



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500004

**MONDAY, THE 30th DAY OF OCTOBER
TWO THOUSAND AND TWENTY-THREE**

Present

**Justice C.V. Nagarjuna Reddy, Chairman
Sri Thakur Rama Singh, Member
Sri P.V.R.Reddy, Member**

OP.Nos. 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 & 44 of 2023

OP.No. 34 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013
3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....Petitioner

And:

Neyveli Lignite Corporation, Head Office,
Neyveli House, No. 135, Periyar Evr High Road,
Chennai, Tamil Nadu - 600010

...Respondents

OP.No. 35 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013
3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....Petitioner

And:

National Thermal Power Corporation Limited,
NTPC Bhawan, Core-7,
Scope Complex 7, Institutional Area,
Lodhi Road, New Delhi - 110013

...Respondents

OP.No. 36 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013
3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....Petitioner

And:

Neyveli Lignite Corporation, Head Office,
Neyveli House, No. 135, Periyar Evr High Road,
Chennai, Tamil Nadu - 600010

...Respondents

OP.No. 37 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013
3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....Petitioner

And:

Neyveli Lignite Corporation, Head office,
Neyveli House, No. 135, Periyar Evr High Road,
Chennai, Tamil Nadu - 600010

...Respondents

OP.No. 38 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013

3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....Petitioner

And:

Nuclear Power Corporation of India Limited,
Vikram Sarabhai Bhavan, Anushaktinagar, Mumbai - 94

...Respondents

OP.No. 39 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013
3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....Petitioner

And:

National Thermal Power Corporation Limited,
NTPC Bhavan, Core -7, Scope Complex,
Institutional Area,
Lodhi Road, New Delhi - 1100013

...Respondents

OP.No. 40 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013
3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....Petitioner

And:

National Thermal Power Corporation Limited,
NTPC Bhavan, Core -7, Scope Complex,
Institutional Area, Lodhi Road, New Delhi - 1100013

...Respondents

OP.No. 41 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013
3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....Petitioner

And:

National Thermal Power Corporation Limited,
NTPC Bhavan, Core -7, Scope Complex,
Institutional Area,
Lodhi Road, New Delhi - 1100013

...Respondents

OP.No. 42 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013
3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....Petitioner

And:

National Thermal Power Corporation Limited,
NTPC Bhavan, Core -7, Scope Complex,
Institutional Area,
Lodhi Road, New Delhi - 1100013

...Respondents

OP.No. 43 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013

3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....**Petitioner**

And:

National Thermal Power Corporation Limited,
NTPC Bhavan, Core -7, Scope Complex,
Institutional Area, Lodhi Road, New Delhi - 1100013

...**Respondents**

OP.No. 44 of 2023

Between

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road,
Tirupati - 517503, Chittoor District, Andhra Pradesh
2. Eastern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013
3. Central Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
Beside Polytechnic College ITI Road Vijayawada - 520008

.....**Petitioner**

And:

National Thermal Power Corporation Limited,
NTPC Bhavan, Core -7, Scope Complex,
Institutional Area,
Lodhi Road, New Delhi - 1100013

...**Respondents**

APCPDCL, APEPDCL & APSPDCL (the DISCOMs. hereinafter referred to as “**the Petitioners**”) have filed OPs. 34, 35, 36, 37, 38, 39, 40, 41, 42, 43 & 44 of 2023 under Section 86 (1) (b) of the Electricity Act, 2003 read with Section 21 of the AP Electricity Reforms Act, 1998 arraying the Neyveli

Lignite Corporation (NLC), National Thermal Power Corporation (NTPC) and Nuclear Power Corporation Limited (NPCL), **as the respondents**, seeking grant of consent for the PPAs entered into with the NLC/NTPC/NPCL in the unified state of Andhra Pradesh.

All these Original Petitions have come up for final hearing before the Commission on 20-9-2023 in the presence of Sri P. Shiva Rao, Learned Standing Counsel for the petitioners. None represented the Respondents. After carefully considering the submissions of the learned counsel, and material available on record, the Commission passes the following:

COMMON ORDER

1. The Petitioners submitted the following:

During the course of time, the unified Andhra Pradesh has been bifurcated into two states i.e., Telangana & Andhra Pradesh with effect from 02-06-2014 as per AP Reorganization Act, 2014. In accordance with the sharing of PPA ratios prevailing at that point of time, power from the respondent's plants has been reallocated by MoP, GoI. The latest allocations, date of signing and other details in respect of the OPs.34, 35, 36, 37, 38, 39, 40, 41, 42, 43 & 44 of 2023 are as shown in the table below:

Sl. No.	Name of the Project	Installed Capacity in MW	AP Allocation in MW w.e.t installed capacity w.e.f 01-07-2021	Date of signing of PPAs	Date of COD of unit	PPA term In Years	Expiry Date	OP.No.
1	NLC-TPS II St-1	630	46.70	18-02-1999	09-04-1994	25	31-03-2021	34/2023
2	NLC - TPS II St-2	840	85.61					
3	NTPC Kudgi-St-1	2400	230.16	23.09.2010	15-09-2018	25	14-09-2043	35/2023
4	NTPL, Tuticorin (JV of NLC &	1000	121.33	30-11-2010	29-08-2015	25	26-08-2040	36/2023

	TNEB)							
5	NNTPS (2 * 500)	500	52.70	30-11-2010	10-02-2021	25	09-02-2046	37/20 23
6	MAPS	440	18.13	24-12-2011	20-01-2011	15	23-12-2036	38/20 23
7	Kaiga 1 & 2	440	55.21					
8	Kaiga 3 & 4	440	58.90					
9	NTPC - Ramagundam - STPS St-III	500	69.38	01-02-2001	25-03-2005	25	24-03-2030	39/20 23
10	NTPC - Ramagundam STPS St-I&II	2100	275.84	22-03-1985	01-04-1991	25	31-10-2017	40/20 23
11	NTPC Talcher - II	2000	176.03	06.04.1998	01-08-2005	25	31-07-2023	41/20 23
12	NTPC-Simhadri St-I	1000	461.10	04-02-1997	01-03-2003	25	28-02-2028	42/20 23
13	NTECL Vallur	1500	66.15	02-02-2008	26-02-2015	25	25-02-2040	43/20 23
14	NTPC-Simhadri St-II	1000	204.00	03.02.2007	30-09-2012	25	29-09-2037	44/20 23

That power sharing among the APDISCOMs is carried out in accordance with the monthly actual drawals by them as per the APERC Regulation 2 of 2023 (4th amendment to Determination of Tariff for Wheeling and Retail Sale of Electricity Regulation) issued on 29-03-2023.

That in compliance with a directive in the Retail Supply Tariff Order for FY 2021-22, on 24th Dec 2021, APSPDCL on behalf of three DISCOMs submitted copies of 14 No. PPAs (CGSs) to APERC for their consent on procurement of power in accordance with the said PPAs explaining the necessity of procuring power from CGS by treating them as base load plants, cost, and reliability with 24/7 availability.

That in Retail Supply Tariff Order (RSTO) for FY 2022-23, at Para 100, it was mentioned that since there is no consent of the Commission for the PPAs with CGSs, there is no obligation to take power from them unless the Commission approves the same on a case-to-case basis. The Commission further stated that the Ministry of Power (MoP), Gol vide its letter dated 28.08.2006 had clarified that the PPAs, the DISCOMs enter into with interstate projects shall have the approval of the State Electricity Regulatory Commission (SERC) concerned as they only have the powers to regulate electricity purchases and procurement process of distribution licensees under Section 86(1) (b) of the Electricity Act, 2003 except the tariff and tariff-related matters of the PPAs. Consequently, the DISCOMS were restrained from procuring power from four Central Generating Stations out of 14 nos. base load plants.

That the aforesaid restraint has been assailed by the DISCOMS before the Appellate Tribunal for Electricity ('APTEL') vide Appeal No.333/2023, 335/2023 and 350/2023. The said Appeals are pending adjudication before APTEL as of this date.

That vide para 112 of RSTO for FY 2023-24, the Commission stated that "As regards CGSs, surprisingly, except submitting all the PPAs by Lr. No. (Projects an IPC) APSPDCL/GM/IPC/F.CGS/D. No.1164/21, Dt.24/12/2021 in response to the Commission's directions in the RST order for FY 2021-22 by APSPDCL on behalf of three DISCOMS", no applications seeking PPA approval of the Commission as per the regulatory procedure have been filed by the DISCOMs. Consequently, the DISCOMS have yet again been restrained from procuring power from the four CGSs.

That the DISCOMS are in the process of instituting an Appeal against this RSTO for FY 2023-24 before APTEL assailing this disallowance of power procurement from four CGSs.

That without prejudice to the Appeal 333/2023, 335/2023 and 350/2023 against the RSTO for FY 2022-23 and the Appeals yet to be filed by the DISCOMS against the RSTO for FY 2023-24 before APTEL, and having due regard to the directions of APERC, the APDISCOMs seek the approval of APERC for these 11 nos. PPAs.

2. The petitioners stated the following main grounds to continue to procure power from the CG stations:

- a) That these plants being placed in the thermal category can generate on a consistent basis to cater to the day-to-day demand and are utilized as base load stations. APDISCOMs are scheduling power from these base load plants more or equal to its entitlement in most of the time blocks in a year.
- b) That APSLDC/ APDISCOMs are of the opinion that the existing base generation capacity from Intra State projects (AP Genco Thermal, Joint Sector-Thermal & IPPs-Thermal) will not be sufficient to meet the minimum load persistent on the system for all time blocks in a year with a stringent requirement to comply to the various Regulations enforced by CERC such as IEGC, DSM and Ancillary Services affecting Grid operation and second to second Load Generation balance in the State control area.
- c) That if the power procurement from these CGS base load plants is not approved, DISCOMs have to rely on market purchases even to meet the base load, which is more susceptible to surplus availability across States, Demand conditions across Nations and Coal logistics, leaving the fulfilment of the objective of 24X7 power supply in question.

3. The petitioners submitted that as per Section 86(1)(b) of the Electricity Act 2003, the Commission has wide powers to regulate the process of such proposed procurement of power, and to pass orders granting approval or otherwise of it. Further, as per AP Electricity Reforms Act, 1998 under section 21 (5), the Power Purchase Agreement becomes void without the consent of APERC, which Act was saved as per

section 183 of the Electricity Act,2003 to the extent of not having inconsistency.

Objections/View/Submissions

4. All the petitions have been filed for identical relief i.e., for seeking a grant of consent for the PPAs entered with the Central Generating Stations (CGS) by the four DISCOMs of erstwhile unified AP with the respective shares of present APDISCOMs i.e., APSPDCL, APCPDCL and APEPDCL. Since the issue relates to the approval of the PPAs, the matters required a public hearing and hence placed the public notice dated 10.07.2023 on all this batch of petitions on the website of the Commission calling for objections/responses from the stakeholders duly fixing the public hearing on 26.07.2023 and serving the notices to the respondents. Sri. M. Venugopala Rao, the learned objector, requested time for filing his objections. Accordingly, the time has been extended by three weeks for filing objections. Sri. M. Venugopala Rao, in his submissions dated 16-08-2023 has not filed any objections relating to the approval sought by the petitioners in respect of the OPs OPs 34, 38,39,40, 41, 42 & 44 of 2023. However, in respect of OPs 35, 36, 37 & 43 of 2023, Sri. M. Venugopala Rao, has brought the Petitioner's stand in the RST Order for FY 2023-24 to the notice of the Commission that if they do not off-take power from these CGS, they will have to pay fixed costs even without receiving power from them. He requested the decision of the Commission not to impose any liability on the consumers keeping in view of the Petitioner's stand and their appeal in APTEL. He also stated that it is better to finalise the long-term load forecast, procurement plan etc., for the 5th control period first after holding public hearings, and then consider the procurement of power from four central generating stations - NTPC - Kudigi, NTECP - Vallur, NTPL and NNTPS with a total allocated capacity of 504.74.
5. In this regard, it is relevant to discuss the DISCOMS' submissions and the Commission's decision in Retail Supply Tariff Orders for FY

2022-23 and FY 2023-24 regarding the PPAs of CGS which are extracted herein:

RST order for FY 2022-23:

“68. The DISCOMs have stated that they have been purchasing power from the Central Generating Stations (CGS) owned/controlled by the Central Public Sector Undertakings (CPSUs) based on the long-term PPAs. The share of capacities in the CGS proposed to be availed by the DISCOMs for FY2022-23 which is stated to be as per the Regional Energy Account issued by SRPC for the month of Oct’ 20 is shown in the following table.

Station	Capacity Share-State (MW)
<i>NTPC-(SR) Ramagundam I & II</i>	<i>275.84</i>
<i>NTPC-(SR) Ramagundam- III</i>	<i>69.38</i>
<i>NTPC-Talcher-II</i>	<i>176.03</i>
<i>NTPC Simhadri Stage-I</i>	<i>461.10</i>
<i>NTPC Simhadri Stage-II</i>	<i>204.00</i>
<i>NLC TS II Stage-I</i>	<i>46.70</i>
<i>NLC TS II Stage-II</i>	<i>85.61</i>
<i>NPC-MAPS</i>	<i>18.13</i>
<i>NPC-Kaiga 1 & 2</i>	<i>55.21</i>
<i>NPC-Kaiga 3 & 4</i>	<i>58.90</i>
<i>NTPC Kudgi St-I</i>	<i>230.16</i>
<i>NTECL Vallur</i>	<i>86.15</i>
<i>NTPL- Tuticoran (JV of NLC & TNEB)</i>	<i>121.33</i>
<i>NNTPS (2 *500)</i>	<i>52.70</i>
<i>NTPC JNN SM - Phase-I</i>	<i>39.27</i>
<i>Total</i>	<i>1980.51</i>

The DISCOMs have also stated that the PPA with NTPC Ramagundam I & II expired on 31.10.2017 and the PPA with NLC TPS-II Stage-I & II expired on 31.03.2021. Power procurement is being continued from Ramagundam I & II plant and NLC TPS-II Stage- I & II owing to their low prices. The DISCOMs have also stated that the following clause in the expired PPAs allows them to continue to procure power from these plants.

“Provided that this Agreement may be mutually extended/ renewed or replaced by another agreement on such terms and for such further period of time as the parties may mutually agree. In case the bulk power recipient continues to get the power from the plant, even after expiry of this agreement without further renewal, or formal extension thereof, then all the provisions of this agreement shall continue to operate till this agreement is formally renewed /extended or replaced.”

The DISCOMs have further stated that these two projects are pit head old stations, and are presently operating as “Base Load Stations” in AP Power System and supplying power at cheaper prices. Average Central Transmission Charges to the extent of Rs.0.6 per unit is currently incurred towards Inter State Transmission Charges, for the procurement of power from all CGS (except Simhadri-I) and M/s Sembcorp (IPP). That even after taking ISTS charges also into account, power procurement from these stations is cheaper. That the entire allocated expensive thermal power quantum of 625 MW as part of JNNSM-Bundled Power scheme-Phase-II has been surrendered by APDISCOMs, stated to be due to of the best efforts made by them keeping in view the commercial interests of reducing the power purchase costs. The DISCOMs proposed to continue procurement of power from the pit head stations viz. Ramagundam-Stage- I&II and NLC- TPS-II for FY2022-23, keeping in view the “Base Load” thermal capacity requirement in the system to extend 24X7 reliable, secured and cost effective power supply to the consumers

Commission's analysis and decision

98.The Commission would express its opinion at appropriate places on the objections and DISCOMs' responses in the paragraphs infra. The Commission has examined the proposed power sources, energy availability, despatches, and accordingly approves the power purchase costs for FY2022-23 as detailed below:

99.The DISCOMs have proposed to continue to procure power from NTPC Ramagundam I & II and NLC TPS-II Stage-I & II for FY2022-23 though the PPAs of the said plants have expired on 31.10.2017 & 31.03.2021 respectively by citing their low per unit prices at the Andhra Pradesh state periphery after accounting for the inter-state transmission charges applicable to them. The Commission after careful examination of the unit prices paid to these plants in the past few years and also the prices proposed by the DISCOMs for FY2022-23 for these plants, has decided to accept the request of the DISCOMs and accordingly considered the proposed procurements as an interim measure in the ARR computations for FY2022-23.

100.Further, APSPDCL on behalf of the three DISCOMs by its Lr. No. CGM (Projects & IPC) APSPDCL/GM/IPC/F.CGS/D.No.1164/21, Dt.24/12/2021 placed all the PPAs with the CGSs quoting the following direction issued by the Commission in the RST order for FY2021-22.

"However, DISCOMs are directed to place all the power purchase agreements of CGS before the Commission irrespective of when they were entered into, justifying the necessity of continuing the power purchases from them and their impact on the overall power procurement plan and cost implications for the balance control period"

The Commission issued the above direction while dealing with the objection relating to the inclusion of NTPC Ramagundam I & II and NLC TPS-II Stage-I & II in the power procurement plan for FY2021-22. As there was no approval by the Commission for any of the PPAs with the Central Generating Stations, the DISCOMs have sought the approval of the Commission for the same now. In support of their request, they submitted that power procured from all the CGSs is treated as 'Base

load requirement' to cater to the daily demand because of cost viability, reliability, and 24/7 availability when compared with other power purchases on a long-term basis. Moreover, AP state is entitled to the capacity allocations from these CGS as per the notification issued by the MoP from time to time.

As there is no consent of the Commission for these PPA with the CGS, there is no obligation on the DISCOMs to take power from them unless the Commission approves the same on a case by case basis. The Ministry of Power (MoP), GoI vide its letter dated 28.08.2016 had clarified that the PPAs the DISCOMs enter into with interstate projects shall have the approval of the State Electricity Regulatory Commission (SERC) concerned as they only have the powers to regulate electricity purchases and procurement process of distribution licensees under section 86(1)(b) of the Electricity Act, 2003 except the tariff and tariff related matters of the PPAs. In the above backdrop, the Commission has examined the unit costs paid to the CG stations in the past few years and prices proposed by the DISCOMs for them for FY2022-23. Among the CGSs proposed by the DISCOMs for inclusion in the ARR for FY2022-23, the following stations have higher unit costs.

S.No.	1	2	3	4
Name of the Station	NTPC Kudgi Stage-I	NTECL Valluru	NTPL (NLC Tamilnadu)	NLC NNTPS
Rupees per unit during FY2015-16 (Actual)	-	3.67	4.06	-
Rupees per unit during FY2016-17 (Actual)	-	4.47	4.34	-
Rupees per unit during FY2017-18 (Actual)	5.42	5.24	5.99	-
Rupees per unit during FY2018-19 (Actual)	7.72	6.83	5.66	-
Rupees per unit during FY2019-20 (Actual)	8.17	8.36	5.05	4.10
Rupees per unit during FY2020-21 (Actual)	9.01	6.77	5.66	4.45

<i>Rupees per unit during FY2021-22 (Estimated)</i>	6.09	4.83	4.60	4.23
<i>Rupees per unit during FY2022-23 (Projections)</i>	5.21	4.87	4.65	4.24

As could be seen from the above table, the per unit costs from the above stations work out to more than Rs.5 per unit after factoring in the interstate transmission charges. The Commission, therefore, examined the capacities contracted by the DISCOMs, energy proposed to be procured from these stations, and dates of signing and dates of expiry of PPAs. Though the residuary term of PPAs ranges between 18 and 24 years, in the absence of their approval by this Commission they are not per se, enforceable. Unless the tariff is at reasonable levels, it would be against the consumers' interest to allow the licensees to purchase power.

The Commission has also examined the weighted average per unit price of the energy procured by the DISCOMs from the exchanges during the current financial year (Up to Sep' 21) and found it to be around Rs.4.80 per unit.

Therefore, after examining the above factual information, and also keeping in view the adverse financial impact of these PPAs on the DISCOMs particularly on long term basis in the form of increased overall power purchase costs, the Commission has decided not to include the above stations in the list of approved sources for FY2022-23. However, other CGSs, in view of their lesser per unit costs, have been included in the list of approved sources for FY2022-23 only and the above inclusion, however, does not confer any right on the DISCOMs to continue procurement from these stations beyond FY2022-23. As regards the request of the DISCOMs for approval of the PPAs with CGS, the same will be dealt with by the Commission in separate proceedings in accordance with law”.

RST Order for FY2023-24:

“112. As regards CGSs, surprisingly, except submitting all the PPAs by L.r. No. CGM (Projects & IPC) APSPDCL/GM/IPC/F.CGS/D. No. 1164/21, Dt. 24/12/2021 in response to the Commission’s directions in the RST order for FY 2021-22 by APSPDCL on behalf of three DISCOMS, no applications seeking PPA approval of the Commission as per the regulatory procedure have been filed by the DISCOMS. Out of the 17 CGSs, one CGS has the approval of the Commission under JNNM phase 1. The remaining CGSs do not have the approval of the Commission. The DISCOMS in their letter dated 24.12.2021 while seeking the consent for all the PPAs with CGSs have stated that they would abide by the directions of the Commission in this regard. The PPAs with NTPC Ramagundam I & II, and NLC TPS-II Stage-I & II have expired on 31.10.2017 & 31.03.2021 respectively, and the DISCOMS sought the approval of the Commission to continue to procure the power from the same in the ARR filings for FY 2022-23. After examination of all the facts and the total landed cost of the CGS at the state periphery with reference to the trend of market prices during FY 2021-22, the Commission has permitted the DISCOMS to procure power from all CGSs till the end of the financial year 2022-23, except from the four CGS viz NTPC- Kudgi, NTECL - Vallur, NTPL, and NNTPS. As noted elsewhere, the DISCOMS filed for a Review of the Commission RST Order for FY 2022-23 for inclusion of the said four CGS in the power procurement plan for FY 2022-23, and the same was rejected by order dated 29.06.2022 by the Commission. Appeals filed before the APTEL by the DISCOMS are pending. In defiance of the Commission’s directions, the DISCOMS have been continuing power procurement from these four stations. The main grounds on which the DISCOMS insist on power procurement from the said four CGS are:

- A. Without the said four CGSs, it is difficult to meet the Baseload.*
- B. The said four CGSs have been included by the Commission in the Resource plan for the fourth control period.*

C. The power procurement cost from the said four CGSs is cheaper compared to the market prices during FY 2022-23.

D. They are under obligation to pay the fixed costs to the said four CGSs as per the PPAs even if the power is not received or approved by the Commission.

As regards point A, against the energy requirement of 74947 MU approved for FY2023-24 by the Commission, and the maximum demand of 12293 MW recorded in the AP power system that includes the power procured by the open access users on 08.04.2022, the capacities and energy potential of the thermal stations approved in this order are shown in the table below

S. No	Source	Contracted capacity MW	Energy at full capacity per Annum (MU)	Energy at 85 percent normative availability (MU)
1	APGENCO-Thermal	4210	33930	28840.5
2	CG Stations	1476	17344	14742.4
3	APPDCL Stage-I & II	2400	19654	16705.9
4	Thermal Power Tech	231	1888	1604.8
5	SEIL P2	625	5064	4304.4
6	HNPC	1040	8518	7240.3
	TOTAL	9982	81984	69686.4

As could be seen from the above table, there is a base thermal generation capacity of 9982 MW apart from the availability of approximate base capacity of 2000 MW solar power during day time for an entire year, 2500 MW base capacity of wind power during the wind season, and 500 MW Hydel power during the rainy season even after exclusion of the said four CGSs. Even assuming availability of 80 per cent capacity at any time, the base capacity requirement of about 8000 MW for all the time blocks during the year FY 2023-24 (as per the load duration curve approved in the resource plan for the fourth control

period) can be easily met. Hence even without the power from the 4 CGSs, the required demand could be met from the other available sources.

As regards point B, the Commission's direction in the Resource plan for the fourth control period at para 134 is extracted herein:

"134. However, in respect of the Generating stations included in the sources of supply shown above which either have no Power Purchase Agreements or have no approval from the Commission for their Power Purchase Agreements and/or have to still have their tariff determined by the Commission, except in the cases where there is an ad-hoc tariff already being paid as per the Orders of the Commission, the licensees shall not receive any supply of power without prior intimation to and prior approval of the Commission."

As can be seen from the above direction, the mere inclusion of any source in the Resource plan will not confer any right on the parties concerned for enforcement of PPA. In the absence of PPAs approval sought, much less granted by the Commission, it is not permissible for the DISCOMs to schedule power without prior approval of the Commission. Inclusion in the resource plan being hedged in by the conditions as referred to above and the conditions not having been fulfilled, reliance on the Resource plan is misplaced.

As regards point C, the power procurement cost from the exchanges as furnished by the DISCOMS on an RTC basis during FY 2022-23 is given in the table below:

Delivery Month	Round the clock (00:00 to 24:00 Hrs)		
	Average Quantity Procured (MU)	Average Quantity Procured (MW)	Average Rate (Rs./KWh)
APR -22	1000.7	1389.8	10.5
MAY -22	573.6	796.6	5.4
JUNE-22	936.2	1300.3	4.7
JULY-22	363.4	504.8	4.0

AUG -22	391.9	544.3	3.8
SEPT -22	324.3	450.4	4.6
OCT -22	526.8	731.7	3.7
NOV -22	814.4	1131.2	5.2
DEC -22	868.9	1206.8	6.3

As could be seen from the above table, the average power procurement cost per unit from the exchanges on RTC basis is lesser than the average power procurement cost of Rs.6.47 per unit paid to the said four CGSs during the first six months of FY 2022-23. Further information provided by the DISCOMS for a query shows that the weighted average cost per unit has come down gradually after the first half year in the market, whereas there is an increase in per unit cost from the four CGSs. Further, the Ministry of Power, GoI vide its notifications dated 09.01.2023, and 01.02.2023 issued directions afresh to all Gencos to import coal mandatorily till September 2023 keeping in view the high demand for power supply coupled with inadequate supply of domestic coal. Therefore, the expectations of the DISCOMS that the variable cost of the said four CGS will recede may not turn true.

As for point D, PPA/agreement is not unregulated. such an agreement is subject to the grant of approval by the Commission under 86 (1) (b) of the Electricity Act, 2003 as held by the Hon'ble Supreme Court in Tata Power Company Ltd vs Reliance Energy Ltd and another - (2009) 16 SCC 659. So long as the PPA is not approved by the appropriate Commission, the terms thereof are not enforceable. Therefore, the obligation to pay fixed costs to the generators under the unapproved PPAs does not arise.

The above reasons would answer the contentions of the various stakeholders on this matter.

In view of the foregoing, the Commission decides not to include the said four CGSs in the power procurement plan for FY 2023-24. However, the

DISCOMS are at liberty to approach this Commission for procurement of the power from the said four stations on a short-term basis with substantiation that the power procurement from them would be beneficial to the DISCOMS in all respects if there is a dire need and in case of any slippage of generation from the approved sources. On such proposals, the Commission will take appropriate decision after considering pros and cons.”

6. As can be seen from the discussion in the RST Orders for FY2022-23 and FY 2023-24, the Commission has given elaborate reasons for allowing the DISCOMS to continue to procure power from the CGS as filed in OPs 34, 38, 39, 40, 41, 42 & 44 of 2023 and disallowing the power procurement from the CGS as filed in OP. Nos. 35, 36, 37 & 43 of 2023. The petitioners have not brought any new facts in the present petitions about the CGSs.
7. As evident from the dates of all PPAs, they were entered into long back and power is being procured by the Petitioners from the Respondents as per the approval of the Commission in RST Orders issued from time to time. As per the statute, all PPAs entered into by the DISCOMS with any entity shall have the approval of the Commission, and the Ministry of Power has also clarified to that effect. On noticing that the PPAs entered into by the petitioners with CGSs have no approval from the Commission, we directed the petitioners to seek approval of the same to comply with the provisions of the Electricity Act, 2003, in the RST Order for FY 2023-24. Accordingly, the petitioners have filed all these OPs for the consent of the Commission.
8. On examination of the PPAs, it is seen that the PPA with NTPC in OP 40 of 2023 in respect of power stations of Ramagundam STPS St-I & II has expired on 31.10.2017, the other PPA with NTPC in OP 41 of 2023 in respect of power station of Talcher - II has expired on 31.07.2023, and the PPA with NLC in OP 34 of 2023 in respect of power stations of TPS II St-1 & TPS II St-2 has expired on 31.03.2021. In this regard, the relevant part in clause 12 of PPA in OP.No 40 of 2023, clause 11 of PPA in OP.No 41 of 2023 is extracted below:

“Provided that this Agreement may be mutually extended/ renewed or replaced by another agreement on such terms and for such further period of time as the parties may mutually agree. In case the bulk power recipient continues to get the power from the plant, even after the expiry of this agreement without further renewal, or formal extension thereof, then all the provisions of this agreement shall continue to operate till this agreement is formally renewed /extended or replaced.

the relevant part in clause 10.2 of PPA in OP.No 34 of 2023 is extracted below

“in case the Recipients continue to get power from Power Station II (Stage I and Stage II) after the expiry of this agreement without renewal and formal extension thereof, then the provisions of this agreement shall continue to operate till the agreement is formally renewed, extended or replaced”.

Accordingly, the petitioners have been receiving power from the Respondents without any break even after the expiry of the PPAs and the Commission has also approved them from time to time in view of cheaper cost compared to other sources.

Further, the Ministry of Power, GoI notified the **“Scheme for Pooling of Tariff of those plants whose PPAs have expired”** on 20.04.2023 wherein in the “sample illustration for the calculation of uniform capacity charges” the Ramagundam STPS I & II was shown under pooling Scheme. Further, paragraph 3 (A) of the said Scheme states that as and when any Station of the Generating Company completes its PPA period, the same shall be automatically added to the pool. Further, the plants/capacity which have already completed their PPA period but have already signed fresh PPAs post the expiry of the original PPA shall be excluded from the pool.

The Scheme has not started yet as per the information available with the Commission.

With respect to the power stations in the remaining OPs, the PPAs will be operative ranging between 5 years to 23 years from now. As regards expired PPAs or PPAs whose terms have not yet expired, the Respondents have not submitted their responses on the filing of the DISCOMs for approval of the PPAs. After careful examination of the unit prices paid to Central Generating Stations under consideration in OPs 34, 38, 39, 40, 41, 42 & 44 of 2023 in the past few years, the provisions of expired PPAs relating to renewal or extension of PPA, taking into consideration of the provisions of the MoP's Scheme date 20.04.2023, and considering the submission of petitioners on the need and necessity of procuring power, in our view the lesser per unit costs from CG power stations covered by OPs 34, 38,39,40, 41, 42 & 44 of 2023 (being pit head, and fixed costs per unit are less since commissioned long back) will not impose any burden on consumers if PPAs are approved in medium/long term. Hence, we are inclined to grant consent for the PPAs entered with the respondent's CGSs as filed in OPs 34, 38,39,40, 41, 42 & 44 of 2023 till the end of the terms specified in the respective PPAs. However, with respect to PPAs where the term already expired and the petitioners are continuing the power procurement as per the clauses in the respective PPAs with regard to the renewal, the term of PPAs is approved up to 31.03.2030.

9. As regards CGSs relating to OP 35, 36, 37 and 43 of 2023, PPAs entered into after the enactment of the Electricity Act, 2003 with a balance tenure of about 17-23 years and power is being procured by the Petitioners from the Respondents as per the approval of the Commission in RST Orders issued from time to time. However, the Commission has not allowed the power procurement from these four CGSs keeping in view the long-term cost implications on the consumers in FY 2022-23 and FY2023-24 with detailed reasoning. However, the petitioners, continued power procurement from them and filed these OPs for the consent of the Commission. As observed supra enforcement of PPAs is subject to the grant of approval by the Commission under 86 (1) (b) of the Electricity Act, 2003 as held by the

Hon'ble Supreme Court in Tata Power Company Ltd vs Reliance Energy Ltd and another - (2009) 16 SCC 659. So long as the PPA is not approved by the appropriate Commission, the terms thereof are not enforceable. Therefore, the obligation to pay fixed costs to the generators under the unapproved PPAs does not arise. The Respondents have not even filed their views on the filings by the DISCOMs. After careful examination of the unit prices paid to four Central Generating Stations under consideration for approval in these OPs since their Commissioning, the SLDC's letter available with the Commission that the power from CGSs Kudigi and Valluru is unreliable, and for the reasons explained in detail in RST Orders for FY2022-23 and FY 2023-24 for not approving the power procurement from these stations, we are not inclined to grant consent for the PPAs entered with the respondent's CGSs filed in OP 35, 36,37 and 43 of 2023. It is directed that the relevant portions of the RST Orders for FY2022-23 and FY2023-24 shall remain part of this order.

10. Accordingly, the batch of OPs is disposed of.

Sd/-	Sd/-	Sd/-
P.V.R. REDDY	JUSTICE C.V. NAGARJUNA REDDY	THAKUR RAMA SINGH
MEMBER	CHAIRMAN	MEMBER