



**Delhi Electricity Regulatory Commission**  
**Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.**

No. F.11(1612)/DERC/2018-19/

**Petition No.45/2018**

**In the matter of :** Petition pursuant to the Order dated 21.05.2018 passed by the Hon'ble Supreme Court of India in Civil Appeal No. 11106-11107 of 2016 under Section 86 (1) (a) and (b) of the Electricity Act, 2003 read with Regulation 7 and 57 of the DERC (Conduct of Business) Regulations, 2017.

BSES Yamuna Power Ltd.  
Through its: **CEO**  
Shakti Kiran Building,  
Karkardooma  
New Delhi – 110092

...Petitioner

**Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson**  
**Hon'ble Mr. B.P. Singh, Member**

**ORDER**

(Date of Order: 18.09.2018)

1. M/s BSES Yamuna Power Limited (BYPL) has submitted the present petition pursuant to the liberty granted by the Hon'ble Supreme Court of India by the Order dated 21.05.2018 passed in the IA No. 67517 of 2018 while disposing of the Civil Appeal No. 11106-11107 of 2016, directing as under:

*"Considering the assertions made in the applications, the applicants are permitted to withdraw the Civil Appeal No. 7362 of 2016 and Civil Appeal Nos. 11106-11107/2016, with liberty to pursue the matter before the Delhi Electricity Regulatory Commission. We make it clear that we are not expressing any opinion on the merits of the controversy and all questions are left open."*

2. The Petitioner has made following submissions:

- 2.1 That the present petition pertains to the recovery of the cost of power procurement from Anta, Auriya and Dadri Gas Station of NTPC for the years FY's 2012-13, 2014-15 and 2015-16 wherein it is seeking the reversal/negation of the adverse financial impact of Rs. 230.30 Cr. on account of disallowance of power procurement costs

from Anta, Auriya and Dadri Gas Stations for the FY's 2012-13, 2013-14, 2014-15 and 2015-16 along with carrying costs.

- 2.2 That Anta, Auraiya and Dadri gas based stations are part of the consolidated Power Purchase Agreement (PPA) dated 05.06.2008 entered into with NTPC Limited. The relevant article of the PPA is as follows:

**“ 13.0 DURATION OF AGREEMENT**

13.1 Validity of this Agreement for power supply shall be as follows:	
(A) Stations: (i) Singrauli Super Thermal Power Station Stage-I (2000 MW), (ii) Rihand Super Thermal Power Station Stage-I (1000 MW), (iii) <b>Anta Gas Power Station (419.33 MW), (iv) Auraiya Gas Power Station (663.36 MW), (v) Dadri Gas Power Station (829.78 MW),</b> (vi) Feroz Gandhi Unchahar Thermal Power Station Stage-I (420 MW), (vii) National Capital Thermal Power Station (840 MW)”	<b>Validity:</b> Upto 31 <sup>st</sup> March, 2012 or 25 years for coal based stations and 15 years for gas based stations, from the COD of the last unit of the respective stage/station, whichever is later.

- 2.3 However, the Central Electricity Regulatory Commission (CERC) has modified the 'useful life' of the gas based generating stations to 25 years which consequently enlarged the duration of the aforesaid consolidated PPA dated 05.06.2008. The extension of life of plants, *ipso facto* resulted in reduced fixed charges.
- 2.4 That the petitioner entered into a supplementary PPA dated 22.03.2012 with NTPC. Vide the Supplementary PPA, the term of procurement from the gas based stations of NTPC and from the other stations contained in Clause 13.1 (A) of the PPA dated 08.05.2008 was increased beyond their respective expiry dates to the end of useful life of the respective station considered in the tariff orders or Regulations issued by CERC or GoI allocations whichever is later. The supplementary agreement was also on the same terms and conditions as the PPA originally entered into between the Petitioner and NTPC.
- 2.5 On 12.06.2015, the Hon'ble Commission has disallowed the power purchase adjustment costs towards Anta, Auraiya and Dadri plants of NTPC. The same was challenged before the Hon'ble Appellate Tribunal for Electricity (APTEL) in Appeal No. 196 of 2015. The Hon'ble APTEL by judgment dated 01.06.2016 had dismissed the said Appeal. Thereafter, the Petitioner filed the Civil Appeal No. 11106 of

2016 against the said judgment under Section 125 of the Electricity Act, 2003 before the Hon'ble Supreme Court.

- 2.6 On 29.09.2015, this Commission passed Tariff Order for the Petitioner *interalia* disallowing the power purchase costs from Anta, Auraiya and Dadri gas based plants of NTPC both for past (after 31.03.2012) and future periods. The issue regarding the past period has been challenged before the Hon'ble APTEL in Appeal No. 290-297 of 2015, which is still pending adjudication.
- 2.7 On 31.08.2017, the Hon'ble Commission passed Tariff Order for the Petitioner for FY 2017-18, whereby it had again disallowed the power procured by the Petitioner from Anta, Auriya and Dadri plants. The Petitioner by Appeal No. 70-71 of 2018 has again challenged the issue of power purchase costs for the said three plants for FY 2016-17. The same is pending adjudication before the Hon'ble APTEL.
- 2.8 In July, 2017, BRPL and BYPL had respectively filed Review Petition Nos. 44 and 45 of 2017 seeking review of the Tariff Orders dated 29.09.2015, on the issue of disallowance of the power purchase costs from Anta, Auriya and Dadri plants. The Commission by its Order dated 22.03.2018 has reviewed its Order dated 29.09.2015, and has allowed impact of the same in the latest Tariff Order dated 28.03.2018, i.e., procurement of power from Anta, Auriya and Dadri plants of NTPC. However, the Commission has not given effect to the power purchase cost disallowance in respect of the said three plants of NTPC for the past period on account of pendency of Appeal against the Tariff Order dated 29.09.2015 and for the subsequent years.
- 2.9 The petitioner filed IA No. 67517 of 2018 in Civil Appeal No. 11106-11107 of 2016 in view of the Order dated 22.03.2018 and Tariff Order dated 28.03.2018 passed by the Hon'ble Commission *interalia* allowing procurement of power from Anta, Auraiya and Dadri gas based plants of NTPC from FY 2017-18 and sought liberty of the Hon'ble Supreme Court to approach the Hon'ble Commission seeking costs incurred by the Petitioner on account of power

purchase from Anta, Auraiya and Dadri gas based plants of NTPC for FY 2012-13 uptill FY 2016-17.

2.10 On 21.05.2018, the Hon'ble Supreme Court passed an Order in the IA No. 67517 of 2018 filed by the Petitioner granting liberty to the Petitioner to pursue the matter before this Hon'ble Commission.

2.11 On 04.07.2018, in Petition No. 34 of 2018 the Hon'ble Commission has granted a similar relief to Tata Power Delhi Distribution Limited (TPDDL) which is similarly situated as the Petitioner. Hence, on a parity of treatment, the Petitioner would also be entitled in law to similar relief.

2.12 That the present petition has been necessitated on account of the following grounds:

a) The doctrine of precedent and consistency in decision making will apply and hence the Hon'ble Commission having allowed power procurement from Anta, Auraiya and Dadri Gas Stations for FY 2017-18 onwards, The recovery of the cost of power procurement from Anta, Auraiya and Dadri Gas station of NTPC for the years FY's 2012-13, 2013-14, 2014-15 and 2015-16 may also be kindly allowed. Hence, there ought to be a reversal/negation of the adverse financial impact of Rs. 230.30 Cr. On account of disallowance of power procurement costs from Anta, Auraiya and Dadri Gas Stations for the FY's 2012-13, 2013-14, 2014-15 and 2015-16 alongwith carrying costs.

b) The original PPA was a consolidated PPA for all the generating stations of NTPC, which the Hon'ble Commission has accepted and so held that in the Reveiw Order dated 22.03.2018 in Petition no. 45 of 2017. Hence, even if power was procured for periods post FY 2012 under the original PPA dated 05.06.2008; it was on the same terms and conditions as the original PPA which was admittedly entered into with the Commission's approval and under the Commission's directives. The factum of "one single consolidated PPA" on which the Hon'ble Commission's allowance of the power procurement from Anta, Auraiya and Dadri Gas station of NTPC for the years FY 2017-18 onwards is the same for the

power procurement from Anta, Auraiya and Dadri Gas Station of NTPC for the years FY's 2012-13, 2013-14, 2014-15 and 2015-16.

- c) It is submitted that in all previous years if the petitioners had not procured power from Anta, Araiya and Dadri, they would have paid a much higher rate for procurement of power from the exchanges.
- d) As held by this Hon'ble Commission, the PPA with NTPC did not provide for partial termination with respect to specific generating units. As already held the PPA dated 05.06.2008 needs to be enforced in a consolidated manner with regard to all the generating station/units mentioned therein.
- e) If despite the expiry of the PPA for Singrauli, the cost of power procurement from Singrauli were allowed by the Commission, there can be no reasonable basis for differentiating for Anta, Auraiya and Dadri. This is for the simple reason that in 2012, when the PPA was extended, the cost of procurement from Anta, Auraiya and Dadri were much lower than the average power purchase price of the Petitioners.
- f) Power from these stations has already been supplied and consumed by the consumers of the petitioner;
- g) Further, NTPC has been charging the Petitioner for power scheduled forcibly to the Petitioner despite the said power procurement being disallowed by the Hon'ble Commission;
- h) The petitioner has been informed that in the event of non-payment of dues for the same including the regulation of supply of power, NTPC would be constrained to take action against the petitioner for material breach on part of the Petitioner;
- i) The power purchase cost is an uncontrollable parameter in terms of MYT Regulations 2011 and 2017. Further, the power purchase cost constitutes 80% of the ARR of the petitioner therefore the disallowance have an adverse impact on the finances of the petitioner;
- j) Further, the Petitioner has filed an application in the Hon'ble APTEL for seeking amendment of the Appeals and for withdrawing/deleting the Grounds pertaining to disallowance of cost from Anta, Auraiya and Dadri stations for the past and future period.

3. The submissions made by the Petitioner has been considered and the following have been observed that:

3.1 The disallowance of the power purchase costs towards Anta, Auraiya and Dadri gas based plants in the Commission Order dated 29.09.2015 was on the following grounds:

- (i) The petitioner's tariff petition and petition for true up for the FY 2013-14, the ARR Petition for FY 2014-15 and the documents submitted for the PPAC claims did not mention the renewal of the PPA's. Further, the PPA's/ supplementary PPA's were also not annexed to the Petitions and PPAC claims.
- (ii) The Appellant was in violation of the License conditions in terms of *Clause 5.2(a) of the Terms and Conditions of the Licence* granted by the Commission for renewing the PPA's without the prior approval of the Delhi Commission. The responsibility to seek approval of the Delhi Commission lies with the Petitioner.
- (iii) The approval for renewal of the PPA's should have been sought by the petitioner much before the PPA's were going to expire so that the Delhi Commission could have considered that request well in time.
- (iv) As the power being purchased from these plants is costly and against consumer interest, the petitioner itself wished to give up this power and therefore there was no reason for it to renew the PPA's since it was itself trying to exit from the PPA's. The petitioner *vide* its letter dated 08.06.2015 to GoNCTD with a copy to the Delhi Commission has itself raised the issue of surrender of its entire share from Anta, Auriya and Dadri power plants forever with immediate effect.
- (v) The Hon'ble APTEL in Appeal No. 186 & 196 of 2015 has also upheld the decision of the Commission stating 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."*

- (vi) Therefore, the Petitioner was in violation of Licence condition to get approval of renewal of PPA from this Commission.

3.2 In respect of the petitioner's submission that the instant petition may also be allowed on the same principles as applied in the Commission Order in Petition no. 34 of 2018, whereby power from these stations have been allowed for the period from FY 2012-13 to FY 2016-17, it is clarified that the Commission has allowed the power purchase cost from Anta, Auraiya and Dadri gas based stations for the period from FY 2012-13 to FY 2016-17 on the following grounds:

- a) NTPC has executed a bundled PPA in respect of all its stations ;
- b) The agreement did 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 needs to be enforced in a combined manner in regard to all the generating stations/units mentioned therein;
- c) The Commission in another case had accorded approval based on cost-benefit analysis for renewal of Bulk Power Supply Agreement (BPSA) of the Petitioner with NHPC, wherein the Petitioner had requested for prior approval of such BPSA, on the ground of bundled BPSA as NHPC was reluctant to sign individual station-wise BPSA with the Petitioner. Similarly in the present case NTPC has submitted that the PPA is bundled and agreement does not provide for partial termination of the PPA with regard to the generating station and needs to be enforced in a combined manner.
- d) That the average cost of supply from NTPC, except Aravali Power Corporation Ltd. is less than the average power purchase cost of power portfolio of TPDDL.

- 3.3 Commission had also considered the fact that the Petitioner has been allowed previously renewal of PPA from Singrauli power station of the NTPC which is also part of bundled PPA and the power from these stations has already been supplied and consumed by the consumers of the petitioner and also that the agreement between the petitioner and NTPC does not provide for partial termination of the PPA with regard to the generating station of the generating units.
- 3.4 The submission of the petitioner that the extension of PPA has resulted in reduced fixed charges in respect of such plants has also been considered.
- 3.5 In the instant case also apart from all other aspects being similar, the average Power Purchase Cost is less than the average power purchase cost of power portfolio of the petitioner.
4. In view of the aforesaid discussions and the fact that the instant petition is similar to Petition no. 34 of 2018, same relief is granted to the Petitioner and the cost of power purchase from FY 2012-13 till FY 2016-17 is allowed on the principle of Merit Order.
5. Notwithstanding anything contained in para 4 above, the Commission reserves the right to initiate action against the Review Petitioners for violation of Licence condition in this matter under the provisions of Electricity Act, 2003.
6. The Petition is disposed of.

**Sd/-**  
**(B.P. Singh)**  
**Member**

**Sd/-**  
**(Justice S S Chauhan)**  
**Chairperson**