

DELHI ELECTRICITY REGULATORY COMMISSION

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017.

Petition No. 05/2009

In the matter of: Approval of Power Purchase Agreement between NDPL and TPTCL for procurement of 132 MW Power on Long-Term Basis from Jhajjar Power Ltd. (JPL).

North Delhi Power Limited
Through its: **CEO**
Sub-Station Building,
Hudson Lines, Kingsway Camp,
Delhi-110009.

...Petitioner/Licensee

Coram:

**Sh. Berjinder Singh, Chairman, Sh. Shyam Wadhera, Member &
Sh. Subhash R. Sethi, Member.**

Appearance:

1. Sh. Amit Kapur, Advocate for NDPL;
2. Sh. Mansoor Ali Shokat, Advocate for NDPL;
3. Ms. Apoorva Misra, Advocate for NDPL;
4. Ms. Sugondha Sowami, Advocate for NDPL;
5. Sh. Vivek Singla, GM(PM&CC), NDPL;
6. Sh. Anurag Bansal, HOG Legal, NDPL;
7. Sh. Bharat Sharma, Asstt. Manager, NDPL;
8. Sh. Ashis Kr. Dutta, AGM, NDPL;
9. Sh. Ajay Kapoor, CFO, NDPL;
10. Sh. V. Venugopal, DGM(SO), SLDC;
11. Sh. V.K. Garg, DTL;
12. Sh. Nirmal, DTL.

ORDER

(Date of Hearing: 18.02.2010)

(Date of Order: 13.05.2010)

1. The Petitioner, NDPL through this Petition, sought Approval of Power Purchase Agreement between NDPL and Tata Power Trading Company Ltd. (TPTCL) for procurement of 132 MW Power on Long-Term Basis from Jhajjar Power Ltd. (JPL). A copy of Power Purchase Agreement initialed by NDPL and Tata Power Trading Company Ltd. (TPTCL) was placed on record for the consideration and approval of the Commission. It is stated that TPTCL has agreed to supply 132 MW power from Jhajjar Power Ltd. to NDPL from April, 2012 to March, 2037 on long-term basis.

2. The Haryana Power Generation Company Limited (HPGCL) on behalf of the Uttar Haryana Bijli Vitran Nigam Limited and Dakshin Haryana Bijli Vitran Nigam Limited (UHBVNL and DHBVNL) identified the project at Matenhail, District Jhajjar, Haryana, based on coal as fuel and coal linkage from Coal India Limited. In accordance with the Competitive Bidding Guidelines of Ministry of Power, Government of India, HPGCL on behalf of the UHBVNL and DHBVNL initiated a competitive bidding process through issue of RFQ and RFP for selecting a Successful Bidder to build, own, operate and maintain the 1320 MW Coal Fired Thermal Power Project at Matenhail, Dist. Jhajjar, Haryana. HPGCL had incorporated Jhajjar Power Limited ("JPL") a company under the Companies Act, 1956 to build, own, operate and maintain the Project. UHBVNL and DHBVNL had entered into the Power Purchase Agreement on 07.08.2008 with JPL to purchase 90% of the available capacity from the Project.
3. The Power Station to be eligible for benefits of the Mega Power Project Policy has to sell 10% of the total power produced from this Power Station outside the State of Haryana under the Mega Power Project Policy ("MPP Policy") of the Ministry of Power, Government of India. The condition also includes that an Electricity Regulatory Commission should be set-up in the State where power from the project is being supplied and the distribution of electricity in cities having a population of more than one million should be privatised. The state of Delhi fulfils both of these requirements. Pursuant to mutual discussions, JPL and TPTCL agreed that TPTCL shall purchase from JPL, and JPL shall sell to TPTCL the Allocated Contracted Capacity and corresponding Electrical Output from the Project at the Delivery Point for a period of 25 years from the Commercial Operation Date of the Project. Consequently, TPTCL and JPL entered into the Power Purchase Agreement on 20.01.2009 to purchase 10% of the Available Capacity from the Project.
4. Subsequently, TPTCL and NDPL entered into the Power Purchase Agreement on 20.01.2009 to purchase 132 MW i.e.10% of the Available Capacity from the Project (1320 MW). Pursuant to the aforesaid PPA the TPTCL would facilitate the long-term open access and evacuation arrangements and other related activities, for trading margin payable by the Buyer (NDPL) for the duration of 25 years.
5. It is further stated that the said Power Purchase Agreement is subject to the approval of the appropriate Commission. It is further submitted that the PPA requires approval of the Commission also in terms of the Commission's letter No.

F.12(3-5)/DERC/2002-03/1001-1003 dated 02.06.2006 which requires all DISCOMs at Delhi including NDPL to take approval of the Commission for any financial transaction with group company/companies under the same management. The terms of the PPA are stated to be based on arms length commercial principles.

6. It is further stated that Govt. of India, Ministry of Power has considered this project under the Mega Power Policy which provides various benefits. The Jhajjar Power Limited is developing this coal based project under the Mega Power Policy. The project has been recognized as Mega Power Project as per Ministry of Finance, Govt. of India. The benefits of Mega Power Project shall be passed on to NDPL as and when the same are received.
7. It is further stated that considering the long-term power scenario in NCT of Delhi, as projected by Central Electricity Authority (CEA) in their 17th EPS, NDPL would require this 132 MW of power by January, 2012 to meet its universal service obligation of supply to its consumers. It may be noted that even Hon'ble Supreme Court is constantly monitoring the power situation in the NCT of Delhi and NDPL cannot afford to miss such opportunity of getting firm supply of power for 25 years, from January, 2012.
8. It is further stated that the TPTCL has signed a PPA with JPL for 132 MW power and has confirmed that 132 MW of power of TPTCL will be sold at similar terms and conditions to NDPL as offered to UHBVNL and DHBVNL by JPL. All the benefits of Mega Power Project shall be extended to NDPL. NDPL has executed the PPA with TPTCL. The payment risk to Jhajjar Power Limited (Generating Company) shall be borne by TPTCL. The Commission does not approve the proposal to allow TPTCL the right to sell power in the open market if NDPL is in default. However, NDPL shall take all steps to ensure that they do not default in payments to TPTCL. It is noted that TPTCL shall be facilitating long term open access and shall take care of the schedule and dispatch for this power.
9. The Petitioner submitted that the procurement of power shall be on the basis of Bidding Process finalized by Haryana Power Utilities except the trading margin to be paid to TPTCL, as per CERC guidelines. Presently the levelised tariff determined for procurement of power from Jhajjar Power Limited is 2.996 paise/kWh. The Petitioner was of the opinion that keeping in view the location of power plant which is near to Delhi and keeping in view the growing power

purchase cost, it may be viable option to the Petitioner to procure the power from Jhajjar Power Limited through TPTCL.

10. The Commission through its earlier order dated 12.11.2009 sought the detailed information on the following from the Petitioner:-
 - (a) Demand supply scenario in the area of Petitioner based on their assessment;
 - (b) Power evacuation arrangement from Jhajjar Power Ltd. and Open Access from concerned Power Transmission utilities;
 - (c) Trading margin to be paid to Tata Power Trading Corporation Ltd.

The information sought by the Commission was placed on record by the Petitioner on 13.01.2010.

11. NDPL submitted that the Central Electricity Authority in the 17th Electric Power Survey (EPS) considered an escalation of 8% on the peak demand projection of Delhi. The actual peak demand growth for Delhi is fairly close to the demand projection considered by the CEA, if we consider a nominal risk margin to the actual peak demand growth rate for Delhi. Accordingly NDPL considered the unrestricted peak demand of NDPL for year 2009-10 (1259 MW) as the base demand and considered the load growth of 8% on the base demand till the year 2020-21.
12. Analyzing the long term demand and supply scenario NDPL has claimed that it would be facing shortages on long term basis and from year 2018-19 onwards the net shortfall of NDPL would be more than 1000 MW. It is claimed that it is evident that there is likelihood of a power shortage being experienced by the consumers of NDPL in the light of its statutory obligation in terms of Section 43 of the Electricity Act, 2003 and in its continuous endeavor towards ensuring the long-term security of power to its consumers. NDPL has entered into this agreement with TPTCL for 132 MW power.
13. In the Petition, Petitioner has proposed to inter-link the NTPC's Aravali power station (1500MW) Jhajjar-I with CLP power station (1320 MW) Jhajjar -II to evacuate the contracted capacity of power from the project through dedicated transmission line from Aravali power station to 400 KV Mundka Sub-station of DTL. In case PGCIL/CEA does not find it to be technically feasible then

the only alternative will be through Haryana STU-CTU (PGCIL) system. The transmission charges/ cost shall be determined by the appropriate Commission.

14. During the hearing on 18.02.2010, the Commission made an observation and sought response from the Petitioner on power evacuation arrangement under the PSA particularly on the following aspects:-

- (a) Whether the increase in fault level beyond 40 KA is after considering the proposed 400 KV and 765 KV Ring Main transmission system and Grids around Delhi and after considering with opening of 765/400/220 KV network wherever required to control the fault levels?
- (b) The details of points where this transmission network is opened in the network analysis studies done by PGCIL to control the fault levels.

15. In order to address the queries of the Commission, NDPL issued a communication dated 19.02.2010 to PGCIL wherein, NDPL informed PGCIL about the queries of the Commission and sought clarification on the said queries. It is relevant to note that the stand taken by PGCIL in its letter dated 26.02.2010 is in continuation to its earlier letter dated 24.11.2009 is as under;

"We have analyzed the above transmission scenario. The interconnectivity of the two generating stations leads to increased fault levels. With interconnection between CLP Jhajjar and Aravali Jhajjar, the fault level at CLP Jhajjar and Aravali Jhajjar would reach to levels of about 40 KA and 42 KA respectively, an increase in short circuit level of about 14 and 11kV without interconnection levels. ...

Keeping above in view, the direct interconnection of two generating stations is technically not feasible."

The splitting of Delhi 400 kV ring main, as agreed in standing committee has been done. With the above arrangement, Delhi 400 kV system would become

- *Dadri-Mandola-Meerut-Mandola-Bawana-Mundka-Jatika Kalan 400 kV- Jatikalan 765 kV- Jatikalan 400 kV- Bamnauti- Samaypur and*
- *Dadri-G.Noida/ Maharani Bagh- Samaypur"*

16. NDPL had applied for LTOA to PGCIL, LTOA was already granted from techno-commercial route by the PGCIL after detailed load flow studies considering future projects, proposed 765 KV & 400 KV transmission system and after splitting the buses at various location as recommended by the CEA in the standing committee for power system planning. NDPL clarified that 124 MW Power would be available for evacuation from CLP-Jhajjar Power Project through Long Term Open Access after deducting the auxiliary consumption as per CERC Guidelines.

17. The Petitioner submitted that TPTCL shall charge a trading margin to NDPL in accordance with the CERC Regulations as applicable from time to time. The applicable trading margin as on the effective date is 4 paise per KW hour. In case the CERC changes/removes the ceiling on trading margin, the same shall be limited 2% of the Tariff (Capacity charges + Energy Charges) or the limit on trading margin imposed by CERC, whichever is lower. No early payment rebate will be applicable on TPTCL's Trading Margin. Further the payment risk is covered by TPTCL for the entire period of this agreement from 2012 to 2037.
18. Further, it is submitted that trading margin negotiated by NDPL with TPTCL is a competitive trading margin in view of the following facts:-
- (i) CERC Regulations on fixation of trading margin, 2010 removed any cap on the trading margin for long term power purchase through Traders.
 - (ii) In contrast to above development, the trading margin in present PSA is capped as 2% of the tariff in the PSA for the entire term of the agreement.
 - (iii) Many Long-term PPA's have been executed with trading margin way above the trading margin specified in this PSA. In this context, it is noteworthy that Ld. Haryana Electricity Regulatory Commission in its recent orders approved the PPA's between PTC and Haryana Power Generation Company Ltd. (HPGCL) for purchase of power from Budhil HEP, Teesta-III HEP and Karchan-Wangtoo HEP. In all these cases, PTC has charged trading margin of 5 paise/unit for first 12 years of PPA and 10 paise/unit for the remaining terms of the agreement.
19. The Commission on 23.01.2006 framed DERC (Intra-State Electricity Trader) Regulations, 2005. The aforesaid Regulations capture the roles, functions, responsibilities and obligations cast on the trader. The framing of the said regulations also go on to justify the role, obligations of the trader in arrangement of power for the state and the Commission is cognizant of the same. Regulation 9 of the aforesaid Regulations is noteworthy and quoted herein below:-

"NDPL quoted CERC order dated 20.01.2010. CERC has accepted the report of KPMG and in its Statement of Reasons in the matter of Review (Fixation of Trading Margin). "The CERC is cognizant of the fact that the traders are providing different types of products by entering into contracts on long-term, medium-term and short-term basis. The risk profile of each of these contracts is different. Accordingly, the Commission is of the view that where traders enter into long term power purchase agreements of duration exceeding a year, the risks cannot be completely mitigated through a trading margin. Also,

since the long term power procurement market is witnessing competitive forces at work, the Commission feels that the determination of an appropriate trading margin be best left to the market forces".

20. Sh. Kapur further stated that the Commission may also recognize that various costs and risks associated with the activities involved in trading transactions are as follows:

- (a) Banking Charges to open and maintain LC & Escrow Accounts under Agreement: The Trader is required throughout the term of the agreement to open and maintain such accounts since entire risk on account of payment to generator is to be borne by the trader in this back to back agreement. The trader also has to pay charges to the bank for opening and maintaining payment security mechanism. This is one of the major component of cost for Trader in such trading transactions. Since Trader has to maintain the payment security mechanism for generator for entire term of the contract which may run upto long tenure of 25 years.
- (b) Operational expenses in order to run the Trading business and to maintain trading license. The various operational expenses are as follows:
 - (i) Annual license fees to CERC.
 - (ii) Office maintenance related fixed costs.
 - (iii) Employee Expenses (salary, travelling, communication etc.)
 - (iv) Legal expenses
 - (v) Other miscellaneous expenses (IT related, sponsorship fees etc.)
 - (vi) Performance Bank Guarantee charges
 - (vii) Bank transaction fees
 - (viii) Operations, Scheduling, Telephone, Fax, & Logistics costs
 - (ix) Cost of capital employed and Interest on Working Capital/Borrowings etc.
- (c) Default Risk - This is identified (by KPMG in the report on Trading margin mentioned above) as one of the risks for a trader in a trading transaction as even in the cases where buyer doesn't honour the agreement and pay the monthly trader bill, but the obligation of Trader who is also the purchaser of power remains unaltered in terms of liability towards the generator. For the trader, he has to act under the payment security mechanism in place with generator and disburse the entire bill amount as per the agreement irrespective whether it receives the payment from buyer.

- (d) Late Payment Risk – This risk is attributed to the delayed Payment by the buyer beyond the payment due date which results in additional working capital requirements for trader. In fact, this is quite common risk faced by the trader.
- (e) Contract Dishonor Risk - Contract dishonor risk implies and recognizes the risks of breach, violation of a contract by either a buyer or a seller. Even though in such cases the party in default of the contract must be made liable to pay for penalties agreed upon in the Agreement, yet it is observed that generally the penalties imposed are not recoverable from the buyer. This further leads to litigations and increase in the legal costs of a trader.

In view of the above, Sh. Kapur submitted that the trading margin under the present PSA is justified.

21. Sh. Kapur placed before the Commission the similar PPAs for long term procurement of power specifying the trading margin as under:-

- (a) These are long term Power purchase contracts executed between Trader and Distribution Licensee.
- (b) Trading margin charged was higher than 4 Ps/unit by trader for long term power transactions.
- (c) These contracts have been accorded approval by their respective state regulatory commission.
- (d) Power Sale Agreement for 1200 MW Teesta-III HEP (sikkim) between Haryana and PTC & Power Sale Agreement for 1000 MW Karcham-Wangtoo HEP (Himachal Pradesh) between Haryana and PTC.

The Haryana Electricity Regulatory Commission vide Memo No. HERC/Teesta-II/Karcham Wangtoo/PSA/637 dated 21.06.2007 approved the Power Sale Agreements for 1200 MW Teesta Stage-III HEP (Sikkim) and 1000 MW Kacham Wangtoo HEP (H.P.) between PTC & HPGCL. HERC approved the PSA between PTC and Haryana Power Generation Company Ltd. (HPGCL) for purchase of 200 MW power from each project by HPGCL. The PSA entered between PTC and HPGCL for the above

referred two Power Purchases has specific clause on trading margin which is reproduced below:

9.1.5.2 "PTC's Trading Margin shall be Rs. 0.05/kwh for the Tariff Years 1 to 12 years and Rs. 0.10/kwh for the Tariff Years 13 to 35 and shall be payable by the purchaser to PTC for the entire purchaser billable energy. Provided that the Trading Margin shall be as decided pursuant to the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2005 issued on 23rd January 2006 if the same is applicable to transaction of nature and duration as captured in this Agreement, subject further to the condition that if CERC increases such Trading Margin or clarifies either that the applicable Trading Margin is not decided pursuant to the Central Electricity Regulatory Commission (Fixation of Trading Margin) Regulations, 2005 issued on 23rd January 2006 or that there shall be no specified limits on Trading Margin, then the Trading Margin shall be 5 paise for the first 12 years and 10 paise for the subsequent period (until Tariff year 35) of this Agreement or the CERC notified Trading Margin as applicable to transaction of nature and duration as captured in this Agreement, whichever is lower. Such margins shall be in compliance with any norms applicable to transaction of nature and duration as captured in this PSA, as may be laid down by CERC from time to time."

22. Power Sale Agreement for 70 MW Budhil HEP (Himachal Pradesh) between Haryana and PTC.

In a similar matter Power sale Agreement between PTC and Haryana Power Generation Company Ltd. (HPGCL) was approved by Haryana Electricity Regulatory Commission for purchase of power from Lanco Green Power Ltd. owned Budhil HEP. HERC vide its Memo No. HERC/Budhil/PSA/2007/528 dated 07.06.2007 accorded its approval to the Power Sale Agreement (PSA) entered between PTC and HPGCL on 21.09.2006 for purchase of power from 70 MW Budhil HEP. The specific observation of HERC in the said approval intimation dated 7-6-2007 on the approval is reproduced below:

"...the approval of the Hon'ble Commission to the Power sale Agreement (PSA) dated 21.09.2006 for 70 MW Budhil HEP (HP) between PTC and HPGCL subject the following provisions:-

1. *The trading margin shall be fixed by CERC from time to time subject to the maximum of 5 paise/unit for the first 12 years and 10 paise/unit for the subsequent period of the above PSA.*
2. *PTC/CTU may obtain approval of the additional incidence of transmission charges as to be determined by CERC."*

23. SLDC submitted the following before the Commission:

- (i) All the other stakeholder in Delhi Power Sector namely IPGCL, PPCL, BRPL, BYPL, NDMC, MES and representative of general public should have been made respondent as in case of approval of PPA for 300 MW power on

long term basis between NDPL and Maithon Power Ltd. were made respondent.

- (ii) Though the utility is not statutorily bound to put up the proposal before the Delhi Power Procurement Group (DPPG), it would have been appropriate had such proposals been deliberated in DPPG first for overall interest of the Power Sector in Delhi.
 - (iii) NDPL may negotiate for reducing the trading margin. It is submitted that there is a precedence for allowing 1 paise rebate i.e. 25% of trading margin 4 paise per unit in case of purchase of power from Tala on long term basis by Delhi and other utilities. However, as observed by the Commission earlier for long term purchase through Traders trading margin should be less than what is fixed by CERC for short terms trading contracts. Perhaps this may be the reason that CERC has not mentioned the trading margin for long term purchase through Traders.
 - (iv) SLDC submitted that if any DISCOM has surplus power arising out of bilateral purchase or by any other means, first that surplus power should offered to the other needy DISCOMs within the State for which Commercial Arrangements need to be entered into by the utilities either through DPPG or through the commercial sub-committee of Grid Coordination Committee.
24. The Ld. Counsel Sh. Amit Kapur, appearing for the Petitioner, opposed the arguments advanced by the SLDC. The Ld. Counsel denied that IPGCL, PPCL, BRPL, BYPL, NDMC, MES and representative of general public should be made respondents in the present Petition, on the ground that above mentioned parties are in no way connected with power procurement in this matter. Therefore, these parties are neither necessary nor proper parties to be impleaded in this matter. Thus the contention of SLDC to implead these parties as Respondents is untenable.
25. The Ld. Counsel further contended regarding public hearing that the cost and quantum associated with power procured by the Petitioner under the present PSA is subjected to public review in the MYT/ARR proceedings and as such, the public hearing at this stage may not serve any purpose.

26. The Ld. Counsel contended that there was no need to place the power supply agreement before Delhi Power Procurement Group. It was further submitted it is incorrect to say that PPA between NDPL and Maithon Power Ltd. was discussed in the DPPG. It is not out of place to mention here that only short/medium term power procurement by Delhi Discoms (BRPL and NDPL) with Maithon Power Ltd. was discussed in the DPPG. Further the Electricity Act, 2003 does not provide placing of PSA by Discom before a body like DPPG. Regarding reducing the trading margin by NDPL the Ld. Counsel contended that Power Sale Agreement signed between Petitioner and TPTCL was negotiated at arm's length commercial principles, both the parties agreed to the present clauses of PSA including trading margin clauses. Thus, the issue of further negotiations does not arise.
27. The Ld. Counsel further submitted that SLDC submissions on the trading margin charged in the transaction from Tala HEP is misconceived and irrelevant in the present context in view of the fact that Tala HEP is Central Government owned Project from where power is allocated to various States whereas Jhajjar Power Project is not on allocation basis but on negotiated basis. It was stated that it may not out of place to mention that in the present power shortage scenario, where such competitive source of power is barely available in the country, TPTCL offered the power to the Petitioner based on the excellent track record and successful relationship between the two. The trading margin was negotiated and the best trading margin which is in the interest of the consumer was agreed upon.
28. The Ld. Counsel for the Petitioner further submitted that the contention of SLDC that if any Discom has surplus power such surplus power be offered to the needy State of Delhi is misleading, misconceived and without any basis. The Commission in its Order dated 31.03.2007 in the matter of reassignment of PPA reads as under:-
- "If the allocation results in any excess capacity in the hands of any of the Distribution Companies/Agency at any time, such excess capacity shall be offered to other Distribution Utilities in Delhi at the first instance and only if such spare capacity cannot be absorbed within Delhi, it shall be offered to others. Necessary arrangements for this purpose shall be evolved in the Power Procurement Group constituted by the Government of NCT of Delhi."*
29. It was submitted that it is clear from the above that the Order of the Commission regarding offering of excess capacity to other DISCOMs of Delhi at regulated rate relates to only the power allocated vide the aforesaid Order and not to bilateral purchases which are at much higher rate.

30. Before approving the PPA signed between NDPL and Tata Power Trading Corporation Limited (TPTCL) for 132 MW power from Jhajjar Power Plant, the Commission feels that it is essential to examine the relevant provisions of the Electricity Act, 2003, Rules, Regulations and National Electricity Policy and the guidelines issued by Central Government for Competitive Bidding.

31. Section 86 of the Electricity Act, 2003 provides that:

“(1) The State Commission shall discharge the following functions, namely:--

- (a) ...*
- (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;*
- (c) ...*
- (d) ...*
- (e) ...*
- (f) ...*
- (g) ...*
- (h) ...*
- (i) ...*
- (k) discharge such other functions as may be assigned to it under this Act.”*

32. Section 79 of the Electricity Act, 2003 provides that:

“(1) The Central Commission shall discharge the following functions, namely:--

- (a) ...*
- (b) ...*
- (c) ...*
- (d) ...*
- (e) ...*
- (f) ...*
- (g) ...*
- (h) ...*
- (i) ...*
- (j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;*
- (k) to discharge such other functions as may be assigned under this Act.”*

33. Section 61 of the Electricity Act, 2003 provides that:

“The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely:--

- (a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees;
- (b) the generation, transmission, distribution and supply of electricity are conducted on commercial principles;
- (c) the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments;
- (d) safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

34. Section 62 of the Electricity Act, 2003 provides that:

- “(1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for--
- (a) Supply of electricity by a generating company to a distribution licensee:
PROVIDED that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;
 - (b) ...;
 - (c) ...;
 - (d)
 - (2) The Appropriate Commission may require a licensee or a generating company to furnish separate details, as may be specified in respect of generation, transmission and distribution for determination of tariff.
 - (3) The Appropriate Commission shall not, while determining the tariff under this Act, show undue preference to any consumer of electricity but may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity during any specified period or the time at which the supply is required or the geographical position of any area, the nature of supply and the purpose for which the supply is required.
 - (4) ...
 - (5) ...
 - (6) ...”

35. Section 63 of the Electricity Act, 2003 provides that:

“Notwithstanding anything contained in section 62, the Appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government.”

36. Clause 5.1 of the National Tariff Policy provides that:

“All future requirement of power should be procured competitively by Distribution Licensees except in cases of expansion of existing projects or where there is a state controlled/owned company as an identified developer and where regulators will need to resort to tariff determination based on

norms provided that expansion of generating capacity by private developers for this purpose would be restricted to one time addition of not more than 50% of the existing capacity.

Even for the Public Sector project, tariff of all new generation and transmission projects should be decided on the basis of Competitive Bidding after a period of five years or when the Regulatory Commission is satisfied that the situation is ripe to introduce such competition."

37. From the above, it is seen that to regulate/approval of electricity purchase and procurement process of Distribution Licensees is one of the statutory functions of the State Commission under Section 86 (1)(b) of the Electricity Act, 2003. There is no ambiguity with regard to the power of Commission to regulate/approve electricity purchase and procurement process of Distribution Licensee. This power of the Commission is unconditional and is not restricted in any way.
38. Section 63 of the Electricity Act, 2003 clearly states that appropriate Commission shall adopt the tariff if such tariff has been determined through transparent process of bidding in accordance with the guidelines issued by the Central Government. This provision particularly empowers the Commission to adopt the tariff when such tariff is arrived at through transparent process of bidding. This power of the Commission for adoption of tariff is particularly specific and distinct. The conditions when the appropriate Commission can adopt the tariff are also clearly dealt with in Section 63 of the Electricity Act, 2003. However, it is seen that Section 63 carves out the situation where the discretion of the Commission is circumscribed in the matter of determination of the tariff where such tariff has been determined through a transparent process of bidding.
39. The Commission is of the view that Regulation of business practices of Distribution Licensee including the manner of purchase of electricity is a function of the State Commission under the Electricity Act, 2003 and the National Electricity Policy and National Tariff Policy is a guideline in this area. The National Electricity Policy and National Tariff Policy has to be in conformity with the Act and cannot over-ride its provisions.
40. As regards entering into PPA with a Trader, the Commission has observed that CERC in its Order in the case of Essar Power had directed the generator to sign the PPA directly with the purchaser instead of entering into a PPA with a Trader. However, ATE in its Order dated 23.11.2006 in Appeal no. 228 and 230 of 2006 decided that there cannot be any direction to prevent signing of a PPA with the

Trader. Thus, the PPA initialed between NDPL and TPTCL would be a legally valid Agreement after approval of the Commission.

41. In light of the above discussion the Petitioner prayed that the Commission may consider the same and approve the present PPA.
42. The Commission observed that Haryana Electricity Regulatory Commission in accordance with Section 63 of the Electricity Act, 2003 adopted the levelised tariff of Rs. 2.996kWh of the successful bidder (CLP Power India Pvt. Limited). Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) had entered into a Power Purchase Agreement on 07.08.2008 with Jhajjar Power Limited, a company incorporated under the Company's Act, 1956 by Haryana Power Generation Company Limited (HPGCL) to purchase 90% of the available capacity from this project. For the remaining 10% power from this project TPTCL and JPL entered into a Power Purchase Agreement on 20.01.2009. Subsequently, TPTCL and NDPL entered into the Power Purchase Agreement for 132 MW power from this project on 20.01.2009. It is further observed by the Commission that pursuant to the aforesaid Power Purchase Agreement between TPTCL and NDPL, TPTCL would facilitate the Long-Term Open Access and evacuation arrangements and other related activities for trading margin payable by the buyer (NDPL) for tariff of 25 years. The above said Power Purchase Agreement is subject to the approval of the Commission.
43. The Commission is empowered under Section 86(1)(b) of the Electricity Act, 2003, to approve Power Purchase Agreements between distribution licensees and generating companies or licensees or traders. Section 86(1)(b) of the Electricity Act, 2003 provides that:

"Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State."

44. The Commission perused the PPA between NDPL and TPTCL and approves the said Agreement subject to the following:
 - a) Any specific deviation with respect to any standard PPA has not been brought out by the Petitioner. Accordingly, only major issues of the power purchase agreement with specific reference to the Act/Regulation are seen by the Commission.

- b) Any new charge creation shall duly take into account the existing charges on revenue of the Petitioner vis-à-vis other agencies.
 - c) The dispatch of power from this power station shall be on merit order basis. Further, all efforts shall be made by NDPL for utilizing this power, so that the burden of fixed cost is not passed on to the consumers, without using the power from this project.
 - d) An indicative tariff schedule shall be appended to the PPA.
 - e) All normative parameters for tariff calculations shall be in accordance with the applicable CERC Regulations.
 - f) Any waiver to the conditions precedent shall be carried out only with the prior approval of the DERC.
 - g) Clear demarcation between the obligations of the generator and the obligations of the trader needs to be made.
 - h) If the tested capacity of the unit is less than its installed capacity, while allocating the capacity on a pro-rata basis to various power purchasers, the capital cost shall also be reduced on a pro-rata basis or in accordance with the applicable CERC Regulations.
 - i) All benefits on account of mega power policy and passing on the same to the Petitioner by TPTCL needs to be incorporated.
45. Subject to incorporation of the above in the PPA, procurement of 132 MW power from Jhajjar Power Plant is hereby approved for a period starting from Commercial Operation Date (COD) for 25 years. The revised PPA incorporating the changes mentioned above alongwith the other relevant documents, as called for, be submitted to the Commission for record within a month.

Sd/-
(Subhash R. Sethi)
MEMBER

Sd/-
(Shyam Wadhera)
MEMBER

Sd/-
(Berjinder Singh)
CHAIRMAN