

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No: 116/MP/2019**

**Coram:**

**Shri Jishnu Barua, Chairperson**

**Shri Arun Goyal, Member**

**Shri Pravas Kumar Singh, Member**

**Date of Order : 18<sup>th</sup> May, 2024**

**In the matter of**

Petition under Section 79 (1)(f) of the Electricity Act, 2003 read with CERC Tariff Regulations, 2014 for resolution of disputes regarding payment of capacity charges for the allocated capacity of Muzaffarpur Thermal Power Station (MTPS) Stage-II (2 x 195 MW), Kanti Bijlee Utpadan Nigam Limited (KBUNL).

**AND**

**IN THE MATTER OF:**

Kanti Bijlee Utpadan Nigam Limited (KBUNL),  
NTPC Bhawan, Core – 7, Scope Complex,  
7, Institutional Area, Lodhi Road, New Delhi – 110003

**...PETITIONER**

**VERSUS**

1. Jharkhand Bijli Vitran Nigam Ltd. (JBVNL),  
Engineering Building, HEC Township, Dhurwa, Ranchi – 834004
  
2. GRIDCO Ltd.  
Janpath, Bhubaneshwar – 751022
  
3. West Bengal State Electricity Distribution Co. Ltd. (WBSEDCL)  
Vidyut Bhawan, Bidhan Nagar, Block DJ,  
Sector – II, Salt Lake City, Kolkata – 700091



4. Power Department,

Govt. of Sikkim, Kazi Road, Gangtok, Sikkim – 737101

5. Damodar Valley Corporation (DVC),

DVC Towers, VIP Road, Kolkata, West Bengal – 700 054

6. Bihar State Power Holding Company Limited,

(erstwhile Bihar State Electricity Board)

Vidyut Bhawan, Bailey Road, Patna – 800 001

...RESPONDENTS

**Parties Present:**

Ms. Swapna Seshadri, Advocate, KBUNL

Ms. Ritu Apurva, Advocate, KBUNL

Shri Venkatesh, Advocate, DVC

Shri Ashutosh Kumar Srivastava, Advocate, DVC

Ms. Mehak Verma, Advocate, DVC

Shri Mahoranjana Sahoo, DVC

Shri Arijit Maitra, Advocate, GRIDCO

Shri R.B. Sharma, Advocate, WBSEDCL

**ORDER**

The Petitioner, Kanti Bijlee Utpadan Nigam Limited (hereinafter to be referred to as “the Petitioner”), has filed the present Petition under Section 79 (1) (f) of the Electricity Act, 2003 (hereinafter referred to as ‘Act’) read with applicable provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2014 seeking resolution of disputes which have arisen with Respondents No.1 to 5 with regard to short payment / non-payment of capacity charges for the allocated capacity and being supplied by the KBUNL under the respective PPAs entered into.

2. The Petitioner has made the following prayers:

- (a) *Admit the petition;*
- (b) *Direct the Respondent No. 1 to 5 to make the payment of outstanding fixed charges to KBUNL at the earliest;*
- (c) *Direct the Respondent No. 1 to 5 to pay the late payment surcharge on the above delayed amounts @ 18 % per annum;*



- (d) Direct the Respondent No. 1 to 5 to establish the LC in favour of KBUNL;
- (e) Pass such other further order(s) as the Hon'ble Commission may deem just and proper;

**Background:**

3. The Petitioner, Kanti Bijlee Utpadan Nigam Limited (KBUNL), is a company under the provisions of the Companies Act, 1956 having its registered office at NTPC Bhawan, Core – 7, Scope Complex, 7, Institutional Area, Lodhi Road, New Delhi – 100003 has set up Muzaffarpur Thermal Power Station (MTPS) at Kanti block, Muzaffarpur district, Bihar and own and operates the same. Initially, KBUNL was established as a Joint Venture (JV) between NTPC Ltd. (65 % stake) and Bihar State Power Generating Company Limited (BSPGCL) (35 % stake). Subsequently, Govt. of Bihar, vide notification dated 27.06.2018, transferred equity shares of BSPGCL to NTPC Ltd., and KBUNL became a wholly owned subsidiary company of NTPC Ltd.

4. Muzaffarpur Thermal Power Station (hereinafter called MTPS) has Stage – I (2 X 110 MW) and Stage – II (2 X 195 MW). Stage – I (2 X 110 MW) has been supplying 100 % power to DISCOMs of Bihar (North Bihar Power Distribution Company Ltd. – NBPDC and South Bihar Power Distribution Company Ltd. – SBPDCL). The Ministry of Power, Government of India, vide its letter dated 10.12.2010, allocated the capacity of MTPS Stage – II (2 X 195 MW) amongst the beneficiaries of the Eastern Region. The issue in the instant petition pertains to stage II of MTPS.

5. The beneficiaries of stage II, MTPS are Bihar and Respondents No. 1 to 5 mentioned herein above. The details of the allocation capacity of MTPS Stage – II to Beneficiaries by the Ministry of Power in brief are as follows:

S. No.	Name of State	Share in Installed Capacity (%)	Equivalent Capacity (MW)
1	Bihar	67.7	264
2	DVC	2.6	10
3	Jharkhand	3.1	12
4	Orissa	7.7	30
5	West Bengal	8.7	34
6	Sikkim	0.5	2
7	Unallocated	9.7	38
8	Total	100.0	390



6. Respondents No. 1 to 5 (beneficiaries) have signed a Power Purchase Agreement (PPA) with KBUNL for the allocated capacity. As per PPA, the sale of electricity is at the busbars of MTPS Stage II. The brief particulars of PPAs are as follows:

<b>S. No.</b>	<b>Beneficiary</b>	<b>PPA Signed</b>
1	DVC	30.12.2010
2	Jharkhand	05.01.2011
3	Orissa	27.12.2010
4	West Bengal	30.12.2010
5	Sikkim	28.12.2010

7. The scheduled COD of units I and II of stage II are 12.10.2012 and 12.01.2013, respectively, whereas the actual CODs of these units were 18.03.2017 and 01.07.2017, respectively. In this regard, the Commission, vide order dated 29.04.2019 in Petition No. 74/GT/2017, has condoned the time overrun of 948 days for Unit I and 961 days for Unit II and disallowed the delay of 670 days for each unit.

8. In the meantime, in June 2011, on behalf of beneficiaries (Jharkhand, GRIDCO, West Bengal, Sikkim, and DVC), excluding Bihar and its share allocation, KBUNL submitted an application with Central Transmission Utility (CTU) for transfer of 121.6 MW power from MTPS Stage – II under Long Term Access (LTA). Accordingly, in April 2012, CTU granted LTA for 121.6 MW from MTPS Stage – II.

9. As per Regulation 15 of Central Electricity Regulatory Commission (Grant of Connectivity, Long Term Access and Medium-Term Open Access in inter-State Transmission and related matters) Regulations, 2009 and Detailed Procedure made thereunder, in order to execute and operationalize the long-term access, after the grant of LTA, the applicants shall sign the agreement for long-term access with the CTU. In line with PPAs signed between the respective beneficiaries and KBUNL, beneficiaries were required to sign this agreement. However, in spite of the request by the petitioner, as the beneficiaries had not signed the LTA Agreement by January 2017, CTU gave notice to the petitioner on 25.01.2017 to get the LTA agreement signed within 15 days, failing which LTA granted would be liable for revocation. In addition, as the ERLDC was limiting the injection for the trail run operation to 126 MW



(quantum of connectivity) and declining the scheduling thereof, another issue of scheduling of power from the generating station also arose.

10. In view of this, a special meeting was held on 25.01.2017, prior to the COD of Unit I, at ERPC, Kolkata, amongst concerned stakeholders (DVC, West Bengal, Orissa, Sikkim, Bihar, Jharkhand, KBUNL, NTPCL, PGCIL, ERLDC, and CEA) to deliberate upon the issue of signing the LTA Agreement and scheduling of MTPS-II, wherein, it was agreed that provisionally SLDC, Patna would schedule and KBUNL may approach CERC for its approval. However, the issue of signing of LTA agreements remained unresolved. Accordingly, KBUNL has approached the Commission by way of filing Petition No. 20/MP/2017 to resolve the issue of jurisdiction of scheduling of MTPS Stage II and signing of the LTA agreement by beneficiaries. Subsequently, the COD of Units 1 and 2 was declared as 18.03.2017 and 01.07.2017, respectively and Jharkhand has signed the LTA agreement for its allocated capacity. Since the COD of Unit 1, KBUNL was declaring the station availability on a daily basis to SLDC - Bihar and raising the bills in line with the proviso of Tariff Regulation, 2014 on beneficiaries for fixed charges, variable charges, and other applicable charges. However, these bills were objected to by the respondents, citing that power was not scheduled till 31.03.2018 and conveyed that a request for the surrender of allocated power had already been made to the Ministry of Power.

11. The Commission heard the parties and vide order dated 09.03.2018 in Petition No. 20/MP/2017 decided that MTPS Stage – II shall be under the Control area jurisdiction of ERLDC and transferred its jurisdiction to ERLDC with effect from 01.04.2018 and the liability of transmission charges of beneficiaries shall arise once LTA is operationalized and directed CTU to operationalize the LTA.

12. In this context, the petitioner claims that disputes have arisen between KBUNL and Respondents No. 1 to 5 on the aspect of payment of the fixed charges for the capacity declared by KBUNL and Respondents No.1 – 5 have not paid / short-paid the fixed charges which they are obliged to pay under the PPAs. Brief particulars of outstanding dues of each respondent as on 28.02.2019 are as follows:



S. No.	Beneficiary	Amount (Crore Rs.)
1	DVC	18.08
2	JBVNL	37.97
3	GRIDCO	80.53
4	WBSEDCL	58.40
5	Sikkim	7.59
6	Total	202.57

13. Under the above circumstances, KBUNL, vide affidavit dated 2.3.2019, has filed the instant Petition seeking resolution of disputes that have arisen with Respondents No.1 to 5 with regard to short payment / non-payment of capacity charges for the applicable declared capacity under the respective PPAs entered into. KBUNL has made the following submissions regarding short / non-payment of capacity charges by beneficiaries for the respective allocated capacity:

- (a) Despite the repeated reminders and communications sent by KBUNL, none of the beneficiaries has made the payment of fixed charges.
- (b) The Commission, in Order dated 09.03.2018 passed in Petition No. 20/MP/2017, observed that KBUNL is entitled to fixed charges for its declared capacity on a daily basis.
- (c) The Commission has also observed in the said Order that *“Unless and until the allocation of power in favour of particular beneficiaries is rescinded by Ministry of Power, the PPAs shall subsist and the concerned beneficiaries shall be liable to comply with the provisions of the PPAs including their obligations to sign the LTA Agreement and liability to pay the transmission charges”*. Therefore, the beneficiaries cannot seek to wriggle out of their obligations under the PPA on the pretext of the re-allocation or de-allocation of power by the MoP under consideration. Unless the same is decided by the Ministry of Power, the beneficiaries are liable to pay the fixed charges to KBUNL.
- (d) As per the relevant provisions of the PPA, respondents 1 – 5 are liable to pay for capacity charges, and further, until the decision of the Ministry of Power on reallocation, fixed charges shall be payable by beneficiaries under Tariff Regulations, 2014.
- (e) As per Article 6.2.1 of the PPA, Respondents No. 1 to 5 had a responsibility of establishing a Letter of Credit in favour of KBUNL but failed to do so.



14. The Commission heard the case on 12.6.2019 and admitted the Petition. Subsequently, GRIDCO, DVC, and WBSEDCL have filed their replies. However, JBVNL and Sikkim have not submitted any reply to the Petition.

15. The Respondent No. 2, GRIDCO, vide affidavit dated 24.07.2019, filed its reply, and a brief of the same is as follows:

- i. GRIDCO is the sole state-designated entity for the execution of power purchase agreements with generating companies and tie up for power procurement so that bulk power supply is made available to distribution licensees in Odisha.
- ii. In terms of Section 86(1)(b) of the Electricity Act, 2003, the Orissa Electricity Regulatory Commission (OERC) is mandated to regulate electricity purchase of distribution licenses, including the prices at which electricity shall be procured from the generating companies through agreement for the purchase of power for the distribution and supply within the state of Odisha and regulation of electricity purchase is within the sole domain of the State Commission.
- iii. In line with section 176 of the Electricity Act, 2003, Govt. of India has notified the Electricity Rules, 2005. As per the rule 8 of subject Rules, 2005, *“The State Commission may determine whether a distribution licensee in a state should enter into a PPA or procurement process with such generating company based on the tariff determined by Central Commission”*, the power to decide whether a distribution licensee should enter into PPA rests with the OERC but not the CERC.
- iv. Accordingly, GRIDCO has a filed petition with the OERC seeking its decision under section 86 (1) (b) of the Electricity Act, 2003 on power procurement from KBUNL and adjudication of disputes with KBUNL for an unjustified claim of charges, especially power is scheduled by ERLDC contrary to Merit Order Despatch (MOD) principles. The OERC reserved its order on the subject petition. Thus, the OERC is seized of the legal validity and continuance of PPA dated 27.12.2010 between KBUNL and GRIDCO Ltd. Further, the allocation of power by Govt. of India is of executive



instruction in nature and nothing but guidelines, and the same cannot override the power of OERC.

- v. Thus, the prayers made in the present petition by KBUNL seeking the payment of outstanding fixed charges along with LPSC and establishing of LC cannot be granted unless and until the power purchase agreement and procurement of power from KBUNL is approved by the Odisha Electricity Regulatory Commission (OERC).
- vi. The date of investment approval for the plant was 12.03.2010 and as per CERC regulations, the COD should have been 12.10.2012 (31 months from the investment approval). However, the COD of units 1 and 2 are 18.03.2017 and 01.07.2017, respectively i.e. nearly delayed by 4.5 years for each unit.
- vii. The delay in commissioning of the plant led to an increase in capital cost, i.e., KBUNL has claimed Rs. 12 Cr / MW in its tariff petition No. 74/GT/2017 filed with the CERC. The fixed charge and variable charge of KBUNL are Rs. 3.03 / unit and Rs. 2.49 / unit, and the total charge at normative drawl is Rs. 5.52 / unit, whereas other plants having agreements with GRIDCO have fixed charges and variable charges in the range of Rs. 0.83 – 1.86 / unit and Rs. 1.52 – 2.30 / unit, respectively, i.e., the rate of KBUNL is nearly twice the other power plants. At the time of signing of the PPA, GRIDCO could not envisage such a high capital cost, and if the plant had been commissioned in time, the cost would have been affordable. On account of the fault of KBUNL, there was an inordinate delay in the COD of its plant. GRIDCO, therefore, cannot be compelled to purchase power at a high rate. In view of the uncertainty in the commissioning of KBUNL, GRIDCO has entered into PPAs with other generating stations to meet its demand / universal supply obligations under section 43 of the Electricity Act, and in addition, enhancement of home state share from 10 % to 50 % by Govt. of India has also led to increased availability. Thus, the average availability of GRIDCO is surplus in the FY 2019 – 20 to 2031 – 32.
- viii. Accordingly, GRIDCO, sought de-allocation of power from KBUNL and other plants. The surrender of power from a few stations was accepted by the Central Government, but the same is pending for KBUNL. Further, the





Ministry of Power, Govt. of India allocated 30 MW from KBUNL vide its letter dated 10.12.2010 stating that the allocation will come into force from actual COD. The GRIDCO / Govt. of Odisha requested the Ministry of Power for the deallocation of power from KBUNL in 2014, i.e., well before the actual COD of unit 1 (18.03.2017). Thus, GRIDCO is not liable to pay fixed charges for KBUNL.

- ix. Time is of the essence in a contract, and it is expected that the promiser would perform the contract within the stipulated time. On his failure, the promisee has the right to avoid the contract. Para 1 of section 55 of the Indian Contract Act of 1872 stipulates as under:  
*“When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of the essence of the contract.”*
- x. The Para 4 of Clause 6.2.9 of the PPA dated 27.12.2010 stipulates that:  
*“In case of default in payment of bills a period of 90 (ninety) days of billing, KBUNL shall have the right to reallocate part or full Allocated Capacity to other Bulk Power Customer(s) / Third Party(ies).”*
- xi. As per relevant provisions of PPA, the allocation made from the station in favour of GRIDCO by Govt. of India shall be contracted capacity subject to the signing of the Agreement, the opening of Letter of Credit (LC) at least one month prior to COD and providing appropriate security mechanism. However, KBUNL requested GRIDCO to establish LC vide letter dated 20.10.2017, i.e., after a lapse of around 7 months from the COD date. However, GRIDCO has not opened LC since it approached the Ministry of Power, Govt. of India for de-allocation. In light of clause 2.2 of the Agreement, the contract does not exist between GRIDCO and KBUNL.
- xii. Thus, in the absence of payment receipts from GRIDCO, instead of re-allocating the power to others, KBUNL has been raising bills on GRIDCO. However, it is not liable to pay any capacity charges as it has neither scheduled any power nor opened any LC in favour of KBUNL.



16. The Respondent No. 5, DVC, vide affidavit dated 22.07.2019, has filed its reply, and a brief of the same is as follows:

- i. In terms of the PPA signed between KBUNL and DVC, the scheduled COD of units I and II of MTPS stage II are 12.10.2012 and 12.01.2013, respectively. However, the actual COD of Units 1 and 2 was 18.03.2017 and 01.07.2017, respectively, with a time overrun of around 1625 days for each unit. In this regard, the Commission vide its order dated 29.04.2019 in Petition No. 74/GT/2017 filed for approval of tariff of MTPS Stage-II (2X195 MW), allowed time overrun of 948 days for Unit 1 and 961 days for Unit 2 and disallowed 670 days for each unit. Thus, by executing the project diligently, KBUNL could have avoided this disallowed time overrun. However, such laxity on the part of KBUNL, led DVC to suffer a huge loss for non-supply of power. In such a scenario, DVC considered alternative measures, such as the signing of PPAs with other power plants, including the commissioning of new plants to meet its demand. Thus, it becomes a surplus power to the tune of 1300 MW.
- ii. In September 2014, the Jharkhand State Electricity Regulatory Commission disallowed the power purchase from MTPS. Consequently, in December 2014 and February 2015, DVC communicated to the Ministry of Power, Govt. of India, that it would surrender its power from MTPS stage II and requested reallocation of the same. The matter was consistently pursued with the Ministry of Power from time to time.
- iii. In March 2015, prior to the COD of unit I, DVC communicated to CTU that due to a substantial quantum of surplus power from new generating stations of its own, it had decided to surrender the power allocated from MTPS and requested CTU to take necessary action so that Long Term Access (“LTA”) is not allowed for the evacuation of power from MTPS. It was also mentioned that any commercial implication arising out of the issuance of LTA to MTPS will not borne by DVC till the reallocation of power.
- iv. Subsequently, DVC informed KBUNL about the de-allocation request made to the Ministry of Power along with another request made to CTU regarding LTA. In order to avoid any commercial implications in the future, DVC also



requested KBUNL not to seek LTA on behalf of DVC for evacuation of power from MTPS stage II.

- v. In May 2016, in a reply to NTPC, DVC conveyed its no objection to the sale of URS power in the power exchanges for certain NTPC plants, including MTPS. Further, in a meeting held on 25.01.2017, DVC conveyed its inability to offtake power from MTPS Stage II.
- vi. In response to the bill raised by KBUNL, DVC conveyed that it has not signed the LTA agreement and, thus, could not process the subject bill.
- vii. In line with the decision taken in the meeting held on 25.01.2017, SLDC, Patna is responsible for scheduling and dispatch of power from the MTPS Stage – II. However, it has neither communicated any declared capacity of KBUNL to DVC on a day ahead basis nor got any consent from DVC for scheduling of the same. Thus, SLDC, Patna has failed to perform its statutory functions and obligations, which has resulted in DVC being unaware of its DC. As a result, DVC has been unable to schedule such power thereof. Further, the representatives of KBUNL have countersigned the Monthly Energy Statements issued by SLDC, Patna, wherein the schedule for all beneficiaries, excluding Bihar, was shown as 'Nil'. In addition, the issue of non-communication of DC of MTPS by SLDC - Bihar, was taken up in ERPC, but the same was unresolved. Thus, KBUNL is well aware of the fact that SLDC Patna has not given any DC to DVC and scheduling thereof. Therefore, it cannot be made liable to pay the capacity charges for such DC.
- viii. Subsequent to the direction of the Commission, vide its order dated 09.03.2018, the control area jurisdiction of the plant was given to ERLDC w.e.f. 01.04.2018. Accordingly, ERLDC has been communicating the declared capacity of MTPS stage II to DVC on a regular basis, which enabled DVC to schedule its power as per requirement and DVC is making regular payments for such power that it has availed. However, KBUNL unlawfully adjusted these payments towards the disputed outstanding dues and late payment surcharge thereof associated with the period from March 2017 to March 2018 and claiming the dues are pending, which is not acceptable to DVC.



- ix. Although KBUNL heavily relied upon the Order dated 09.03.2018 passed in petition No. 20/MP/2017, the same is completely silent on the issue of operationalisation of the LTA for the period between 18.03.2017 to 31.03.2018 and whether capacity charges are payable by DVC in the absence of a valid LTA with CTU. Further, CTU also has not claimed any transmission charges with respect to LTA allocation from MTPS to DVC during the period between 18.03.2017 to 31.03.2018. However, KBUNL is claiming capacity charges for the same period. Thus, the reliance of KBUNL on the order dated 09.03.2018 is misplaced.
- x. KBUNL, in its invoices, adjusted the financial gains realized from 01.04.2018 onwards on account of the sale of URS power; however, it did not disclose such gain made by it for the period between the commissioning of MTPS and 31.03.2018.
- xi. As per Clauses 4.4.2 and 4.4.3 of the PPA, a Regional Energy Account (REA) has to be issued by ERPC / ERLDC or any other Competent Authority, and any change in the methodology of REA shall be done as per the decisions taken in the ERPC forums. However, the monthly bills raised by KBUNL were as per the Energy Accounting carried out by SLDC, Patna for the period from COD of Unit – I to 31.03.2018, but KBUNL has not furnished any supporting documents in favour of SLDC, Patna as a competent authority to issue REA for KBUNL. Therefore, the invoices raised by KBUNL were not in accordance with the PPA. Thus, the invoices are not payable by DVC.

17. The Respondent No. 3, WBSEDCL, vide affidavit dated 25.07.2019, has filed its reply, and a brief of the same is as follows:

- i. The allocation of power by the Ministry of Power is limited to allocating the power from MTPS Stage II to the beneficiaries in accordance with 'Guidelines of Allocation.' Thereafter, the conduct of the parties would be determined with the provisions of the PPA.
- ii. The Petitioner delayed the commercial operation of the subject power station, failed to supply power even after 5 years of execution of the PPA, and failed to perform its own obligation under the PPA. Under such



circumstances, WBSEDCL was constrained to meet the demand of its consumers from alternative sources at higher cost. Accordingly, served the PPA termination notice to the Petitioner.

- iii. In line with the Hon'ble Commission's order dated 08.03.2018 in Petition No. 20/MP/2017, WBSEDCL signed the LTA with the CTU, and the PPA was also revived and power from the MSTs Stage – II was commenced on 01.04.2018.
- iv. The Petitioner has filed the instant petition before the Commission on 02.03.2019 for the disputed dues. Subsequently, in line with Article 7 of PPA, both the Petitioner and WBSEDCL have agreed for an amicable out-of-court settlement regarding the payment of Capacity Charges for the disputed period between 18.03.2017 to 31.03.2018. Accordingly, a meeting was held on 27.05.2019 between Petitioner and WBSEDCL, and it was agreed that WBSEDCL should pay the principal amount of Rs. 32.18 Crores in 24 instalments and KBUNL shall waive the LPSC amount. Further no LPSC shall be charged on an instalment amount. Thus, the issue raised in the instant petition has already been looked into by the petitioner and WBSEDCL.

18. Subsequently, the Petitioner vide affidavit dated 7.8.2019 filed its rejoinder in reply to DVC, and a summary of the same is as follows:

- i. As per the provisions of PPA, DC is an Ex-Bus capability declared by KBUNL, and the sale of electricity is at the busbar of the generating station. Subsequently, it is the responsibility of DVC to make necessary arrangements for the evacuation of power. Accordingly, KBUNL was declaring its DC on a daily basis to SLDC, Patna, along with a copy to ERLDC. The failure of the beneficiary to offtake power for any reason not attributable to KBUNL, including lack of communication by SLDC, Patna, shall have to be considered as 'deemed availability.' Thus, the fixed charges shall not be linked with the conduct of CTU or any other entity involved in the transmission of Electricity.
- ii. Considering the above read with CERC (Terms and Conditions of Tariff), Regulations, DVC is liable to pay subject fixed charges. Further, prevailing



regulations provide for payment of fixed charges for declared capacity but DVC is linking it to scheduling of DVC.

- iii. The fact that JSERC has disallowed the power purchase from MTPS may be relevant for the reallocation but not for the payment of fixed charges by DVC in terms of PPA. In this regard, it was mentioned that the Commission, in its order dated 09.03.2018 in Petition No. 20/MP/2017 decided that as long as PPAs subsist between KBUNL and beneficiaries and till such time, the power is not reallocated by Ministry of Power, the beneficiaries are liable to discharge their obligations under the PPA. It was also held that by declaring availability, the petitioner had fulfilled its obligation under the PPA. Further, DVC has never raised any dispute against the above order dated 09.03.2018; DVC is, therefore, expected to act as per the letter and spirit of the subject order.
- iv. The delay in commissioning of Units I & II of MTPS stage II was due to reasons beyond the control of KBUNL and has relevance in the tariff determination process. The Commission had considered the matter comprehensively and condoned the time overrun of 948 days for Unit I and 961 days for Unit II vide Order dated 29.04.2019 in Petition No. 74/GT/2017. The balance delay and IDC and IEDC thereof have been disallowed. Accordingly, the fixed charges have been appropriately reduced. Further, the time overrun does not provide beneficiaries any right not to pay the fixed charges.
- v. In regard to the sale of URS power, it was mentioned that the Ministry of Power had bundled the unallocated share of Eastern Region Stations with 100 MW Solar Power for Telangana, and the same cannot be termed as 'financial gains.' The generating companies are permitted to participate in the URS scheme subject to the consent of beneficiaries and the gains realized are shared with beneficiaries in a ratio of 50: 50. In any case, participation in URS does not mean double recovery of capacity charges and the Commission's vide order dated 30.01.2019 in Petition 267/MP/2017, TANGEDCO Vs NLC India Ltd. & Ors decided that Central Generating stations cannot be denied fixed charges for participating in the URS scheme. Further, it was also submitted that there was no sale of URS



power during the period of 18.03.2017 to 31.03.2018 from MTPS Stage-II (3x195MW), KBUNL.

- vi. The Commission, vide order dated 09.03.2018 in petition no. 20/MP/2017, transferred the control area to ERLDC with effect from 01.04.2018, and it would automatically mean that only SLDC Patna can do the scheduling and issue the energy accounts prior to the said date.

19. The Petitioner, vide another affidavit dated 07.08.2019, filed its rejoinder to the reply of GRIDCO, and a brief of the same is as follows:

- i. The issue of approval of PPA by OERC was never raised by GRIDCO from the date of the PPA (27.12.2010) to COD of MTPS stage II, including in Petition No. 20/MP/2017. Further, GRIDCO nowhere mentioned that its petition is pending before OERC. However, GRIDCO could have thought of this approval immediately after signing the PPA, and in any case, the pendency of the petition before OERC would not have any impact on the subject issue, as it is a contractual compliance of PPA by GRIDCO.
- ii. Unless the power is reallocated by the Ministry of Power, Govt. of India to other beneficiaries, GRIDCO is liable to pay the capacity charges, irrespective of its scheduling. Further, on the one hand, GRIDCO sought the approval of PPA before OERC and, on the other hand, surrendered the power, and it is not clear why it has approached OERC for approval of PPA under section 86 (1) (b) of the Electricity Act.
- iii. In regard to the delay in the commissioning of Units 1 and 2 of Stage II, MTPS, it was mentioned that the subject delay is relevant in the tariff determination process, and CERC vide Order dated 29.04.2019 in Petition No. 74/GT/2017 has comprehensively considered condoning the delay of 948 days for Unit 1 and 961 days for Unit 2 and disallowed the balance delay and IDC and IEDC thereof and appropriately reduced the fixed charges.

20. Subsequently, the petitioner, vide affidavit dated 09.08.2019, made additional submissions, wherein it was submitted that subsequent to the filing of the petition, the dues have increased substantially. Thus, the cash flows of the petitioner were severely





impacted, which has resulted in impairing the payment of its loans and day-to-day expenses. Thus, the Commission may direct the respondents to clear their dues.

21. The matter was listed on 17.09.2021, and after hearing the parties, the Commission directed the Petitioner to file additional information regarding the monthly energy statements, monthly bills raised against the beneficiaries, allocation of power to Telangana, difference in quantum of power among total power allocated to respondents 1 to 5, LTA applied and demand made for the opening of LC; Month wise Average DC, Energy generated, Energy supplied to Bihar, payment received from beneficiaries etc and reserved the order.

22. The Respondent 5, DVC, dated 29.09.2021, made written submissions and has reiterated the submissions made in its reply in addition, it also submitted that:

(a) As the SLDC, Patna did not communicate DC of KBUNL, till March, 2018, DVC was unaware about availability of KBUNL. Therefore, the repercussions of failure of SLDC, Patna to perform its statutory duty should not be attributable to DVC.

(b) Due to the Petitioner's lackadaisical approach in commissioning of plant, DVC has suffered huge financial losses on account of the non-supply of power during the crisis period of FY 2013 – 14. In the meantime, DVC has commissioned its new units. Thus, it became power surplus and accordingly, proposed to the Ministry of Power for surrender of power from KBUNL.

23. The Petitioner, KBUNL, dated 30.09.2021, has made written submissions and reiterated submissions made in its earlier rejoinders, and in addition, it was also submitted that:

(a) In regard to the claim of the respondents that the allocation of Power by the Govt. of India is an executive instruction, it was submitted that since inception, the Govt. of India's allocation of power has been given statutory recognition in terms of Regulation '*Computation and Payment of Capacity Charges for Thermal Generating Stations*' of Tariff Regulations of CERC. As per the same, as long as electricity remains allocated to the respondents, respondents have an absolute obligation to pay capacity charges.





- (b) In regard to the claim of GRIDCO that until the establishment of a payment security mechanism and approval of OERC for the purchase of power, PPA would not be effective it was submitted that by not maintaining payment security and non-payment of capacity charges are a material breach of PPA on the part of GRIDCO, these objections stand rejected by Commission in the order dated 09.03.2018 in petition no. 20/MP/2017, and further, approval of OERC will not affect the allocation of electricity from the Ministry of Power.
- (c) The Commission has already determined fixed charges by dealing with Project's time overrun in Petition No. 74/GT/2017. As the liabilities do not end due to time overrun, GRIDCO cannot contend that it has a right not to comply with the obligation under PPA, i.e., non-payment of capacity charges.
- (d) In regard to DC declaration by KBUNL, it was submitted that the Commission, in its order dated 09.03.2018, held that by declaring availability, KBUNL had fulfilled its obligations under PPA, and this would be taken into account while deciding the fixed charges liability of beneficiaries
- (e) The settlement between KBUNL and WBSEDCL did not materialise. Therefore, WBSEDCL shall be bound by the directions of this Commission in the present petition.
- (f) The statement of outstanding dues furnished on 30.09.2021 is as follows:

<b>S. No.</b>	<b>Beneficiary</b>	<b>Amount (Crore Rs.)</b>
1	DVC	22.38
2	JBVNL	72.15
3	GRIDCO	340.90
4	WBSEDCL	73.58
5	Sikkim	30.27
6	Total	539.27

24. The Respondent No. 2, GRIDCO, vide, its written submissions dated 30.9.2021 has reiterated the submissions made in its earlier reply in addition, it also submitted that:

- (a) The instant petition has been filed to adjudicate under section 79 (1) (f) of the Electricity Act, 2003, seeking directions to the respondents to make payment of outstanding dues. However, the dispute between the generating company and the Distribution licensee cannot be adjudicated by CERC



under section 79 (1) (f) of the Act. Further, GRIDCO has cited certain sections of Civil Procedure Code and challenged the jurisdiction of this Commission on the subject matter of the instant petition.

- (b) In order to give effect to the PPA dated 27.12.2010 signed between GRIDCO and KBUNL, statutory approval under section 86 (1) (b) by the OERC is necessary, which has not yet been received. In the absence of such approval, the subject PPA is not valid and cannot be enforced upon GRIDCO. In addition, GRIDCO has pleaded before the OERC to permit its exit from the subject PPA, as the same stood frustrated under the doctrine of frustration due to inordinate delay in commissioning and, consequently, claiming tariff, which is much higher than estimated at the time of signing of PPA. The OERC has not made any provision in the ARR and Tariff order of GRIDCO for power procurement from Stage II, MTPS of KBUNL. Thus, GRIDCO can neither pay the fixed charges nor the late payment surcharge from its coffers or the equity shareholding of the State Government nor ask the public exchequer of the State Government of Odisha to defray these expenses. Further, as any payment made by GRIDCO is at the cost of the public exchequer, there is no reason to pay the subject fixed charges without taking any power supply from Stage II, MTPS.
- (c) There is no section / provision in the Act empowering the Central Government to allocate electricity from a power plant to beneficiaries / State. Hence, the letter dated 10.12.2010 ought to be read down as ultra-virus. Further, the allocation of power by Govt. of India or PPA signed between GRIDCO and KBUNL would not override / restrict the powers of the OERC.
- (d) In line with the decision of the Hon'ble Supreme Court in the case of Tata Power Company Ltd. Vs. Reliance Energy Limited and Ors, the averments that the subject PPA has led KBUNL to make an investment in setting up the generating station do not have any merit.
- (e) As per Article 11 of the PPA, the Agreement shall come into effect for all purposes and intent from the date of signing of this Agreement subject to the establishment and continuance of payment security mechanism. As GRIDCO has never opened Letter Credit and any other payment security

mechanism, as per section 31 and section 32 of the Indian Contract Act, 1872, PPA dated 27.12.2010 cannot be enforced.

- (f) As GRIDCO has not requisitioned any quantum of power from MTPS Stage – II, but ERLDC, contrary to MOD principles, had force scheduled under the alibi of technical minimum, GRIDCO is not liable to pay any charges for such forced scheduling. Thus, objected against the bills raised by the Petitioner.
- (g) As per the Minutes of a Meeting held on 25.01.2017, the jurisdiction of Stage II, MTPS, KBUNL was shifted from ERLDC to SLDC, Patna w.e.f. 06.02.2017 to enable full load trial run operation. Further, as per the Minutes of the above Meeting KBUNL was to approach the CERC for ratification of the change in the jurisdiction of MTPS Stage II from ERLDC to SLDC. In the absence of such ratification by CERC, the declaration of COD and scheduling of Power to Odisha by Bihar SLDC are legally not permissible. Therefore, the fixed cost burden cannot be imposed on GRIDCO.
- (h) As the petitioner has delayed the commissioning of the plant by 4.5 years, the cost of power procurement consequently results to be very high (twice that of other plants), and in the meantime, GRIDCO was constrained to enter into PPAs with other generating companies to meet DISCOM's statutory obligations. Further, subdued growth in demand, the envisaged Peak demand is much lower than that of Electric Power Survey (EPS), upcoming State Sector Power Plants, etc, resulted in GRIDCO having a surplus in power. Thus, it would be imprudent to buy expensive power from the Petitioner. Therefore, GRIDCO has sought de-allocation of power from upcoming NTPC Stations located outside Odisha, including KBUNL. Accordingly, GRIDCO sought the intervention of this Commission on the PPA dated 27.12.2010 as a matter of exigency and necessity.

25. Subsequently, the Petitioner vide affidavit dated 9.10.2021 submitted its reply to the RoP in a hearing dated 17.9.2021, and a summary of the same is as follows:

- (a) The allocated power to Bihar was 264 MW, and the same was to draw its share directly from the generator busbar and balance 126 MW, including 38 MW of unallocated quantum (which is allocated by GOI from time to time), shall be evacuated. Considering the 5% margin for governor action, the



over-loading capacity of 101 %, and APC of 9 %, LTA was applied for 121.6 MW (126 x 0.91 x 1.05 x 1.01).

- (b) ERPC vide letter dated 27.06.2017 allocated the unallocated quantum of Stage II, MTPS to all beneficiaries, and the same was effective from COD of unit 2, i.e., 01.07.2017. The details are given below:

S. No.	Constituent	Firm (%)	Firm (MW)	UA (%)	UA (MW)	Total (%)	Total (MW)
1	Bihar	67.7	264.03	7.27	28.36	74.97	292.39
2	DVC	2.6	10.14	0.28	1.09	2.88	11.23
3	JBVNL	3.1	12.09	0.33	1.30	3.43	13.39
4	Odisha	7.7	30.03	0.83	3.23	8.53	33.26
5	West Bengal	8.7	33.93	0.93	3.64	9.63	37.57
6	Sikkim	0.5	1.95	0.05	0.21	0.55	2.16
7	Un-Allocated	9.7	37.83	-	-	-	-
8	Total	100.0	390.00	9.7	37.83	100.00	390.00

- (c) Subsequently, ERPC, vide letter dated 30.11.2017, allotted 50 MW power from ER stations to Telangana under NSM – II, including 0.28 % share of Stage II, MTPS (1.09 MW) and revised the share of DVC to 10.14 MW and the revision was affected from 00:00 Hrs. of 01.12.2017.
- (d) In line with the revised allocations and Article 6.2 of PPA, which provides for the establishment of LC equivalent to 105 % of one month's estimated billing by beneficiaries, LC was demanded by the Petitioner.
- (e) With respect to a specific query of the Commission regarding the DC declared, energy supplied to various beneficiaries, the petitioner has furnished the DC declared, the gross energy generated, energy supplied to Bihar (scheduled generation), and bills raised against respondents for the period between 18.03.2017 to 31.03.2018. However, with respect to Telangana, the petitioner has not provided any details of the DC declared and bills raised. The petitioner has further submitted that payments were not received from the respondents against the bill raised in the above period, i.e., 18.03.2017 to 31.03.2018. However, subsequent to scheduling by ERLDC, i.e., 01.04.2018, payments are being received from DVC, JBVNL, and WBSEDCL, and the same were adjusted for dues against the period prior to 01.04.2018. In regard to GRIDCO, it was submitted that it had made a payment of Rs. 1.14 Cr as an advance in lieu of LC in August 2019, and

the same was adjusted against the dues prior to 01.04.2018. Sikkim has accepted the reconciled statement as on 30.06.2021. The details of DC, gross generation, energy scheduled by Bihar, energy supplied in the market, and energy supplied to respondents are as follows:

Period	DC (MUs)	Gross Generation (MUs)	Energy Scheduled by Bihar (MUs)	Energy transacted in Short Term Market	Energy supplied to Respondents 1 to 5
18.03.2017 to 31.03.2017	27.417	17.729	15.38	0	0
01.04.2017 to 30.04.2017	43.06	33.163	28.5	0	0
01.05.2017 to 31.05.2017	0	0	0	0	0
01.06.2017 to 30.06.2017	0	0	0	0	0
01.07.2017 to 31.07.2017	62.67	48.41	42.25	0	0
01.08.2017 to 31.08.2017	128.03	102.85	91.96	0	0
01.09.2017 to 30.09.2017	109.26	90.64	81.24	0	0
01.10.2017 to 31.10.2017	191.97	157.39	141.23	0	0
01.11.2017 to 30.11.2017	108.32	88.33	79.07	0	0
01.12.2017 to 31.12.2017	119.67	96.4	86.98	0	0
01.01.2018 to 31.01.2018	88.93	71.18	64.37	0	0
01.02.2018 to 28.02.2018	141.67	112.56	101.1	0	0
01.03.2018 to 31.03.2018	222.787	175.754	157.04	0	0

(f) The details of bills raised against the respondents are as follows:

Period	DVC (Rs)	JBVNL (Rs)	GRIDCO (Rs)	WBSEDCL (Rs)	Sikkim (Rs)
18.03.2017 to 31.03.2017	2213425	2639084	6555145	7406462	425659
01.04.2017 to 30.04.2017	3555572	4239337	10529965	11897492	683764
01.05.2017 to 31.05.2017	-56974	-67931	-168729	-190642	-10956
01.06.2017 to 30.06.2017	17936	21385	53118	60016	3449
01.07.2017 to 31.07.2017	4598668	5483028	13619136	15387854	884360
01.08.2017 to 31.08.2017	9334687	11129820	27645036	31235298	1795132
01.09.2017 to 30.09.2017	7944482	9472268	23527893	26583461	1527786
01.10.2017 to 31.10.2017	13767924	16415603	40774242	46069595	2647679
01.11.2017 to 30.11.2017	7790777	9289004	23072688	26069141	1498227
01.12.2017 to 31.12.2017	7559038	9980840	24791119	28010742	1609813
01.01.2018 to 31.01.2018	5541803	7317314	18175266	20535688	1180213
01.02.2018 to 28.02.2018	9648185	12739318	31642825	35752280	2054729
01.03.2018 to 31.03.2018	14287067	18864428	46856810	52942106	3042651

26. The Respondent no. 2, GRIDCO, vide affidavit dated 12.10.2021, submitted that the OERC, vide its order dated 04.10.2021 in case no. 27/2018, has disapproved the power purchase agreement dated 27.12.2010 executed between GRIDCO and KBUNL for purchase of power from stage II, MTPS. The OERC's order dated 04.10.2021 has stated as under:

*"31. The Commission further observed that since GRIDCO is not able to meet the RPO, it has entered into PPA with many renewable developers as well as with SECI and PTC to purchase renewable energy (both solar and non- solar) in order to meet its RPO. GRIDCO is still far behind its RPO target fixed by*



*Commission and it needs procurement of more renewable energy for meeting the RPO. Consequently, availability of surplus power will further increase, resulting in a huge burden of fixed charge of the NTPC generating stations on the state consumers.*

*32. As per Section 86(1)(b) of Electricity Act, 2003 the State Commission shall have to “regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the state.”*

*33. Considering all the above we are not inclined to approve the present PPA with M/s. KBUNL and direct GRIDCO to take steps for de-allocation of State share from M/s. KBUNL in co-ordination with the State Government. This will relieve the State consumer from bearing the unnecessary burden of the fixed cost of power which is not being drawn. Regarding force scheduling of power GRIDCO may approach appropriate forum for relief.”*

27. Subsequently, on 13.01.2022, the Petitioner and Respondent, GRIDCO, mentioned the matter and submitted that after the order was reserved by the Commission on 17.09.2021, there are some developments in the matter, including settlement talks among KBUNL, GRIDCO, and Ministry of Power and they prayed before the Commission to allow the parties to place these facts on record. Accordingly, the Commission allowed both parties to file their respective additional submissions.

28. In line with the above, the Petitioner, vide submissions dated 20.01.2022 (affidavit dated 4.10.2022), has submitted that it has filed an appeal no. 330/2021 before the Hon'ble APTEL against OERC's order dated 04.10.2021 and the APTEL vide interim order dated 17.12.2021 has given a stay on OERC's order dated 04.10.2021.

29. The respondent, GRIDCO, vide affidavit dated 27.01.2022, submitted that a meeting was held on 01.11.2021 among NTPC, GRIDCO, and the Ministry of Power to settle the outstanding dues, wherein the Secretary (Power), Govt. of India advised NTPC to have a meeting with Chief Secretary, Odisha and resolve the issue. Accordingly, a meeting was held between NTPC and GRIDCO on 01.12.2021, wherein the reallocation of 33 MW from the generating station was discussed, and in January 2022, GRIDCO followed up with NTPC. It was also mentioned that GRIDCO has not scheduled/requisitioned any power from the generating station, and in case any power has been flowed, that was due to forced scheduling by ERLDC. Further, even though



APTEL has granted a stay on OERC's order dated 04.10.2021, it has not been set aside. Thus, GRIDCO's request is to keep the instant Petition in abeyance and adjourn it sine die until the parties, KBUNL and GRIDCO, reach a final settlement.

30. The case was heard on 22.02.2022, wherein GRIDCO submitted that settlement talks were going between GRIDCO and Petitioner and requested to defer the hearing till this settlement. However, the petitioner prayed for disposing of the matter, without any prejudice to the parties settling the matter. In view of the above, the Commission deferred the hearing and directed both Petitioner and GRIDCO to workout settlement at the earliest. The case was again heard on 20.05.2022, and after hearing the parties, the Commission granted additional time for settlement between parties.

31. The respondent, GRIDCO, vide affidavit dated 05.07.2022 submitted that KBUNL and GRIDCO reached an out-of-court private settlement on 21.05.2022 for Rs. 295 Cr, and both the Board of KBUNL as well GRIDCO approved the same.

32. The case was heard on 22.09.2022, and the parties submitted that KBUNL had arrived at an amicable settlement with GRIDCO and WBSEDCL. After hearing the parties, the Commission directed Petitioner to submit month-wise DC declared, scheduled given, energy supplied with regard to Telangana and details of settlement entered with GRIDCO as well as WBSEDCL and reserved the Order.

33. Subsequently, the Petitioner, KBUNL, vide affidavit dated 10.10.2022, submitted that it has arrived at a settlement with both Respondents, i.e., GRIDCO and WBSEDCL, and payments have been received accordingly. It was also submitted that the Ministry of Corporate Affairs has sanctioned the amalgamation of KBUNL with NTPC with effect from 26.08.2022. In addition, the petitioner submitted declared capacity, energy scheduled, and energy supplied to Telangana during the period from 18.03.2017 to 31.03.2018.





34. As it was noted that SLDC Bihar was not communicating the declared capacity to the respondents during the period 18.03.2017 to 31.03.2018, the matter was relisted 10.10.2023, and the parties requested to implead the SLDC, Bihar for effective disposal. Further, the respondent, GRIDCO, submitted that a one-time settlement of dues relating to the period from March 2017 to March 2018 and thereafter was arrived at with the Petitioner, and full payments have been made. Accordingly, the Commission directed the petitioner to implead SLDC, Bihar.

35. In this regard, it is noted that subsequently, the SLDC, Bihar communicated that it is an integral part of Bihar State Power Transmission Company Ltd (BSPTCL) and the same is under Bihar State Power Holding Company Ltd. (BSPHCL), requested BSPHCL be impleaded as a respondent and that all the communication may be made to through the above utility. Accordingly, the petitioner has impleaded BSPHCL as a respondent. Subsequently, the respondent, BSPHCL, vide affidavit dated 01.12.2023, furnished monthly energy accounting of the instant station for FY 2017 – 18.

36. The Petitioner vide affidavit dated 5.1.2024 made additional submissions and submitted that in line with the direction of the Commission, a meeting was held between petitioner and DVC on 28.12.2023, wherein, while the petitioner was of the view that till the time of deallocation, the beneficiaries are liable to pay fixed charges and delay in payments attracts the LPSC, the respondent, DVC was of the view that it was not liable to pay fixed charges for the period 18.03.2017 to 31.03.2018. Thus, the meeting remained inconclusive.

37. The respondent, BSPHCL, on behalf of SLDC, Bihar, vide affidavit dated 19.01.2024, submitted its response to information sought by the Commission vide RoP in hearing dated 22.09.2023 and a summary of the same is as follows:

- a. It has furnished information regarding day-wise DC received from the petitioner during the subject period, the DC communicated to Bihar DISCOMs.
- b. In a meeting held to resolve the issues associated with KBUNL on 25.1.2017, CTU emphasised that Connectivity and Long-Term Access (LTA) shall be ensured for enabling scheduling, but no beneficiary has





signed the LTA agreement. However, as the beneficiaries had not signed any LTA agreement, the power was not scheduled.

- c. The schedule to Bihar DISCOMs is done as per its share allocation.
- d. Neither the petitioner nor any beneficiary has flagged the issue regarding the unavailability of declared capacity to the beneficiaries.

38. The petitioner, vide additional affidavit dated 20.01.2024, submitted its response to the RoP in a hearing dated 22.9.2023, and a summary of the same is as follows:

- a. It has declared its DC on a daily basis and it was sent to SLDC, Patna along with a note that 'Kindly forward this DC to ERLDC also for scheduling purpose of other eastern region beneficiaries of MTPS Stage II of KBUNL namely Jharkhand, West Bengal, DVC, GRIDCO, Sikkim and Telangana.'
- b. The bills were raised and sent to the beneficiaries on a monthly basis for fixed and variable charges based on the energy accounting issued by SLDC, Patna from April 2017 to March 2018 and followed up for the same. Thus, the beneficiaries were aware that the KBUNL is declaring the DC and its power available to them.
- c. In response to communication of GRIDCO and Jharkhand regarding the unavailability of DC by SLDC or RLDC or the Petitioner, it was informed that the power is made available by the Petitioner at the busbar of its switchyard and it's the responsibility of beneficiaries to evacuate the same by signing the necessary documents with CTU and other agencies. Further, the subject concern of beneficiaries has been communicated to SLDC, Patna through a letter dated 11.7.2017, along with a copy to ERPC / ERLDC. Thus, it has taken all measures to send the DC to SLDC and intimate the same to beneficiaries through SLDC and requested SLDC to take all necessary actions for scheduling.

39. The case was listed on 16.2.2024, and after hearing the parties, the Commission directed SLDC, Bihar, and Petitioner to furnish certain information and reserved the order.



40. The respondent, DVC, vide affidavit dated 8.4.2024, reiterated its submissions made in its earlier reply, and in addition, it has submitted that:

- a. In a meeting held on 25.1.2017, it was recorded that GRIDCO approached the concerned authorities for surrender of their share and have not signed LTA. West Bengal and DVC were also of the same view and had taken up the matter separately for surrender of their share.
- b. The jurisdiction of MTPS II shall be shifted from ERLDC to SLDC w.e.f. 6.2.2017.
- c. In terms of the above, SLDC Bihar is responsible for scheduling and dispatch of power from MTPS; however, during the subject period, i.e., 18.3.2017 to 31.3.2018, SLDC Patna, neither communicated any declared capacity of the Petitioner on a day ahead basis to beneficiaries nor took any consent for scheduling of power. This is a lackadaisical and inexplicable approach by Bihar SLDC. Further, as per the information submitted by BSPHCL, the schedule given to all beneficiaries (including DVC), barring Bihar, is ZERO; it is not liable to pay any fixed charges.
- d. The Petitioner was well aware of the non-scheduling of its power by Bihar SLDC to beneficiaries, including DVC. However, it remained completely silent.
- e. Though JBVNL had already signed the LTA with PGCIL on 18.05.2017, no communication / instruction was made by SLDC Patna for scheduling of power from MTPS to JBVNL.
- f. The matter of non-scheduling of MTPS power by Bihar SLDC was placed before the 135<sup>th</sup> OCC meeting held on 24.07.2017, wherein JBVNL was advised to pursue with CTU for issuing the letter of operationalisation. Subsequently, the matter, along with the surrendering of power, was taken up in the 36<sup>th</sup> TCC meeting held by ERPC on 13.09.2017 and 14.09.2017, wherein the CTU informed that LTA had been signed by JUSNL only, but other beneficiaries are yet to sign, and the issue has been heard by this Commission in Petition No 20 /MP /2017, which is to decide control area jurisdiction of MTPS stage II and the order is awaited. Further, TCC opined that the allocation of power is being done by the Ministry of Power, and the



matter may be taken up with MoP. In the meanwhile, pending the order, ERPC vide meeting dated 25.1.2017 assigned responsibility of scheduling of power of MTPS to Bihar SLDC. Thus, the ERPC and CTU failed to resolve the issue of non-communication of declared capacity by Bihar SLDC by inappropriately mixing with the issue pending before the Commission in petition no. 20/MP/2017. Further, a perusal of the subject minutes, it can be noted that the precondition to claim availability was not met by the Petitioner. However, the Petitioner has not agitated this matter before the concerned authority / forum.

- g. Subsequent to the transfer of the control area to ERLDC, DVC is receiving DC, scheduling the power, and making payments accordingly. However, the petitioner unlawfully, adjusted such amounts to the LPSC on capacity charges claimed for the period March 2017 to March 2018.
- h. The petitioner has relied on the order dated 9.3.2018 in petition no. 20/MP/2017 to state that DVC is liable for fixed charges. However, the subject order is silent on LTA operationalization during the period from 18.3.2017 to 31.3.2019 and liability of capacity charges with respect to DVC in the absence of valid LTA. Further, as no transmission charges were levied by PGCIL for LTA for the subject period, the reliance placed on the order dated 9.3.2018 for capacity charges is misplaced.
- i. The petitioner has not disclosed the financial gain made by it on account of the sale of un-requisitioned surplus power during the period 18.3.2017 to 31.3.2018. Only after 1.4.2018 the financial gains made on account of URS power are adjusted in invoices. Further, as it appears that the petitioner has deliberately concealed and suppressed such material information, the petition deserves to be dismissed on this ground alone.
- j. As per clause 4.4.3 of PPA, ERPC is the competent authority for REA. However, the same was carried out by SLDC, Patna, and no supporting document was provided to substantiate that SLDC, Patna is the competent authority for the same. Thus, the invoices raised are not in accordance with the PPA.
- k. The SCOD of units 1 and 2 are 12.10.2012 and 12.01.2013. However, the actual CODs are 18.3.2017 and 1.7.2017, respectively, i.e., COD of units 1



and 2 got delayed by 1619 days and 1632 days, respectively. The Commission vide order dated 24.4.2019 has disallowed 670 day of time-overrun for both units. Thus, if the petitioner had executed the project diligently, the plant could have been commissioned much earlier and supplied the power to beneficiaries. However, as it was not so, it suffered huge losses due to non-supply of power. Accordingly, alternative measures are considered, including commissioning of all 500 MW units and becoming surplus to the tune of 1300 MW from its own generation. Thus, DVC proceeded to surrender the power vide letter dated 30.12.2014 to the Ministry of Power and pursued the same consistently. The same was communicated to Petitioner and requested not to take any action seeking the LTA on behalf of DVC.

- I. Accordingly, the petition is devoid of merit, and the relief sought may be denied, and the petition may be dismissed with costs.

41. The respondent, BSPHCL, vide affidavit dated 8.4.2024, reiterated its submissions made earlier, and in addition, it was submitted that:

- a. The instant petition is purely a contractual dispute, and SLDC, Bihar has been dragged unnecessarily.
- b. As per the PPA, it is obligation of the beneficiary to sign the LTA agreement, evacuate the power from the delivery point of the station and establish a Letter of Credit prior to the commencement of electricity supply.
- c. The party which is itself in breach of its contractual cannot derive benefit from its own wrong.
- d. DVC wanted to surrender the power and had no intention of paying until the reallocation of power was settled. Thus, the blame put on SLDC is an afterthought.
- e. The petitioner itself has marked the DC to ERLDC, and as per the subject OCC and ERPC, the JBVNL has not addressed the letter to SLDC.
- f. The no liability can be attached to SLDC, Bihar.

42. In response to RoP in a hearing dated 16.2.2024, the petitioner vide affidavit dated 8.4.2024 has submitted that:



- a. As the power is allocated to beneficiaries by the Ministry of Power, till the power is reallocated/deallocated or rescinded, the PPAs will subsist and beneficiaries are liable for provisions of PPA, and it cannot sell the power to a third party.
- b. ERPC vide dated 30.11.2017 has allocated 50 MW from the unallocated share of ER stations to Telangana, wherein the allocation of DVC was revised to 10.14 MW.
- c. The final settlement amount with GRIDCO is Rs. 295 Cr, and it was a one-time settlement of the outstanding dues on a lumpsum basis against the bills raised by the petitioner. Therefore, there is no adjustment of such an amount in capital cost.

43. The respondent, BSPHCL, vide affidavit dated 8.4.2024, submitted its response to the RoP in a hearing dated 16.2.2024 and furnished the day-wise Declared Capacity (DC) by petitioner from 18.3.2017 to 31.3.2018. A 1.09 MW (0.279291 %) share of the instant station was allocated to Telangana w.e.f. 00:00 Hrs of 1.12.2017.

### **Analysis and Decision**

44. After hearing the parties and considering the submissions having merit, it is noted that the plant had two units with a total installed capacity of 390 MW (2 x 195 MW), and the Ministry of Power, vide its letter dated 10.12.2010, had allocated power of the instant generating station amongst beneficiaries of Eastern Region, i.e., Bihar, West Bengal, Orissa, Jharkhand, Sikkim and DVC. Accordingly, the petitioner entered into Power Purchase Agreements (PPAs) with beneficiaries in December 2010. Further, as the plant is located in Bihar and the majority of the share is allocated to it, it was envisaged that Bihar would draw power through its own transmission infrastructure and the balance power of 126 MW, inclusive of allocation of other beneficiaries and unallocated power, was to be evacuated through ISTS. Therefore, the petitioner had applied for connectivity for 126 MW and LTA for 121.6 MW (=  $126 \times 0.91 \times 1.05 \times 1.01$  – considering APC - 9 %, margin in governor action – 5 %, and overloading capacity – 1 %). Thus, the petitioner had connectivity to the STU system as well as ISTS (through 220 kV Kanti – Muzaffarpur D/C line).



45. In terms of the above PPAs, the SCOD of units 1 and 2 were 12.10.2012 and 12.01.2013, respectively. However, as the execution of works was delayed enormously coupled with cost escalation prior to the actual commissioning of units, the Respondents GRIDCO and DVC conveyed to the Ministry of Power, Govt. of India that they had developed their own plants / new tie ups have been made. Accordingly, they requested that their share of power from the instant generating station be deallocated. Similarly, the respondents, West Bengal and Jharkhand, also expressed their desire to surrender the power from the instant generating station.

46. Based on the application made by the Petitioner for LTA, though CTU has granted it, as none of the beneficiaries had signed the LTA agreement, CTU gave notice to the petitioner in January 2017 to sign the LTA agreement within 15 days, failing which LTA granted would be liable for revocation. Further, as the plant was connected to both STU and CTU networks and the majority of the capacity had been allocated to Bihar, prior to the trial run operation of unit 1, issues such as control area jurisdiction, restriction of quantum of power to be injected during trial run to connectivity / LTA quantum applied with ISTS (126 MW), LTA operationalization, the applicability of PoC charges for the power drawn by Bihar, STU charges on power drawn by other beneficiaries, etc., had cropped up. Accordingly, a meeting was held among the parties viz CEA, ERPC, ERLDC, CTU, PGCIL, KBUNL, BSPTCL, BSPHCL, GRIDCO, DVC, WBSEDCL, SLDC – West Bengal, OPTCL and GRIDCO on 25.1.2017, wherein, it was decided that jurisdiction of KBUNL Stage II be shifted from ERLDC to SLDC - Bihar immediately w.e.f. 6.2.2017 to enable full load trial operation and KBUNL was to approach CERC for ratification of the same.

47. Accordingly, the petitioner has filed a petition no. 20/MP/2017 before this Commission and prayed for a direction to the respondents to sign the LTA agreement or consider it deemed signed by beneficiaries, approval for the jurisdiction of SLDC - Bihar for scheduling of MTPS Stage II, not to levy PoC charges in case scheduling by RLDC, not to levy transmission / wheeling charges for other beneficiaries in case of scheduling by SLDC - Bihar, etc. Pending the above petition, the Petitioner had declared the COD of unit 1 as 18.3.2017 and had been declaring its availability to SLDC - Bihar on a day ahead basis. Subsequent to the issuance of an energy account



by SLDC – Bihar, the petitioner had raised monthly bills to its beneficiaries in April 2017. However, the respondents Orissa, West Bengal, Jharkhand, DVC, and Sikkim raised objections against such bills, citing that as the DC is not being made available to them by SLDC - Bihar, they were unaware of the declared capacity of instant station and had not scheduled any power. Thus, they are not liable for any capacity charges. In response, the petitioner conveyed that in terms of PPA, it has declared availability at its busbar, and the liability of the respondents is to evacuate such power from the busbar. Subsequently, ERPC vide letter dated 27.6.2017 has revised the share allocation of beneficiaries from the instant station, wherein unallocated power was allocated to beneficiaries, and the same was made effective from COD of unit 2, i.e., 01.07.2017.

48. The matter of non-scheduling of MTPS power by Bihar - SLDC was placed before the 135<sup>th</sup> OCC meeting held on 24.07.2017, wherein JBVNL was advised to pursue with CTU for the issuance of an LTA operationalisation letter. Subsequently, this issue, along with another issue, i.e., surrendering of power, was taken up in the 36<sup>th</sup> TCC meeting held by ERPC on 13.09.2017 and 14.09.2017, wherein the CTU informed that LTA had been signed by JUSNL only but other beneficiaries are yet to sign. The issue was heard by this Commission in Petition No. 20/MP/2017, which was filed to decide the control area jurisdiction of MTPS stage II, and the order is awaited. Accordingly, TCC opined that the deliberations may not be fruitful, as the order in the matter was reserved. TCC further opined that the allocation of power is being done by the Ministry of Power (MoP); therefore, the matter may be taken up with the MoP.

49. Subsequently, ERPC vide letter dated 30.11.2017 allocated 50 MW from ER stations to Telangana under NSM II, including allocation of 1.09 MW associated with DVC to Telangana, and the same was made effective from 00:00 Hrs of 1.12.2017. Accordingly, the share allocation details of the plant during the period from 18.3.2018 to 31.3.2018 are summarized as follows:

S. No.	Beneficiary	18.3.2017 to 30.6.2017		1.7.2017 to 30.11.2017		1.12.2017 to 31.3.2018	
		Allocation Percentage (%)	Allocated Capacity (MW)	Allocation Percentage (%)	Allocated Capacity (MW)	Allocation Percentage (%)	Allocated Capacity (MW)
1	Bihar	67.7	132	74.97	292.39	74.97	292.39
2	West Bengal	8.7	17	9.63	37.57	9.63	37.57





3	Orissa	7.7	15	8.53	33.26	8.53	33.26
4	Jharkhand	3.1	6	3.43	13.39	3.43	13.39
5	DVC	2.6	5	2.88	11.23	2.60	10.14
6	Sikkim	0.5	1	0.55	2.16	0.55	2.16
7	Telangana					0.28	1.09
7	Unallocated	9.7	19	-	-	-	-
9	Total	100.0	195	100.0	390	100.0	390

50. The Commission, vide its order dated 09.03.2018 in Petition No. 20/MP/2017, transferred the jurisdiction of the instant generating station to ERLDC w.e.f. 01.04.2018, directed respondents to sign LTA agreements; if they fail to do so, CTU should operationalize LTA, and beneficiaries shall be liable to pay transmission charges in terms of contractual obligations of PPA signed with the Petitioner. State charges are not payable on the conveyance of power through the ISTS network, while computing schedules of Bihar from MTPS Stage-II, ISTS Charges, and losses shall not be applicable on schedules of Bihar, etc.

51. Thus, during the period from 18.3.2017 to 31.3.2018, the plant was under the control area jurisdiction of SLDC – Bihar, and from 1.4.2018 onwards, it was under the control area jurisdiction of ERLDC. During the period from 18.3.2017 to 31.3.2018, wherein the plant was under the control area jurisdiction of SLDC – Bihar, while the petitioner had claimed that it had declared its availability at ex-bus and entitled to capacity charges, the respondents Orissa, West Bengal, DVC, Jharkhand, and Sikkim had claimed that as the declared capacity was not being made available to them by SLDC - Bihar, no scheduling was being done and they were not liable to any capacity charges during the said period. Further, subsequent to 1.4.2018, wherein the plant was under the control area jurisdiction of ERLDC, the petitioner claimed that it had declared availability and capacity charges thereof, wherein respondents West Bengal, Jharkhand, and Sikkim agreed with the contention of the Petitioner, but respondents Orissa and DVC submitted that though the DC was made available by ERLDC, as the commissioning of the plant got delayed, alternative arrangements were made and they already requested the Ministry of Power to consider their proposal for the surrender of power. Further, as the respective SERCs did not approve the PPA/power procurement from the Petitioner, they did not schedule the power and were therefore not liable for capacity charges. However, subsequent to the filing of the instant petition



by the Petitioner, DVC was scheduling the power and paying the capacity charges from 01.04.2018 onwards.

52. Accordingly, the disputes involved in the instant petition are (a) Declared Capacity with respect to respondents Orissa, West Bengal, DVC, Jharkhand, and Sikkim during the period 18.03.2017 to 31.03.2018 and liability of Capacity Charges thereof and (b) Capacity Charges to be paid by GRIDCO for power not availed of during the period beyond 1.4.2018, wherein DC was made available to it by ERLDC. However, it is also noted that the Petitioner had separate out-of-court settlement discussions with respondents GRIDCO, West Bengal, and DVC. The petitioner succeeded in a one-time out-of-court settlement on a lumpsum basis without re-opening any further claims/counterclaims for Rs. 295 Cr towards the capacity charges for both pre and post-to 1.4.2018 with Orissa and also agreed with Orissa's proposal to exit from PPA. The Ministry of Power vide letter dated 28.03.2022 has reallocated the share of Orissa to TANGEDCO. Similarly, the Petitioner had entered into another one-time settlement on a lumpsum basis without re-opening any further claims/counterclaims with West Bengal for Rs. 39 Cr towards capacity charges for the period from 18.3.2017 to 31.3.2018. However, the Petitioner could not arrive at any such settlement with DVC. Accordingly, the dispute remains for consideration is Declared Capacity with respect to respondents DVC, Jharkhand, and Sikkim during the period 18.3.2017 to 31.3.2018, wherein the plant was under the control of SLDC - Bihar and liability of these beneficiaries towards Capacity Charges thereof.

53. With regard to the dispute during the period from 18.03.2017 to 31.03.2018, the Petitioner has claimed that on a day ahead basis, it had declared its availability to SLDC – Bihar through an e-mail along a note that '*Kindly forward this DC to ERLDC also for scheduling purpose of other eastern region beneficiaries of MTPS Stage II of KBUNL namely Jharkhand, West Bengal, DVC, GRIDCO, Sikkim and Telangana*' and copy (cc) to ERLDC. In this regard, while the respondents submitted that as the DC was not made available to them by SLDC - Bihar, they were unaware of the availability of the plant and could not schedule the power from the plant of the Petitioner. On the other hand, SLDC - Bihar submitted that the LTA is mandatory for scheduling of power from the instant generating station to the respondents; however, as the respondents



have not complied with the requirement for signing the LTA agreement, no schedules were generated for these beneficiaries.

54. In this regard, it is noted that the PPAs executed between the Petitioner and the respondents, are governed by CERC (Terms and Conditions of Tariff) Regulations, 2009 and IEGC, 2010. Accordingly, certain relevant clauses of PPA are excerpted as follows:

*'Availability: 'Availability' as defined in the CERC (Terms and Conditions of Tariff) Regulations, 2009 as amended or replaced from time to time.*

*Regional Energy Account (REA) : Periodic Energy Account issued by ERPC / ERLDC including amendments thereof.*

*Scheduled Generation: Scheduled Generation as defined in the CERC (Terms and Conditions of Tariff) Regulations, 2009 as amended or replaced from time to time.*

#### **SCHEDULING, METERING AND ENERGY ACCOUNTING**

**4.1 SCHEDULING** *It is understood and agreed by and between the parties that KBU NL shall operate the Station as a base load station as per the manufacturers' guidelines, applicable grid operating standards, directions of the CERC and relevant statutory provisions, as applicable from time to time. **Methodology of generation scheduling shall be as per IEGC and the decisions taken at ERPC forums.***

*All charges / fees related to scheduling and despatch of electricity shall be borne by DVC.*

*KBUNL shall make declaration of the capacity at the busbars of the Station after taking into account the capability of the Station to deliver Ex-Bus which shall be considered while calculating Declared Capacity (DC). DVC shall have the right to schedule this DC in proportion to its allocation from the Station.*

**4.2 DECLARED CAPACITY** *Declared Capacity or 'DC' means the capability of the Station to deliver Ex-Bus electricity in MW declared by the Station in relation to any period of the day or whole of the day, duly taking into account the availability of fuels as per the procedure laid down in IEGC.*

*Notwithstanding the following, Station shall be deemed as available to the extent of DC declared by the Station for any time period:*

*a. Failure on account of Bulk Power Customer(s) to transmit and wheel electricity from the Ex-bus of the Station.*

*b. Any other reason not attributable to KBUNL restricting scheduling and despatch of capacity at the Ex-Bus of the Station*



#### 4.4 ENERGY ACCOUNTING

4.4.1 Both the Parties agree to facilitate issue of Regional Energy Accounts by 1<sup>st</sup> day of every month.

4.4.2 Regional Energy Account issued by ERPCI ERLDCI or any other Competent Authority shall be binding on all the parties for billing and payment purposes.

4.4.3 Any change in the methodology of Regional Energy Account shall be done only as per the decisions taken in the ERPC forums and both the Parties agree to abide by the methodology so finalised.'

55. Similarly, certain relevant excerpts of CERC (Indian Electricity Grid Code), 2010 are as follows:

#### *2.3 Role of RLDC*

2.3.1 According to sections 28 and 29 of Electricity Act, 2003, the functions of RLDCs are as follows:

.....

(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;**

....

#### *2.7 Role of SLDC*

2.7.1 In accordance with section 32 of Electricity Act, 2003, the State Load Despatch Centre (SLDC) shall have following functions:

.....

(2) The State Load Despatch Centre shall –

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

.....

#### *6.4 Demarcation of responsibilities:*

...

5. The Regional grids shall be operated as power pools with decentralized scheduling and despatch, in which the States shall have operational autonomy, and SLDCs shall have the total responsibility for

.....

(iii) scheduling their drawal from the ISGS (within their share in the respective plant's expected capability),

....

6.5 Scheduling and Despatch procedure for long-term access, Medium – term and short-term open access (to be read with provisions of Open Access Regulations 2008 as amended from time to time. The scheduling procedure for medium-term open access transactions shall be similar to the scheduling procedure for long-term access transactions and is as given below, except where it is specifically mentioned for collective transactions):

**1. All inter-State generating stations (ISGS) shall be duly listed on the respective RLDC and SLDC web-sites. The station capacities and allocated / contracted Shares of different beneficiaries shall also be listed out.**

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).

**3. By 8 AM every day, the ISGS shall advise the concerned RLDC, the station-wise ex-power plant MW and MWh capabilities foreseen for the next day, i.e., from 0000 hrs to 2400 hrs of the following day.**

**4. The above information of the foreseen capabilities of the ISGS and the corresponding MW and MWh entitlements of each State, shall be compiled by the RLDC every day for the next day, and advised to all beneficiaries by 10 AM. The SLDCs shall review it vis-à-vis their foreseen load pattern and their own generating capability including bilateral exchanges, if any, and advise the RLDC by 3 PM their drawal schedule for each of the ISGS in which they have Shares, long-term and medium-term bilateral interchanges, approved short-term bilateral interchange.**

56. Considering the above, it is noted that as per the PPA and relevant regulations:
- a. KBUNL was to be listed on the RLDC and SLDC websites along with its station capacity and contracted capacity with different beneficiaries.
  - b. KBUNL was to make declaration of the capacity at the busbars of the Station and advise the concerned RLDC about the ex-power plant MW and MWh capabilities foreseen for the next day (D day) by 08:00 Hr of D-1 day.
  - c. RLDC was to compile such information as per contracts entered between parties and advise all beneficiaries accordingly by 10:00 Hrs of D-1 day.
  - d. The SLDCs were to advise the RLDC for their drawal schedule by 15:00 Hrs of D-1 Day.

57. As noted earlier, in order to resolve certain issues associated with the instant generating station, ERPC, CEA, ERLDC, CTU, and beneficiaries held a meeting on 25.1.2017, prior to the COD of unit 1 and decided that the plant would be under the control area jurisdiction of SLDC, Bihar and that the petitioner would approach Commission for ratification of the same. Accordingly, the petitioner has filed petition no. 20/MP/2017, wherein the Commission vide order dated 9.3.2018 transferred the control area jurisdiction from SLDC, Bihar to ERLDC w.e.f. 1.4.2018. Accordingly, the role of RLDC envisaged in the PPAs had to be played by SLDC – Bihar during the period 18.3.2017 to 31.3.2018. Some excerpts of the subject record of minutes are as follows:

*'The present issue concerns ERLDC approval for injection of full load capacity for trial operation of the stage II of the station scheduled for February'17. ERLDC has informed that KBUNL must limit its generation to 126 MW which the quantum connectivity approved by CTU.*

.....



GM, ERLDC informed that as the connectivity to ISTS is for 126 MW, KBUNL must limit its generation to the same amount as there is probability of full injection through the ISTS which may affect the security and fault level of ISTS system.

.....

CTU clarified that LTA agreement has not been signed by the beneficiaries of KBUNL stage II. CTU representative further mentioned that the status of KBUNL Stage II as central generating station or as Inter state generating station is not clearly defined. Therefore, for full load testing whether only one CTU line is to be considered or all lines including state lines to be considered are not clear... It was emphasised that Connectivity and LTA are to be ensured separately for enabling the scheduling. It was pointed out that the nature of Kanti bus is not very clear: whether to be considered it as state bus or a ISTS bus.....

...

CTU informed that the nature of Kanti Bus will also have commercial implications. If the bus is considered as ISTS bus, then Bihar may have to pay PoC charges and if the bus is considered as a STU bus then other beneficiaries of KBUNL stage II may have to pay state wheeling charges.

.....

**ESE, BSTCL emphasised that Bihar is not agreeable to payment of PoC charges for own drawl. He further referred para 6.4.2(c)(iii) of IEGC wherein, if a generating station connected both to state and ISTS and the state has more than 50 % share then scheduling responsibility lies with SLDC. In that case the role of RLDC will be limited to incorporation of the ISTS interchange schedules as advised by SLDC.**

....

GRIDCO observed that loading STU charges on other beneficiaries may not be commercially acceptable. He suggested that as 67.7 % of power from KBUNL Stage II is already allocated to Bihar, Bihar may consider to avail the remaining quantum of power also. Odisha have already taken up with concerned authorities for surrender of their share and have not signed the LTA agreement. West Bengal, DVC were also of the same view as GRIDCO and informed that they have also separately taken up with competent authority for surrender of their respective shares.

.....

Director (Projects), BSPTCL informed that the requirement of additional power would be assessed and communicated to competent authority. However, concerning STU charges BSPTCL will be taken up with State Electricity Regulatory Commission.

.....

**KBUNL representative provisionally agreed for scheduling of KBUNL stage II units by SLDC, Bihar pending CERC approval. KBUNL informed that it will file a petition with CERC for its approval of scheduling of Kanti Stage II by SLDC, Bihar. Till that time SLDC will continue to schedule Kanti stage II.**

**In view of the consent of KBUNL for scheduling of KBUNL Stage II by Bihar SLDC, it was decided that jurisdiction of KBUNL Stage II be shifted from ERLDC to SLDC Bihar immediately w.e.f. 6.2.2017 to enable full load trial operation. KBUNL may approach CERC for ratification of the Central Commission.'**

58. Considering the above, it is noted that though ERPC, along with the concerned stakeholders, had assigned the scheduling of the instant station, including beneficiaries outside Bihar, to SLDC - Bihar, in variance with the execution of such role by ERLDC in terms of the PPAs signed between the parties. However, the



modalities for the execution of such task, including roles of the Petitioner, SLDC – Bihar, ERLDC, and beneficiaries, registration of petitioner, submission of PPAs, listing out petitioner plant on the website along with beneficiary-wise share allocation, mode, and channel of communication regarding availability and schedule, punching of data in the prescribed format, fee and charges of SLDC by the Petitioner and beneficiaries, etc., were not recorded either in the minutes of the meeting held 25.01.2017 or in any subsequent deliberations. Under these conditions, the petitioner was declaring its availability to SLDC - Bihar and raising monthly bills against the respondents from April, 2017 onwards. In response, the respondents vide their respective letters in April 2017 have apprised the petitioner that SLDC – Bihar was neither intimating any declared capacity of KBUNL nor obtaining any consent for scheduling from respective SLDCs and objected bills of KBUNL. The Petitioner replied to the beneficiaries that as per PPA, the availability is declared at the busbar of the station, and evacuation from the busbars would be the responsibility of the beneficiaries.

59. Subsequently, after signing the LTA agreement on 18.5.2017, JBVNL, vide letter dated 22.06.2017 conveyed to the Petitioner that it has already signed the LTA agreement with CTU. However, they were not receiving any declared capacity from SLDC, Patna nor were they giving schedules thereof. Therefore, it would not pay the capacity charges until the power was scheduled from the instant station. In response, the Petitioner vide letter dated 11.07.2017 communicated to SLDC – Bihar along with CC to ERPC that it was furnishing DC along with specific remarks to forward the subject DC to ERLDC for scheduling by other beneficiaries. However, it was learnt that SLDC – Bihar was not coordinating with ERLDC to enable the scheduling of other beneficiaries. Further, JBVNL has signed the LTA agreement with CTU. However, it was not getting intimation from SLDC – Bihar / ERLDC regarding the scheduling of an instant station. In addition, other beneficiaries also raised similar issues. Therefore, the Petitioner requested the SLDC – Bihar to coordinate with ERLDC for the scheduling of other eastern regional beneficiaries. The excerpts of the letter of the petitioner dated 11.07.2017 are as follows:

*“In this regard, KBUNL is sending daily declaration of availability for MTPS Stage II, to SLDC, Patna with specific remark as mentioned below:*





*'Kindly forward this DC to ERLDC also for scheduling purpose of other eastern region beneficiaries of MTPS Stage-II of KBUNL namely Jharkhand, West Bengal, DVC, GRIDCO & Sikkim'.*

*However, it was learned that SLDC, Patna was not coordinating with ERLDC to enable scheduling of other Eastern Region beneficiaries of MTPS Stage II.*

*.....JBVNL vide their letter ref no. 909/C. E. (C&R) / ranchi dtd 22.06.2017 (copy enclosed) have contended that even after of signing of LTA agreement their power is not getting scheduled i.e. they are not getting information from SLDC, Patna / ERLDC regarding scheduling of MTPS Stage II. Moreover, other Beneficiaries of MTPS Stage II have also raised similar issues.*

*In view of the above and in order to discharge the functions / duties assigned to SLDC in Electricity Act, 2003, you are kindly requested to co-ordinate with ERLDC for scheduling of other Eastern Region beneficiaries of MTPS Stage II."*

60. The matter of no scheduling of power to JBVNL was also deliberated in the 135<sup>th</sup> OCC meeting held on 24.7.2017, wherein OCC advised JUSNL to pursue with CTU for issuing the letter for LTA operationalization for enabling the scheduling of JUSNL share from MTPS Stage – II. Further, in the 136<sup>th</sup> OCC meeting held on 30.8.2017, it was recorded that Petition No. 20/MP/2017 on a related issue was heard by CERC on 09.05.2017, and the order was reserved.

61. Subsequently, the JBVNL vide letter dated 4.9.2017 communicated to ERPC that it has already signed LTA with CTU on 18.5.2017; however, to date, neither it is receiving any information from SLDC, Patna / ERLDC nor scheduling any power. However, it is receiving bills from the petitioner for fixed charges and the matter was already brought to the notice of CTU and the Petitioner. Accordingly, the matter was deliberated in the 36<sup>th</sup> ERPC / TCC meeting held on 13.9.2014 and 14.9.2017, wherein CTU informed that LTA had been signed by only JUSNL but other beneficiaries, i.e. DVC, GRIDCO, and WBSEDCL were yet to sign. After deliberations, it was opined that as the issue was being heard by CERC and the order was awaited, further discussions would not be fruitful.

62. In response to the query of the Commission regarding the actions taken by SLDC - Bihar and the Petitioner on concerns raised by respondents that the information on DC was not being made available, the petitioner submitted that it had



declared its DC on a daily basis and the same was sent to SLDC – Bihar along with a note to forward this to ERLDC for scheduling of other eastern region beneficiaries and the power was made available at busbar of its switchyard and it was the responsibility of beneficiaries to evacuate the same by signing the necessary documents with CTU and other agencies. Further, the concerns of beneficiaries have been communicated to SLDC – Bihar through a letter dated 11.7.2017, along with a copy to ERPC. Thus, it has taken all measures to send the information on DC to SLDC and intimate the same to beneficiaries through SLDC. On the other hand, SLDC - Bihar submitted that as per PPA, it is the obligation of the beneficiary to sign the LTA agreement, evacuate the power from the delivery point of the station, and establish a Letter of Credit prior to the commencement of the electricity supply. However, as none of the beneficiaries have signed the LTA agreement, the power was not scheduled. Further, the Petitioner itself has marked the DC to ERLDC, and neither the Petitioner nor the beneficiaries have flagged the issue of unavailability of declared capacity. Further, JBVNL had addressed the subject letter to the Petitioner and ERPC / ERLDC, but not to SLDC - Bihar.

63. Considering the above, it is noted that while the issue is non-communication of declared capacity to the beneficiaries, the OCC, CTU, ERPC, SLDC – Bihar, and petitioner have been interlinked with the signing of LTA by the beneficiaries or opening of Letter of Credit. However, it may be noted that while communication of declared capacity to the beneficiaries is only passing of a piece of information about their respective availability, signing or operationalization of LTA is for drawl of actual power on a firm basis, and also, any entity is allowed to draw its power not only through LTA but also under MTOA or STOA. Thus, operationalization of the LTA by CTU may impact the actual drawl of power by respondents but does not have any impact on the DC declaration of the generating station, communication of availability by the Petitioner to SLDC – Bihar, communication of SLDC – Bihar to Respondents regarding their availability. As per submission of JBVNL, even after it signed the LTA agreement with CTU on 18.5.2017, no communication regarding DC declaration of the generating station was made available to them. Thus, though the petitioner has declared its ex-bus capacity to SLDC – Bihar on a daily basis, non-communication of the availability





to the beneficiaries, as per their allocation, on the pretext of non-signing of LTA does not have any merit.

64. Further, though the PPA provides for the establishment of a Letter of Credit by beneficiaries at least one month prior to the commencement of electricity supply from the first unit station, the request for a Letter of Credit was made to respondent JBVNL on 16.04.2018 and that for the respondents DVC and Sikkim on 20.10.2017 and reminder thereof on 16.04.2018. In this regard, as it is noted that the plant had an enormous time overrun, it may be appropriate to open subject LC after receipt of information regarding the trial run or COD of the unit. Further, the issue of non-communication of DC to beneficiaries prevailed since the COD of the plant, both prior to and post the request by the Petitioner to the respondents for opening LC and otherwise also on account of such action/inaction of respondents, supply can be regulated, but communication regarding the availability as made by generating entity shall be communicated to the beneficiaries so that they are aware of the actual availability, financial impact and further necessary action thereof. In addition, the respondents were never informed that in the absence of LC, the availability or scheduling would not be provided. Accordingly, linking non-communication DC with non-establishment of LC by respondents does not have any merit.

65. It is also opined that though the ERPC, along with the concerned, decided for control area jurisdiction of SLDC – Bihar, further modalities for the implementation of such decisions and issues arising thereof could have been deliberated, after COD of the unit, however, it was not done so. Further, though ERLDC was involved in all deliberations, including a meeting held on 25.1.2017, OCC, ERPC / TTC, and also receiving the DC from the petitioner on a daily basis during the entire disputed period, and also had a role in availability and scheduling of other beneficiaries of ER, it has not taken any measures to address the issue and neither forwarding such availability to beneficiaries nor rejecting mail of the Petitioner.

66. It is also noted that from declaration of availability to supply of power to beneficiaries as per schedule, involves various sequential steps, including the declaration of ex-bus capacity on a daily basis by the Petitioner to the concerned LDC,



communication such availability by LDC to beneficiaries as per their allocation, compilation of schedules received from beneficiaries by LDC and giving total schedule against the DC declared, the actual generation of power as per schedule by petitioner, etc. In terms of PPA, primarily, the Petitioner declared the availability of power at the bus bar of the generating station on a daily basis, communicated the same to the concerned LDC, and thus made the petitioner entitled to fixed charges as per the availability declared. However, the beneficiaries cannot be made liable for such capacity charges unless the communication regarding their respective availability is made available / known to them by prescribed means. In the instant case, the respective beneficiaries were deprived of such communication due to actions/inactions by SLDC – Bihar, such as non-communication of DC to the beneficiaries, no action even though the issue was flagged by the Petitioner, deliberation was done in OCC and ERPC, etc,

67. With regard to action taken by the Petitioner and SLDC – Bihar on the concerns raised by respondents regarding the unavailability of declared capacity and non-scheduling of power, the Petitioner furnished a letter dated 11.7.2017 addressed to SLDC – Bihar. In contrast, SLDC – Bihar vide affidavit dated 19.01.2024 submitted that neither the Petitioner nor the beneficiaries had flagged the issue of unavailability of declared capacity and schedule thereof. The excerpts of SLDC Bihar's affidavit dated 19.01.2014 are as follows:

*"It is humbly submitted that as per record available with Bihar SLDC, since there was no issue flagged by any beneficiaries of KBUNL and Petitioner regarding the unavailability of declared capacities to the beneficiaries, Bihar SLDC didn't take any action in this regard."*

68. Thus, the claim of SLDC – Bihar is contrary to the submissions made by the Petitioner. Further, as the SLDC – Bihar submitted to the Commission that it is an integral part of BSPTCL, which is an entity under BSPHCL, and also beneficiaries had raised the subject matter in the OCC and ERPC / TCC meeting, wherein BSPTCL / BSPHCL had participated, the submission of SLDC – Bihar that the issue was not flagged by petitioner or beneficiaries is not accepted.

69. With regard to actions taken by the Petitioner on concerns raised by the Petitioner, though the Petitioner has claimed that it has taken all measures, including



a note made to communicate the DC to ERLDC for scheduling of other beneficiaries and also a letter dated 11.7.2017, it is observed that in spite of the Petitioner was aware of the prime issue of non-communication of DC by SLDC – Bihar and objections received from respondents regarding the bills raised, except, the letter dated 11.7.2017, no other action on behalf of the Petitioner to resolve the issue has been noticed. The petitioner has not even shared its availability directly with any of the beneficiaries but continued to share with SLDC – Patna along with CC to ERLDC and thereafter raised the bills. Further, on examining the daily DC communicated by the petitioner to the SLDC – Bihar, it was observed that the request of the petitioner to forward the DC to ERLDC for scheduling other beneficiaries was missing for many days. The issue is important and has large commercial repercussions, and all beneficiaries have expressed the same concern; the matter could have been resolved at the earliest by deliberations among all concerned, including the beneficiaries, SLDC, etc., or brought to the notice of the competent authority, ERPC, immediately, as it was done for the trial run operation or to the commission through a petition.

70. Further, on a particular query of the Commission regarding the utilization of un-requisitioned power of beneficiaries other than Bihar and Telangana and revenue realized thereof, the petitioner submitted that no power has been sold in the short term, and no money has been received. However, the petitioner has not furnished any reason for the non-utilization of such available capacity in the short term. On the other hand, it is also noted that the petitioner has participated in the short-term sale from 1.4.2018 onwards, after the transfer of control area jurisdiction to ERLDC and adjusted revenue received thereof. In this context, it is noted that the Ministry of Power, vide letter dated 19.5.2016, mentions that various states had sent proposals for the surrender of around 4700 MW power from Central Generating stations, and as on date no request for power by any state is pending. Thus, the fixed charge liabilities would continue with the original beneficiaries till reallocation is made by the Ministry. In such cases, the states may consider using the provision of para 6.2(1) of the Tariff Policy and give consent to the sale of such URS power in the market through power exchange. The gains may be shared among parties and the states may also get some relief in fixed charge liability. However, in the instant case, neither beneficiaries were aware of their availability nor was such consent sought for the sale of power in the exchange. In addition, it is also noted that though the plant was operated in terms of



IEGC, 2010, the petitioner communicated its availability (Rev. 00) to the SLDC – Bihar much later than the timelines provided in relevant regulations. However, reasons for such deviations are not on record.

71. On pursuing documents available on record, it is noted that till April 2017, SLDC – Bihar has scheduled 178 MW to DISCOMs of Bihar, and the Petitioner has declared Zero (0) availability from 11.4.2017 to 10.7.2017 due to boiler tube leakage / tripping. From July 2017 onwards, SLDC – Bihar communicated 74.97 % of DC declared by Petitioner as availability for Bihar DISCOMs and scheduled up to 74.79 % of the declared capacity to them and also scheduled up to 1.9 MW to Telangana, but for the balance availability no action was taken for around 9 months. Thus, SLDC – Bihar had withheld the information regarding the 25.03 % of the availability declared by the petitioner from 11.07.2017 to 30.11.2017 and 24.75 % of the availability declared by the petitioner from 01.12.2017 to 31.03.2018.

72. It is also noted that though JBVNL brought the subject matter of non-scheduling of power in pleadings 20/MP/2017, no other beneficiaries made such pleas before this Commission until the petitioner filed the instant petition. In this connection, the Commission has addressed the subject matter from 1.4.2018 onwards but not for the period prior to that.

73. With respect to information furnished by the SLDC – Bihar vide affidavit dated 19.1.2024 and that of the affidavit dated 8.4.2024, certain inconsistencies were observed during the period 18.3.2017 to 10.04.2017 with respect to DC declared to DISCOMs of Bihar. As per the affidavit dated 19.1.2024, the SLDC has scheduled up to 178 MW, i.e., 100 % DC (Ex-bus) declared by the petitioner to DISCOMs of Bihar, but, as per affidavit dated 08.04.2024, it has declared 74.97 % of the DC declared by the petitioner (74.97% of 178 MW). However, the SLDC has not furnished any reasons for such inconsistencies. In this context, it is noted that the MoP allocation to Bihar during the period from 18.03.2017 to 30.06.2017 was 67.7% only and not 74.97%. ERPC vide letter dated 27.06.2017 has revised allocation of Bihar from 67.7 % to 74.97 % w.e.f. 1.7.2017, i.e., COD of unit 2.



74. Further, in regard to generation, it is also noted that the information furnished by the Petitioner does not match that of SLDC – Bihar. However, neither the petitioner nor SLDC–Bihar provided any reasons for the same. In this regard, considering the daily generation and energy supplied to Bihar, it is noted that on several days, though the DC, as well as Schedule, was Zero (0), the plant has produced certain energy, i.e., actual generation was there. On several days, though the power generated is supplied to Bihar and Telangana only, the actual generation mentioned was –more than 1.2 times (assuming 20 % auxiliary under low load operations) to the energy supplied to Bihar DISCOMs and Telangana. The details of DC, schedule of Bihar, Telangana, and actual generation for a few relevant dates are as follows:

(in MWhr)

Date	Declared Capacity	Schedule by / Actual Energy supplied to Bihar	Schedule by / Actual Energy supplied to Telangana	Actual Generation
03.04.2017	4400	2400	-	3400
19.04.2017	0	0	-	340
26.04.2017	0	0	-	4467
01.01.2018	4272	3094	11.931	5403
02.01.2018	4272	3094	11.931	5464
06.01.2018	0	0	0	2326

75. Thus, either the information furnished is inconsistent, or the Petitioner might have used such excess power in DSM or supplied such power to Bihar beyond scheduled power.

76. Considering the various letters issued by CE (SLDC) to Bihar DISCOMs along with the information furnished by SLDC Bihar vide affidavit dated 19.1.2024, it is noted that the SLDC – Bihar scheduled up to 178 MW (full ex-bus capacity of Unit-1) to Bihar DISCOMs from 18.03.2017 to 10.04.2017 and declared capacity was zero during the period from 11.04.2017 to 10.07.2017. Further, there was no communication regarding the availability of the plant to the respondents till 10.07.2017. In view of the above, the respondents are not liable for any capacity charges for the period from 18.3.2017 to 10.7.2017. In regard to capacity charges for the period from 11.7.2017 to 31.7.2018, it is noted that there were certain lapses on the part of all the concerned entities, and also the Petitioner has a one-time settlement with GRIDCO as well as WBSEDCL.



77. Taking into account the fact of the case that some beneficiaries have already settled their fixed charge liability, non-payment of fixed charge liability by some of the beneficiaries as they were not able to schedule the power due to non-communication of the declared capacity of the generating station by SLDC Bihar, we, in order to balance the interests of both the Petitioner and beneficiaries, are of the view that the three beneficiaries, i.e., DVC, JBVNL, and Sikkim are liable to pay only three (out of five) components of AFC, i.e., Depreciation, Interest on Loan and O & M, which are essential for the sustainable operation of the plant, on prorata availability declared by petitioner and ratified by SLDC – Bihar in three monthly equal instalments (without any interest on instalments) for the period from 11.7.2017 to 31.3.2018, along with interest of 350 plus basis points above SBI MCLR on the 1<sup>st</sup> April of the respective years during the period 17.03.2017 to the issuance of this order. Further, as the Petitioner has not furnished the details about the Rs. 295 Cr one-time settlement made with GRIDCO against the segregated claim for the period from 17.3.2018 to 31.3.2018 and 1.4.2018 onwards, the Petitioner is directed to place on record all the communication exchanged with GRIDCO regarding claims made against GRIDCO and one-time settlement made thereof at the time of truing up of tariff of 2019-24. The commission also expresses its serious concern regarding the laxity in the discharge of its statutory functions by SLDC Bihar as envisaged in the Electricity Act and the Grid code in spite of the assignment of control area jurisdiction of the petitioner's plant under SLDC Bihar vide MoM dated 25.01.2017.

78. Accordingly, in terms of the above, the petition is disposed of.

Sd/  
**(Pravas Kumar Singh)**  
**Member**

Sd/  
**(Arun Goyal)**  
**Member**

Sd/  
**(Jishnu Barua)**  
**Chairperson**

