



DELHI ELECTRICITY REGULATORY COMMISSION
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi- 110017.

F.11(1383)/DERC/2016-17/5253

Petition No. 24/2016

In the matter of : Seeking directions regarding the bills/invoices raised with respect to the expired Power Purchase Agreement with IPGCL

BSES Yamuna Power Ltd.

...Petitioner

Vs.

Indrapastha Power Generation Co. Ltd. & Anr.

...Respondent

And

Petition No. 28/2016

In the matter of : Seeking directions regarding the bills/invoices raised with respect to the expired Power Purchase Agreement with IPGCL

BSES Rajdhani Power Limited

...Petitioner

Vs.

Indrapastha Power Generation Co. Ltd. & Anr.

...Respondent

Coram: Hon'ble Mr. Justice S S Chauhan, Chairperson

ORDER

(Date of Order: 10.12.2019)

1. The petitioners BYPL and BRPL have filed the instant petitions against the Respondents IPGCL and SLDC with respect to bills/invoices raised against the expired Power Purchase Agreement (PPA) with IPGCL-Rajghat Plant.
2. The following prayers have been made in both the petitions:
 - a) Direct RPH to withdraw the energy bills raised upon the petitioner w.e.f. August 2015 for BYPL and June 2015 for BRPL;
 - b) Restrain RPH from raising any energy bills as the petitioner is not purchasing nor scheduling any power from RPH and RPH is not entitled to recover any cost from the petitioner; and
 - c) Pass appropriate orders to direct RPH and SLDC not to schedule and despatch power.
3. The petitioner has made following submissions:
 - a) that on 28.06.2006 under Section 108 of the Electricity Act, 2003 Delhi Government issued Policy directions to the Commission for making power arrangements in Delhi beyond 01.04.2007. Consequently, by the order dated 31.03.2007 the Commission re-assigned all the existing PPAs from DTL to the

distribution licensees operating in NCT of Delhi including the petitioner herein. In view of the same, from 01.04.2007 onwards, the responsibility for arranging power for their respective areas of distribution was vested in the respective distribution licensees including the petitioner. Accordingly, on 16.07.2012, the Petitioners executed Power Purchase Agreements (PPAs) with IPGCL for purchase of power from Rajghat Power House (RPH) of the IPGCL on mutually agreed terms and conditions contained in the PPAs. According to the clause 13.1 of the PPA, the validity of the agreement was upto the completion of 25 years from the date of commercial operation of last Unit/GT/Module of the station unless it was specifically extended on mutually agreed terms.

- b) The Power Purchase Agreements (PPAs) executed with the Respondent IPGCL for purchase of power from Rajghat Power House (RPH) of the IPGCL have expired on May, 2015 and July, 2015 for BRPL and BYPL, respectively. The said PPAs were not extended and the Petitioners duly communicated that there is no intention of extending the said PPAs. The Petitioners also requested not to schedule and despatch any power from RPH to the Petitioner. However, despite the Petitioner's letters clarifying the factual position supported with provisions of PPAs and laws of the land, IPGCL still continued to schedule and despatch power from RPH to BYPL and therefore continued to raise energy bills for the month of June, July, August, September, October, November, December of 2015 and January and February of 2016. Further, the Petitioner has also contended that to continue to schedule and despatch power from RPH despite expiry of the PPAs dated 16.07.2012 it was unlawful for the SLDC to schedule and despatch power to the petitioner from RPH.
 - c) The Commission vide Tariff order dated 29.09.2015 has disallowed fixed charges for RPH of the IPGCL, however, the Respondent still continues to schedule power from RPH to the Petitioners and to raise energy bills.
4. Per contra the Respondent IPGCL made the following submissions:
- a) The actual Date of commercial operation (COD) of the Plant is not certain and in the original PPA signed between the parties the expiry date of the PPA was in 2017 whereas in the supplementary PPA signed between the parties the expiry of the PPA was in 2015.
 - b) The Petitioner has sought to project as if the present matter only involves the interpretation of Article 13 of the Supplementary PPA and needs to be adjudicated as a Section 86(1)(f) dispute under the Electricity Act, 2003. However, this is not the case.
 - c) The Petitioner is selectively relying on certain communications of SLDC/DTL to contend that there is no requirement to operate the RPH to provide grid

security and stability. However, SLDC, DTL has at several points of time taken the position that the Islanding Scheme implemented for NCT of Delhi requires substantial embedded generation including the generation from RPH. This has also been concurred with by the Central Electricity Authority (CEA). Also, the SLDC has been scheduling the power RPH on a regular basis.

- d) In the Meeting held on 05.06.2015, the State Government had directed as under: -

"2. Non-scheduling of power of Rajghat Power House

.....

The total share of NDMC and MES from 285 MW BTPS which has been reallocated to UP was about 70MW, so as to meet the power requirement and better flexibility and since it is a generation at the load centre which may be handy in case of any trouble or bottleneck in the grid, the same quantity of power is allocated to NDMC and MES from RPH and the balance power of RPH is reallocated to other three DISCOMs in the same ratio as allocated earlier. Based upon the new allocation of Power to different DISCOMs shall be as under:-

- I) NDMC – 37.41%*
- II) MES - 14.96%*
- III) BRPL – 20.67%*
- IV) BYPL – 11.75%*
- V) TPDDL – 14.37%*
- VI) IP Station – 0.84%*

The above allocation of power from RPH shall continue till atleast 6 months after the stabilization of the 400 KV grid substation under construction at RPH by Central Sector under ISTS Scheme. DISCOMs & IPGCL are accordingly requested to take necessary actions for renewal of PPAs."

- e) The petitioner's contention that Article 13.1 of the PPA refers to station wise expiry of 25 years from the commercial date is not correct. Till the time there is a clear direction from the Government of NCT of Delhi, the power allocation cannot be stopped or done away with.
- f) Further the power of scheduled by SLDC/availability certified by SLDC during the period beyond alleged expiry of PPA cannot be unilaterally decided by the petitioner as illegal. The RPH power station of the Respondent is situated as an embedded power station in the National Capital grid. The power station is must to operate for supply of power in the walled city of National Capital. It is also one of the important elements of islanding schemes of Delhi which has been finalized by DTL in line with the recommendations of CEA to avoid recurrence of the impact of the grid collapse incidents on 30th and 31st July, 2012 leading to complete darkness to National Capital. It is not merely an interpretation of one terms of the PPA as being contended by the Petitioner. The contentions and averments to the contrary are wrong and are denied.

5. The Respondent No. 2 SLDC has made the following submissions:
- a) The only allegation against the answering respondent is that its act of continuing to schedule and dispatch power from Rajghat Power House (RPH) to the petitioner despite expiry of the PPAs dated 16.07.2012 between the Petitioners and Respondent No. 1 is contrary to the provisions of Section 32 of the Electricity Act, 2003.
 - b) That the functions of the SLDC is not subject to the PPA entered into between the generating companies and the distribution licensees. The function of SLDC is envisaged under Section 31 of the Act, limited to only scheduling and dispatching of power from the generating stations to the distribution companies provided the generating stations make an advance declaration for the next day.
 - c) That it is not the duty of the respondent to check whether there exists a valid PPA or not under which scheduling is being done. The respondent cannot become an adjudicator of this fact and is only under an obligation to schedule power if the State Generating Stations make an advance declaration of ex-power plant MW and MWh capabilities foreseen for the next day i.e. 0000 hrs to 2400 hrs.
 - d) That despite the fact that all the stakeholders had taken a decision to request the State Government to close down RPH in the meeting held in SLDC on 27.03.2015 and despite the fact that such decision of the stakeholders had been communicated to the State Government by the respondent vide its letter dated 04.06.2015,
 - e) That, accordingly, the scheduling and dispatching of power done by the respondent was in terms of the decision taken in the meeting held on 05.06.2015 and the case of the Petitioner that after the expiry of the PPA and scheduling and dispatching of power from RPH was contrary to Section 32 of the Electricity Act, 2003 is not sustainable.
 - f) That once the Generating station shows declared capacity, the respondent is under a binding obligation to schedule power and dispatch the same to the distribution licensees for making it available within the state. In the present case, the Respondent No.1 showed declared capacity of RPH which was accepted by the SLDC till the direction of DPCC dated 31.12.2015 and a subsequent direction dated 22.03.2016, which stated that Rajghat Power House shall remain closed as it is not able to meet the standards of particulate matter 50 mg/Nm³.

6. **COMMISSION'S ANALYSIS:**

- a) The rival contentions of the parties have been considered. It is a fact that the PPAs with BRPL and BYPL in respect of Rajghat Power House (RPH) had

expired in May, 2015 and July, 2015 but the Respondent continued to bill the Petitioners in respect of RPH. Subsequently, owing to the direction of DPCC, the scheduling of power from RPH was stopped by SLDC on 31.12.2015 and no more scheduling of power from RPH was being done. Therefore, the prayer of the Petitioners to ask SLDC not to schedule power from RPH has since been rendered infructuous and no further directions are needed.

- b) The only issue remains to be adjudicated is about energy bills of RPH till 31.12.2015. In normal circumstances the power stations are not entitled to raise bills after expiry of the PPA. The contention of the petitioners is that even after expiry of PPAs, the RPH continues to bill the fixed charges. The Respondent IPGCL has submitted that the plant was kept in operational mode and availability was indicated to SLDC.
- c) It is noted that a meeting was held on 05.06.2015 at the State Government level attended by Petitioner also, wherein, it was decided that allocation of power from RPH would continue for at least six months after the stabilization of 400 KV grid sub-station, under construction by Central Sector, under Inter-State Transmission System Scheme. The RPH was closed as per the directions of DPCC and no further scheduling of the power was done thereafter. A plant/station available for scheduling of power is entitled for the fixed charge even if no energy is drawn from the station. On the issue of scheduling of power from RPH despite PPA being expired, SLDC has clarified that once the generating station declares capacity, SLDC is bound to schedule power and dispatch the same to the distribution licensee for making it available within the state from that station, and it was not its duty to verify whether there exist a valid PPA under which scheduling is being done.
- d) Keeping in view the fact that in wake of the stabilization of the 400 KV grid sub-station it was decided by the Government of Delhi to continue the allocation of power from RPH till at least 6 months after the stabilization of the 400 KV grid sub-station under construction at RPH by Central Sector under ISTS Scheme and allocation of power was made for the petitioner as well, the Petitioners are liable to pay the bills in respect of RPH till 31.12.2015 i.e. the date the RPH was finally closed as per the direction of DPCC.

7. With the above directions the Petitions are disposed of.

Sd/-
(Justice S S Chauhan)
Chairperson