



Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17

No. F.11(1581)/DERC/2017-18/6108

Petition No. 25/2018

In the matter of: Petition seeking approval towards procurement of power from Anta, Auraiya and Dadri gas based stations of NTPC for future period starting from FY 2017-18 and its associated costs.

Tata Power Delhi Distribution Ltd.

Through its: Managing Director

Grid Sub Station Building

Hudson Lines, Kingsway Camp,

Delhi 110 009

....**Petitioner**

Coram: Sh. B. P. Singh, Member

ORDER

(Date of Order: 29.06.2018)

1. The instant petition has been filed by M/s TPDDL seeking approval towards procurement of power from Anta, Auraiya and Dadri gas based stations of NTPC for future period starting from FY 2017-18 and its associated costs.

SUBMISSIONS BY THE PETITIONER

2. The petitioner has submitted that the present petition has been necessitated on account of the following grounds:
 - i. NTPC Ltd. by its various letters and deliberations has communicated to the petitioner that the petitioner is contractually bound to perform its obligations under the PPA dated 08.05.2008 read with the Supplementary PPA dated 22.03.2012 and bear the applicable tariff for Anta, Auraiya and Dadri gas based stations. In the event of non-payment of dues NTPC Ltd. would be constrained to take action in terms of the CERC (Regulation of Power Supply), Regulations, 2010.
 - ii. Apart from above, NTPC has contested that the liability of the Petitioner under the PPA and at the tariff terms and conditions determined by the Hon'ble Central Commission is absolute and cannot be denied except under a specific order by the Hon'ble Central Commission. The effect of the Orders passed by this

Commission regarding Anta, Auraiya and Dadri plant is a matter between the petitioner and this Hon'ble Commission. The details of the discussion held by the petitioner with NTPC interalia submitted that:

- a) PPA between the petitioner and NTPC is one consolidated agreement for 25 years and it is not open for the petitioner to unilaterally exit PPA.
 - b) A selective approach of picking and choosing to exit from 3 stations while retaining other plants of NTPC is illegal and unwarranted.
 - c) The PPA of 2008 and supplementary PPA of 2012 executed between the petitioner and NTPC is legally binding and forms part of one consolidated agreement and need to be honoured as such and not in a piecemeal manner, failing which the NTPC would proceed to invoke the provisions of the PPA, applicable laws and Regulations passed by the Hon'ble Central Commission.
- iii. In this regard it is also noteworthy, the PPA dated 08.05.2008 executed between the petitioner and the NTPC is identical with the PPA's executed and governing the BSES Discoms and NTPC. This Hon'ble Commission in its recent Order dated 22.03.2018 passed in Review Petitions Nos. 44 of 2017 and 45 of 2017 filed by the other Discoms in the NCT of Delhi i.e. BSES Rajdhani Power Limited and BSES Yamuna Power Limited was pleased to allow power purchase cost and procurement from Anta, Auraiya and Dadri gas based stations. The relief prayed hereinabove if granted would allow the Petitioner to be treated in parity with the other two BSES Discoms operating in the NCT of Delhi.

ANALYSIS AND ORDER

3. The submissions made by the Petitioner have been considered and the following have been observed that:
- i. The Petitioner has signed supplementary PPA with the Respondent (NTPC) on 29.03.2012 to extend the validity period of PPAs; which was going to expire on 31.03.2012. The relevant article of the PPA is as follows:

“And whereas, for gas based stations viz. Anta, Auraiya & Dadri Gas, the validity period is expiring on 31.03.2012.

And whereas the parties have discussed and agreed on the validity period for sale and purchase of power of the allocated capacity from all generating stations be extended."

In view of the above extracts of the PPAs, it is evident that the validity of PPA was upto 31.03.2012 only which was extended through a supplementary PPA. It is wrong to assume that validity of PPA has been extended automatically to a period of 25 years due to modification in useful life of the gas based plants by CERC.

- ii. The Petitioner has failed to obtain prior approval as required for renewal of PPA. The Petitioner was supposed to place the Supplementary PPA dated 29.03.2012 before the Commission for its approval in terms of *Clause 5.2(a) of the Terms and Conditions of the Licence* granted by the Commission as follows:

" The Licensee shall not, without the general or special approval of the Commission:

a. Purchase or otherwise acquire electricity for distribution and retail supply except in accordance with this License and on the tariffs and terms and conditions as may be approved by the Commission."

- iii. The abovesaid position is upheld by the Hon'ble APTEL in Appeal No. 186 & 196 of 2015 wherein it was held that renewing the PPAs without prior approval of the Commission is a violation of the Licence conditions. Hon'ble APTEL has held the following:

" 7.6 ... Thus, we feel that the Appellants have violated the license conditions for renewing the PPAs without the prior approval of the Delhi Commission.

7.7 ... The contention of the Appellants that the approval of the Commission is not required, is not correct and the licensees are bound to comply with the license conditions. Further, there is no provision of a deemed approval in the license conditions.

...

7.9 Accordingly, we do not find any infirmity in disallowing the actual cost of power procurement from Anta, Auraiya and Dadri Gas Generating Stations."

4. The submissions of the Petitioner & NTPC regarding bundled/consolidated PPA for all the generating stations of the NTPC that the agreement does

not provide for partial termination of the PPA with regard to the generating station of the generating units and the PPA dated 05.06.2008 has also been considered.

5. Further, from the demand-supply of the Petitioner as projected by it in its Tariff Petitions for ARR of FY 2017-18 & FY 2018-19 and also the demand-supply projection for FY 2018-19 by Delhi SLDC, it is evident that the Petitioner is in considerable deficit of power to meet the summer peak load and to meet the demand in its area.
6. keeping in view the above and that the Commission in similar Review Petition No. 44 of 2017 and Review Petition No. 45 of 2017 filed by BRPL and BYPL, respectively has allowed the power purchase cost and procurement from Anta, Auraiya and Dadri gas based stations for future period i.e., from FY 2017-18, the Petitioner is allowed the power purchase cost and procurement from Anta, Auraiya and Dadri Gas based stations for future period i.e. from FY 2017-18 to meet its demand following the principle of Merit Order.
7. Notwithstanding anything contained in para 6 above, the Commission reserves the right to initiate action against the Petitioner for violation of Licence condition in this matter under the provisions of Electricity Act, 2003.
8. The Petition is disposed of accordingly.

Sd/-
(B. P. Singh)
Member