



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

No. F.11(1319)/DERC/2015-16/5080  
No. F.11(1320)/DERC/2015-16/5081

**Petition No. 91/2015**

**In the matter of :** Petition for adjudication of disputes between the Petitioner and respondent regarding terms of PPA and payment of dues.

Indrarpasth Power Generation Co. Ltd.  
Through its Director (T)  
Rajghat Power House,  
Office Complex,  
New Delhi 110 002

....Petitioner

**VERSUS**

Tata Power Delhi Distribution Ltd.  
Through its Managing Director  
NDPL House,  
Hudson Lines, Kingsway Camp  
Delhi 110 009

.....Respondent

**Petition No. 92/2015**

**In the matter of :** Petition for adjudication of disputes between the Petitioner and respondent regarding terms of PPA and payment of dues.

Pragati Power Corporation Ltd.  
Through its Director (T)  
Rajghat Power House,  
Office Complex,  
New Delhi 110 002

....Petitioner

**VERSUS**

Tata Power Delhi Distribution Ltd.  
Through its Managing Director  
NDPL House,  
Hudson Lines, Kingsway Camp  
Delhi 110 009

.....Respondent

**Coram:**

**Sh. Krishna Saini, Chairperson &  
Sh. B.P. Singh, Member**

**ORDER**

(Date of Order: 15.07.2016)

1. The petitioners IPGCL and PPCL have filed the instant petitions against the Respondent for discontinuation of payment of monthly bills being raised by the petitioner effective October 2015.
2. The following prayers have been made in both the petitions:

- a. To pass an ad interim ex-parte order directing the Respondent to immediately pay the monthly bills of the petitioner beginning from 01.09.2015 which have become due in 1<sup>st</sup> week of October, 2015;
  - b. Confirm the interim order after notice to the Respondents;
  - c. Direct that the Respondent strictly follow the provisions of the PPA and fulfil their due obligations under the PPA;
  - d. Direct that the Respondents establish the Letter of Credit in favour of the Petitioner to the extent of 105% of the average monthly billing;
  - e. Direct that the Respondent will deposit all their receivables in an escrow account from which the payment will be released to the petitioner
3. The submissions made by the Petitioner are as under:
- (i) That the SPPA provides as under the respect to the billing and payment procedure;
 

*Clause 6.6 Disputed Bill*

6.6.1 The Bill(s).....

6.6.2 All Payments .....

6.6.3 If the Bill raised by PPCL is not disputed within sixty (60) days of receiving it, such bill shall be taken as conclusive. If NDPL disputes any amount forthwith and file a written objection with PPCL within 60 days presentation of the bill NDPL shall issue a notice (the "Bill Dispute Notice") to IPGCL setting out the following:

    - (i) Item disputed, with full details/data and reasons thereof for the dispute
    - (ii) Amount disputed against each item.

6.6.4 The amount.....in line with the dispute settlement procedure as per this Agreement shall be paid/adjusted with an interest of 15% per annum from the date on which the amount in dispute was payable/refundable.

6.6.5 If IPGCL.....PPCL shall revise such bill within thirty (30) days of receiving such notice. If PPCL does not agree with the contention of NDPL or vice-versa, at the lapse of thirty (30) days from the issuance of Bill Dispute Notice, either party issue a Notice of Disagreement to the Bill Dispute Notice, pursuant to which the Dispute shall be resolved in a manner laid down herein after in clause "Settlement of Dispute" and clause in "Arbitration".
  - (ii) That with effect from 01.04.2007, they have been supplying electricity to the Respondent and raising the bills as per PPA. However, since the month of April 2014, the Respondent has not established the Letter of Credit (LC) in favour of the Petitioners as per the terms of PPA.
  - (iii) That the Commission vide its order dated 18.12.2015 directed the Respondent to comply with the PPA and open the LC. However, the Respondent, till date, is in violation of the said direction of the Commission.

- (iv) That the Respondent has suddenly, effective October 2015, stopped paying the monthly bills being raised by the Petitioner. The Petitioner has sent various letters to the Respondent and followed up from time to time to make the due payments since.
- (v) That the Respondent has written a letter dated 01.10.2015 to the Petitioner, inter-alia stating that since the Respondent is in financial crisis and the Commission has not allowed the cost of power purchase from the petitioner in full in the tariff order of the Respondent, the Respondent will not be paying the bills of the Petitioners and adjusting an amount of Rs. 170.70 crores in bills being raised by the Petitioners. This amount has also been claimed to be paid in excess for FY 2014-15. The Respondent has inter-alia stated that the ceiling of power procurement cost determined by the Commission and is in no position to bear any additional costs or payment obligations.
- (vi) That the above charges made by the Respondent are factually incorrect and completely false since the Petitioner has been raising the bills on the Respondent exactly as per the Tariff Orders passed by the Commission for the Petitioner. The Commission has already passed the Multi Year Tariff Order dated 13.07.2012 which is also for the year FY 2014-15. This is subject to the truing up to be conducted by the Commission for which the petition has already been filed.
- (vii) That as per the submission of the Respondent it is not required to pay the said tariff. The Respondent has submitted that the tariff determined for the Petitioner is as per the retail supply tariff order of the Respondent and tariff order for the Petitioner is useless and meaningless.
- (viii) That the bills raised by the Petitioner are only as determined by the Commission in the tariff order of the Petitioner. The Bills raised by the Petitioner are only as determined by the Commission in the tariff order of the Petitioner. The Petitioner is not a party to the Respondent's retail supply tariff, which is between the Respondent and its consumers. That does not determine generation tariff, nor considers the norms and parameters for generation tariff.
- (ix) That vide letter dated 09.10.2015 the Petitioner has replied to the above issue wherein it has stated that even under such a financial constraint TPDDL had been able to regularly pay the energy bills raised by IPGCL & PPCL as per Tariff Order issued by DERC. TPDDL have written above letter with remarks "We are constrained to note that the invoices raised upon us are, in fact, not as per the power procurement cost determined by the Commission in the said tariff Order. Purpose of writing this letter with the above remarks is out of context as IPGCL and PPCL are raising energy bills as per tariff orders issued by DERC/CERC for the Power plants of IPGCL and PPCL and on the basis of energy account issued by Delhi SLDC. TPDDL has been paying Energy Bills without any dispute since 01.04.2007 (the effective date of direct of direct billing to Discoms by IPGCL and PPCL)..."

- (x) That the matter of under allowance of cost and accumulation of regulatory assets is a matter between Respondent and the Hon'ble Commission, and may have arisen due to several factors.
  - (xi) That the relationship between the Petitioner and Respondent is concerned, it is only governed by the PPA and the Supplemental PPA.
  - (xii) That there has been no over-bill by the Petitioner. There the Respondent has no right whatsoever to illegally stop the payment of the Petitioner for the energy supplied from the Power station of the Petitioner and adjust the same with some other amounts.
4. The submissions made by the Respondents are as under:
- (i) That Power purchase cost determined by the Commission through Tariff Order dated 23.07.2014 passed for FY 2014-15 IPGCL and PPCL during FY 2014-15, have respectively overbilled the Respondent by Rs. 35.64 and Rs. 172.77 crores.
  - (ii) Directions contained in Tariff Order dated 29.09.2015 passed for IPGCL, and PPCL viz:
    - a. Not to bill Respondent for IPGCL's Rajghat Power Station after May, 215 (Petition No. 91 of 2015)
    - b. Refund of surplus amount to the tune of Rs. 89.73 Crores (for IPGCL's GTPS), Rs. 75.80 crores (for PPCL) to all its beneficiaries including the Respondent. IPGCL and PPCL have respectively filed Appeal No.(s) 284 and 288 of 2015 against the Tariff Order dated 29.09.2015. Along with, the Appeals IPGCL and PPCL have filed IA No(s) 467 and 469 of 2015, i.e. Application for stay of the said direction subject to deposit of Rs. 30 crores by IPGCL and Rs. 35 crores by PPCL. The Respondent has accordingly filed IA No. 68 and 69 of 2016 in Appeal No. 284 and 288 of 2015 seeking vacation of stay of the Order dated 15.12.2015 (@Annex-R/1, Pg. 27) The matter is now directed to be listed for hearing on 10.08.2016 (Petition Nos. 91 and 92 of 2015)
    - c. Refund of surplus amount to the tune of Rs. 7.04 Crores (for Rajghat) (TPDDL's share being approx. Rs. 2.011 crores) to its beneficiaries, including Respondent. Neither any stay has been sought by the Petitioner against the said direction nor has any refund been made till date (Petition No. 91 of 2015)
  - (iii) That the Delhi Government by its Revised Sanction Order dated 28.01.2016 (@Annx. R/3, pg. 123) on the request of Director (Finance) IPGCL and PPCL, instead of releasing the subsidy amount of Rs. 99.99 crores in favour of Respondent, unilaterally adjusted subsidy amount against the alleged outstanding dues of IPGCL and PPCL, i.e. Rs. 30 cores to IPGCL and 69.99 crores to PPCL. The said unilateral and arbitrary subsidy adjustment made by Delhi Government is illegal since the same is contrary to and in violation of ;
    - a. The Regulatory framework including Section 65 of the Electricity Act, 2003, National Electricity Policy and Tariff Policy.
    - b. Tariff Order dated 29.09.2015 passed by the Commission directed as under:  
"Commission's view:

2.394 Subsidy is a subject matter of the State Government and is not under the purview of the Commission. However, as per the provision of Electricity Act, 2003, subsidy is to be paid by the State Government in advance.

iv. Further, for the First Quarter (i.e., April, May and June) of FY 2016-17 no subsidy has been released by Delhi Government despite the fact that the first Quarter is now over. The total subsidy amount receivable from Delhi Government is estimated to be approx. **Rs. 113.58 crores**. It is apprehended by TPDDL that the said amount would be adjusted in favour of IPGCL and PPCL. Accordingly, as against the total outstanding dues of Rs. 69.74 cores, IPGCL and PPCL will have excess payment of Rs. 43.84 crores as detailed herein below:

<b>Amount payable after considering bill of May 16</b>				
<b>S.No.</b>	<b>Particulars</b>	<b>IPGCL</b>	<b>PPCL</b>	<b>Total</b>
A v.	Energy bills raised by IPGCL/ PPCL for the months of August'15 to Apr'16	84.63	356.84	441.47
B	Amount recoverable by TPDDL over and above approved by DERC for 2014-15	(35.64)	(172.77)	(208.41)
C	Positive Arrear Bill raised by IPGCL/ PPCL	0.65	2.73	3.39
D	Negative Arrear Bill raised by IPGCL/ PPCL	(9.70)	(35.81)	(45.50)
E	Rajghat Bill excess paid by TPDDL after May 2015 and recoverable	(4.00)		(4.00)
F	Amount paid as per request of IPGCL and PPCL	(10.00)	-7.37	(17.37)
G	Subsidy amount diverted to IPGCL& PPCL	(30.00)	-69.99	(99.99)
H	TDS Payable/ Receivable	(0.08)	0.23	0.15
I	Net Payable by TPDDL (+)/ Recoverable by TPDDL (-)	(4.13)	73.87	69.74
J	Estimated subsidy amounts appears to be adjusted by Delhi Government in favour of IPGCL and PPCL			113.58
vi. Kii.	Total Amount in excess with IPGCL and PPCL (subsidy amount-dues payable by TPDDL)			(43.84)

v. That IPGCL and PPCL, respectively by Petition Nos. 91 & 92 of 2015 raise issues and prayers which are already pending before this Hon'ble Commission and /or before the Hon'ble Tribunal which amounts to duplication of proceeding and abuse of process of law.

vi. That Respondent is not in a position to bear any additional cost since Respondent is facing precarious financial condition on account of failure of this Hon'ble Commission to determine cost reflective tariffs for Respondent.

- vii. That the Commission since, IPGCL and PPCL have been illegally billing and have respectively recovered Rs. 35.64 crores (IPGCL) and Rs. 172. 77 crores (PPCL) in excess of tariff permitted by this Hon'ble Commission for the FY 2014-15 which is evident from the following facts.
- viii. That the Commission had determined Tariff for both State Gencos, i.e., IPGCL and PPCL and TPDDL in the Tariff Order dated 23.07.2014 passed for TPDDL for FY 2014-15 and had accordingly calculated the amount payable by TPDDL to IPGCL and PPCL. However, billing of IPGCL and PPCL was contrary to the Tariff Order dated 23.07.2014 passed by the Commission.
- ix. That the invoices raised by IPGCL and PPCL are not in consonance with the power procurement cost as determined by this Hon'ble Commission. The copy of the said letter was also marked to this Hon'ble Commission. TPDDL by its letter dated 01.10.2015 had also provided detailed calculation regarding excessive amount charged by IPGCL and PPCL along with the relevant extracts of the Tariff Order dated 23.07.2014. The amount to be billed by IPGCL and PPCL for FY 2014-15, respectively comes to Rs. 241.73 crores (for IPGCL Comprising of GTPS & Rajghat) and Rs. 596.02 crores (For PPCL comprising of PPS-I and PPS-III). However, IPGCL and PPCL have respectively billed and recovered excess amount of Rs. 35.64 Crores (IPGCL) and Rs. 172.77 crores. (PPCL). The detailed calculations regarding the same are, as under:

IPGCL						Actuals borne by TPDDL			Allowed By Hon'ble Commission		
Actuals	PAFM (plant availability factor)	FC (Fixed Cost)	VC (variable cost)	TC (total cost)	Generation	FC	VC	TC	TC	TC	Additional Amount Paid
FY 2014-15	%age	Rs. Cr	Rs. Cr	Rs. Cr	MUs	Rs./Unit	Rs./Unit	Rs./Unit	Rs./Unit	Rs. Cr	Rs. Cr
Rajghat	29%	36.05	35.61	71.66	104.9	3.44	3.39	6.83	6.36	66.73	4.93
GT	37%	50.28	119.79	170.07	264.4	1.9	4.53	6.43	5.27	139.36	30.71
		86.33	155.4	241.73	369.3	5.34	7.92	13.26	11.63	206.09	35.64

PPCL		Actuals borne by TPDDL					Allowed By Hon'ble Commission			
Actuals	PAFM (plant availability factor)	FC (Fixed Cost)	VC (variable cost)	TC (total cost)	Generation	TC	TC	TC	TC	Additional Amount Paid
FY 2014-15	%age	Rs. Cr	Rs. Cr	Rs. Cr	MUs	Rs./Unit	Rs./Unit	Rs. Cr	Rs. Cr	
PPS I	64.20	45.36	163.68	209.03	392.36	5.33	4.2	164.79	44.24	
PPS III	18.90	258.46	128.27	386.99	415.53	6.22	9.31	258.46	128.53	
		303.82	291.95	596.02	807.88			423.25	172.77	

- x. That TPDDL cannot recover more than what is determined by this Hon'ble Commission including the power purchase costs approved by this Hon'ble Commission in Tariff Order dated 23.07.2014. Further, the Petitioner has submitted that for FY 2014-15, IPGCL and PPCL have billed TPDDL as per Tariff Orders dated 13.07.2012 passed for IPGCL and PPCL, the same is vehemently denied

- xi. That IPGCL and PPCL, rather than averring to the detailed calculations provided by TPDDL, have alleged that TPDDL is seeking recovery of Regulatory Asset directly from IPGCL and PPCL, the said allegation of IPGCL and PPCL is misconceived and untenable in law and facts of the matter. Respondent has made excess payments to the tune of Rs. 208.41 crores, i.e. Rs. Rs. 35.64 Crores for IPGCL and Rs. 172. 77 for PPCL crores which it seeks to adjust in the future bills raised by IPGCL and PPCL.
- xii. That IPGCL has not complied with the following directions of this Hon'ble Commission issued in the Tariff Order dated 29.09.2015 passed for the Petitioner:
- (a) Power purchase cost from IPGCL's Rajghat Power Station would not be considered after May, 2015 as under:
- "RPH
- 2.16 As per the submissions of the Petitioner, the last unit of Rajghat Power House (RPH) was commissioned in May 1990. Therefore the useful life of RPH was till May 2015. As the PPA for RPH expired in May 2015, the DISCOMs have indicated their unwillingness to extend the same. Accordingly the Commission has considered power purchase from RPH till May 2015 for the Tariff Orders pertaining to DISCOMs."
- (b) Apart from the aforesaid directions, this Hon'ble Commission in the truing up exercise has found surplus amount in the accounts of IPGCL and has therefore directed IPGCL to refund the same to the respective beneficiaries in three equal monthly instalments starting from October, 2015, as under:
- | Power Station | Surplus Amount  | Reference to Tariff Order dated 29.09.2015 |
|---------------|-----------------|--|
| IPGCL Rajghat | Rs. 7.04 crores | Para 3.139 of IPGCL's Tariff Order         |
| IPGCL GTPS    | Rs 89.73 crores | Para 3.263 of IPGCL's Tariff Order         |
- xiii That IPGCL apart from other issues has challenged the aforesaid directions of this Hon'ble Commission in Appeal No. 284 of 2015 and also sought an interim stay of the impugned findings limited to the direction of this Hon'ble Commission to refund the excess amount as directed.
- xiv That provisions of a statute cannot be whittled down by way of a contract. In present case, IPGCL and PPCL have alleged that there is a procedure for disputing a bill as provided under Clause 6.6. of the PPA. As such the contract, i.e., PPA between IPGCL/PPCL and TPDDL cannot allow IPGCL and PPCL to act contrary to:
- (a) Specific provisions of Electricity Act, 2003, i.e., 62 of the Electricity Act, 2003
- (b) Tariff Order dated 23.07.2014 passed by the Hon'ble Commission determining tariff for TPDDL and the power purchase cost allowed by this Hon'ble Commission for IPGCL and PPCL in TPDDL's Tariff Order.

- xv. That the claim of TDDL seeking refund of excess tariff charged by IPGCL and PPCL is in terms of:
- (a) Mandate under section 62(6) which, inter-alia, provides that a generating company shall not recover a price or charge exceeding the tariff that is determined by the appropriate Commission. If a generating Company charges in excess of the Tariff determined by the Appropriate Commission, the same does not in any manner restrict the challenge of TPDDL towards illegal billing on account of time lines. The words 'tariff' determined under this section indicates that the prohibition from charging excess price is dependent on the determination of the price under the preceding five Sub-sections of Section 62.
  - (b) The Tariff Order dated 23.07.2014 passed by the Hon'ble Commission are statutory in nature which have to be adhered to by the generating companies as well TPDDL. Therefore, IPGCL and PPCL have violated the Tariff Order passed by this Hon'ble Commission by charging in excess to more than what had been determined by this Hon'ble Commission in the Tariff Order dated 23.07.2014.
- xvi. Even otherwise, it is noteworthy that, the dues of IPGCL and PPCL for FY 2014-15 were already been paid by TPDDL. It was only in 2015, when TPDDL analysed the bills raised by IPGCL and PPCL, it came to the knowledge of TPDDL that IPGCL and PPCL have charged in excess of the Tariff which was determined by the Hon'ble Commission, by Tariff Order dated 23.07.2014. Further, as demonstrated above, the bills raised by IPGCL and PPCL were even more than the tariff determined by the Hon'ble Commission in the MYT Order dated 13.07.2012.
- xvii. That IPGCL and PPCL cannot restrict period for disputing the excess amount billed and recovered by IPGCL and PPCL, on the basis of the Clause 6.6 of PPA. By not confirming to the orders passed by this Hon'ble Commission, IPGCL and PPCL have violated the provisions of the Electricity Act, 2003 and contract cannot which cannot protect IPGCL, PPCL from their illegal act. Even otherwise, the Respondent has always informed this Hon'ble commission about the excessive billing done by the Petitioners. In fact, the copies of letters dated 01.10.2015 issued by TPDDL to IPGCL and PPCL was also copied to this Hon'ble Commission

5. The Commission has examined the respective submissions made by the parties and has come to the conclusion that the contention of the Petitioner is that the Respondent is not making payment of energy bills raised as per the rates determined by the Commission in the tariff order for generators namely to IPGCL and PPCL. Whereas, the Respondent's submission is that it is supposed to pay energy bills for the generation company as per the rate determined in the tariff order for the Discom namely TPDDL. The Respondents tried to exhibit that by paying the energy bills as per the rates determine in the tariff order for the Discom, it has already paid in excess to the Petitioner and therefore, no violation has been committed by the Respondent.

6. It is to be noted that the energy bills of the generators are to be paid as per rates determined in the tariff order of the generators and not as per the rates reflected in the tariff order for Discom, which are governed by respective MYT Regulations for Generation and Distribution Tariff. As per MYT Regulations, 2011 for generation tariff, variable energy charge of generation company shall be billed on the basis of actual fuel cost. It must be kept in mind that



rates given in the tariff order for the Discom or for generators are only the projections and cannot be treated as final or actual. The Commission has specified the formula for recovery of Power Purchase Cost Adjustment Charges (PPAC) in the Tariff Order of the Discom to take care of any variation in the projected power purchase cost and actual power purchase cost. The Discom may not have different approach for making payment to different generating stations e.g. Central Generating Stations and State Generating Stations.

7. Moreover, as per the terms of PPA the Discom has to pay 95% of the bill even if it is disputed and there is no scope to deny payment of bills. Further, the Discoms have to honour the terms of PPA like opening of Letter of Credit etc. In the instant case, if the Respondent had any dispute in respect of energy bills raised by the petitioner, they would have paid 95% of the bill and made a reference of the dispute to the Petitioner to get it resolved as per the provisions of the PPA. The difference, if any, in projected Power Purchase Cost and actual Power Purchase Cost along with carrying cost is to be considered at the time of truing up of ARR for respective financial year.

8. Considering the above facts, the Respondent Discom is directed to make payments of energy bills raised as per the rate determined in the tariff order for the Petitioner and also to open Letter of Credit as per the terms of PPA.

9. With the above directions the matter is disposed off.

10. Order accordingly.

Sd/-  
(B.P. Singh)  
Member

Sd/-  
(Krishna Saini)  
Chairperson