

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

PETITION No. 73/MP/2013

Coram:

Shri Gireesh B. Pradhan, Chairperson

Shri M.Deena Dayalan, Member

Shri A K Singhal, Member

Shri A.S.Bakshi, Member

Date of Order: 24.10.2014

In the matter of

Petition for adjudication of dispute between the parties involving termination of the PPA dated 10.6.2008 due to failure of the Respondent to remedy/take corrective steps in relation to rising cost of power.

And

In the matter of

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

.....Petitioner

Vs

Aravali Power Company Private Limited
NTPC Bhawan,
Core-7, Scope Complex,
Institutional Area, Lodhi Road,
New Delhi-110 003

.....Respondent

ORDER

The petitioner, Tata Power Delhi Distribution Limited, has filed this petition for adjudication of dispute between the petitioner and the respondent alleging high cost of power supplied by the respondent.

2. The respondent has set up 1500 MW (4x600 MW) Indira Gandhi Super Thermal Power Station ('the project') at Jharli, Jhajjar district in the State of Haryana. On 10.6.2008, the petitioner entered into a PPA with the respondent for supply of



power from the project. The first and second units of the project were declared under commercial operation on 5.3.2011 and 21.4.2012 respectively and third unit is likely to be declared under commercial operation shortly.

3. The petitioner has submitted that cost of power supplied from the project is in the range of ₹ 6-7 per unit which is one of the costliest rates at which power is being supplied in the country under long term PPAs from the coal based thermal generating stations. The petitioner has submitted that in order to arrive at a mutually beneficial arrangement, the petitioner made a number of representations to Government of NCT of Delhi, Delhi Electricity Regulatory Commission (DERC) and the Ministry of Power for surrender of power allocated to it from the generating station. The petitioner has submitted that despite taking all prudent steps for reallocation of its share to other beneficiaries through Ministry of Power, the petitioner has partial and temporary relief and there is no long term or firm commitment/reallocation of the power.

4. The petitioner has submitted that the cost of procurement of power from the generating station has reached unprecedented level. The petitioner is stated to have paid ₹ 153.70 crore for 2152 MUs supplied to it @ ₹ 7.12 /unit whereas the average power procurement price mandated by DERC is ₹ 3.68/unit. The petitioner has submitted that the respondent has failed to reduce the cost of power from the generating station to sustainable level despite repeated requests. The petitioner has submitted that since the PPA has become economically unviable and unworkable, the petitioner on 10.6.2008 terminated the PPA after serving of notice on the respondent. The petitioner has submitted that dispute has arisen between the parties

with respect to cost of power payable by the petitioner which can be adjudicated by this Commission in terms of Article 7.1 of the PPA. In the above background, the petitioner has filed the present petition with the following prayers:

- "(a) Adjudicate the disputes between the parties on account of the high cost of power or refer the parties to arbitration for settlement of disputes; and
- (b) Hold that the PPA between the Aravali Power Company Private Limited and TPDDL has been validly terminated; and
- (c) Issue necessary directions/advice in exercise of powers under the Electricity Act, 2003 to the Central Government to reallocate the petitioner's entire firm share of power from respondent's Aravali power station to other States; and
- (d) Pass any or such further order or orders as may be deemed just and proper in the facts and circumstances of this case."

5. The matter was heard on 21.5.2013. During the course of hearing, learned counsel for Aravali Power Company Limited, the respondent, submitted that the petitioner is obligated to the purchase power from the respondent on the terms and conditions contained in the PPA. He further submitted that the petitioner cannot refuse to fulfill its obligations assumed under the PPA on the ground that the cost of power purchased from the generating station is higher or otherwise is not economical for the petitioner to maintain distribution of electricity in its areas of licence as per the retail supply tariff determined by the State Commission. Learned counsel for the respondent submitted that the petitioner can be released of its obligation to pay the capacity charges and other charges under the PPA only upon a valid re-allocation of power by the Government of India to some other beneficiaries.

6. We had directed the petitioner to approach Government of NCT of Delhi and Ministry of Power, Government of India for re-allocation of the share of the petitioner to other beneficiaries. In the meantime, the petition was kept in abeyance.

7. The petitioner and the respondent were directed vide letter dated 9.9.2014 to file the status on the steps taken for resolution of dispute. In response, the petitioner vide its letter dated 25.9.2014 has submitted as under:

"We seek to inform in this regard that one of our concerns raised in the petition before the Hon'ble Commission has been partially addressed through the reallocation of 212.6 MW of power from Aravali Jhajjar plant by MoP, Government of India. The Delhi Government made recommendation in this regard to the Ministry of Power, vide letter dated 30.7.2014 reallocating TPDDL and Delhi's share from Aravali Jhajjar to Andhra Pradesh, Telangana and Kerala.

As per our information the allocation was done for the whole month of July, 2014 and now has been extended from 1st August, 2014 to 31st March, 2015.

We further seek to inform the Hon'ble Commission that APCPL has no firm arrangement of coal supply, which is one of the main reasons for its high variable cost of power as compared to other generating stations. Accordingly, the issue of high variable cost of power is still persisting and our concerns are yet to be addressed.

Considering the above developments, we request the Hon'ble Commission to kindly keep the present petition in abeyance till the resolution of the matter warranting intervention by the Hon'ble Commission or in the alternative dispose of the petition with a liberty to approach the Hon'ble Commission again in the event our concerns, disputes arise."

8. We have considered the submission of the petitioner. The petitioner has submitted that one of its concerns raised in the petition has been partially addressed through the reallocation of 212.6 MW of power from the respondent's generating station by MoP, Government of India initially for the month of July 2014 and subsequently from 1st August, 2014 to 31st March, 2015. The petitioner has requested for disposal of the petition with liberty to approach the Commission in the extent the dispute arises in future. Taking note of the submission of the petitioner, we

dispose of the present petition with liberty to the petitioner to approach the Commission, if need so arises, in accordance with law.

Sd/-
(A.S.Bakshi)
Member

sd/-
(A K Singhal)
Member

sd/-
(M Deena Dayalan)
Member

sd/-
(Gireesh B. Pradhan)
Chairperson