



**Petition No. 1357/2018**

**BEFORE**

**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**

**LUCKNOW**

**Date of Order: 13.08.2021**

**PRESENT:**

Hon'ble Shri Raj Pratap Singh, Chairman  
Hon'ble Shri Kaushal Kishore Sharma, Member  
Hon'ble Shri Vinod Kumar Srivastava, Member (Law)

**IN THE MATTER OF :**

Petition under Section 86(1)(f) of the Electricity Act, 2003 and the relevant provisions of the Power Purchase Agreement dated 21.11.2008 executed between the Distribution Companies of the State of Uttar Pradesh and Prayagraj Power Generation Company Ltd. (PPGCL) for seeking the direction to M/s PPGCL to install two nos. 765/400KV, 1500 MVA Interconnecting Transformers (ICTs) at 3x660 MW Prayagraj Thermal Power Project (Bara) as a contractual obligation under the PPA.

1. Uttar Pradesh Power Corporation Limited,  
Shakti Bhawan, 14 Ashok Marg, Lucknow - 226001
2. Paschimanchal Vidyut Vitran Nigam Limited,  
Victoria Hydel Inspection House,  
Hydel Colony, Victoria Park, Meerut-250001
3. Purvanchal Vidyut Vitran Nigam Limited,  
Vidyut Nagar, Bhikharipur, P.O. DLW, Varanasi- 220101
4. Madhyanchal Vidyut Vitran Nigam Limited,  
4A, Gokhale Marg, Lucknow-226001
5. Dakshinanchal Vidyut Vitran Nigam Limited,  
Urja Bhawan, NH2 (Agra-Delhi Bypass Road),  
Sikandra, Agra - 282002
6. Kanpur Electricity Supply Company Limited,  
14/71, Civil Lines, KESA House, Kanpur - 208001

**...Petitioner(s)**



1. Prayagraj Power Generation Company Limited,  
Sector-128, Noida- 201304

...Respondens

The following were present:

1. Shri Venkatesh, Counsel PPGCL
2. Shri Suhael Buttan, Counsel, PPGCL
3. Shri Ajay Kapoor
4. Shri Pankaj Prakash, PPGCL
5. CE(Planning), UPPCL
6. CE (Commercial), UPPCL
7. MD (PuVVNL)
8. Mohd. Altaf Mansoor, Counsel UPPCL

### ORDER

(Date of Hearing 29.07.2021)

1. UP Power Corporation Ltd (UPPCL), the Petitioner has filed this petition under Section 86 (1) (f) of the Electricity Act 2003 for seeking direction to Prayagraj Power Generation Co. Ltd. to install two nos.765/400KV, 1500MVA ICTs at 3x660 MW Prayagraj Thermal Power Project as contractual obligation under the PPA.
2. The petitioner has stated that the Respondent was awarded this project under case-2 bidding guidelines of Government of India and the PPA was signed with the respondent on 21.11.2008 for supply of 1980MW power to the Petitioner. It has been stated in the petition that the project has been commissioned in the year 2017-18 but the respondents have not installed the ICTs of required capacity as envisaged in the Tata Consultancy Engineering Technical Report which was provided to all the bidders along with the RFP documents. The Petitioner has also stated that despite requests the Respondents are not installing the ICTs of required capacity.
3. The Petitioner has made following prayers in the Petition:
  - a. Declare that installation of 765/400 KV, 1500 MVA, ICTs at Bara TPS is contractually obligation of PPGCL under the PPA.
  - b. Direct PPGCL for immediate installation of 765/400 KV, 1500 MVA, ICT-II at Bara TPS under their contractual obligation under the PPA.

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### Brief facts

4. The Petitioner in its petition has mainly submitted as under:
- a) The Article 1 of the PPA dated 21.11.2008 signed between M/s PPGCL and Procurers in takes into account RFP dated 05.11.2008. The RFP Clause 1.1.4(7) specifically mentions a Detailed Technical Report (DTR) prepared by M/s Tata Consulting Engineers (TCE) as a project document was provided along with the RFP Documents. The same was issued along with the RFP to all the bidders and was also received by representative of M/s PPGCL on 03.10.2008.
  - b) That in the DTR as well as in the drawing attached to the said DTR, it was clearly mentioned that as per the transmission plan, M/s PPGCL was required to make available two 765/400kV, 2x1500 MVA ICT at Bara TPS. It was in the knowledge of M/s PPGCL that it was required to make available two 765/400kV 2x1500 MVA ICT at Bara TPS, instead M/s PPGCL has installed only One 765/400KV, 1500 MVA, ICT at Bara TPS.
  - c) That as per the approval of the 26<sup>th</sup> Meeting of Standing Committee on Transmission System Planning of Northern Region held on 13.10.2008, two 765/400kV, 2x1500 MVA ICTs are to be commissioned at Bara TPS to ensure N-1 compliant system. At present only 1, 1500 MVA, ICT is commissioned at Bara TPS which was installed by M/s PPGCL. Therefore, in case of tripping of 765kV Bara-Mainpuri Transmission Line, 1980 MW Power generated by Bara TPS cannot be evacuated through single 1500 MVA ICT. This will lead to tripping of single 765/400 kV, 1500 MV ICT on over current and hence resulting in tripping of all generating units of Bara TPS, resulting into grid insecurity.
  - d) UPPCL, vide letter no. 880/Plg/UMPP/PPGCL dated 07.05.2018 enclosed with UPPTCL letter no. 1292/Dir. (SLDC)/Reliability dated 02.05.2018 and letter no. 328-Dir(Com.&Plg)/UPPTCL/Evacuation/2018 dated 03.05.2018, has requested M/s PPGCL to commission one more 1500 MVA, ICT-II at Bara in compliance of the provisions of RFP and as per the approval of 26<sup>th</sup> Meeting of Standing Committee on Transmission System Planning of Northern Region TPS to ensure N-1 compliant system.
  - e) That in response to above, M/s PPGCL vide letter dated 14.06.2018 communicated its stand that it is not their contractual obligation to install ICT-II and other related facilities at Bara TPS. UPPCL vide its



letter no. 1155/Plg/UMPP/PPGCL dated 20.06.2018 denied the contention of M/s PPGCL by stating the facts that installation of Two no. of 765/400 kV, 1500MVA-ICTs was in the knowledge of M/s PPGCL.

- f) That because of the obdurate stand taken by the PPGCL, with regard to its contractual obligation under the PPA for installing and commissioning of the 765/400 kV, 1500 MVA ICT-II, a dispute has arisen between the Petitioners and the Respondent for adjudication by this commission under Article 17 "Governing Law and Dispute Resolution" of PPA.

### Record of Proceedings

5. The Commission held hearings in the matter on 6<sup>th</sup> February 2018, 2<sup>nd</sup> August 2018, 7<sup>th</sup> and 20<sup>th</sup> December 2018, 13<sup>th</sup> April 2021, 20<sup>th</sup> May 2021, and 8<sup>th</sup> July 2021. The hearing was concluded on 29<sup>th</sup> July 2021.
6. PPGCL vide its affidavit has submitted the following:
- The Project was originally envisaged consisting of generating plant and transmission lines for evacuation of power from the plant. The initial bid were based on the technical details provided in the TCE report, which the Commission included elements of the transmission system including the ICT. The scope of the project was subsequently altered under the directions of UPERC. Therefore, the bid documents were altered and the transmission system including the ICT was excluded from the scope of the project.
  - The ICT since the beginning were a part of the transmission system, which was earlier to be set up by the successful bidder along with the generation station, however the project was subsequently split up and transmission system was excluded from the scope of the project.
  - The Commission vide order in Petition No 557/2008 dt. 22.08.2008, issued direction w.r.t the bidding process namely that the technical and financial requirement for transmission and generation project shall be laid separately and all annexure, required for RFQ shall be grouped in two parts one each for generation and transmission and also indicated that UPPTCL should be the bid process coordinator for the transmission system.
  - The Commission vide order in Petition No 568/2008 had observed that CEA had conveyed its opinion to the Commission's queries vide letter dt. 23.10.2008 suggesting separation of generation and



transmission projects for bidding to be taken up separately for each project in light of the fact that the separate Govt. of India (GoI) guidelines exist under Section 63 of EA. The Commission expressed its concurrence with the opinion of the CEA and decided that the transmission project shall be separated from generation project in preparation of RFP.

- e. ICT -1 was provided by PPGCL being fully aware of the fact that it is not its contractual responsibility, as contractually Petitioner is to make the ICTs available for evacuation at 765/400kV level.
7. UPPCL, subsequently filed an application for impleadment of UPPTCL. The application was allowed by the Commission. UPPTCL has filed its submission stating that ICTs are required to be installed at the Generating Station of PPGCL.
8. On 04.12.2019, Renascent Power Ventures Private Ltd (RPV) acquired majority stake (75.01%) in PPGCL, now PPGCL is owned by RPV, which is a joint venture formed by Tata Power, ICICI Bank and reputed international investors.
9. SBI in 2019, in order to seek approval of the transfer of shares in favor of RPV, filed Petition No 1403 of 2019 before the Commission. The Commission vide order dt 29.03.2019 approved the changes in ownership control, conditional upon a reduction in adopted tariff. The same was challenged in APTEL in Appeal No 183 of 2019. APTEL, vide its Judgment dt 27.09.2019 upheld the approval granted by the Commission but without any reduction in adopted tariff. Pursuant to the aforesaid, the activities relating to transfer of shares and one-time settlement of lenders were concluded on 12.12.2019.
10. On 29.05.2020, PPGCL and Respondents entered into amicable settlement by way of a MOU where PPGCL has agreed to withdraw the instant Petition No 1277 of 2018 and all claims raised therein.
11. The Respondent, PPGCL vide its affidavit dated 17.05.2021, has submitted that on 29.05.2020, Petitioners and PPGCL entered an amicable settlement to the various ongoing disputes/claims including the present petition. The relevant extract of the said affidavit is extracted as under:

*"4. That on 29.05.2020, during the pendency of the instant Petition, Petitioners and PPGCL have entered into an amicable settlement*



and have mutually agreed to settle the various on-going disputes/claims between the parties including the present Petition.

5. In so far as the present petition is concerned, the Petitioners have filed an Additional Affidavit seeking withdrawal of the present petition.

6. That PPGCL has no objection to the withdrawal of the said Petition and therefore PPGCL is absolved of its obligations against the claims raised by the Petitioners in the present petition.

7. In light of the above said settlement and as per own free will, without coercion or undue influence, it is humbly submitted that this Hon'ble Commission may therefore kindly allow the Petitioners to withdraw the present Petition."

12. The Petitioners no. 1 to 6 vide affidavits dated 22.06.2021 has submitted that they have no objection to withdrawal of the petition. The relevant extract of the said affidavit is extracted as under:

"4. That on 29.05.2020, during the pendency of the instant Petition, the Petitioners and PPGCL have entered into an amicable settlement and have mutually agreed to settle the various on-going disputes/claims between the parties including the present Petition.

5. That the present affidavit is filed subject to PPGCL i.e., the respondent abiding by the settlement dated 29.05.2020 and withdrawing its Petition Nos. 1277/2018 and 1333/2018 pending before this Hon'ble Commission and foregoing its right to raise any claim against the Petitioners (i.e. UPPCL, 5 DISCOMS and KESCO) in terms of the settlement.

6. That in so far as the present Petition is concerned, the Petitioner shall not make/press any claims relating to the installation of the second ICT. Further, implementation of the second ICT and any cost thereto shall not be borne by PPGCL and the Petitioner shall not raise any claim in this regard. However, the petitioner shall retain its right to make appropriate claim under any other change in law event which is not part of the present petition.

7. That considering the above said settlement and as per own free will, without coercion or undue influence, it is humbly submitted that the Petitioner seeks to withdraw the present Petition in terms averments made in the preceding paras. The Hon'ble Commission may, therefore, kindly permit the Petitioner to withdraw the present Petition in terms of the present Affidavit."

13. During the hearing dated 29.07.2021, the Commission asked the parties, whether ICT-II has been installed or not, the counsel of the PPGCL, responded that ICT-II has not been installed as it is not required.

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### Commission's view

14. The Commission is of the considered opinion that rights to make claim and obligation to make payment arise out of contractual obligations and have legal sanctity. Therefore, though parties are free to arrive at whatsoever settlement but such settlement document viz; MOU in the instant case can't be taken cognizance by the Commission to allow withdrawal of the Petition.
15. The Petitioners, (PVVNL, DVNNL, PuVVNL, MVVNL, KESCO and UPPCL) vide affidavits on 22.06.2021 has submitted that *as per own free will, without coercion or undue influence, this Commission may kindly allow the petitioner to withdraw the present petition.* Respondent PPGCL vide affidavit dated 17.05.2021 have submitted that *as per own free will, without coercion or undue influence, this Commission may kindly allow the petitioner to withdraw the present petition.*
16. Therefore, on the basis of above-mentioned affidavits dated 17.05.2021 and 22.06.2021 filed by the Respondent and the Petitioners respectively, the Commission approves withdrawal of the instant Petition and thus claims as prayed under this Petition also stand withdrawn.

The Petition is disposed of accordingly.

(Vinod Kumar Srivastava)  
Member

(Kaushal Kishore Sharma)  
Member

(Raj Pratap Singh)  
Chairman

Place: Lucknow  
Dated: 13.08.2021