

**In the Appellate Tribunal for Electricity at New Delhi
(Appellate Jurisdiction)**

**Appeal No. 186 of 2015 & IA No. 318 of 2015 and Appeal No. 196 of
2015 & IA No. 335 of 2015**

Dated: 1st June, 2016

**Present: Hon'ble Justice Mr. Surendra Kumar, Judicial Member
Hon'ble Mr.T Munikrishnaiah, Technical Member**

Appeal No. 186 of 2015 & IA No. 318 of 2015

IN THE MATTER OF:

Tata Power Delhi Distribution Limited
NDPL House, Hudson Lines
Kingsway Camp
Delhi – 110 009

.....Appellant/Petitioner

VERSUS

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, C Block, Shivalik
Malviya Nagar, New Delhi – 110 017

.....Respondent (s)

Counsel for the Appellant(s) : Mr. Alok Shankar
Mr. Anjani Kumar Singh
Mr. Gopal Jain, Sr. Adv.
Mr. Anurag Bansal
Mr. Nayantara Pandey
Mr. Vaibhav Chaudhary

Counsel for the Respondent(s): Mr. Pradeep Misra
Mr. Suraj Singh for DERC
Mr. Prashant Bezboruah

Appeal No. 196 of 2015 & IA No. 335 of 2015

IN THE MATTER OF:

1. BSES Rajdhani Power Ltd.
BSES Bhawan, Nehru Place
New Delhi – 110 019
2. BSES Yamuna Power Ltd.
Shakti Kiran Building
Karkardooma, Delhi – 110 032

.....Appellant/Petitioner

VERSUS

Delhi Electricity Regulatory Commission
Viniyamak Bhawan, C Block, Shivalik
Malviya Nagar, New Delhi – 110 017

.....Respondent (s)

Counsel for the Appellant(s) : Mr. Buddy A Ranganadhan
Mr. Hasan Murtaza
Ms. Malavika Prasad

Counsel for the Respondent(s) : Mr. Pradeep Misra
Mr. Suraj Singh for DERC
Mr. Prashant Bezboruah for DERC

JUDGMENT

Per Hon'ble T. Munikrishnaiah, Technical Member

Appeal No. 186 of 2015

1. The present Appeal being Appeal No. 186 of 2015 has been filed
under Section 111 of the Electricity Act, 2003, by the Appellant,

Tata Power Delhi Distribution Ltd. (**TPDDL**) against the Impugned Order dated 12.06.2015 issued by Delhi Electricity Regulatory Commission (DERC). The contention of the Appellant is that in compliance with this Tribunal Order dated 25.05.2015, DERC issued the PPAC for Tata Power Delhi Distribution Ltd. for the quarters 4 and 5, 2015 and other Distribution Licensees vide Order dated 12.06.2015 (“**Impugned Order**”) without any notice to the Appellant, disallowed cost of procurement of power from Anta, Auraiya and Dadri Gas Power generating stations of NTPC. The claim of the TPDDL is that the Delhi Commission disallowed actual Power Procurement Cost from these Generating Stations that the Distribution Licensee renewed the PPAC on 22.03.2012 by violating its License Conditions and without seeking and obtaining the prior consent of the Commission.

Further, the DERC also deducted 2% normative rebate from the Gross Power Purchase and considered the net Power Purchase Cost while computing PPAC. These issues lead to filing this Appeal before this Tribunal. The sole Respondent is Delhi Electricity Regulatory Commission (DERC).

Appeal No. 196 of 2015

The present Appeal being Appeal No. 196 of 2015 has been filed under Section 111 of the Electricity Act, 2003, by the Appellant, BSES Rajdhani Power Ltd. and BSES Yamuna Power Ltd. against the Order dated 12.06.2015 passed by the Delhi Electricity Regulatory Commission in the matter of Power Purchase Cost Adjustment Charges. The DERC disallowed the power procurement cost from Anta, Auraiya and Dadri Gas Power Station of NTPC under the plea that the Appellants renewed the PPAC without prior approval of the DERC as per License Rules. The PPA of these Plants was expired on 31.03.2012.

These two appeals filed by the Appellants against the same Impugned Orders dated 12.06.2015 passed by DERC in the matter of Power Purchase Cost Adjustment Charges, since involve the similar issues are being taken up together for decision.

The Distribution Companies, TPDDL, BSES Rajdhani Power Limited and BSES Yamuna Power Limited came into existence as Power distribution licensee after implementation of reform package initiated by the Government of National Capital Territory of Delhi

(GoNCTD) in July 2002. The above three distribution companies distribute electricity in the respective areas of Delhi as per the license issued by DERC. The sole Respondent is Delhi Electricity Regulatory Commission (DERC).

2. **FACTS OF THE CASE**

- 2.1 In the light of the policy directions issued by the GoNCTD, the responsibility for power procurement/bulk supply for the first 5 years i.e. 2002-07 was vested with the Delhi Transco Limited (“**DTL**”). The Commission, vide its Order dated 31.03.2007, directed the Appellants and other Distribution Companies in the GoNCTD to procure and arrange power. The Respondent Commission also undertook the reassignment of Power Purchase Agreements entered into by DTL (or its predecessors) among which were the Anta Gas Station (419.33 MW), Auraiya Gas Station (666.36 MW) and Dadri Gas Station (829.78 MW) which were procured through the Bulk Purchase Supply Agreement (“**BPSA**”) entered into by the Delhi Electric Supply Undertaking in 1994.
- 2.2 As per the above reassignment order, the Appellant inherited various PPAs, including the BPSA referred above, which were re-

assigned to the distribution companies on similar terms and conditions as entered into by DTL or its predecessors in compliance with the Commission's order as well as for commercial certainty, the Appellant entered into a comprehensive PPA with the National Thermal Power Corporation (NTPC) stations on 08.05.2008, for various thermal power stations including Anta, Auraiya and Dadri Gas Power generating stations.

- 2.3 The validity of the PPA for Anta, Auraiya and Dadri Gas Power generating stations was expired on 31.03.2012. During the true-up exercise for Financial Year 2010-11 and ARR for various years i.e. FY 2012-13 and 2014-15, the Appellant, in its ARR Petition submitted to the Delhi Commission the details of proposed power procurement from the above plants whose validity was due to end on 31.03.2012.
- 2.4 The Delhi Commission while approving the Power Purchase Cost specifically and unconditionally approved the purchase of power from these stations as part of the Appellant's power purchase portfolio.
- 2.5 On 02.03.2012, the Appellant TPDDL received a written communication from NTPC indicating that the term of the PPA for

Anta, Auraiya and Dadri gas based stations was due to expire soon and NTPC proposed the signing of a supplementary PPA.

2.6 The Tata Power Distribution Company Ltd entered into a Supplementary PPA dated 22.03.2012 with NTPC and the Appellant of Appeal No. 186 of 2014 executed supplementary PPA on 29.03.2012 with the NTPC.

2.7 The Supplementary Agreement was also on same terms and conditions as the PPA originally entered into between the Appellants and NTPC.

2.8 In the year 2012, the Appellants submitted its tariff petition and petition for true up for the Financial Year 2013-14 as per Regulations. In the said Petition the Appellant TPDDL included the cost of power from Anta, Auraiya and Dadri Gas Power generating station. The Respondent, Commission approved the base power purchase cost of the Anta, Auraiya and Dadri Gas Power generating stations in the tariff order dated 23.07.2014 for the Financial Year 2014-15 and allowed the Appellant to claim the increase in power purchase cost of the aforesaid in accordance with the PPPAC formula for recovery from the consumers.

- 2.9 On 19.03.2015, the Respondent Commission directed the Appellants to provide an explanation regarding the renewal of PPA for Anta, Auraiya and Dadri Power Plants without approval of the Commission.
- 2.10 On 30.03.2015, the Respondent Commission has sought explanations from the Appellant with respect to the alleged violation of clause 5.2(a) of the License Condition as observed by the Commission through its communication dated 19.03.2015.
- 2.11 On 29.04.2015, the Appellants filed its response in Petition No. 67 and 68 of 2011 with respect to the various issues raised by the Respondent Commission through its communication dated 30.03.2015.
- 2.12 On 08.05.2015, TPDDL filed I.A. No. 195 of 2015 in O.P. No. 1 of 2015 seeking directions to DERC for issuance of PPAC.
- 2.13 On 25.05.2015, I.A. No. 195 of 2015 in O.P. No. 1 of 2015 disposed of by this Tribunal, directing DERC to issue PPAC within three weeks.
- 2.14 On 12.06.2015, DERC issued the Impugned Order suo moto amending its Tariff Order, thereby disallowing the power purchase

costs of Anta, Auriya and Dadri Gas generating stations from PPAC.

3. Aggrieved by this Impugned Order dated 12.06.2015, the Appellant filed these Appeals in this Tribunal and prayed to:

- a) Set aside the order dated 12.06.2015 passed by the Respondent Commission to the extent of disallowing the Power Purchase Cost from Anta, Auraiya and Dadri gas based plants';
- b) Hold that since DERC had approved the procurement of power from Anta, Auraiya and Dadri gas based generating station, and is now estopped from taking a contrary view;
- c) Hold that DERC has not applied the PPAC formula correctly and deduction of 2% rebate is arbitrary;
- d) Direct the Respondent Commission to immediately revise PPAC declared vide order 12.06.2015 and include the Power Purchase Cost of Anta, Auraiya and Dadri gas based power plants and 2% rebate in an urgent and time bound manner and thereby discharge its statutory functions and ensure compliance of the directions of this Tribunal in letter and spirit;
- e) Pass such other order as this Tribunal may deem necessary in the interest of justice and equity.

4. Heard the Arguments of Mr. Alok Shankar, Learned Counsel for the Appellant and Mr. Pradeep Misra, Learned Counsel for the Respondent in Appeal No. 186 of 2015 and Mr. Buddy A. Ranganadhan, Learned Counsel for the Appellants and Mr. Pradeep Misra Learned Counsel for the Respondent in Appeal No. 196 of

2015 and have gone through the Written Submission including the Impugned Order, the only following issue arises for our consideration:

Whether the Delhi Commission erred in computing the PPAC on 6% as against the 11% for quarter 3 and quarter 4 of 2015 claimed by the Appellants duly disallowing the actual procurement cost of power from Anta, Auraiya and Dadri Gas Power Generating Stations for the FY 2013-14, 2014-15 under the plea that the Appellants/Petitioners entered into Supplementary Agreement without prior approval of the Commission as per license condition and also computed the net Power Purchase Cost after deducting 2% rebate from the Gross Power Purchase Cost while computing the PPAC in the Impugned Order dated 12.06.2015?

5. The following are the submissions made by the Learned Counsel of the Appellants:

5.1 Lack of computation in the impugned order:

- (i) that the impugned order is a non speaking order in as much as it is completely silent how the PPAC formula has been worked out. The order does not even make clear the value attributed to each of the components of the PPAC formula.
- (ii) that in short the impugned order only includes the description of formula, alleged disallowances and the final PPAC amount.
- (iii) that on numerous occasions, this Tribunal has been pleased to hold that all the computations and the rationale of the order has to be included in the order itself. From a bare

reading of the order it is not possible to determine as to how the Commission has arrived at the figure of 6% to the PPAC.

- (iv) that as per the appellant, the PPAC should be in the range of 11% as would be apparent from the computation given herein under.

BRPL-9 months		PPAC Calculation
Sr No	Parameters	
1	A (in Kwh)	8,590
2	B (in Kwh)	985
3	C (in Kwh)	0.60
4	D (Rs. Cr.)	508
5	E (Rs. Cr.)	462
6	Z	7,291
7	Distribution Loss	12.06%
8	ABR	7.18
9	PPA (nth Qtr) % = $\frac{(A-B)*C+(D-E)}{(Z*(1-Distribution\ Loss\ in\ \%/100))*ABR}$	11%

5.2 Disallowance of power purchase cost and related generation (MU) for Anta, Auriya and Dadri Gas Power Plants.

- i) that the Respondent Commission by way of the impugned order dated 12.6.2015 provided for the PPAC for Q.2 - FY 2015, Q.3 - FY 2015 and Q.4 -FY 2015. The Respondent Commission seriously erred while disallowing the power purchase cost and related generation (MU) for computing PPAC on the ground that the power purchase agreement for Anta, Auriya and Dadri Gas Power Plants had expired on

31.3.2012 and no prior approval of the Commission was obtained for the renewal of the said power purchase agreement. The Respondent Commission while so disallowing the costs attendant to the aforesaid power plants, lost sight of the fact that it is the Respondent Commission which has in the Tariff Order dated 23.07.2014 had allowed the base power purchase cost of the aforesaid three power plants. In the said Tariff order dated 23.07.2014, the Respondent Commission inter alia directed that the Appellant may claim the increase in the power purchase costs of Anta, Auriya and Dadri Gas Power Plants in accordance with the formula approved by the Commission and accordingly recover from the consumers the increase in the power purchase cost after necessary approval of the Commission.

- ii) that having approved the base power purchase cost of the aforesaid power plants in the said Tariff Order dated 23.07.2014 for FY 2014-15, and having allowed the Appellant to claim the increase in the power purchase costs of Anta, Auriya and Dadri Gas Power Plants in accordance with the PPAC formula for recovery from the consumers, the Respondent Commission could not have in the impugned order

disallowed the power purchase cost and related units (MUs) on the ground that the Appellant was scheduling power from these Stations without prior approval of the Commission.

- iii) that the Respondent Commission lost sight of the fact that the purported ground of not having prior approval of the Commission for scheduling power from these Stations, in fact existed even on the date of the Tariff Order dated 23.07.2014 for FY 2014-15. However, despite no such prior approval purportedly being in existence, the Respondent Commission did allow the base power purchase cost of the aforesaid Power Plant in the said Tariff Order.
- iv) that the Respondent Commission could not by way of a subsequent order i.e., the impugned order take the ground of not obtaining prior approval on the renewal of the PPA dated 5.6.2008, for disallowing the power purchase costs of Anta, Auriya and Dadri Gas plants from the PPAC computation.
- v) that the Respondent Commission could not inter alia have modify the Tariff Order dated 23.07.2014 by passing the impugned order dated 12.6.2015 disallowing the power purchase cost and related units (MU) for computing the PPAC for the Appellant. The impugned disallowance is tantamount to

a suo motu review and modification of the aforesaid Tariff Order dated 23.07.2014, which is impermissible in law. The Respondent Commission could not in law have modified the Tariff Order dated 23.07.2014 by the Impugned Order as once the said Tariff Order dated 23.07.2014 was signed and issued, the Respondent Commission became functus officio and was not empowered to make any suo motu changes in the said Tariff Order dated 23.07.2014 by way of the Impugned Order.

vi) that the Respondent Commission has issued PPAC on quarterly basis vide its orders dated 31.01.2013, 03.05.2013, 31.01.2014, 02.05.2014 and 13.11.2014 but however while issuing the PPAC vide the aforesaid orders, the Respondent Commission did not disallow the power purchase costs and related generation in MU in regard to Anta, Auriya and Dadri Gas stations.

vii) that the Respondent Commission passed an Order dated 27.02.2014 in the matter of 'Review of Reassignment order dated 31.03.2007 passed by the Commission of Power Purchase Agreement to the Distribution Licensees in National Capital Territory of Delhi', and taking into account that the consumption has now changed due to change in consumer

mix, reassigned PPAs among Delhi Distribution Licensees (including the Appellant) as per current average energy drawn. The said Order dated 27.02.2014 states that “Keeping in mind the public interest the Commission has decided to reallocate the PPAs among BRPL, BYPL & TPDDL on the basis of average energy drawl for the period FY 2007-08 to 2011-12.....The Commission directs that the reassignment of PPAs shall be made effective from 1st April 2014. This order will remain in force till amended or modified by the Commission.”

viii) that the Respondent Commission, having by its Order dated 27.02.2014 re-assigned and reallocated the PPAs among APPELLANT, BYPL & TPDDL on the basis of average energy drawl for the period FY 2007-08 to 2011-12, made effective from 1st April 2014, which included the power drawn from Dadri, Auriya and Anta, could have not have disallowed the power purchase costs of Anta, Auriya and Dadri Gas Plants from the PPAC for the 2nd, 3rd and 4th Quarter of 2014-15.

ix) that the Respondent Commission in its Tariff Order dated 23.07.2014 for FY 2014-15 noted that the Commission in its Order No. DERC/FY 2013-14/4052 dated February 27, 2014 has reallocated the Power Purchase Agreements (PPAs) for

purchase of power from Central Generating Stations and other stations among the Distribution Licensees in the National Capital Territory of Delhi, and indicated the revised PPA assignment. The Commission noted that the Reassignment of PPA was effective from April 1, 2014 and the same has been considered by SLDC in projecting the availability of power to the Appellant from the various stations. The said order dated 23.07.2014 inter alia provides as follows:-

“4.62 The availability of power to the Petitioner from Central, State and Other Generating Stations as approved by the Commission is given in the Table as follows:

Table 4.16: Energy availability from Central, State and Other Generating Stations as approved for FY 2014-15

Sl. No.	Particulars	Station Capacity (MW)	Share Allocation to Delhi/ DISCOMs (%)	Share Allocation to Delhi/DISCOMs (MW)	Total Energy Available (MU)	Petitioner Share (MU)
A	NTPC					
1	ANTA GAS	419	10.50	44.00	190.09	83.49
2	AURAIYA GAS	663	10.86	72.00	140.23	61.59
4	DADRI GAS	830	10.96	90.97	295.91	129.96

In view of the above, the Respondent Commission made a grave mistake in the impugned order by disallowing the power purchase costs of Anta, Auriya and Dadri Gas Plants from the PPAC for the 2nd, 3rd and 4th quarter of FY 2014-15.

x) that while disallowing the power purchase cost from the computation of the PPAC on the ground that the supplementary PPA dated 29.3.2012 had not been pre-approved by the Respondent Commission, the Respondent Commission lost sight of the fact that in the various earlier Tariff Orders dated 13.07.2012, 31.07.2013, and 23.7.2014, the Respondent Commission had allowed the power purchase cost and the variation pertaining to the said Anta, Auriya and Dadri Gas Power Stations ostensibly on the basis that it was the order of the Respondent Commission dated 31.3.2007 in terms whereof the power allocation from the aforesaid power stations were made in favour of the Appellant. Hence, having approved the power purchase costs from the said power plants in the Tariff Orders for FY 12-13 to FY 14-15, the said Supplementary PPA was deemed to have been approved by the Respondent Commission.

xi) that the impugned order is bad in law as the Respondent Commission had not exercised the ground of not obtaining prior approval while approving the power purchase costs of the very same power plants of Anta, Auriya and Dadri in the Tariff Orders for FY 12-13 to 14-15. The Respondent Commission

could not have made a U-turn while passing the impugned PPAC order disallowing the power purchase cost and related generation (MU) from Anta, Auriya and Dadri power plants on the ground that there was no prior approval of the Commission regarding the renewal of the PPA which expired on 31.3.2012.

xii) that the impugned order is contrary to and inconsistent with the Tariff Order dated 23.07.2014 for FY 2014-15 as the base power purchase cost of Anta Gas, Auriya Gas, and Dadri Gas Plants had been approved under the said Tariff Order for computation of the power purchase cost adjustment charges on the base power purchase cost.

xiii) that the impugned order is contrary to and inconsistent with the power purchase adjustment formula provided in the Tariff Order dated 23.07.2014 for FY 2014-15 in terms whereof the quantum and the rate at which power was procured from the aforesaid 3 power plants had to be factored in the power purchase adjustment formula.

xiv) that the impugned order is tantamount to *suo motu* modification of the power purchase adjustment formula provided for in the said Tariff Order dated 23.07.2014 for FY 2014.15.

5.3 that if the Appellant is in default of complying with the License conditions then the Delhi Commission is well within its powers to take the default into account while granting the PPAC vide Order dated 12.06.2015. In fact, the Tariff Order has not been modified/reviewed at all. In addition, the Impugned Order has factored in the violation of the terms and conditions of the License. It is a separate Order and cannot be deemed to be a modification of the Tariff Order dated 23.07.2014. No mention has been made in the Impugned Order that the Tariff Order dated 23.07.2014 is modified.

5.4 that as per the Regulation 5.24 of the MYT Regulations, 2011, the Distribution Licensees are allowed to recover Net Power Purchase Cost considering maximum normative rebate i.e. 2%. Accordingly, the Power Purchase Cost (including Transmission Charges) claimed in PPAC was reduced by maximum normative rebate. Such practice is also adopted by the Delhi Commission in the True up process of Power Purchase Cost. Further, this rebate is considered both for Power Purchase Cost and Transmission Charges. Such approach has been adopted by the Delhi Commission for all Delhi DISCOMs which is based on the MTY Regulations, 2011.

5.5 that merely because the MYT Regulations have been challenged in the High Court, does not mean that the Appellant must be allowed to recover the power purchase cost without applying the normative rebate. Nothing has been put on record by the Appellant to show that the Hon'ble High Court of Delhi has passed any such direction or Order.

5.6 that further while approving PPAC to the Appellants, the Commission has considered the formula for PPAC as prescribed in Tariff Order dated 23.07.2014 and also that there should be no Tariff shock to the consumers while providing reasonable PPAC to the Appellants.

6. Per Contra, the following are the submissions made by the Counsel of the Respondents

6.1 that the main issue regarding these generating stations is in relation to the renewal of the PPA's without taking the approval of the Delhi Commission. There was a clear violation of the License conditions by the Appellant and therefore it had been asked to provide an explanation by the Delhi Commission vide its letter dated 08.04.2015. The main issue in the Appeal is not whether the power procured has been considered and factored into the earlier Tariff Orders and PPAC Orders. The main

question for the consideration of this Tribunal is whether or not the Appellant has violated the terms and conditions of its License by not seeking prior approval of the Delhi Commission while renewing the PPA's and purchasing power from the gas stations.

6.2 that the PPA's for the Anta, Auriya and Dadri Gas Power Plants were to expire on 31.03.2012 and were renewed by the Appellant on 22.03.2013 without obtaining the prior approval of the Delhi Commission.

6.3 that the terms and conditions of the License granted to the Appellant are clear and unambiguous. There is no provision in the License or the Act/ Regulations for "*deemed approval*" of renewal of PPA's and the Appellant's assumption about the same is without any cogent basis and lacks bonafides. The Appellant is trying to justify its non-compliance with the License conditions on flimsy grounds because it knows it is clearly in default of the License conditions.

6.4 that the power is procured at a tariff determined by the CERC, is not subject to rejection and therefore there can be no question of any imprudent cost being incurred by the Appellant. The Delhi Commission has to necessarily implement the law

and protect consumer interest as per its mandate under the Act and Regulations. Further, the cost from these plants has been disallowed due to non compliance with the License conditions by the Appellant.

6.5 that the Appellant's submission regarding deemed approval of the renewal of PPA is factually incorrect because whenever the analysis for projected demand and supply is considered, the supply from each station is considered up to the date of validity of the existing PPA. Therefore, before extending the existing PPA for further periods, cost benefit analysis for procurement should have been considered by the Appellant and as per the license conditions, prior approval for renewal of the PPA's from the Delhi Commission was required, which has not been done by the Appellant.

6.6 that assuming, without admitting the same, that the Delhi Commission had allowed the base power purchase cost in the earlier Tariff Orders and issued earlier PPAC Orders based on information available at that stage, this aspect has now been taken care of in the Impugned Order and also the latest Tariff Order dated 29.09.2015. It was mischief on the part of Appellant that it did not inform the Delhi Commission about the expiry/

renewal of the PPA. It is only during prudence check of power purchase for FY 2013-14 for BRPL and BYPL, that it came to the notice from the internal audit report of BRPL and BYPL that PPAs' of some power stations were renewed without approval of the Delhi Commission. On further enquiry the Delhi Commission took note of this issue and passed an order accordingly in the latest Tariff Order as well as in the Impugned Order.

6.7 that the Commission had sought clarifications from the Appellant vide its letter dated 08.04.2015 regarding renewal of PPA's for these stations. Obviously, the Delhi Commission felt that there was a violation of the License conditions and therefore it asked for these clarifications. If, as the Appellant states, there was an approval of the renewal of the PPA's then there was no need for the Delhi Commission to send the letter dated 08.04.2015. The submission of the Appellant that the MYT Order for FY 2012-13 approves the procurement of power after expiry of the PPA's is therefore incorrect.

6.8 that it is also relevant to mention here that the Appellant submitted its reply vide letter dated 17.04.2015 and stated that the renewal of the PPA was brought to the notice of the Delhi

Commission during the true up exercise and thereafter approved vide the Tariff Order passed by the Commission. However, it is pertinent to state that the true up exercise is carried out on the basis of the Tariff Petition filed by the Distribution Licensee. The Appellant has never mentioned in its tariff petition that these PPAs were about to expire. Therefore, the Appellant's submission is factually incorrect that the Commission was informed and renewal of PPA of these stations has already been approved. What has not been mentioned in the Tariff Petitions cannot be deemed to be approved just because the Tariff Order has been passed. This is more so when the License conditions specify the requirements clearly. Moreover, it also worth mentioning that the PPA had already expired on 30.03.2012 and the letter dated 24.12.12 was sent only after the Delhi Commission raised the issue.

- 6.9 that there can be no question of deemed approval of renewal of PPA's when the Tariff Petitions filed by the Appellant do not contain any statement or facts regarding the renewal of the PPA's. It would indeed be strange if the Delhi Commission could be deemed to approve something that is not even

mentioned in the Tariff Petition.

6.10 that without admitting the same, even if it is assumed that the power purchase from these plants was approved by the Delhi Commission erroneously, the Appellant was certainly in violation of the License conditions for renewing the PPA's without the prior approval of the Delhi Commission. There can be no justification whatsoever for not complying with the License conditions.

6.11 that the Appellant vide its letters dated 08.06.2015, 25.06.2015 and 01.07.2015(*Annexure R-2 Colly*) has submitted its proposal to surrender its allocation from Anta, Auriya and Dadri Gas Stations forever from their portfolio due to high cost of generation from these stations. The said letters were addressed to Go NCTD by the Appellant with a copy to the Commission.

6.12 that the purchase of power by the Appellant from the power plants of Anta, Auriya and Dadri at much higher rates was in complete violation of the License conditions and against consumer interest. This purchase of power was certainly not legitimate when the Appellant itself was willing to give up this power forever knowing fully well that it was much more

expensive than other sources. Despite knowing this fact, the Appellant went ahead and renewed the PPA's in complete violation of the License conditions.

6.13 that it is also relevant to bring to the notice of this Tribunal that the Tariff Order dated 23.07.2014 also clearly specifies that approval of the Commission would be required for allowing the Appellants to claim the increase in the power purchase costs.

6.14 that the Appellant will have to bear the cost of purchasing power illegally and not the consumers. There is therefore no question of accumulation of revenue gap and any carrying cost being imposed on the consumers since this revenue gap, if any, is the fault of the Appellant itself. If it were so bothered about the revenue gap and carrying cost, it would have sought the approval of the Delhi Commission before renewing the PPA's. The Appellant cannot seek to blame the Delhi Commission for its own non-compliance with the License conditions and then threaten the consumers with carrying cost and Regulatory Asset.

6.15 that in view of the above facts and circumstances, the Delhi Commission had decided that the power purchase cost from Anta, Auriya and Dadri Gas based station should not be

considered in the total power purchase cost after the expiry date of PPA's due to the violation of License conditions. This aspect has been considered and set out in the Impugned Order as well as in the latest Tariff Order dated 29.09.2015.

6.16 that the consumers cannot be forced to bear the burden on behalf of the entity when a certain provision for 2% normative rebate exists in the MYT Regulations. Further, the formula for PPAC has many heads and the Delhi Commission needs to consider all factors before determining PPAC. The interest of consumers as well as a reasonable return to the entity is to be ensured by the Delhi Commission.

7. Our Considerations and Conclusions on this Issue

We have cited above the facts of the case, the issues involved and contention of the rival parties in the upper part of the Judgment hence, we directly proceed to our discussions and conclusion.

7.1 The contention of the Appellants TPDDL, BRPL, BYPL is that while determining Power Purchase Adjustment Cost (PPAC) for 3rd and 4th quarters of 2015, the Commission disallowed the actual Power Procurement Cost of Anta, Auraiya and Dadri Gas Power stations under the plea that the Appellants without

prior approval of the Commission, entered into Supplementary Agreement towards extension of existing Power Purchase Agreement which was expired on 31.03.2012. The Supplementary Agreement was entered on 02.02.2012 with NTPC for a period up to the useful life of the Gas Turbine Stations, i.e. 25 years from the date of CoD of Anta, Auraiya and Dadri Gas Power stations.

Further, the Appellants contested that the Commission computed PPAC for the 3rd and 4th quarters of 2015 duly deducting normative rebate of 2% from actual Power Purchase Cost paid by the Appellants.

7.2 We have gone through the terms and conditions of the license granted by Delhi Commission to the Appellant dealing with the approval of the Delhi Commission for purchase of Power. The relevant Clause is quoted below:

“5.2 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; or*
- b) undertake any transaction to acquire, by purchase or takeover or otherwise, the utility of any other Supplier; or*
- c) merge its utility with the utility of any other Supplier; or*

*d) transfer – by sale, lease, exchange or otherwise – the undertaking or its utility, either in whole or any part thereof; or
e) enter into any agreement or arrangement with any other person to get any part of the Licensed Business undertaken, except the appointment of Franchisees;*

Provided that any such agreement or arrangement shall be subject to the terms and conditions of this License including such other terms and conditions that may be imposed by the Commission:

Further, provided that the Licensee shall continue to have the overall responsibility for the due performance, by such other person and a breach of any of the terms and conditions of this License by such other person shall be deemed to be a breach by the Licensee”.

According to above Clause of the license conditions, the distribution licensee should not acquire electricity for distribution and retail supply without prior approval of the Commission.

- 7.3 We have gone through Tariff Order on true-up for FY 2012-13, and ARR for the FY 2014-15 of the distribution companies issued by Delhi Commission. The Delhi Commission considered actual power procurement cost of Anta, Auraiya and Dadri Gas Power stations while trueing for the FY 2012-13 and also considered the power purchased from these gas generating stations while determining the ARR for FY 2014-15.
- 7.4 The PPAs for the Anta, Auraiya and Dadri Gas Power Plants expired on 31.03.2012 and the Appellants renewed by entering

into Supplementary Agreements with the NTPC without obtaining prior approval of the Delhi Commission.

We have gone through the submissions and noticed that on 14.12.2012, Delhi Commission had requested the Appellants for copies of PPA's signed by the Appellant. No mention has been made of the Supplementary PPA's signed by the Appellant and the Delhi Commission was not even aware that the PPA's had been renewed by a Supplementary PPA. Further, even in the Appellant's letter dated 24.12.2012, no mention had been made of the Supplementary PPA and only Long-term PPA had been mentioned.

The Commission came to know only during prudence check of power purchase for 2013-14 for BRPL and BYPL and that it came to notice from the Internal Audit Report of BRPL & BYPL that PPAs of some of the power stations were renewed without the approval of the Commission.

Further, the Delhi Commission vide its letter dated 08.04.2015 had sought clarifications from Appellant regarding renewal of PPAs from these stations. It is also relevant to mention here that the Appellant submitted its reply vide its letter dated 17.04.2015 and stated that the renewal of the PPA was brought

to the notice of the Delhi Commission during the true-up exercise.

- 7.5 We have gone through the DERC Order on true-up for FY 2013-14 and ARR for FY 2015-16. The Commission has taken serious view for violating the license conditions specified in Clause 5.2 (a) that the licensee shall not purchase or otherwise acquire electricity for distribution and retail supply without prior approval of the Commission.

The Commission in the directives of the Tariff Order for FY 2014-15 directed the Appellant/Petitioners to adhere to the directions of the Commission. Further, all cases of power purchases through related parties, needing prior approval of the Commission shall be subject to prudence check.

The relevant part of the Tariff Order disallowing power purchase cost from Anta, Auraiya and Dadri Gas Power stations is as under:

3.252 As discussed in earlier paragraphs, the Commission has decided that the Power Purchase Cost from Anta, Auriya and Dadri Gas based stations should not be considered into the total power purchase cost after the expiry date of its PPA due to their high cost of generation. Further, power from Singrauli has been considered even after the expiry of PPA and its renewal without intimation to the Commission, in the interest of consumers as the generation cost from this station is Rs. 1.79/kWh which is quite less than the average Power Purchase

Cost from the Petitioner's portfolio. The Petitioner has also not proposed for surrender of power from Singrauli.

3.253 As physically the power was received from Anta, Auriya and Dadri Gas Stations in FY 2013-14, the Commission has considered all power scheduled from these stations as it was procured by the Petitioner through short term sources. Therefore, the cost of procurement of this power shall be allowed limited to the monthly average rate of exchange of Northern Region (N2) as per CERC Monthly Market Monitoring Report for FY 2013-14. Accordingly, the difference between the actual rate of power procured and exchange rate of Northern Region (N2) amounting to Rs. 39.66 Crore from these stations has not been considered into the Power Purchase Cost of FY 2013-14. The calculation of the avoidable cost of power from these stations based on the above methodology is as follows:

Table 3.71: Amount Disallowed from Anta, Auriya and Dadri Gas Stations during FY 2013-14

MU Purchased													
Stations	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Total
Anta Gas	3.66	2.25	2.32	6.61	6.81	2.26	4.53	4.85	5.85	6.63	5.74	2.99	54.50
Auraiya Gas	2.94	1.62	2.35	6.02	5.24	3.15	3.45	2.93	2.43	4.15	3.95	1.96	40.19
Dadri Gas	5.02	2.67	4.98	9.84	7.14	8.93	10.60	7.13	6.33	7.79	9.87	6.09	86.39
Rate (Rs./KWh)													
Anta Gas	4.07	7.38	5.32	3.86	3.85	5.59	4.68	3.91	3.97	3.99	3.92	5.16	-
Auraiya Gas	5.71	10.73	6.86	4.44	3.13	5.79	5.74	5.84	6.77	5.95	5.37	7.95	
Dadri Gas	5.33	10.12	5.35	1.12	4.51	4.52	4.46	4.84	5.08	5.39	4.46	5.35	
N2 Exch. Rate	2.67	2.36	1.96	2.02	1.77	2.94	2.48	2.56	3.06	2.97	3.09	2.80	
Disallowed Cost (Rs. Crore)													
Anta Gas	0.51	1.13	0.78	1.22	1.41	0.60	1.00	0.66	0.53	0.68	0.47	0.71	9.7
Auraiya Gas	0.89	1.36	1.15	1.46	0.71	0.90	1.12	0.96	0.90	1.24	0.90	1.01	12.60
Dadri Gas	1.33	2.07	1.69	(0.88)	1.95	1.41	2.10	1.62	1.28	1.89	1.35	1.55	17.37
													39.66

Thus, an amount of 39.66 crore from these stations had not been considered into the power purchase cost of FY 2013-14 considering the power purchase rate equivalent.

7.6 As per Clause 5.4 of the Terms and Conditions of the Licence granted by the Commission to the Appellant/Petitioner, deals with optimisation of Power Purchase Cost which is as follows:

3.254 “The Licensee shall purchase the energy required by the Licensee for Distribution and Retail Supply in an economical manner and under a transparent power purchase or procurement process.....”

3.255 As per the above mentioned clause, the Petitioner is required to procure the power in an economical manner and the principle of Merit Order Dispatch is an integral part of this process. As per Merit Order Dispatch principle, the plants are stacked in least cost approach of their Variable Cost. The demand is then met through stations in ascending order of their Variable Cost subject to various Technical Constraints and the balance power from the left over stations after meeting the required demand, are not scheduled.

We have observed that the cost of power from Anta, Auraiya and Dadri Gas Power stations is more than the average cost of power procured. As said in the above Clauses to meet their requirement of power, they have to follow the merit order dispatch principle, i.e. considering lowest power purchase cost and next higher power purchase costs in ascending manner (lowest to highest) while adjusting the power requirement so that the power purchase can be made on economical basis and it will help the end consumers.

Further, the distribution companies are selling surplus power to third party sales or through exchanges at a lower cost than average power purchase cost when the distribution companies are selling the surplus power at cheaper rate, there is no point to procure high cost of power from Anta, Auraiya and Dadri Gas

Power stations by entering into Supplementary Agreement. They can restrict their energy purchases from the generating station as soon as the Power Purchase Agreements are expired. The Appellants without prior approval of the Commission and without proper economic calculations entered into Supplementary Agreements with Anta, Auraiya and Dadri Gas Power stations which lead to burden on the end consumers with tariff shock.

We feel that it is the responsibility of the Appellants to seek approval of the Delhi Commission. Further, the Licensee has to inform the Commission about the validity of the Power Purchase Agreements and the Appellants to show bonafides must itself approach the Commission when the PPAs have to be renewed.

The Appellant vide its letters dated 08.06.2015, 25.06.2015 and 01.07.2015 had submitted its proposal to surrender its allocation from Anta, Auriya and Dadri Gas Stations forever from their portfolio due to high cost of generation from these stations. The said letters were addressed to GoNCTD by the Appellant with a copy to the Commission.

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 Further, the Appellant has relied on Clause 5.1 of the license conditions which states as under:

“5.1 The Licensee shall be entitled to purchase, import or otherwise acquire electricity from such sources and persons with whom the Licensee had agreements or arrangements of power purchase or procurement of energy as on the date of the coming into force of the Transfer Scheme, in accordance with the terms and conditions of such agreement and arrangement”.

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. It is also mentioned in the license conditions that the licensee shall purchase the energy required for distribution and retail supply in an economical manner and under a transparent power purchase or procurement process and in accordance with the Regulations framed by the Commission from time to time. As per the license conditions, prior approval from Delhi Commission was required which had not been done by the Appellants.

7.8 Further, this APTEL in its Judgment in Appeal No. 160 of 2012 dated 08.04.2015(R-Infra-D v/s MERC) has ruled regarding power purchase cost as follows:

“(vii) The Commission felt that it cannot carry out the micro analysis to quantify the exact impact of such imprudent power

purchase and avoidable power purchase cost and therefore disallowed 2/3rd of the cost of Rs. 6.35 crores on account of such avoidable power purchase done from costlier firm/Day Ahead contracts which amounts to Rs. 4.23 crores.

(viii) In truing up for FY 2010-11 also the State Commission has given similar findings and disallowed 2/3rd of the cost of Rs. 22.94 crores on account of avoidable power purchase done from costlier firm/DA contracts amounting to Rs. 15.29 crores.

We find that the State Commission has given detailed findings and computed avoidable power purchase after analysis of the data furnished by the Appellant.

... Accordingly we do not find any reason to interfere with the findings of the State Commission in this regard.”

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. However, the Commission considered the power drawn from these stations at short-term power purchase rate as the power was already consumed by the Appellant.

7.10 Let us examine the contention of the Appellants regarding consideration of maximum normative rebate of 2% for arriving net power purchase cost. The relevant Regulations dealing with rebate of MYT Regulations, 2011 are quoted below:

5.24 Distribution Licensee shall be allowed to recover the net cost of power it procures from sources approved by the Commission, viz. Intra-state and Inter-state Trading Licensees, Bilateral Purchases, Bulk Suppliers, State generators, Independent Power Producers, Central generating stations, non-conventional energy generators, generation

business of the Distribution Licensee and others, assuming maximum normative rebate available from each source for payment of bills through letter of credit on presentation of bills for supply to consumers of Retail Supply Business;

Provided that the Distribution Licensee shall propose the cost of power procurement taking into account the fuel adjustment formula specified for the generating stations and net revenues through bilateral exchanges and Unscheduled Interchange (UI) transactions;

Provided further that where the Licensee utilises a part of the power purchase approved or bulk supply allocated or contracted for the Retail Supply Business for its Trading Business, the Distribution Licensee shall provide an Allocation Statement clearly specifying the cost of power purchase that is attributable to such trading activity.

5.25 While approving the cost of power purchase, the Commission shall determine the quantum of power to be purchased from various sources in accordance with the principles of merit order schedule and despatch based on a ranking of all approved sources of supply in the order of their variable cost of power purchase. All power purchase costs shall be considered legitimate unless it is established that the merit order principle has been violated or power has been purchased at unreasonable rates or the power procurement guidelines as laid down by the Commission from time to time has not been followed.

5.26 To promote economical procurement of power as well as maximizing revenue from sale of surplus power, the Commission may evolve an appropriate mechanism to incentivise/penalise the Distribution Licensee.

According to above Regulations, the Distribution Licensee shall be allowed to recover the net cost of power it procures from sources approved by the Commission, viz. Intra-state and Inter-state

Trading Licensees, Bilateral Purchases, Bulk Suppliers, State generators, Independent Power Producers, Central generating stations, non-conventional energy generators. Accordingly, the Delhi Commission while determining the ARR, considered reduction of normative rebate of 2% from the gross power purchase made by the Distribution Licensees. Further, the rebate is given for the timely payment of the power purchase cost by the Distribution Licensees so that they can get a benefit of maximum normative rebate of 2% and thereby the consumers are benefited with lesser tariff.

7.11 The Delhi Commission during the validation session on 21.04.2014 directed the Appellant/Petitioner to compute power purchase rebate on normative basis and furnish the details. The Commission also directed the Appellant/Petitioner vide letter dated 05.06.2014 to submit the above particulars immediately but details not furnished. Then, the Delhi Commission has to deduct 2% rebate from Long-term Power Purchase and also on transmission charges as shown below:

Table 3.16: Computation of Normative Rebate (Rs. Crore)

Particulars	Cost	Rebate
Gross Power Purchase Cost from long-term sources	3609.56	72.48
Total Transmission charges (Inter State + Intra State)	448.9	8.98
	Total	81.46

The relevant part of the DERC Tariff Regulations 2011 pertains to rebate is quoted below:

“Rebate

7.26 For payment of bills of the generating company through a letter of credit on presentation, a rebate of 2% shall be allowed. If the payment is made by any other mode but within a period of one month of presentation of bills by the generating company, a rebate of 1% shall be allowed”

DERC Transmission Tariff Regulations, 2011:

“Rebate

5.28 For payment of bills of the Transmission Licensee through a letter of credit on presentation, a rebate of 2% shall be allowed. If the payment is made by any other mode but within a period of one month of presentation of bills by the Transmission Licensee, a rebate of 1% shall be allowed”.

Further, CERC in the Tariff Regulations 2009-14 clearly states as under:

“34. Rebate. (1) For payment of bills of the generating company and the transmission licensee through letter of credit on presentation, a rebate of 2% shall be allowed. (2) Where payments are made other than through letter of credit within a period of one month of presentation of bills by the generating company or the transmission licensee, a rebate of 1% shall be allowed”.

7.12 The Regulations are framed by considering the remarks/suggestions of the stakeholders and public at large. The Appellant at this point cannot raise the issue that the Delhi Commission illegally deducted 2% from the Gross Power Purchase Cost.

7.13 Further, The Distribution Companies are directed to furnish the relevant data with regard to payment of bills through a Letter of Credit on presentation but the Appellants/Petitioners failed to submit the relevant data. In view of the above, the Delhi Commission has taken normative rebate of 2% while arriving at net Power Purchase Cost.

After going through the above submissions, we do not find any infirmity in levying 2% normative rebate on the gross power purchase bills.

7.14 Let us examine the computation of Power Purchase Adjustment Cost by the Delhi Commission. As per this Tribunal's Judgment dated 25.05.2015, in Appeal No. 195 of 2015 as observed in OP No. 1 of 2015 determined the PPAC for 3rd and 4th quarter in the Impugned Order dated 12.06.2015. While determining the PPAC, the Commission followed the following procedure as under:

The Methodology/Approach for computation of PPAC for Q2FY 15, Q3FY15 and Q4FY15 is described as below:

a) Disallowance of generation (MUs) and all associated Cost

The PPAs of TPDDL, BRPL & BYPL with Anta, Auraiya and Dadri Gas Power Plants has already expired on 31st March, 2012. However, it is observed that these DISCOMs have not taken prior approval of the Commission regarding the renewal of PPA pursuant to the License Conditions before signing a supplementary PPA. At the same time, BRPL BYPL and TPDDL have also proposed the current of power from these

stations vide their letter dated. 28.05.2015, 28.05.2015 & 25.05.2015, respectively. Further, TPDDL vide its letter dated. 08.06.2015 has also submitted to GO NCTD regarding surrender of its entire share from Anta, Auraiya and Dadri Gas Power Plants forever with immediate effect. The renewal of PPAs without the permission of the Commission above is a violation of the License conditions and the Commission vide its letter dtd. 19.03.2015 has called for the explanation from BRPL and BYPL and a similar letter dated 08.04.2015 issued to TPDDL. Since the DISCOMS are scheduling power from these stations without prior approval of the Commission, therefore, the power purchase cost and related generation (MU) has not been considered for the purpose of computation of PPAC for these DISCOMs.

- b) *As per the Regulation 5.24 of the MYT Regulation, 2011, the Distribution Licensees are allowed Net Power Purchase Cost considering maximum normative rebate i.e., 2%. Accordingly, the Power Purchase Cost (including Transmission Charges) claimed in PPAC is reduced by 2% is considered only for Power Purchase Cost and Transmission Charges.*

“5.24 Distribution Licensee shall be allowed to recover the net cost of power it procures....assuming maximum normative rebate available from each source of payment of bills through letter or credit on presentation of bills for supply to consumers of Retail Supply Business”.

- c) LPSC, Pension trust and Fixed Cost of regulated Plants including Rithala have not been considered as per past practice.

7.15 The Commission while computing the PPAC did not consider the Power Purchase Cost from the NTPC Generating Stations, namely Anta, Auraiya and Dadri Gas Power Plants. As the PPA of these plants has already expired on 31.03.2012, the Distribution Licensees without prior approval of the Delhi Commission entered

into Supplementary Agreement with NTPC for purchase of power from these gas generating stations. In view of the non-fulfillment of the license conditions, the Delhi Commission rejected the Power Purchase Cost of these stations while computing the Power Purchase Adjustment Cost.

7.16 The Electricity Act 2003 clearly specifies one of the important functions of the State Commission i.e. to 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 in the state and also then discharging its functions, the State Commission shall be guided by the National Electricity Policy and the Tariff Policy.

Thus, while determining the Tariff, the Commission has to take care of the consumers' interest and also the welfare of the generators in judicial manner. It is also to quote that the Section 61(d) of Electricity Act, 2003 specifies safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner.

7.17 Let us examine the formula which deals with Power Purchase Cost Adjustment. While revising the PPAC formula, the Petitioner has requested the Commission to consider the following in the revised formula:

- a) The variance in power purchase is being allowed but the variance in sale rate (which is also a part of power purchase) should also be in-built in the PPA formula.
- b) Any under recovery/over recovery of PPA of previous quarters should be included in the existing PPA formula.
- c) Only due and paid /bills payable of power purchase should be considered.

The Commission has analysed the above submissions of the Petitioner and has considered:

1. Variation in Transmission Charges,
2. Arrears payable to GENCOs/TRANSCO's and
3. No Fixed Cost on account of Regulated power in the revised PPAC formula.

Accordingly, the PPAC formula has approved in the Tariff Order on 23.07.2014 which is reproduced below:

Power Purchase Adjustment (PPA) formula

$$\text{PPA for nth Qtr. (\%)} = \frac{(A-B)*C + (D-E)}{\{Z * (1 - \frac{\text{Distribution losses in \%}}{100})\} * \text{ABR } 100}$$

Where,

A = Total units procured in (n-1)th Qtr (in kWh) from power stations having long term PPAs – (To be taken from the bills of the GENCOs issued to distribution licensees)

B = Proportionate bulk sale of power from Power stations having long term PPAs in (n-1)th Qtr (in kWh)

$$\frac{\text{Total bulk sale in (n-1)th Qtr (in kWh)} * A}{\text{= Gross Power Purchase including short term power in (n-1)th Qtr (in kWh)}}$$

Total bulk sale and gross power purchase in (n-1)th Qtr to be taken from provisional accounts to be issued by SLDC by the 10th of each month.

C = Actual average Power Purchase Cost (PPC) from power stations having long term PPAs in (n-1)th Qtr (Rs./ kWh) – Projected average Power Purchase Cost (PPC) from power stations having long term PPAs (Rs./ kWh) (from tariff order)

D = Actual Transmission Charges paid in the (n-1)th Qtr

E = Base Cost of Transmission Charges for (n-1)th Qtr= (Approved Transmission Charges/4)

Z = $\frac{\{[\text{Actual Power purchased from Central Generating Stations having long term PPA in (n-1)th Qtr (in kWh)} * (1 - \text{INTERSTATE TRANSMISSION LICENSEE losses in \%})]$

+ $\frac{\text{Power from Delhi GENCOs including BTPS (in kWh)} * (1 - \text{Intra state losses in \%}) - B}{100}$ in kWh

ABR = Average Billing Rate for the year (to be taken from the Tariff Order)

Distribution Losses (in %) = Target Distribution Losses (from Tariff Order)

INTER STATE TRANSMISSION LICENSEE Losses in % =

$100 * \text{Approved INTER STATE TRANSMISSION LICENSEE losses in Tariff Order (kWh)}$

$\frac{\text{Approved long term power purchase from central generating stations having long term PPA in the Tariff Order (kWh)}}$

DTL Losses (in %) =

$100 * \text{Approved DTL Losses (from the Tariff Order)}$

Power available at Delhi periphery (from energy balance table tariff order)

7.18 The Commission did not consider the quantum of Power Purchase Cost of Anta, Auraiya and Dadri Gas Generating Stations while computing the PPAC as the power purchase from these stations, the Commission has considered under short-term power purchase. The PPAC formula deals with long-term power purchases only and hence the power procurement from Anta, Auraiya and Dadri Gas Generating Stations has been taken into consideration and only considered other long-term Power Purchase Costs. Further, the Commission also considered the net Power Purchase Cost by deducting normative rebate of 2% from the gross Power Purchase Cost. The relevant part of the Impugned Order dated 12.06.2015 is quoted below with respect to PPAC:

“j) The PPAC claim of any quarter submitted by the Petitioner shall be examined by the Commission. In view of public interest, the Commission will endeavour that while approving the PPAC, there is no Tariff shock and at the same time reasonable PPAC is provided to the DISCOMs. The Commission may take appropriate view to carry forward to spread some amount of PPAC in the subsequent quarters”.

Keeping in view the above, claims of the DISCOMs and the detailed analysis, Commission approves the following PPAC on a provisional basis for a period of 9 months (3 Quarters) i.e. 15.06.2015 onwards or till further Orders, whichever is earlier. This is because the Commission has taken into consideration all additional power purchase over a period of 3 Quarters i.e. Q2, FY 14-15, Q3, FY 14-15, Q4, FY 14-15.

<i>DISCOM</i>	<i>PPAC %AGE SPREAD OVER NEXT 3 QUARTERS</i>
<i>BRPL</i>	<i>6%</i>
<i>BYPL</i>	<i>6%</i>
<i>TPDDL</i>	<i>4%</i>
<i>NDMC</i>	<i>5%</i>

1. *Any spill over of the entitlement of PPAC during FY 2014-15 will be duly factored into the tariff calculation of FY 2015-16 so that the entire entitlement is recovered as far as possible during FY 2015-16 itself without waiting for the detailed True-up of the Power Purchase Cost of FY 2014-15 during FY 2016-17.*
2. *While finalizing the provisional PPAC charges, the Commission has taken into account the different entitlements of the respective DISCOMs based on preliminary prudence check.*
3. *The Commission specifically observes that the provisional PPAC charges constitute a reasonable extra charge on all consumers for the next nine months and promote the interest for maintaining constant & quality power supply by the DISCOMs.*
4. *The Commission reserves the right to subsume, these charges in the Tariff Order for FY 2015-16 if considered fit for both consumers and DISCOMs. This issue will be decided after holding public hearing and taking a final view on the Petitions filed by the DISCOMs.*
5. *The Commission is of the firm opinion that the DISCOMs should demonstrate their commitment by ensuring that the extra revenues recovered through PPAC are dedicated to clear Generators and Transmission utilities bills.*
6. *It is clarified that Power Purchase Cost Adjustment charge is a component of tariff and its application shall be in the same manner as in the case of a tariff revision, i.e. it shall be applicable only on the pro-rate consumption with effect from 15.06.2015. Further, it is clarified that the above PPAC is to be*

levied only on the basis of energy consumed from 15.06.2015 onwards for a period of 9 months or till further Orders, whichever is earlier for which consumption shall be determined on a pro-rata basis.

7. *It is also clarified that:*

- i) The percentage increase on account of PPAC will be applied as a surcharge on the total energy and fixed charges (excluding arrears, LPSC surcharge billed as separate entries.*
- ii) The bill format shall clearly identify the PPAC percentage and amount of PPAC surcharge billed as separate entries.*
- iii) The Distribution Licensee shall levy PPAC after considering rebate on energy charges, if any, available to the consumer.*
- iv) PPAC surcharge shall not be levied on the 8% surcharge; and*
- v) The 8% additional surcharge towards recovery of past accumulated deficit shall not be levied on PPAC”.*

7.19 Further, the claim of the Appellant is that the Appellants were not given any opportunity while revising the formula of PPAC. This is not correct, the Appellant/Petitioner had given certain submissions and the Commission after analyzing the submissions has considered transmission charges etc in the revised PPAC formula.

7.20 In the Appeal No. 196 of 2015, the Appellant has raised the issue regarding disallowance of payment into Pension Trust from PPAC. The Counsel of the Appellants did not raise this

issue while arguing the Appeal and hence this issue has not been considered in this Judgment.

7.21 In view of the above discussion and analysis, we do not find any infirmity in the Impugned Order and we hold and observe that the Delhi Commission is fully and legally justified in passing the Impugned Order dated 12.06.2015

7.22 Accordingly, the issue is decided against the Appellants and the Impugned Order of the Delhi Commission is liable to be upheld.

ORDER

The Appeals being Appeal Nos. 186 of 2015 and Appeal No. 196 of 2015 filed by the Appellants TPDDL, BRPL and BYPL are hereby dismissed and the Impugned Order dated 12.06.2015 of the State Commission is hereby upheld.

No order as to costs.

Pronounced in open Court on this **1st day of June, 2016.**

(T. Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

√ REPORTABLE/NON-REPORTABLE