will get relief from payment of fixed charges and penalty due to non-lifting of coal on account of less scheduling.

34. We note that the Petitioner's prayers are limited to the extent of application of Para 5.10 of the DOP where:

- (a) one of the two units of JPL is under RSD;
- (b) there is non-off take of power up to its allocated contracted capacity by the Haryana Discoms; and
- (c) power requisitioned by the Petitioner can be accommodated for supply from the On-Bar Unit of JPL.

35. The concern raised by Haryana Discoms towards allowing the relief sought by the Petitioner through the present Petition is premised on the understanding that the Petitioner intends to seek requisition of power that will result in curtailing/ encroaching upon the power requisitioned by Haryana Discoms. In this regard, Haryana Discoms have relied upon Clause 5.10(ii) of the DOP. It is, however, noted that the Petitioner is only seeking application of DOP for requisition of power when a unit is taken under RSD and where the same can be accommodated from the on-bar unit. This can in no way lead to any curtailment of rights of the Haryana Discoms

since the power can be supplied to the Petitioner (up to its contracted capacity in the Project) only when the Haryana Discoms are not off-taking power. It does not in any way encroach upon any contractual right of the Haryana Discoms.

36. Further, it becomes important to point out that as opposed to the understanding of the Respondents, accommodating the Petitioner's requisition of power as explained above, does not amount to third-party sale under the PPA. It is noted that the Petitioner has been paying full capacity charges for the entire contracted capacity (123.72 MW) to JPL irrespective of one unit of the Project being under RSD. Therefore, the Petitioner is already complying with the obligation as mandated under Para 5.9 of the DOP making it entitled under Para 5.10 of the DOP to avail the total contracted capacity of power from the unit of the generating station that is operating, when the other unit is under RSD if Haryana Discoms are not availing power up to its allocated contracted capacity from such operating unit. The regulatory scheme provided under the DOP allows the Petitioner to requisition the entire contracted capacity at the existing tariff binding the Petitioner under the contract (capacity charges and variable charges), from on-bar unit of JPL while not making the Petitioner liable to bear any further or additional payments in this regard i.e. additional capacity charges.

37. The contention of the Haryana Discoms that they cannot allow scheduling of power to the Petitioner unless the Petitioner pays fixed charges and capacity charges (for power more than 61.86 MW from running unit) to the Haryana Discoms and that the Petitioner is also to take responsibility to bear charges under FSA with coal companies, is incorrect. The Haryana Discoms are the predominant buyer from both the units of the Project accounting for 90% of the share in the Project, while the Petitioner has only 10% share. It is the Haryana Discoms that are responsible for

reserve shutdown of one unit on account of low schedule given to the generating station. For no fault of the Petitioner, the power available to it gets reduced on account of RSD of one unit and it is then compelled to procure power through alternate sources which entails further costs and charges over and above those being already borne by the Petitioner for procurement of power from JPL (e.g. transmission charges etc.).

38. Thus, the contention of the Haryana Discoms that the Petitioner is required to pay both fixed charges and variable charges for the additional power (more than 61.86 MW) from the running unit, is unacceptable.

39. As regards JPL, it has already conveyed its willingness to supply entire contracted capacity secured under the PPA for the Petitioner from one running unit (the other unit being under RSD) of the Project subject to agreement in this regard between Haryana Discoms and the Petitioner/ TPTCL and SLDC issuing scheduling instructions.

40. It is pertinent to mention that the acceptance of the Petitioner's proposal, and implementation of the Commission's directions as elucidated in the DOP, would be mutually beneficial for the Petitioner, Haryana Discoms and JPL as well, and thereby improve the overall efficiency and functioning of the Project. The intent of DOP is to aid and facilitate eventualities such as those being faced by Petitioner in the present case and to restore balance between the generator's and procurers' interest.

41. In our view, from a combined reading of the provisions of the PPA, the Grid Code and DOP, it is clear that the Petitioner can avail the entire contracted capacity (123.72 MW) from the running unit of the Project in case another unit is under RSD and the Haryana Discoms are not scheduling power from the running unit upto its

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allocated capacity in the unit. For the power so availed (up to 123.72 MW) by the Petitioner, it shall only pay energy charges as the Petitioner has been paying capacity charges of 123.72 MW to JPL as mentioned in Para 36 above and shall not be required to pay any additional capacity charges. The Haryana Discoms and the Petitioner shall continue to pay capacity charges as per their respective PPAs. Needless to say, the Haryana Discoms can also avail power not off taken by the Petitioner in the running unit without payment of additional capacity charges. The RLDC shall approve the schedules accordingly.

42. The Petition No. 114/MP/2018 is disposed of in terms of the above.

Sd/-  
**(I.S. Jha)**  
**Member**

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

sd/-  
**(P.K. Pujari)**  
**Chairperson**