

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

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

Review Petition No. 44/2017

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

BSES Rajdhani Power Limited

Through its: CEO

BSES Bhawan, Nehru Place,
New Delhi-110019

....Review Petitioner

And

National Thermal Power Corporation Ltd.

Through its: Executive Director (Commercial)

NTPC Bhawan, Scope Complex,
Institutional Area, Lodhi Road,
New Delhi 110003

.....Respondent

Review Petition No. 45/2017

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

BSES Yamuna Power Ltd.

Through its: CEO

Shakti Kiran Building, Karkardooma
New Delhi 110 032

....Review Petitioner

And

National Thermal Power Corporation Ltd.

Through its: Executive Director (Commercial)

NTPC Bhawan, Scope Complex,
Institutional Area, Lodhi Road,
New Delhi 110003

.....Respondent

Coram: Sh. B. P. Singh, Member

ORDER

(Date of Order: 22.03.2018)

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

SUBMISSIONS BY THE REVIEW PETITIONER

2. The petitioners argued that vide order dated 29.09.2015, the Commission held that the power purchase cost from Anta, Auraiya and Dadri gas based stations should not be considered in the total power purchase cost after the expiry date of Power Purchase Agreement (PPA) due to their high cost of generation [para 3.131 for BRPL] and [para 3.127-3.131 and 3.247-3.248 for BYPL].
3. The said disallowance was on the ground that PPA for the aforesaid gas stations which expired on 31.03.2012 were renewed without getting approval from the Commission. The Commission allowed the cost of procurement for the said stations at the monthly average rate of exchange as per CERC market monitoring report for FY 2012-13. However, the procurement from the said gas stations stood disallowed for all future times.
4. The grounds for Review :
 - i. Anta, Auraiya and Dadri gas based stations are part of the consolidated Power Purchase Agreement (PPA) dated 05.06.2008 entered into with NTPC Ltd. The APTEL in its judgment dated 24.01.2013 in Appeal No. 82 of 2012 and 90 of 2012 inter-alia recognized that the review petitioner has "signed a single consolidated PPA for all the generating stations dated 05.06.2008" owned by NTPC Ltd. and upheld the provision of consolidated letter of credit.
 - ii. NTPC Ltd. in its letter dated 28.09.2015, 21.01.2016 and 21.06.2017 has stated that the Review petitioner would be bound to be liable to pay the applicable tariff for Anta, Auraiya and Dadri gas stations and in the event of non-payment of dues NTPC Ltd. would be constrained to take action in terms of the CERC (Regulation of Power Supply), Regulations, 2010.
 - iii. Hence, the selective disallowance of procurement of power from Anta, Auraiya and Dadri gas stations, which are part of single consolidated PPA, is an error apparent on the face of record in the Commission's Order dated 29.09.2015. The fact of Anta, Auraiya and Dadri gas stations being part of one single consolidated PPA could not be placed before the Commission prior to passage of the Order dated 29.09.2015. Hence, the review is necessitated on the

ground of discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge or could not be produced by the Review petitioner at the time when the order dated 29.09.2015 was passed.

iv. The order dated 29.09.2015 suffers from an error apparent on the face of the record as the Commission could not consider the fact that the Central Electricity Regulatory Commission (CERC) has modified the 'useful life' of the gas based generating stations to 25 years which consequently enlarged the duration of the aforesaid consolidated PPA dated 05.06.2008. Reference in this regard may be had to the following:

(1) The CERC Regulations inter-alia provide as under:

"3.....

(42) 'useful life' in relation to a unit of a generating station and transmission system from the COD shall mean the following, namely:-

- | | | |
|------------|---|------------------|
| <i>(a)</i> | <i>Coal/Lignite based thermal generating station</i> | <i>25 years</i> |
| <i>(b)</i> | <i>Gas/Liquid fuel based thermal generating station</i> | <i>25 years</i> |
| <i>(c)</i> | <i>AC and DC sub-station</i> | <i>25 years</i> |
| <i>(d)</i> | <i>Hydro generating station</i> | <i>35 years</i> |
| <i>(e)</i> | <i>Transmission line</i> | <i>35 years"</i> |

(2) CERC Order dated 20.04.2012 in the matter of Approval of tariff of Anta Gas Power Station (419.33 MW) for the period from 01.04.2009 to 31.03.2014 Inter-alia provide as follows:

"Extension in life of the generating station after R&M

54. The Commission vide order dated 21.01.2011 in Petition no. 127/2009 while approving the additional expenditure for R&M of GT-1 and GT-3 during 2008-09 had extended the life of the generating station for 13 years from 01.04.2008 provided the expenditure on Renovation of left over GT-2 is allowed during 2009-10. The observation of the Commission was as follows:

"The Commission in its 2009 Tariff Regulations for the period 2009-14, has increased the life of gas turbines from 15 years to 25 years. Accordingly, the life of the generating station would expire on 31.07.2015 i.e. 25 years from date of commercial operation i.e. 01.08.1990. However, based on the above, the life of the generating station would end on 31.03.2021 i.e. 13 years from 01.04.2008, provided the expenditure on renovation of left over GT-2 is allowed during 2009-10."

55. Accordingly, the life of the generating station from 01.04.2009 is considered as 12 years for the purpose of tariff. "

(3) CERC Order dated 23.05.2012 in the matter of Approval of tariff of Auraiya Gas Power Station (663.36 MW) for the period from 01.04.2009 to 31.03.2014 Inter-alia provide as follows:

"Balance useful life of the generating station as on 01.04.2009 after R&M for the purpose of Depreciation

48. The details of the date of Commercial operation of the different units of the generating station, the period of operation up to 01.04.2009 and 01.04.2014 (completion of major R&M works) and the extended life after R&M of GT and their weighted average period of operation on above dates and weighted average life are as under:

Descrip tion	Capac ity MW	COD	Elapsed life upto 31.03.2009	Extension of life of 15 years for GTs	01.04.2009	01.04.2014
GT-I	111.19	01.10.1990	18.5	23.5		
GT-II	111.19	01.10.1990	18.5	23.5		
GT-III	111.19	01.11.1990	18.42	23.42		
GT-IV	111.19	01.11.1990	18.42	23.42		
ST-I	109.3	01.11.1990	18.42	23.42		
ST-II	109.3	01.12.1990	18.33	23.33		
Total	663.36		18.43	23.43	15.59	10.59

49. The weighted average of the elapsed life (period of operation) of the generating station, as on 01.04.2009 works out to 18.43 years. The major expenditure on R&M of the GTs are allowed for enhancing the life of the generating station by 100,000 Equivalent Operating Hours (EOH) which translates into 15 years, considering the low PLF of the generating station. The major part of R&M works would be completed by 31.03.2014. The weighted average of the period of the generating station as on 31.03.2014 works out to 23.43 years. Considering the life extension of GTs by 15 years from 01.04.2014, the weighted average life of the generating station after R&M of GTs works out to 34.02 years in relation to the date of commercial operation of the respective units of the generating station, as stated above. Accordingly, the balance useful life of the generating station works out to 15.59 years as on 01.04.2009 and 10.59 years as on 01.04.2014."

(4) CERC Order dated 14.06.2012 in the matter of Approval of tariff of Dadri Gas Power Station (829.78 MW) for the period from 01.04.2009 to 31.03.2014 Inter-alia provide as follows:

"Balance useful life of the generating station as on 01.04.2009 after R&M of Gas Turbines

43. The details of the date of Commercial operation of the different units of the generating station, the period of operation up to 01.04.2009 and 01.04.2014 (completion of major R&M works) and the extended life after R&M of GTs and their weighted average period of operation on above dates and weighted average life are as under:

Desc ription	Capac ity MW	COD	Elapsed life upto 31.03.2009	Elapsed life upto 31.03.2014	Extension of life of 15 years for GTs	01.04.2009	01.04.2014
GT-I	130.19	01.05.1992	16.92	21.92	36.92		
GT-II	130.19	01.06.1992	16.83	21.83	36.83		
GT-III	130.19	01.08.1992	16.67	21.67	36.67		
GT-IV	130.19	01.12.1992	16.33	21.33	36.33		
ST-I	154.51	01.08.1996	12.67	17.67	25		
ST-II	154.51	01.04.1997	12	17	25		
Total	829.78		15.07	20.07	32.33	17.27	12.27

44. The weighted average of the elapsed life (period of operation) of the generating station, as on 01.04.2009 works out to 15.07 years. The major expenditure on R&M of the GTs are allowed for enhancing the life of the generating station by 1,00,000 Equivalent Operating Hours (EOH) which translates into 15 years, considering the low PLF of the generating station. The major part of R&M works i.e. complete R&M work of all GTs would be completed by 31.03.2014. The weighted average of the period of operation of the generating station as on 01.04.2014 works out to 20.07 years. Considering the life extension of GTs by 15 years from 01.04.2014, the weighted average life of the generating station after R&M of GTs works out to 32.33 years in relation to the date of commercial operation of the respective units of the generating station, as stated above. Accordingly, the balance useful life of the generating station works out to 17.27."

- v. Hence, in view of the above, Clause 13.1 of the consolidated PPA dated 05.06.2008 stood overridden by the CERC, 2009 Regulations read with the aforesaid Orders dated 20.04.2012, 23.05.2012 and 14.06.2012 in terms of whereof the useful life of the Anta, Auraiya and Dadri gas station stood extended to 25 years and consequently the duration of the consolidated PPA also stood

extended up till 2021 for Anta, 2024 for Auraiya and 2026 for Dadri gas stations.

- vi. The fact of the CERC Tariff Regulations 2009 as well as the aforesaid orders dated 20.04.2012, 23.05.2012 and 14.06.2012 extending the useful life and consequently the duration of the PPA in so far as procurement from Anta, Auraiya and Dadri gas stations are concerned, could not be placed before the Commission prior to passage of the Order dated 29.09.2015. Hence, the review is necessitated on the ground of discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge or could not be produced by the applicant at the time when the order dated 29.09.2015 was passed.
- vii. The disallowance in the Order dated 29.09.2015 has led NTPC to threaten to withdraw power allocation from its other power stations which are part and parcel of the same one single consolidated PPA.
- viii. The Review petitioners have challenged in appeals before the Appellate Tribunal for Electricity the Commission's Order dated 29.09.2015 (in Appeal no. 290 of 2015 and 297 of 2015) wherein procurement from the said stations were disallowed for the period FY 2012-13 and FY 2013-14. However, the Review Petitioner has not filed any appeal with respect to the directions contained in the said order dated 29.09.2015 in so far as the disallowance from procurement for future years for the said gas stations is concerned.
- ix. The Commission may kindly consider the harsh situation that the Consumers (public at large) in general would face in the event NTPC were to discontinue power supply from various power stations in the event the applicant herein were not to off take power from Anta, Auraiya and Dadri gas stations in terms of the disallowance from procurement from the said stations as directed in the said orders dated 29.09.2015.
- x. In view of the above, the said order dated 29.09.2015 may kindly be reviewed by the Commission as sufficient reasons exist. This Commission is empowered under Section 94(1)(f) of the Electricity Act, 2003 to review its decisions, order or directions. The Hon'ble Commission will be guided by Order 47, Rule 1 of the Code of Civil

Procedure 1908 where under for “any other sufficient reason” an Order may be reviewed.

5. The Review Petitioners vide their letter 17.08.2017 have submitted further justification to the Commission for renewal of PPA with the respondent for Anta, Auraiya and Dadri Gas Generating Stations and consider them as peaking plants to meet the spike & drop in demand considering their less ramp-up & ramp-down time as follows:

“Delhi manages its base load from the coal based thermal and nuclear stations out of the available Generation capacities. The peaking loads are managed from the Gas based stations which are operated primarily to meet the peak demands. As Hon'ble Commission is kindly aware that the ramp up and ramp down time for the coal or nuclear stations are more than couple of hours, the gas based stations fulfill the requirement to meet the spikes or drop in the demands though the gas based stations are marginally at a higher cost than coal based stations but it is essential to have proportionate gas based stations in the power portfolio to meet the load curve of the utility.

The ratio of energy availed from gas based plants vis a vis total quantum is only 10%. However, the variation in the maximum and minimum monthly demand as seen from the table below during a month is in the range of 25% to 58%. Therefore, due to the peculiar nature of load curve in Delhi, it is essential to have proportionate higher gas based stations in the power portfolio to meet the load curve of the utility.

In addition to the above fact, it is also noticed that the cost of Gas Power stations of NTPC are decreasing, the total per unit cost is below Rs.3.8/unit, the same is evident from the Table below:

Plants	Allocation	FC-Normative (Rs/kWh)	ECR (Rs/kWh)				Total (Rs/kWh)			
	MW		Apr-17	May-17	Jun-17	Jul-17	Apr-17	May-17	Jun-17	Jul-17
Anta- G	11	0.73	2.62	2.62	2.23	2.23	3.35	3.35	2.96	2.96
Auriya- G	18	0.63	3.13	3.01	2.69	2.85	3.78	3.66	3.34	3.50
Dadri -G	23	0.58	2.75	2.62	2.69	2.84	3.33	3.20	3.27	3.42

SUBMISSIONS BY THE RESPONDENT

6. The matter came up for hearing on 24.10.2017 and after hearing the arguments advanced by the Ld. Counsel for the Review petitioners the Commission was of the view that certain issues raised by the Review petitioners may require a view from NTPC therefore NTPC should be made

a party to these Review petitions. Hence, Respondent NTPC has been impleaded as a party in the present proceedings and it has placed the following submissions that:

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

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

- v. NTPC in its letter dated 28.09.2015 has made it clear to the Review Petitioners that the supplementary PPA was in respect of number of Generating Stations of NTPC and the Review Petitioners cannot selectively deal with any one or more stations.

7. On the direction of the Commission *vide* Order dated 05.02.2018 the Respondent NTPC filed an additional affidavit stating that:

- i. It will not be appropriate to proceed on the basis that the generation and sale of electricity from different generating stations of NTPC can be considered as or split into independent agreements between the parties. In this regard, it is also relevant that the agreement does not provide for partial termination of the PPA with regard to the generating station of the generating units. The PPA dated 05.06.2008 needs to be enforced in a combined manner in regard to all the generating stations/units mentioned therein.
- ii. The long term PPAs are entered into for the entire useful life of the generating stations. The term 'Useful Life' is defined in the CERC Regulation. The useful life is statutorily dealt under the Regulations notified by the Central Commission from time to time. The Statutory scope of the useful life was 25 years in the case of Coal based Thermal Power Stations and 15 years in the case of Gas based Power Stations. However, by a statutory modification made by the CERC in the Regulations effective 01.04.2009 (CERC Tariff Regulations, 2009) the useful life of the Gas based Power Stations was increased from 15 years to 25 years. The duration of any long term agreement which NTPC has entered into with the Procurers of electricity are based on the allocation of power by the Central Government. The Central Government had allocated the power on a long term basis for the entire duration of the useful life, namely, 25 years/15 years as mentioned above and, therefore, the period of 25 years and 15 years mentioned in Article 13 of the PPA dated 05.06.2008 dealing with the duration of the agreement is based on the useful life of the generating station as determined statutorily

earlier under the Notification of the Central Government and subsequently after the constitution of the Central Commission, by the Central Commission under the relevant Tariff Regulations.

iii. The PPAs entered into between NTPC Limited and the Procurers are subject to the Regulations notified by the Central Commission from time to time. The PPA dated 05.06.2008 entered into between NTPC Limited and BSES Rajdhani {Power Limited itself recognise the application of the Regulations of the Central Commission including that the words and expressions used in the PPA should have the same meaning as provided in the Regulations notified by the Central Commission. Further, the Clause 5.1.1 of the PPA states that the tariff for the electricity supplied from NTPC stations would be as determined by the Central Commission. The tariff is being determined by the Central Commission on the basis that the PPA will be valid for the useful life. In this regard, the depreciation admissible as a tariff element is spread over the useful life of the power generating station, namely, 25 years. In view of the above, the duration specified in Article 13 of the PPA has to be considered as consistent with the useful life of the concerned generating station. As mentioned in the reply filed by the respondent in the case of Gas based Power Stations, the useful life has been statutorily modified by Regulation to 25 years and bot the Generator and the Procurer are bound by the same. Further, the Procurers had the advantage of the extension of the useful life from 15 years to 25 years including in regard to the depreciation being computed based on 25 years of the Gas Power Stations instead of 15 years. It will, therefore, not be appropriate to consider the duration of the PPA specified in Article 13 independent of the definition of the term 'Useful Life' in the Regulation notified by the Central Commission. This is particularly as the Annexure III to the PPA dated 05.06.2008 recognised the PPA Validity in terms of the useful life of the Station, as under:

ANNEXURE III
VALIDITY OF NTPC POWER AGREEMENTS

S.No.	Name of the Station	Capacity (MW)	COD of station i.e. Last Unit	PPA Validity Useful life of the Station
(I)	(II)	(III)	(VI)	(VII)
I	Existing Power Supply to Delhi			
i.	Singrauli STPS	2000	01.05.1988	30.04.2013

ii.	Rihand State-I	1000	01.01.1991	31.12.2015
lii.	Rihand Stage II	1000	01.04.2006	31.03.2031
iv.	Anta GPS	419.33	01.08.1990	31.03.2012
v.	Auraiya GPS-I	663.36	01.11.1990	31.03.2012
vi.	Dadri GPS	829.78	01.04.1997	31.03.2012
Vii	Dadri NCTPS	840	01.12.1995	31.11.2020
Viii	Unchahar-I TPS	420	13.02.1992	12.02.2017
Ix	Unchahar-II TPS	420	01.03.2000	28.02.2025
X	Unchahar-III TPS	210	01.01.2007	31.12.2031

- iv. The duration of the agreement specified in Article 13 read with Annexure III of the PPA and the Tariff Regulations, broadly stated, are as under:
- 25 years is consistent with the useful life of the generating station (both Coal based Thermal and Gas based Power Stations. Neither party can terminate the agreement at an early date. There is no provision in the PPA for prior termination of the PPA at the option of either of the parties.
 - After the expiry of the useful life of the power generating station, it is open to the parties to not extend the agreement with respect to any one or more of the generating station as ended by mutual agreement;
 - The parties may also mutually agree to extend the agreement with respect to the said station for a further period;
 - If there is no mutual agreement on the period for extension with respect to any particular station and if the Procurer continues to get power after the expiry of the useful life of the generating station, there cannot, therefore, be any termination during the extended period unless the parties mutually agree. This is clearly on account of the fact that at the end of the useful life, the Generator undertakes renovation and modernisation of the generating station with the due approval of the Central Commission and after assessment of the cost benefit, continues to operate the generating station beyond 25 years. Requirement of expenditure is assessed and investments are made by the generating station. Accordingly, it should not be permissible for either of the parties to seek termination of the PPA. It is not open to the Procurer to take the stand that it will not continue to purchase electricity and it is also not open to NTPC to offer such electricity to third party;
 - The useful life of the generating station through renovation and modernisation gets extended to such period as may be determined

under the Renovation and Modernisation Scheme and the same shall be subject to the regulatory control of the Central Commission.

- f. Neither NTPC nor beneficiaries can take a position that it will not be bound by the PPA after the expiry of the useful life more particularly, selectively depending upon the cost of generation related to any particular generating station.
- v. The Circumstances mentioned above, the provisions of the PPA dated 05.06.2008 and similar PPAs entered into by NTPC with the Procurers have to be harmoniously construed. It is not open to the Procurers to unilaterally seek termination of the PPA with regard to any one or more generating stations. If such a course is adopted, there will be no incentive for any Generator to invest.

ANALYSIS AND ORDER

- 8. The submissions as it came on record in the Review Petition and the written submissions made by NTPC have been considered. The Review Petitioners and NTPC have argued that the extension of PPA signed in 2008 was a technical formality and it was extended *ipsofacto* due to change in Regulations notified by CERC.
- 9. It is observed from the PPA dated 05.06.2008 that its expiry was not linked to useful life of the plant but was valid till March 2012. The relevant article of the PPA is as follows:

“ 13.0 DURATION OF AGREEMENT

13.1 Validity of this Agreement for power supply shall be as follows (A) Stations: (i) Singruali Super Thermal Power Station Stage-I (2000 MW), (ii) Rihand Super Thermal Power Station Stage-I (1000 MW), (iii) Anta Gas Power Station (419.33 MW), (iv) Auraiya Gas Power Station (663.36 MW), (v) Dadri Gas Power Station (829.78 MW), (vi) Feroz Gandhi Unchahar Thermal Power Station Stage-I (420 MW), (vii) National Capital Thermal Power Station (840 MW)"	Validity: Upto 31 st March, 2012 or 25 years for coal based stations and 15 years for gas based stations, from the COD of the last unit of the respective stage/station, whichever is later.
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- 10. The Review Petitioners have signed supplementary PPA with the Respondent (NTPC) on 29/03/2012 to extend the validity period of PPAs; which was going to expire on 31.03.2012. The relevant article of the PPA is as follows:

“And whereas, for gas based stations viz. Anta, Auraiya & Dadri Gas, the validity period is expiring on 31.03.2012.

And whereas the parties have discussed and agreed on the validity period for sale and purchase of power of the allocated capacity from all generating stations be extended."

11. In view of the above extracts of the PPAs, it is evident that the validity of PPA has not been extended automatically due to modification in useful life of the gas based plants by CERC.

12. The contention of the Review Petitioners that prior approval is not required for renewal of PPA is not acceptable because the Review Petitioners were supposed to place the Supplementary PPA dated 29.03.2012 before the Commission for its prior approval in terms of *Clause 5.2(a) of the Terms and Conditions of the Licence* granted by the Commission as follows:

" The Licensee shall not, without the general or special approval of the Commission:

a. Purchase or otherwise acquire electricity for distribution and retail supply except in accordance with this License and on the tariffs and terms and conditions as may be approved by the Commission."

13. Hon'ble APTEL in Appeal No. 186 & 196 of 2015 has also held that renewing the PPAs without prior approval of the Commission is a violation of the Licence conditions. Hon'ble APTEL has held the following:

" 7.6 ... Thus, we feel that the Appellants have violated the license conditions for renewing the PPAs without the prior approval of the Delhi Commission.

7.7 ... The contention of the Appellants that the approval of the Commission is not required, is not correct and the licensees are bound to comply with the license conditions. Further, there is no provision of a deemed approval in the license conditions.

...

7.9 Accordingly, we do not find any infirmity in disallowing the actual cost of power procurement from Anta, Auraiya and Dadri Gas Generating Stations."

14. However, it is evident from the demand-supply of the Review Petitioners as projected by them in its Tariff Petitions for ARR of FY 2017-18 & FY 2018-19 and also the demand-supply projection for FY 2018-19 by Delhi SLDC, that the Review Petitioners are in considerable deficit of power to meet the summer peak load and to meet the demand in their respective areas.

15. The Commission has also considered and find credence in the submissions of the Review Petitioners & the Respondent (NTPC) regarding

bundled/consolidated PPA for all the generating stations of the Respondent that the agreement does not provide for partial termination of the PPA with regard to the generating station of the generating units and the PPA dated 05.06.2008 needs to be enforced in a combined manner in regard to all the generating stations/units mentioned therein.

16. It is also pertinent to state that the Commission in another case had accorded in-principle approval based on cost-benefit analysis for renewal of Bulk Power Supply Agreement (BPSA) of the Review Petitioners with NHPC, wherein the Review Petitioners had requested for prior approval of such BPSA, on the ground of bundled BPSA as NHPC was reluctant to sign individual station-wise BPSA with the Review Petitioners.
17. In view of the aforesaid discussion and keeping in view that the Review Petitioners have (i) preferred an appeal before Hon'ble APTEL on the issue disallowance of power purchase cost from Anta, Auraiya and Dadri Gas Generating Stations from FY 2012-13 to FY 2015-16 (ii) filed this review Petition in July, 2017, the Review Petitioners are allowed the power purchase cost and procurement from Anta, Auraiya and Dadri Gas based stations for future period i.e. from FY 2017-18 to meet its demand following the principle of Merit Order.
18. Notwithstanding anything contained in para 17 above, the Commission reserves the right to initiate action against the Review Petitioners for violation of Licence condition in this matter under the provisions of Electricity Act, 2003.
19. The Review Petitions are disposed of.
20. Ordered Accordingly.

Sd/-
(B. P. Singh)
Member