



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

No. F. 11(1206)/DERC/2014-15/

Petition No. 23/2015

In the matter of: **Petition seeking relief from uneconomical and unviable Power Purchase Agreements and from inefficient coal based plants and costly gas based plants.**

BSES Rajdhani Power Ltd. **....Petitioner**

Vs.

Aravali Power Company Private Limited (APCPL) & Ors. **...Respondents**

Petition No. 24/2015

In the matter of: **Petition seeking relief from uneconomical and unviable Power Purchase Agreements and from inefficient coal based plants and costly gas based plants.**

BSES Yamuna Power Ltd. **....Petitioner**

Vs.

Aravali Power Company Private Limited (APCPL) & Ors. **...Respondents**

Coram:

Hon'ble Sh. Justice S. S. Chauhan, Chairperson
Hon'ble Sh. A.K. Singhal, Member
Hon'ble Dr. A. K. Ambasht, Member

Appearance:

1. Mr. Buddy A. Ranganadhan, Adv. BRPL, BYPL
2. Mr. Hasan Murtaza, Adv. BRPL, BYPL
3. Mr. M.G. Ramachandran, APCL
4. Ms. Swapna Sheshadari, PPCL, IPGCL

ORDER

(Date of Hearing: 09.01.2020)

Date of Order: 24.01.2020)

1. The present Petitions have been filed by BSES Rajdhani Power Ltd. (BRPL) and BSES Yamuna Power Ltd. (BYPL), respectively seeking dissolution of allegedly uneconomical and unviable PPAs dated 5th June 2008, 13th August 2009 and 10.05.2012 entered into with Respondents 1, 2 and 3 viz. APCPL, IPGCL, PPCL, respectively, without any liability of fixed charges or damages on the Petitioner and in the alternative to cancel and revoke the allocation made to the petitioner vide its order dated 30.03.2007 and 27.02.2014 as far as the IGSTPS

(Aravali), Bawana Pragati III, Gas Turbine Station (IGTS) and Rajghat Station, without any liability of fixed charges or damages on the petitioner.

2. The Petitioners have submitted that:
 - a. Section 86 (1)(b) of the Electricity Act 2003 not only empowers but mandates this Commission to regulate the electricity purchase of the petitioner distribution licensee including the price at which electricity is to be procured from the generating companies for distribution and supply within the area of supply of the petitioner. Further, Section 86(4) mandates this Commission to be guided by the National Electricity Policy, National Electricity Plan & Tariff Policy, while this Commission discharges its function which includes the function under Section 86(1)(b) to regulate the electricity purchase including the price of procurement of the petitioner. The National Tariff Policy mandates that merit order principle must be followed so as to justify the reasonability of the power purchase cost.
 - b. The power purchase cost from the aforesaid generating stations is the highest in the merit order stack. Accordingly, while so regulating the power purchase from the aforesaid power stations this Commission is mandated to adhere to the aforesaid requirements of the Tariff Policy. Hence, this Commission ought to either consider dissolution of the aforesaid PPAs or devise a mechanism or issue direction which would result in lower cost of generation from the aforesaid generating stations. In the event such a mechanism or direction cannot result in lower cost of generation, in such an event this Commission ought to relieve the petitioner from the obligations from the aforesaid Power Purchase Agreements so that the petitioner is able to contract from alternative and cheaper sources of electricity for supplying to its consumers.
 - c. "Rationalisation of Electricity Tariff" is one of the corner-stones of the Electricity Act, 2003, as stated in its preamble. If the petitioner discontinues purchasing power from the IGSTPS, and Pragati III, this will result in rationalization of tariff of consumers to a certain extent because IGSTPS, Pragati III, G.T Station and Rajghat Plant are the costliest sources of supply of power to the petitioner.
 - d. Economical use of resources is one factor which the State Commission is mandated to be guided by, while determining the retail supply tariff for the consumers' in terms of Section 61 (c) of the 2003 Act. This Commission is also mandated to safeguard the consumers interest and ensure recovery of cost of electricity in a reasonable manner in accordance with section 61(d) of the said Act. It cannot be disputed

that because the aforesaid power plants are the costliest sources of power supply to the petitioner, the recovery from the consumers of the cost of electricity supplied from the said station would not be reasonable and would militate against Section 61 (d) of the said Act.

- e. The scheme under which the power has been allocated to the petitioner from the aforesaid power stations is contained in the Commission's order dated 31.03.2007. Since the allocation of the capacities took place by this Commission's order dated 31.03.2007, it cannot be denied that there was a lack of complete free-will of the Petitioner for entering into the consequential power purchase agreements dated 05.06.2008, 13.08.2009 and 10.05.2012 with Respondent No. 1, 2 and 3, respectively. It is also submitted that these PPAs have not been entered into with the entire involuntary acceptance by the petitioner of the terms of the aforesaid PPAs. It is also submitted that unlike a commercial transaction, there were no arms length negotiations between the petitioner and Respondent No. 1, 2 and 3 respectively prior to entering into the PPAs dated 05.06.2008, 13.08.2009 and 10.05.2012 and as a result the PPAs were unilateral favouring only Respondent No. 1, Respondent No. 2 and Respondent No. 3.
- f. Further, over the years the supply of power from these power plants have become old and uneconomical as the generating costs of these power plants have shown unprecedented high cost rising by as much as 120% between 2011-12 and 2013-14:
 - i. The IGSTPS/Aravali Jhajjar (Coal based) produces electricity at an average cost of generation of Rs. 10.69 per unit in FY 2013-14 to petitioner. That IGSTPS does not have a long-term fuel supply agreement and procures coal on an ad hoc basis, which results in a very high cost of generation. That inadequate availability of domestic coal linkages makes this power plant dependent on imported coal apart from transportation cost from Ports in eastern parts of India to Jhajjar in Haryana, thereby making the plant unviable and very expensive.
 - ii. Rajghat Plant (Coal based) this plant is nearly 25 years old and the highly inefficient plant has outlived its useful life. Gross Station Heat rate of Rajghat Station is 3200 kcal/kWh, secondary fuel oil consumption is 1.50 ml/kWh and Auxiliary consumption of 11.28% as approved by the Commission. Further, the coal allocation to the Rajghat Plant is from eastern region which increases its overall transportation cost. The Rajghat Power House is operating below

operative norms of 75% PLF set by this Commission. It has been recommended for closing down by Delhi pollution control board.

- iii. Bawana, Pragati and Gas Turbine (Gas based) these plants are running at low PLFs of 30-40% from the past few years on account of unavailability of gas. Furthermore, the power generation is not commercially viable owing to inadequate availability of gas at APM price. Consequently, these plants continue to burden the consumers of Delhi with their full fixed cost which are recoverable by showing full availability of the plants. Although the Bawana plant in Delhi was commissioned for a capacity of 1371 MW where the fixed cost is recoverable for 1371 MW, the plant only has APM gas available for running at an approx. capacity of 300 MW. Due to stranded capacity of gas based plants, the consumers of Delhi, are paying additional rupees 0.32 p.u. for the units which are not supplying to them.

The Gas Turbine Station is very old plant (around 25 years), operating below operative norms of 80% PLF set by this Commission. The actual capacity of GT is 270 MW but due to Gas constraints can generate only 160 MW.

- g. The cost of sourcing electricity from these old plants is in excess of Rs. 5/- per unit and going up to Rs. 11/- which is severely impacting the power purchase costs and consequently burdening the consumers of Delhi. Therefore, due to the unviable power procurement costs, it has become increasingly difficult for the petitioner to restrict the overall tariff to the consumers as nearly 80% of the tariff comprises of the power procurement costs.
- h. The average Cost of Power Procurement in Delhi is considerably higher than the other states of India and National Average. In FY 11-12 Delhi's Average Power Cost was Rs. 4.52 p.u. as against National Average of Rs. 3.35 p.u. which is nearly a gap of Rs. 1.17 p.u. Similarly, in FY 2012-13 the National Average cost is Rs. 3.63 p.u.
- i. In order to mitigate the impact of the high cost of power and the liability towards fixed charges for the entire allocated capacity (even though power is not scheduled), the petitioner had requested the State Load Dispatch Centre, Respondent No. 4, herein, to permit it to purchase electricity from alternate and economical sources. However, the Respondent No. 4 has not allowed the petitioner to source power from alternate sources in view of the need to maintain minimum technical limit for safe loading of associated transmission network.

- j. The petitioner has also surrendered the power supply for the power station of IGSTPS/Pragati III although on temporary basis. It has also been requested for reallocation of the entire capacity of the aforesaid power station to other beneficiary/others unto next 5 years i.e. up to 31st March 2019. However, there is no assurance on this aspect as of now. The petitioner submits that although nothing has been forthcoming on this proposal of long-term reallocation even if such a long-term reallocation is allowed, the petitioner would still have to bear the fixed charges which would ultimately be borne by the consumers for not using the electricity. The petitioner has also written to the Govt. of NCT of Delhi on the urgent need for rationalization of generation costs of the aforesaid plants that would possibly entail a saving of Rs. 770_crore leading to retail tariff reduction by 5-7%.
- k. The Intra-State Transmission System in the NCT of Delhi is in urgent need for modernization and upgradation so that the transmission constraints can be removed, which would enable the petitioner to source power from alternate and economical power stations outside the territory of Delhi for inter alia reducing the retail tariffs of the consumers. It is submitted that in the interest of consumers there is a need for this Commission to issue directions to Respondent No. 4 and 5 so that appropriate measures could be taken to remove the constraint that arises where the system is unable to transmit the power supplied to the location of demand due to congestion at one or more parts.
- l. The Petitioner is heavily dependent on external borrowing/financial assistance in light of non-liquidation of a large quantum of revenue gap over the last several years and in view of the non-cost reflective tariff. This has compounded into the lenders hesitating to extend financial assistance in light of the procurement of power from costly resources such as the aforesaid power plants, which would be viewed as imprudent, inefficient and uneconomical.
- m. Section 86(1)(b) employs the work "regulate electricity purchase". The term 'regulate' has been interpreted by the Hon'ble Supreme Court of India of having wider scope and implications and as doing everything necessary for organized implementation and development.
- n. In a catena of judgement of the Apex Court as well as the APTEL that PPAs can be reopened, if the circumstances so warrant. The Petitioners crave leave to refer to and rely upon applicable case laws during the course of hearing the present matter.

- o. the APTEL's judgement in appeal no. 194 of 2006 in the matter of Punjab State Power Corporation vs. Everest Power Ltd. confirms the position that as part of Regulation u/S 86(1)(b) the State Commission can adjudicate on any dispute arising between the licensees and the generating companies with regard to the implementation of the PPA. The present petition is to seek intervention of the Commission on the PPA dated 13.08.2009 and PPA dated 16.07.2012 due to a matter of exigency and necessity as the rate of procurement is very high, and on the other hand the Petitioners are in a surplus situation compelled to pay fixed charges for forced scheduling of power from the said power plant which does not conform to MOD.
- p. the Supreme Court has in Tata Power Co. vs. Reliance energy & Ors. (20009) 16 SCC 659, held that for the purpose of interpretation and/or application of the statute Court cannot base its decision on any hypothesis. Construction of statute cannot be premised on the hardship of a party which may suffer. Therefore, the averment that Respondent are proceeded to invest substantially in setting up generating stations is not to be taken into account for determining as to whether the PPA should be approved or disapproved u/S 86(1)(b). There is no question of the beneficiary unilaterally rescinding its obligations under the PPA. This Commission being the sectoral regulator has all the necessary powers to decide as to whether the subject PPAs should be dissolved or not, given the facts and circumstances of the present case.
- q. the Commission is the correct forum before which the present Petition has been lodged for a decision as it is maintainable only before the DERC. It cannot be that the prayers of the Petitioners to discharge them from the PPAs are neither maintainable before the Central Commission nor maintainable before the DERC.

3. M/s Aravali Power Company Limited, Respondent No. 1 has submitted that:

- a) The relief prayed for are multifarious, some against the Generating Station with which the Intra State Entity (DTL) is not concerned while others are against Intra State Transmission Entities/SLDC with which the Generating Station is not concerned. The generating station supplies power at the bus-bar and the title to the electricity passes to the petitioner at such delivery point. The Transmission Licensee and the other agencies against whom some of the reliefs are claimed in the Petition are not parties to the PPA. Similarly, the Generating Station is not party to the agreement/arrangement which the Petitioner has for evacuation of power. Accordingly, there is complete mix up of parties and cause of

action. The petition filed is therefore, not maintainable in the present form;

- b) This Commission does not have jurisdiction under the Electricity Act, 2003 to entertain the claim of the petitioner in regard to the disputes arising out of the PPA dated 05.06.2008 i.e. the claim for dissolution/termination or in regard to any other matter connected to the terms and conditions for generation and supply of electricity by the respondent to the petitioner in respect of the Indira Gandhi Super Thermal Power Station. Further, the Central Commission has already notified comprehensive Regulations in regard to the determination of tariff as well as other matters related to the generation and supply of electricity by the Respondent. This Commission does not have any jurisdiction either concurrently or otherwise to vary the terms and conditions contained in the Power Purchase Agreement entered into between the parties or adjudicate disputes on the implications thereof. The scope of the jurisdiction of the Commission in such matters where the Central Commission has jurisdiction over the Generating Company is restricted and covered by Rule 8 of the Electricity Rules, 2005.
- c) Section 79 (1)(f) of the Electricity Act, 2003 provides for the adjudication of disputes involving a generating company or a transmission licensee in matters connected with Clauses (a) to (d) of Section 79. Thus, anything involving a generating station of a Central Government owned and controlled company such as the Respondent relating to the generation and supply of electricity will be a matter governed by Section 79 (1)(f) of the Act. The decision of the Hon'ble Supreme Court of India in PTC India Limited Vs CERC, is that the Regulation of the Commission governing the relationship of the parties are binding on the parties. Accordingly, the Regulations of the Central Commission apply and the agreement and the clauses in the agreement have to be enforced by the Central Commission and can only be altered or modified by the Central Commission by appropriate Regulation.
- d) The role of the State Commission is only to decide at the initial stage whether the PPA to be entered into between the Respondent and the Petitioner for purchase of electricity from the Respondent's Generating Station at the tariff determined by the Central Commission is to be approved or not from the point of view of deciding whether the power can be procured from other sources at a cheaper or in a more economical manner. The examination by the State Commission cannot be for suggesting modification to the terms and conditions or even reserving to deal with the implications of the terms and conditions at a

later stage. It is submitted that in regard to power purchases from the Generating Station in the present case, this Commission had already approved the same in terms of Rule 8 of the Electricity Rules, 2005 and no further decision in this regard is pending. Thereafter in all respects the PPA including the terms and conditions contained therein shall be subject to the regulation of the Central Commission and not of the State Commission.

- e) The issue stands conclusively decided by the Central Commission, the petitioner had raised a similar plea and sought for the same relief before the Central Commission in respect of the PPA entered into with NTPC limited for its various Generating Station. In the Petition no. 301/MP/2015 filed by the petitioner before the Central Commission, it had sought for directions to terminate the existing PPAs and/or in the alternative, re-allocate the power allocated to the petitioner from the Generating Stations of NTPC. The Central Commission, by its Order dated 17.04.2017 in Petition No. 301/MP/2015 and 302/MP/2015, had been pleased to dismiss the petition and had directed the petitioner to approach the Central Government for appropriate relief, namely, to find an alternative procurer willing to off-take the electricity from the concerned Generating Stations on the same tariff terms and conditions and re-allocate the power to a willing beneficiary. Accordingly, the law is clear that in respect of power allocated from Central Government generating stations, the beneficiary is bound by the provisions of the PPA read with the Government of India allocation, unless the contracted capacity stands surrendered and re-allocated by the Government of India. It is therefore, not open for the Petitioner to seek the same relief before this Commission which it has already sought and been denied by the Central Commission.
- f) The relief sought by the Petitioner is beyond the scope of the PPA. It is submitted that the tariff determination of the Generating Station is under Section 62 of the Electricity Act, 2003. In terms of the PPA, the petitioner had agreed to purchase the electricity from the Generating Station at the tariff so determined under Section 62 of the Electricity Act, 2003. The Central Commission undertakes the prudence check and the reasonability of the capital cost and all tariff elements and the petitioner is required to pay such tariff, subject to any appeal that may be filed challenging the tariff Order. The PPA between parties also does not provide for any prior termination, except for events of default as provided in the PPA. The petitioner cannot claim any right to terminate on grounds other than specifically stipulated in the PPA.

- g) Power procurement from the generating station has already been approved by this Commission. There is no occasion for the petitioner to allege that the assignment of the PPAs (existing and future) took place under any duress, economic or otherwise. Having voluntarily entered into a PPA with the Respondent pursuant to the allocation made by the Central Government and as approved by this Commission in its Order dated 31.03.2007 (after hearing all concerned stakeholders), it is not open for the petitioner to now resile from its obligation under the said PPA. This is particularly when the Petitioner has been availing the power from the generating station and has utilized the power for maintaining supply in its license area. It is settled principle of law that in cases of agreements freely and voluntarily entered into, there can be no question of the party contending that it is not bound by the terms and conditions.
- h) The interest of the consumers in the State of Delhi is protected. From time to time, the Respondent has been filing a tariff Petition before the Central Commission in the prescribed format, as provided in the Tariff Regulations and other applicable Regulations notified by the Central Commission. These Regulations are statutory in character, the information to be given by the Respondent in the petition includes the details of additional capitalization, variable cost etc. The prudence of the cost incurred by the Respondent shall be considered by the Central Commission in a transparent process with the participation of all the stakeholders. The procurers, including the petitioner will have the opportunity to make their submissions before the Central Commission. In view of the above, there is an appropriate remedy available to the petitioner as a stakeholder before the Central Commission to contest the costs incurred by the Respondent.

4. M/s PPCL and M/s IPGCL, Respondent No. 2 & 3 have submitted that:

- a) The present petition is not maintainable under Section 86(1)(b) of the Act, it is relevant to note that Section 86(1)(b) of the Act does not empower the distribution licensees to alter, amend or dissolve the PPA on their will. It is stated that the Petitioner is bound by the provisions of the PPAs read with this Commission's Order dated 31.03.2007.
- b) The contention of the petitioner is misconceived that the respondent's power generation is not commercially viable due to inadequate availability of gas at APM price. Factor such as increase in Fuel prices is beyond the control of any generating company including the Respondent No. 2 and 3 and is a pass through in tariff.

- c) The petitioner and the Respondents have mutually entered into the PPAs pursuant to this Commission's Order dated 31.03.2007 for procurement of power for the duration of 25 years. It is relevant to note that here is no provision in the PPAs particularly in the 'Termination Clause' which entitles unilateral request for termination or surrender of PPA on the purported ground of high cost of the gas. In fact, under the PPAs, only the Respondents have the right of termination and also there is no 'Exit Clause' in the PPAs before expiry of contract period.
- d) The fixed charges/capacity charges are for recovery of the capital cost of a generating station and have to be paid to the extent the generating station achieves Plant Availability and makes the electricity available to the beneficiaries. The only specification for recovery of fixed charges is the machine and fuel availability. This follows the principle that the Respondents have borrowed funds and infused their own equity in allocating the contracted power at their generating station. Thus, the respondents have altered their position and the fixed charges need to be paid to them in terms of the PPAs. The Petitioner has chosen to enter into a long-term power purchase agreement for the power supply from the power stations of Respondent No. 2 and Respondent No. 3 for 25 years and has assumed the obligation to pay the capacity charges, energy charges and other charges. Accordingly, the petitioner is bound by the terms and conditions agreed to in the PPAs.
5. There are basically two prayers made by the Petitioner, first to come out of the so called uneconomical and unviable PPAs either by dissolution or by de-allocation and the second to instruct DTL and SLDC to take immediate steps for relieving transmission constraints/augmentation of transmission network to enable the Petitioners to procure electricity from alternative and economical sources. On the basis of rival submissions, to adjudicate on the first prayer, following two issues have to be determined: -
- I. Can a party exit from a Long Term Power Purchase Agreement on being uneconomical or unviable; and
 - II. Whether it is within the jurisdiction of the Commission to de-allocate power from various stations.

Issue No. 1

Can a party exit from a Long Terms Power Purchase Agreement on being uneconomical or unviable?

6. A Power Purchase Agreement (PPA) is a bilateral agreement and the terms and conditions of the agreement is binding on both the parties. A contract can be legally terminated, when a legitimate reason exists to end the contract before

performance has been completed or expiry of the term of the contract. Therefore, a contract can be validly terminated by giving legitimate reasons, e.g. by frustration, breach or prior agreement like exit clause. A party from an agreement may exit only when there is an 'exit clause' available in the agreement or it has become impossible to honour the terms of agreement so as to invoke "doctrine of frustration" etc.

7. It has been observed that the PPA does not have any 'exit' clause which permits a party to renounce the contract on the ground of difficulty or being the power purchase uneconomical and unviable. In the instant case, the only ground for surrender of PPA is that the power from these stations is uneconomical and unviable because the plants are inefficient. The aforesaid reason cannot be a ground for invoking the doctrine of frustration so as to allow the petitioners to terminate the existing PPAs with the Respondents.
8. The Petitioners have submitted that the Hon'ble Appellate Tribunal in the case of NTPC Limited vs. Central Electricity Regulatory Commission & Others, 2010 ELR (APTEL) 833 has held that the interpretation and application of the Electricity Act should be done in a manner to protect consumer interest and reduce the tariff to the consumers. However, in the instant petitions, the Commission does not find any ambiguity in the provisions of the Act or PPAs, which requires interpretation. Moreover, while interpreting the provisions, all aspects of interpretations are taken into consideration.
9. The Petitioners have submitted that these PPAs have not been entered into with the entire involuntary acceptance by the petitioners of the terms of the aforesaid PPAs and unlike a commercial transaction, there were no arm's length negotiations between the petitioner and Respondents. It is immaterial that the PPA was signed on instructions/directions of any authority or on own volition. Once an agreement has been entered into, its terms and conditions become binding on both the parties. It is to be noted that exactly in the similar situation, another Discom of Delhi viz. TPDDL has also signed PPA and the similar issue of imposition of PPAs was raised by TPDDL before the Competition Commission of India (CCI). The plea of TPDDL was rejected by CCI on the ground that TPDDL has entered into the PPAs being fully aware of the terms of the PPAs including the long term obligation stipulated thereunder and can approach the Ministry of Power, Government of India, for reallocation of power to any procurer in case they do not wish to take power at any time during the operation of the long term PPAs.
10. Thus it would not be legally permissible for the party to 'exit' from the instant Long Term Power Purchase Agreements.

Issue No. 2

Whether it is within the jurisdiction of the Commission to de-allocate power from various stations.

11. The Petitioners have made prayers that the allocation made to the Petitioners from IGSTPS (Aravali), Bawana Pragati III, Gas Turbine Stations (IGTS) and Rajghat Power Station be cancelled/revoked without any liability or fixed charges or damages on the Petitioners.
12. The contention of the Petitioners is that the Section 86(1)(b) Electricity Act, 2003 employs the work "regulate electricity purchase", which has wider scope and implications and as doing everything necessary for organized implementation and development including reopening of PPA if the circumstances so warrant. It is further argued that the APTEL's judgement in appeal no. 194 of 2006 in the matter of Punjab State Power Corporation vs. Everest Power Ltd. confirms the position that as part of Regulation u/S 86(1)(b) Electricity Act, 2003, the State Commission can adjudicate on any dispute arising between the licensees and the generating companies with regard to the implementation of the PPA.
13. The aforesaid contentions of the Petitioners have been examined and it is observed that section 86 of the Electricity Act, 2003 does not empower the Commission to allow dissolution of PPA or to reallocate the power. Section 86(1)(b) of the Electricity Act, 2003 provides the following: -

*"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"*
14. From the wordings of the provisions of Section 86(1)(b) Electricity Act, 2003, it is clear that the regulatory functions of the Commission, inter alia, includes approval of agreement (PPA), determination of price (tariff) and adjudication of PPA related disputes. In adjudication of dispute with regard to the implementation of the PPA, the powers of the Commission are wide enough but not to the extent of allowing dissolution of a PPA. The Commission has to regulate electricity procurement process including the price at which electricity is to be purchased through agreement for purchase of power for distribution and supply within the State. The duty of the Commission is to see that the agreement for procurement of power should be made in a proper regulated manner at a reasonably arrived price. However, once an agreement is entered into between the two parties with the approval of the Commission, it becomes a bilateral agreement and thereafter it is governed by the terms and conditions

of the agreement and not by the directives of the Commission. Once the terms and conditions of the PPA and the tariff is determined by the Commission, the Commission becomes "functus officio" and cannot interfere with the terms and conditions of the agreement unless agreed by both the parties or there is any observation from a judicial body.

15. Moreover, the present Petition cannot be construed as a petition on a dispute related to terms and conditions of PPA. The basis of the instant Petitions is that the power from the aforesaid PPAs is uneconomical and unviable. It may be, but it is not a dispute to be adjudicated by the Commission so as to allow dissolution of long term PPAs. There is nothing unforeseen in the PPAs, which may require reconsideration. The plea of the Petitioners that they are in surplus situation of power cannot be termed as a justifiable reason for dissolution of long term PPAs.
16. Further, out of the aforesaid four power stations, the issue of Rajghat Power Station does not exist anymore as the Rajghat Power Station has been permanently shut down and no liability on fixed charges or damages are being made applicable on the Petitioners as on date.
17. Whereas, the IGSTPS, (Aravali Power Station) belongs to NTPC i.e. it is a central sector power station, which is regulated under the jurisdiction of Central Electricity Regulatory Commission (CERC). In a case filed before CERC by TPDDL (Petition No.182/MP/2015) on the issue of re-allocation of power from NTPC Power Stations, the CERC has observed that re-allocation of power from such power station can be made by Ministry of Power, Govt. of India only and therefore, the Petitioners may approach the Ministry of Power in this regard.
18. The Petitioners themselves have provided the details of surrender of power accepted by the Central Government as well as temporary allocation by the Central Government to other States. Therefore, In the backdrop of the observation of CERC or even otherwise, it is beyond the jurisdiction and competence of the Commission to issue advice to the Central Government for re-allocation of power from the IGSTPS (Aravali Power Station) of NTPC.
19. Similarly regarding power from IGTPS and Bawana-Pragati III Gas Station, it is made clear that these stations belong to the Delhi and entire power from IGTPS and 80% power from Pragati III Station has been allocated to the DISCOMs of Delhi. Keeping in view the various factors, the allocation of power from these stations has been made judiciously amongst the Discoms of Delhi. Moreover, regarding gas supply to the units of Pragati III, Hon'ble Supreme Court has directed the Ministry of Petroleum & Natural Gases to ensure gas supply at least for one unit of it. As has been observed in respect of Aravali Power Station, the Petitioners may approach Government of Delhi for re-allocation of power to

any procurer in case they do not wish to take power at any time during the operation of the long term PPAs.

20. In view of the forgoing discussions, it is beyond the jurisdiction of the Commission to de-allocate the power as prayed by the Petitioner or to issue direction for dissolution of PPAs, therefore, prayers of the Petitioner cannot be granted; however, in order to have minimum impact on the tariff, the Petitioners shall endeavor to offtake minimum need based power from these stations. The second prayer to instruct DTL and SLDC about transmission constraints etc., does not survive being incumbent upon the relief of de-allocation/dissolution of PPAs.
21. The Petitions are disposed of with the aforesaid observations.

Sd/-
(A.K. Ambasht)
Member

Sd/-
(A.K. Singhal)
Member

Sd/-
(Justice S S Chauhan)
Chairperson