

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.256/MP/2022

Coram:

**Shri Jishnu Barua, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 3rd May, 2023

In the matter of

Petition under section 79(1)(f) of the Electricity Act, 2003 seeking recovery of fixed charges paid by the Petitioner to the Respondent for the Anta, Auriya and Dadri power plants of the Respondent for the period from 12.8.2021 till 12.2.2022 and other incidental charges and a declaration that the Petitioner is not liable to bear any share in the take-or-pay liability that may be imposed on the Respondent by Gas Authority of India Ltd, in future for Anta, Auriya and Dadri power plants of the Respondent.

And

In the matter of

Punjab State Power Corporation Limited,
The Mall, Patiala-147001 (Punjab)

.... **Petitioner**

Vs

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

.... **Respondent**

Parties Present:

Ms. Suparna Srivastava, Advocate, PSPCL
Shri. Tushar Mathur, Advocate, PSPCL
Shri Anand K. Ganesan, Advocate, NTPC
Ms. Ritu Apurva, Advocate, NTPC
Ms. Archita Kshyap, Advocate, NTPC

ORDER

Punjab State Power Corporation Limited, the Petitioner herein, has filed this
Petition seeking the following reliefs:

- (i) *Allow the present Petition and direct the Respondent to refund a sum of Rs.62.47 crore (approx.) towards capacity charges and a sum of Rs.23.47 crore (approx) towards unrecovered recovered by it from the Petitioner for Anta, Auriya and Dadri*



generating stations of the Respondent from 12.8.2021 to 11.2.2022 for Anta, Auriya & to 31.03.2022 for Dadri generating stations along with interest thereon;

- (ii) Issue a declaration that the Petitioner is not liable to bear any share in the Take-Or-Pay liability that may be imposed on the Respondent by Gas Authority of India Ltd. in future as being unjustified, illegal and in the teeth of the Relinquishment Policy as also the Judgment dated 8.2.2022 passed by the Hon'ble Appellate Tribunal in Appeal No.239/2021 and Appeal No.240/2021; and*
- (iii) Pass such further and other order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.*

2. The Petitioner, in the present petition, has submitted that it had vide letter dated 29.4.2016 informed the Ministry of Power (MOP), Government of India (GOI) that due to power surplus scenario in the State of Punjab, the Petitioner was not scheduling its allocated share of power from Anta, Auriya and Dadri Gas based generating stations of the Respondent and therefore, requested MOP, GOI that the allocated/ unallocated share of power of the Petitioner could be re-allocated/ de-allocated. Thereafter, on 22.3.2021 MOP, GOI launched a policy (Relinquishment Policy) initiative to enable the distribution utilities, to either continue or exit from PPA's with Central Generating Stations (CGS) after completion of the term of the PPAs. In terms of the said policy, the MOP, GOI granted option to the distribution utilities to discontinue power procurement from CGS after the expiry of useful life i.e. 25 years. The Petitioner has also submitted that in terms of the said Relinquishment Policy, it had filed a Petition (Petition No.28/2021) before the Punjab State Electricity Regulatory Commission (PSERC) seeking relinquishment of its allocated share from the aforesaid three generating stations of the Respondent and by order dated 5.8.2021, PSERC had allowed the same. The Petitioner has further submitted that, it had, by letter dated 12.8.2021, issued notice to the Respondent, relinquishing its share of the allocated power from the aforesaid three generating stations, in terms of clause 3 of the Relinquishment Policy. It has also submitted that the relinquishment of power from the said generating stations, was to take effect from six months of the notice of relinquishment of power dated 12.8.2021, in terms of the Relinquishment Policy.



However, the Petitioner has stated that notwithstanding the payment of past dues and unrecovered depreciation under the said policy, pertaining to the generating station till final settlement, the claim of the Respondent towards possible future take-or-pay (TOP) liability was in contravention of the Relinquishment Policy of the MOP, GOI and the applicable Tariff Regulations notified by the Commission.

2. The Petitioner has further stated that considering the terms of the Relinquishment Policy and the provision contained in Note-2 of Regulation 55 of the 2019 Tariff Regulations, it has paid the capacity charges amounting to Rs.62.47 crore and also Rs.23.47 crore towards unrecovered depreciation, for the period from 12.8.2021 to 11.2.2022 (for Anta and Auriya) and 31.3.2022 for Dadri generating stations to the Respondent. The Petitioner has, however, pointed out that pursuant to the judgment dated 8.2.2022 of the Appellate Tribunal for Electricity (APTEL) in Appeal Nos. 239 & 240 of 2021 (BRPL & BYPL v CERC & ors), which held that the regulatory provisions under Regulation 17 of the 2019 Tariff Regulations override the policy or guidelines issued by MOP with regard to relinquishment of power allocated from CGS, the relinquishment notice issued by the Petitioner to the Respondent, on 12.8.2021, is to take effect immediately and not after six months, as envisaged under the Relinquishment Policy. In the above background, the Petitioner has prayed for the reliefs, as stated in paragraph 1 above.

Hearing dated 16.2.2023

3. Pursuant to the hearing on 16.2.2023, the Petition was 'admitted' and the parties were directed to complete their pleading in the matter. The Respondent has filed its reply on 31.12.2022.

Hearing dated 25.4.2023

4. During the hearing of the Petition on 25.4.2023, the learned counsel for the Respondent submitted that the Hon'ble Supreme Court in Civil Appeal No.1877/2022



(NTPC v CERC & ors) & batch, has stayed the operation of the judgment and order dated 8.2.2022 of APTEL in Appeal Nos.239 & 240 of 2021 and circulated copy of the same, with copy to the Petitioner.

5. On a specific query by the Commission, as to whether the present Petition should be kept pending, in view of the interim order of the Hon'ble Supreme Court, the learned counsel for the Petitioner, on instructions, sought withdrawal of the Petition, with liberty to approach the Commission, if need be, based on the final decision of the Hon'ble Supreme Court, in the aforesaid Civil Appeals. She also prayed that the filing fees deposited by the Petitioner, for this petition, may be adjusted, in future.

6. Considering the submissions of the learned counsel of the Petitioner, the prayer for withdrawal of the Petition is allowed. Accordingly, the Petition is disposed of as withdrawn. The Petitioner is, however, granted liberty to file fresh Petition, if any, based on the final decision of the Hon'ble Supreme Court, in the aforesaid Civil Appeals. The filing fees deposited by the Petitioner in respect of this Petition, shall be adjusted against the petition to be filed by the Petitioner, in terms of the liberty granted as above.

7. In view of above, Petition No. 256/MP/2022 stands disposed of as withdrawn.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I.S Jha)
Member

Sd/-
(Jishnu Barua)
Chairperson

