



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

No. F. 11(1501)/DERC/2017-18/

Review Petition No. 44/2017

In the matter of: Petition seeking Review of order dated 29.09.2015 disallowing power purchase cost of Anta, Auriaya and Dadri Gas based stations.

BSES Rajdhani Power Limited
Through its: **CEO**
BSES Bhawan, Nehru Place,
New Delhi-110019

....Petitioner

And

National Thermal Power Corporation Ltd.
Through its: **Executive Director (Commercial)**
NTPC Bhawan, Scope Complex,
Institutional Area, Lodhi Road,
New Delhi 110003

.....Respondent

Review Petition No. 45/2017

In the matter of: Petition seeking Review of order dated 29.09.2015 disallowing power purchase cost of Anta, Auriaya and Dadri Gas based stations.

BSES Yamuna Power Ltd.
Through its: CEO
Shakti Kiran Building, Karkardooma
New Delhi 110 032

....Petitioner

And

National Thermal Power Corporation Ltd.
Through its: Executive Director (Commercial)
NTPC Bhawan, Scope Complex,
Institutional Area, Lodhi Road,
New Delhi 110003

.....Respondent

Coram: Sh. B. P. Singh, Member

Appearance:

1. Mr. Buddy Ranganadhan, Adv., BRPL & BYPL
2. Ms. Poorva Saigal, Adv., NTPC
3. Mr. Phulkit Aggarwal, Adv., NTPC
4. Ms. Tanya Sareen, NTPC
5. Mr. E P Rao, NTPC
6. Mr. Vivek Kumar, NTPC
7. Mr. Sanjay Srivastava, BRPL
8. Mr. Shobhit dhar, BRPL
9. Mr. Kanishk, BRPL

10. Mr. Gagan Swain, BYPL
11. Mr. Nishant Grover, BYPL
12. Mr. Abhishek Srivastava, BYPL
13. Mr. Sameer Singh, BYPL
14. Mr. Brijesh Kumar, BYPL

INTERIM ORDER

(Date of Hearing: 30.01.2018)

(Date of Order: 05.02.2018)

1. The Instant petitions have been filed by M/s BRPL and BYPL for review of the Order dated 29.09.2015 disallowing Power Purchase Costs from Anta, Auraiya and Dadri Gas based Stations.

2. The Counsel for the Review Petitioners made following submissions:
 - i. That the Commission *vide* its order dated 29.09.2015 decided that the power purchase cost from Anta, Auraiya and Dadri gas based stations should not be considered in the total power purchase cost after the expiry date of Power Purchase Agreement (PPA) due to their high cost of generation. The said disallowance was on the ground that PPA for the aforesaid gas stations which expired on 31.03.2012 were renewed without intimating or getting approval from the Commission. The procurement from the said gas stations stood disallowed for all future times.

 - ii. That the Anta, Auraiya and Dadri gas based stations were part of a consolidated Power Purchase Agreement dated 05.06.2008 entered into with NTPC Ltd. In the PPA dated 05.06.2008, the useful life of a Gas Power Station was envisaged to be 15 years from the Commercial operation of the last unit of the station or 31.03.2012, whichever is later. However, during the initial period of 15 years of the Gas Power Stations from the date of the commercial operation of the last unit (and before 31.03.2012), the Central Commission exercised its regulatory powers and in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulation, 2009 notified by CERC on 19.01.2009, the useful life of the Gas Power Station was extended from 15 years to 25 years. Accordingly, the PPA dated 05.06.2008 in respect of Anta, Auraiya and Dadri gas based stations also stood substituted by 25 years.

 - iii. That NTPC Ltd. in its letter dated 28.09.2015 has informed that the Review Petitioners were contractually bound to procure power from Anta, Auraiya and Dadri gas based stations and 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.

- iv. That since Anta, Auraiya and Dadri gas based stations PPAs are with respect to central generating stations, which have their tariffs determined in accordance with law by CERC, in terms of the CERC Regulations applicable to these plants, therefore the Review Petitioners pray to the Commission to allow the procurement of power from Anta, Auraiya and Dadri gas based stations from 29.09.2015 onwards.
3. A Notice was issued to NTPC vide interim Order dated 31.10.2017 as the impugned PPAs pertain to it. The counsel for NTPC made following submissions:
 - i. That being a company, owned and controlled by the Government of India, the tariff and related matters of NTPC are under the regulatory control of the CERC in terms of Section 79 (1) (a) of the Electricity Act, 2003. Therefore, after the notification of the CERC (Terms and Conditions of Tariff) Regulation, 2009 the useful life of the Gas Power Stations become 25 years instead of 15 years and accordingly, the duration of PPA dated 05.06.2008 in respect of Anta, Auraiya and Dadri gas based stations also stood substituted for 25 years i.e till 31.03.2022.
 - ii. That the extension of the PPA by the Supplementary PPA dated 29.03.2012 was not in the nature of an initial agreement seeking approval of the Commission to purchase power from NTPC within the meaning of Rule 8 of the electricity Rules, 2005. The issue regarding the power procurement was decided far back in the year 2008. The Supplementary agreement of 29.03.2012 was a logical corollary of the extension of useful life of the Gas Power Stations to 25 years by the Tariff Regulations, 2009 of the Central Commission.
 - iii. That a similar situation arose in the case of the extension of life of the PPA dated 22.12.1995 for the Faridabad Gas Power Station of NTPC. At the relevant time, the initial useful life of the Faridabad Gas Power Station was envisaged to be 15 years and in the PPA dated 22.12.1995, the tariff terms and conditions were considered with the useful life of the Gas Power Station as 15 years. On 05.10.2016 the Haryana Commission was pleased to extend the life of PPA dated 22.12.1995 in light of the modifications in the Tariff Regulations, 2009 notified by the Central Commission.
 - iv. That the PPA dated 05.06.2008 read alongwith the Supplementary PPA entered into on 29.03.2012 is a consolidated Agreement providing for the terms and conditions for supply of electricity from several Generating Stations of NTPC (including the stations which will be declared under commercial operation in future) to the Review Petitioners. In such circumstances, it would not be appropriate to selectively continue the

power procurement from other generating stations of NTPC while disallowing the Power Purchase Costs of Dadri, Anta and Auraiya Gas based stations when these all form part of the same consolidated PPA.

- v. That NTPC in its letter dated 28.09.2015 has made it clear to the Review Petitioners that the supplementary PPA was in respect of number of Generating Stations of NTPC and the Review Petitioners cannot selectively deal with any one or more stations.
4. After hearing the arguments advanced by the Ld. Counsels the Commission is of the view that to make the record straight it is required to obtain the submissions of NTPC on an affidavit that the supplementary PPA was in respect of number of Generating Stations of NTPC and the Review Petitioners could not selectively deal with any one or more stations. NTPC is directed to file an affidavit to this effect within a week.
5. Judgment is reserved.

Sd/-
(B. P. Singh)
Member