

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Record of Proceedings

Petition No.19/2009

- Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 against Damodar Valley Corporation for non-supply of power allocated to the National Capital Territory of Delhi in accordance with the Power Purchase Agreement dated 24.8.2006 entered into between Damodar Valley Corporation and Delhi Transco Limited, and thereafter re-assigned to the three DISCOMs of Delhi vide Hon'ble Delhi Electricity Regulatory Commission's Order dated 31.3.2007
- Coram : Dr. Pramod Deo, Chairperson
Shri R.Krishnamoorthy, Member
Shri S.Jayaraman, Member
Shri V.S.Verma, Member
- Date of Hearing : 9.6.2009
- Petitioner : BSES Rajdhani Power Limited, BSES Yamuna Power Limited, North Delhi Power Limited.
- Respondents : Damodar Valley Corporation, Delhi Transco Ltd, Ministry of Power.
- Parties present : Shri Amit Kapoor, Advocate, BSES
Shri MG Ramchandran, Advocate, DVC
Shri Anand K Ganeshan, Advocate, DVC
Ms Shobhana Masters, NDPL
Shri Rahul Dhawan, BRPL
Shri Mukesh Dadhich, BRPL
Shri Sunil Kumar, BRPL
Shri Anurag Bansal, NDPL

The petitioners, the three distribution licensees of Delhi, have made this application for enforcing the contractual obligations on Damodar Valley Corporation, Respondent No. 1 herein, for sale of different quantum of power on round-the-clock basis to the petitioners as per clause 4.1 of the Power Purchase Agreement dated 24.8.2006, entered into between Respondent No. 1 and Delhi Transco Limited which has since been re-assigned to the petitioners vide order

dated 31.3.2007 passed by the Delhi Electricity Regulatory Commission. It has been prayed that the respondents be directed to commence supply of at least 100 MW power to the NCT of Delhi as per the PPA executed/LTOA granted to the petitioners.

2. The petition was listed for hearing on admission on 17.2.2009. At the joint request of parties to amicably settle matter, the matter was adjourned to 19.3.2009 and 12.5.2009. On 12.5.2009, the Commission had directed that no further adjournment would be given on that ground. To a query of the Commission at the beginning of the hearing regarding the settlement, learned counsel for the Respondent No. 1 submitted that the Respondent No.1 was sincere to settle the matter.

3. Learned counsel for the petitioners submitted that notice in the petition having been issued and served, Respondent No. 1 had not filed the reply. As regards the progress of the settlement, the learned counsel for the petitioners referred to its affidavit filed on 8.6.2009 and submitted that the minutes of the meetings 18/19.5.2009 and 11.5.2009 between the petitioners and Respondent No.1 would reveal that the matter still remained unresolved. The learned counsel referred to a letter dated 19.3.2009 from Ministry of Power to DVC whereunder it was directed with the approval of the Hon'ble Minister of Power to schedule 100 MW power from Mejia TPS Unit No. 6 to Delhi till further orders. Referring to the minutes dated 11.5.2009 between the officers of Respondent No. 1 and Delhi Discoms, the learned counsel pointed out that Respondent No. 1 committed to schedule 100 MW power to Delhi from Mejia TPS Unit No.6 in pursuance to the MOP's order which would be monitored for two weeks. However, the scheduling data from 1.5.2009 to 7.6.2009 downloaded from NRLDC site revealed that less than 50 MW were scheduled during the period 11.5.2009 to 25.5.2009. He further submitted that with the DVC's concurrence, the petitioners obtained long-term open access from PGCIL on 25.9.2007 for transmission of power from

Respondent No. 1 bus bar to Delhi. Despite the contractual obligations and the availability of open access, Respondent No. 1 had not been scheduling power to Delhi and instead, it had been selling power to other entities depriving the petitioners of their legitimate entitlement as per the PPA. The learned counsel pleaded that an immediate direction should be issued to Respondent No. 1 to supply 100 MW power.

4. Learned counsel for Respondent No.1 submitted that as per the terms and conditions of the PPA dated 24.8.2006, Respondent No. 1 was required to supply 100 MW of power from December 2006 to September 2007 at negotiable price and after September 2007 onwards at the rate of Rs.3.21/kWh subject to the tariff determined by the Commission. As regards the minutes of the meeting dated 11.5.2009, learned counsel submitted that it covered two aspects, one for sale above 130 MW and the other for supply of power of 100 MW. Respondent No. 1 would schedule 130 MW of power to Delhi from the existing generation whenever generation was above 1900 MW and the quantum of power would be on pro-rata basis if the generation was between 1700 MW and 1900 MW. If DVC system generation was below 1700 MW, the learned counsel submitted that no supply could be made. As regards the MOP's directions for supply of 100 MW of power, it was allocation of supply of 100 MW capacity and not firm supply of 100 MW, irrespective of the level of generation. The learned counsel clarified that Respondent No. 1 would schedule 100 MW, that is, 40% of 230 MW power generated from Mejia TPS Unit No.6. When there is fall in generation, scheduling of power will be on pro-rata basis. He further submitted that there was no generation from Mejia TPS Unit No. 6 from 11.5.2009 to 27.5.2009 due to non-availability of coal supply and therefore there was no question of scheduling of power. As regards the commitment in the minutes dated 11.5.2009, the learned counsel submitted that the difference between the petitioners and Respondent No.1 was on the methodology for calculation of 40% capacity. Whereas 40% according to the Respondent No.1 is proportionate of the actual generation to the installed capacity whereas according to the petitioners, it was 100 MW

irrespective of the actual generation which could never be the intention of MOP. As regards the trading of power, the learned counsel on instructions submitted that these were a few aberrations and Respondent No. 1 had stopped trading in power at the cost of scheduled power. The learned counsel sought four days time to file a detailed reply meeting the points raised by the petitioners on merits and also on jurisdictional and other preliminary issues.

5. The Commission directed the counsel for the petitioner to place on record the factual details and material required to be brought on record for adjudication of the dispute in question. Learned counsel for petitioners was also permitted to seek additional information from Respondent No.1. Learned counsel for the petitioners in the meantime has sent a letter dated 9.6.2009 to the learned counsel for the Respondent No.1 outlining the different aspects on which factual details and materials are required to be submitted by the petitioner before the Commission.

6. The Respondent No.1 was directed to file its reply to the petition alongwith the information as required in para 5 above latest by 12.6.2009 with copy to the petitioners. The matter is listed for hearing on 16.6.2009.

Sd/-
(K.S.Dhingra)
Chief (Legal)