

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION,
BAYS NO.33-36, SECTOR 4, PANCHKULA
(Appeal filed by Magnum Power Generation Limited under Section 86(1(f)
of the Electricity Act, 2003)**

Case No.HERC/PRO-7 OF 2008
Dates of hearing:5.12.2008 & 30.9.2009
Date of order: 23.03.2010

Magnum Power Generation Limited (MPGL) ..Appellant

Versus

HVPNL and its successor companies for bulk supply and trading of power in the State of Haryana i.e. HPGCL/HPCC(acting on behalf of UHBVNL and DHBVNL).

..Respondent(s)

Present on behalf of MPGL: Sh.C.Mukhopadhey, Advocate,
Sh. J.K. Bhatnagar, Vice President, MPGL
Sh. Girish Luthra.

Present on behalf of HPPC/HPGCL/UHBVNL:

Sh. K.K.Lahiri, Advocate
Smt. Nazli J.Shayine, Director,(Finance)UHBVNL
Sh.D.C.Arya, FA/Hqr,HPGCL
Sh. G.L.Gomber, CE/HPPC

This order of the Commission will dispose of the petition filed by Magnum Power Generation Limited (MPGL) regarding the dispute relating to the Power Purchase Agreement (PPA) dated 12th August,1998 entered between them and the respondents for a period of 15 years.

ORDER

Briefly, the State Government of Haryana through Haryana State Electricity Board (HSEB) had invited bids in 1995 for setting up 25

Megawatt Liquid Fuel Based Projects at different locations of Haryana. The lowest bid received was Rs.2.40 per Kwh with a fixed cost component of Rs.1.29 per Kwh. MPGL agreed to match the lowest rates and achieved financial closure by deploying its own capital towards equity and proposed to set up 4 x6.3MW plan at Sihi (Gurgaon). PPA was signed between the parties for 15 years on 12.8.1998. The PPA after unbundling of HSEB was assigned to HVPNL and then to HPGCL vide Haryana Government notification dated 9.6.2005. Currently the PPA has been assigned to both the distribution licensees i.e. 50:50 UHBVNL and DHBVNL who have emerged as State owned distribution companies in Haryana after the unbundling of HSEB. With the passage of time dispute arose between MPGL and HSEB/its successors on various issues. Good faith negotiations between the petitioner and respondent companies could not resolve the matter and ultimately the case was referred in July,2006 by the parties for arbitration to a panel of three retired Supreme Court Judges as per the provision incorporated in the PPA(clause No.16.2). After holding a number of sittings, the panel further referred the matter to the Haryana Electricity Regulatory Commission (HERC) because as per Section 86 of the Electricity Act,2003, the disputes between the generator and licensees are required to be first referred to the State Electricity Regulatory Commission and it was for them to either settle the dispute themselves or to refer the same for arbitration. In this context the

judgement of the Hon'ble Supreme Court in **Gujarat Urja Nigam Ltd. Vs. Essar Power (2008) 4 SCC 755** was cited, wherein the Hon'ble Supreme Court has held as under:-

“after the coming into force of the Electricity Act 2003, any dispute between a Licensee under the Act and a generation Company must first be decided by the State Electricity Regulatory Commission under Section 86(1)(f) of the Act unless the SERC refers it to arbitration.”

Thus, the dispute came before the Commission for decision and the Commission decided to adjudicate as per its order dated 25.6.2008. Thereafter the Commission summoned the parties as also the record from the Court/Arbitrator.

The petitioner MPGL has filed the above petition dated 16th May,2008 before the Commission seeking relief against HPGCL and its successor companies which are owned by the Government of Haryana. The following was the prayer made by MPGL in its petition:-

- (i) Ratify the Hon'ble Arbitral Tribunal nominated by the parties herein and allow the Hon'ble Tribunal to continue with the proceedings.
- (ii) Pass any such other order/direction that this Hon'ble Commission may deem fit in the facts and circumstances of the present case.

Arguments from both the parties were heard on 5.12.2008. Thereafter the parties were directed to submit their written submission by the end of December,2008 which were complied with.

While examining the record by the Commission it was considered necessary to obtain the entire record of the case pending with the Hon'ble Arbitrator and the same was obtained by May.2009. Thereafter Shri T.S.Tewatia, Hon'ble Member of the Commission submitted his part of the order on 24.06.2009 on the basis of the material already available in the file. Since the case was not ripe for passing any order as the record of the case remained incomplete, the same is not incorporated in this order. The records of the case was examined and it was felt that more clarifications would be needed to settle claims and counter claims as filed by the parties. Consequently by order dated 3.7.2009 both the parties were summoned for a fresh hearing which was fixed on 31st July,2009. After a couple of postponement, on the request of MPGL, the case was finally heard on 30.9.2009.

On 30.9.2009 after the hearing, MPGL filed objection with the following submissions (1) that during the hearing on 30.9.2009 third Member could not have been sitting as only two Members who had originally heard the parties could seek any clarification, if so required. (2) Given the fact that the written submissions have been filed and matter

has been heard in detail, judgement should be rendered based on the hearing that has already taken place.

It was further submitted by MPGL that rather than fixing date for further hearing, the judgement should be delivered. In the event of any clarification being required, specific queries for clarification may be called for in writing within a short time so that the judgment can be delivered at the earliest.

On the application of MPGL, views of HPPC (successor of both the distribution companies) were obtained. HPPC vide their reply dated 19.11.2009 apart from replying on the merits of the case left it to the Commission to proceed with the matter in the way it decides.

CLAIMS OF THE PARTIES:

MPGL:

MPGL has put up claim stating that the Utilities (HVPNL, HPGCL and now UHBVNL, DHBVNL) have not complied with their obligation to off-take power since FY 2002-03 to the extent of 75% Plant Load Factor (PLF) on an annual basis. Hence deemed generation charges have become payable towards the end of financial year i.e. 31st March, 2003. Against the claim filed by MPGL for the year 2003-04, 2004-05 they have received an amount of Rs.2 Crores on account of deemed generation charges. They also mentioned that due to frequent stop-start instructions of the

Utilities one of the four engines has suffered major damages on 21.10.2004. Apart from the deemed generation charges MPGL had also claimed payment on account of difference between the meter readings, amount withheld for difference in oil density, dispute relating to LADT and interest accrued on the unpaid balance. The total claim raised before this Commission by MPGL is summed up below:-

(Rs. In Millions)

1.	Deemed Generation from April 2002 to December 2008	637.89
2.	Amount on hold for metering (as per reconciliation)	48.24
3.	Amount on account of deduction of oil density	32.33
4.	Miscellaneous deductions (march 2004 to January 2006)	14.47
5.	Interest on late payment @ 11.73%	217.88
6.	Interest on late payment of LADT(on actual basis)	8.00
7.	(less) Amount received against Deemed Generation dated 7.5.2004 against deemed generation of FY 2003-04	20.00
8.	Total	938.82

HPGCL/HPCC:

In response to the notice issued to HPGCL (now HPPC) the licensee through their learned counsel filed the counter claim as follows:-

- i) Generation loss and losses due to unserved power for the period 1998 till 31st March,2006 amounting to Rs.4183.4 millions).
- ii) Claims on account of purchase of high cost energy from alternative sources amounting to Rs.231.03 millions.
- iii) Payment against bills raised by HPGCL amounting to Rs.6,67,200/- (including interest) on MPGL for drawl of energy from HPGCL's power grid for running the auxiliaries to start up after closure of the plant.
- iv) Payment on account of refund of LADT amounting to Rs.24.494919 Millions including interest thereafter.
- v) Claim for interest of Rs.1,61,970/-.
- vi) Claim for refund of advance of Rs.2 Crore with interest @ 11.73% amounting to Rs.2,56,30,400.

HPGCL also claimed interest on its counter claim. They have also claimed the cost of proceedings as per Section 31(8)9(a) of the Arbitration and Conciliation Act,1996 read with explanations thereto.

The Commission has examined the entire record of the case including the evidence recorded before the Hon'ble Arbitrators before the case was transferred to us. It has also taken note of the arguments, claims of both the parties including oral and in writing from the learned counsels of both the parties and also the subsequent objection raised by MPGL regarding further hearing of the case and the response

of HPPC thereon. After detailed perusal of all the evidence and documents produced so far, the Commission felt that still some more information would be needed on few crucial issues including clarity on some points on which evidences have already come in file. In view of the reluctance expressed by MPGL regarding further hearing, it was thought appropriate to obtain further information/clarification from both the parties in writing only. Consequently a questionnaire was issued from the Commission dated 22.1.2010 to both the parties with direction to respond by 10th of February. The points raised by the Commission on which response was sought are listed below:-

ONLY HPPC:

- (1) Why were dispatch orders issued by the respondent even upto 2002-03 inspite of the plant's failure as per record to achieve 75% PLF on annual basis? What was the response of MPGL on the suspension notice issued by HPGCL in 2005? What has been further development on this point?
- (2) What prompted the respondent finally to stop sending dispatch orders from 2003-04 onwards? Compliance of Haryana Electricity Regulatory Commission's (HERC) order on the subject from year to year may also be mentioned?
- 3) The respondent may intimate whether the fund allotted to them under FSA in different years by HERC have been kept separately in any contingency fund to be taken care of as and when the dispute in this case is settled. Furnish details thereof.

- 4) More clarification may be given with regard to counter claims with evidence.

ONLY MPGL

- (i) What are the efforts made by the petitioner to carry out third party sale when the respondent refused or did not issue dispatch orders over the number of years?
- (ii) Was any application given to HVPNL or the distribution licensee to allow them to use their distribution network to evacuate power to a third party? If done, what was the response from the licensees?
- (iii) What is the evidence available to prove that the petitioner was capable of generating power as per the table given by the petitioner from 2002-03 onward when in the earlier period its generation was much less?
- (iv) Was any regular maintenance and overhauling including purchase of oil, lubricant and spare parts carried out during this period to keep the plant in working condition? If so, the details thereof be furnished.
- (v) Was any inspection carried out by any other agency to certify that the plant was in good running condition during the period? If so, the details thereof?
- (vi) After HERC's order dated 22.12.2005 the licensee was allowed to lift 3 MU of generation to exhaust the existing liquid fuel (893.6MT) available with the petitioner. Is there any evidence to show that liquid fuel was purchased subsequently to start the generation?

- (vii) What was the deployment of manpower for maintenance and running the plant from 2003-04 onward? The details thereof.
- (viii) It has been reported by the respondent that one of the units suffered major break down in 2004. When was it repaired subsequently? The details thereof may be furnished.

BOTH THE PARTIES

- 1) Was the Power Purchase Agreement (PPA) executed between the parties in August 1998 drafted on the lines of any model PPA circulated by the Ministry of Power, Govt. of India in 1998 or around that time?
- 2) Furnish the details of fixed cost component of the tariff @ Rs.1.29 per Kwh since as per the evidence in the file a second hand power plant costing about Rs.43 crores was installed at site instead of a new one for which about Rs.80 Crores was envisaged at the time of drafting of PPA.
- 3) What is the duration of monsoon months mentioned in the PPA when the respondent would lift partly or no power from the petitioner? Was this clause ever insisted upon and implemented during the time when there was working relationship between the parties (upto 2002-03)? If yes, the details thereof.
- 4) What are the details of the performance factor as agreed to in the meeting dated 5.8.2003 between the parties? Why could not the relationship be maintained between the parties on this basis from 2003-04 onward?
- 5) What is the significance of running of the plant at 75% PLF as mentioned in the PPA and the consequence of not maintaining the same?

6) What is the present status of LADT? Is any case pending at present in any court in this regard?

The reply from MPGL was received within time while HPPC after having sent reply to two queries within time upto 10.2.2010, requested for further time upto 25.2.2010 to file reply with regard to other queries. The request of HPPC was considered by the Commission and the same was granted to them. Reply of most of the queries were received from HPPC on 15.3.2010 and the Commission decided not to give any further extension of the prayer of the respondent to submit reply to the rest of the queries.

The response received from both the parties have been examined in detail alongwith all the documents available in the case file. In order to decide claims and counter claims following issues were taken up for consideration:-

- 1) Whether the amount of deemed generation as claimed by MPGL is to be allowed and if so, to what extent ?**
- 2) Whether the amount claimed by MPGL with regard to dispute relating to metering, deduction on account of difference in oil density, late payment of LADT, misc. deductions and interest thereof ought to be allowed?**
- 3) Whether counter claim filed by the respondent is to be entertained and if so, to what extent?**

ISSUE NO.1

The PPA which has been entered between the parties on 12.8.1998 is the most crucial and important document which needs close examination to throw light on most of the issues mentioned above. To

decide Issue No.1 it would be necessary to examine the relevant section in the PPA.

As per article 8.2 of the PPA, the company MPGL(petitioner) was required to supply power to HSEB (respondent) in terms of clause 2(a) of schedule which specifies declaration of daily availability and other information in regard thereto by the petitioner and declaration of energy requirement schedule by the respondent. Section 8.2 further specifies that **respondent is to ensure annual PLF of 75% over the year** failing which the petitioner was to be compensated for constant component of tariff for the shortfall. This section further provides for semiannual adjustment of PLF and if availability in subsequent six months was not sufficient, then **annual PLF shall be considered on the basis of declared availability for the year.**

The annual PLF formula specified in clause 3.2 of Schedule 3(P-41) is as under:-

PLF(%)= $\frac{\text{Actual Electrical Output at interconnection point in MU by the project} \times 100}{\text{Electrical Output plant is capable of delivering at the Interconnection point as per tested capacity of the project.}}$

Schedule 3 of the PPA specifies the following formula for calculating **annual contracted electrical output in MU:-**

$$(8760 \times 0.75 \times 1000 / 1000000) (1 - 0.35\%) \times \text{tested capacity in MW}$$

According to this formula the annual contracted energy as per the PPA works out to 143.79 MUs.

Article 6 of the PPA, however, specifies certain undertakings for the company. The undertakings at Sr.No.(j) & (k) are relevant to be mentioned here:-

- (j) **Make available to the HSEB not later than the Required Synchronization date, the Contracted energy** and the contracted Operating Characteristics on each Unit; and
- (k) **Operate & maintain the Project so as to provide the HSEB with the Contracted Energy** and the Contracted Operating characteristics of the Units reliably over the Term of this Agreement, taking into account permissible degradation.

These stipulations require that the petitioner was responsible to provide enough power availability for drawal of the same by the respondent so as to enable the achievement of 75% PLF annually i.e. 143.79 MUs and 75% thereof would be the responsibility of the respondent to purchase.

In accordance with Para 1 & 2 of Schedule 6 of PPA, MPGL shall submit availability declaration by 10.00 AM for following day if an availability declaration is not submitted to HSEB in respect of any scheduled date in accordance with the terms of this agreement which

the company shall be deemed to have submitted the availability declaration on the same terms as the most recent declaration made by it.

Similarly, as per Para 5 of Schedule 6, HSEB shall issue its energy requirement by 5.00 PM on the preceding day failing which the energy generated as per availability declaration shall be deemed to be energy requirement. As per Clause 5.2(a) of schedule 6 of the PPA, the level of Active Power shall be within(-) 10% of the **Declared Availability to that Schedule day**; subject to minimum of 75% of the contracted energy on daily basis i.e. $0.75 \times 143.79 = 107.84$ MUs per annum. But as per PPA, the petitioner is required to supply contracted energy over the year.

It is further provided at the end of clause 5.2 of schedule 6 that in exceptional cases during the **monsoon season**, HSEB shall have the right to dispatch below 75% PLF irrespective of provisions of clause 5.2 (a) referred above.

It is felt that provisions of clause 5.2(a) of schedule 6, are meant only to facilitate the day to-day declaration and dispatch of power on normal days and during rainy season. These provisions, cannot supersede the overall provisions of Article 8 & 6 for making available the contracted energy by MPGL and drawl of the same by HSEB to ensure annual PLF of 75%. Further, the provisions made for acceptance of less power during monsoon season do not specifically clarify the term exceptional cases

referred in the schedule, the duration of the monsoon season and the extent of reduced power that can be drawn by HSEB. The above factors, therefore, make this stipulation quite arbitrary and open to individual interpretation.

The respondent has argued that the contracted energy of the plant as per the method of calculation given in the PPA is 159.77 millions unit per year. This figure is based on the contention that the plant was to be set up was of 25 MW. However, he has erred in not taking into account the tested capacity, as distinct from rated capacity, in his calculation. It has been proved on the basis of performance test for each of the four units set up by the petitioner that there was no dispute regarding the conduct of the test in accordance with the terms of PPA. No where in the PPA has mentioned that all the four Units are to be tested simultaneously to demonstrate 25 MW capacity. Thus the argument of the respondent on this point is not based on facts and hence not accepted. On the basis of the performance test, it was found that the tested capacity of the plant was 22.68 MW and consequently as per the formula given in the PPA the contracted figure of generation of power comes to 143.79 MU per year.

It has been accepted by both the parties that the plant has to be run on 75% PLF on yearly basis and an obligation on the part of HSEB was to lift 75% of such PLF on day today basis. The conduct of the parties

during the period under dispute however, tells a different story. It is an admitted fact that MPGL failed to generate 75% PLF in any of the year. The reason for the same has been attributed to excessive grid failure and frequent start-stop instructions. Similarly, it has also blamed the respondent that it prevented the petitioner to carry out schedule maintenance of the plant in terms of PEP and PUP as per manufacture schedule/recommendation due to failure on the part of the respondent to make timely payment. It has also been alleged that even when there was less generation i.e. less than 107.84 MU per annum, it was attributable to the respondent for not following the PEP and PUP.

The respondent has emphasized that unless MPGL was in a position to achieve 75% PLF on annual basis, the respondent was under no obligation to requisition a minimum of 75% of the same or pay deemed generation charges if it did not issue daily dispatch instructions of 75% of the declared availability. A plain reading of the PPA makes it abundantly clear that maintaining generation capacity of 75% PLF on yearly basis is as sacrosanct as is the responsibility of the respondent to issue daily dispatch instructions for 75% of the same on daily basis. While for the former no pecuniary penalty attached to it, for the latter the same has been prescribed in the form of payment of deemed generation charges. Consequently, the Commission does not agree with the view points of either of the party.

In order to find out as to how the plant had functioned during the first few years of its existence i.e. upto 2003 when despite periodical dispute, a workable relationship existed between the parties, the Commission has taken note of the evidences produced by both the parties. It is agreed that when the PPAs are drawn certain assumptions are made with the hope that it would have a smooth running but in the present case it seems that they met rough weather sooner than later. The figures quoted below have been supplied by the respondent; but not openly controverted by the petitioner and for the arguments sake, they are relied upon:-

Performance year	Contracted energy	Actual generation	PLF on the declared availability	PLF actually achieved
1998-99 (part)	143.79	19.71	18.17	17.86
1999-2000	143.79	83.51	39.50	39.22
2000-01	143.79	115.92	64.08	54.42
2001-02	143.79	102.27	60.06	48.01
2002-03	143.79	94.88	61.12	44.54

It would be seen from above that in none of the year till 2003 PLF was ever 75% on yearly basis. None of the parties did mention in their submission as to why the generation figure was so less on yearly basis in the first few years of the operation of the plant. Was it because of the incapability of the petitioner to generate the quantity as incorporated in the PPA by running the plant at 75% PLF or because of the less dispatch schedule submitted by the respondent, the position has not been clarified by either party. The figure quoted above go contrary to the argument put forward by the parties. However, one point emerges from this that the

parties made honest effort to keep the PPA alive by compromising their stand in the initial years. The Commission does appreciate the efforts considering the fact that the investor must get return of the capital locked up in his project. Over a period of time both the parties took cognizance of the derailment of PPA during this period and tried to arrive at some workable solution. In this context a meeting was held between the parties on 5.8.2003 which is available on record.

Having taken note of the nature of relationship of the parties including the performance of the plant upto 2003, now the Commission examines claim from 2002-03 onwards. The petitioner has made the following claims for deemed generation payable from 2002-03 to December 2008:-

DEEMED GENERATION SUMMARY REPORT AS PROVIDED BY MPGL

YEAR	Expected Units Generation as per Plant declared availability Sch-6, Clause 1 of PPA (A)	HVPNL to take 75% Units of (a), Article & Clause 8.2 (a) A x 75% = B	Units allowed to Generate by HVPNL as per Generation Schedule given Schedule-6 Clause 5.2 (C)	% PLF as per HVPNL Schedule given C / A = (D)	Shortfall Units for Deemed Generation (B-C) = E	Compensation as per constant component of tariff Article 8, Clause 8.2 (a) of the PPA in Rs. Per unit (F)	Compensation Amount payable by HVPNL in Rs. (ExF)
2002-03	135303538	101477654	96659881	71.4393	4817773	1.29	6214927
2003-04	175719264	131789448	27475158	15.6358	104314290	1.29	134565434
2004-05	136629925	102472444	75094324	54.9618	27378120	1.29	35317775
2005-06	128737778	96553334	5927537	4.6043	90625797	1.29	116907278
2006-07	129337020	97002765	0	0.0000	97002765	1.29	125133567
2007-08	129691368	97268526	0	0.0000	97268526	1.29	125476399
APR'08-DEC'08	97445700	73084275	0	0.0000	73084275	1.29	94278715
G.TOTAL	932864593	699648446	205156900		494491546		637894095

For the years when there was very few or no transaction between the parties, there is only one report available on record from SSE 220 Sub Station, Gurgaon dated 16.1.2004 which stated that as against the declared availability of 21 MW by the respondent the actual average loading of the four machines was found to be 24.2 MW. Thereafter till date (till the time deemed generation claimed by the petitioner i.e. upto the year December 2008) there has been no inspection report from any side stating that the plant was in functional condition and capable of generating power at 75% of PLF.

As per the details furnished by the petitioner, MPGL was not allowed to purchase any fresh stock of furnace oil from January 2006. Therefore, the claimant has been buying fuel if at all only to keep its engine in working condition. However, the party has not given any details including documents to show the actual purchase. Manpower to run the plant was also progressively reduced as no fund was forthcoming from anywhere.

As per the statement of MPGL as on 21st October 2004 due to grid fluctuation one of the engines got totally damaged. Its repair would have entailed an expenditure of Rs.5.00 Crores. Since the requisite fund was not forthcoming, the repair work could not be carried out. It has been mentioned by the petitioner that they were prepared to purchase a new engine provided that cost was paid by the respondent. Apart from the condition of the plant, the Commission was not given any further details with regard to the maintenance of the plant from time to time which is mandatory to ensure its continuance generation capability. The party kept on submitting the deemed generation schedule till the filing of the arbitration proceedings. However, as per the past performance, had the corresponding dispatch schedule been given by the respondent, the

petitioner would not have been in a position to supply such power. Consequently, the claim of the party with regard to their deemed generation looks to be extremely doubtful in the absence of their capability to generate the same.

In order to decide the deemed generation charges one has to first decide the quantum of deemed generation and the rates applicable to it. Looking at the figures above, it would be evident that the performance of the petitioner remained far below the expected generation on the declared availability assuming 75% PLF. Thus even without restriction on dispatches the PLF of 75% could not be achieved.

Undoubtedly maintenance of 75% PLF has been provided in the PPA on the part of both the parties but it is observed that during actual implementation of the PPA, it has lost much of its significance. As per evidence produced by the parties, the PLF remained in the vicinity of 40-50% during the years 1999-2000 to 2002. The petitioner could not achieve 75% PLF and the respondent accepted whatever was the energy supplied on the basis of actual performance.

The presumption of the Commission is further strengthened by the submission of the petitioner in an allied case where the respondent had requested them to start generation to resume purchase of power. In their submission before the Commission it was stated by the petitioner in their letter dated 18.9.2009 from Shri J.K.Bhatnagar, Vice President (Works) that minimum time required to restart the supply of power would be 5-6 months from the date of receipt of 50% of the outstanding amount which as per their calculation was about Rs.97 crores as on 31.3.2009 and further subject to compliance with stipulations that the remaining amount to be

cleared within six months thereafter in equal installments and completing the purchase formalities regarding opening of the PPA etc.

One of the arguments taken up very vehemently by the learned counsel of the respondent is that the petitioner should have sold power which was not being purchased by the respondent to any third party to mitigate its financial loss in terms of Article 5.4(b)(1) of the PPA which is reproduced below:-

“(i) HSEB's Default

In the event of HSEB's default, the company shall have right to enter into agreement (s), to sell any portion of the Contracted Electrical output of the project for a period of 6(six) months or till clearance of default whichever is later to any third party (ies) to the extent permitted by law and on the best terms reasonably available over the period of sale (having regard to any corresponding HSEB tariff) and the HSEB shall wheel within the State of Haryana on request at nondiscriminatory rates and terms all electrical output sold to third party(ies) pursuant to this clause. Any excess revenue over and above which HSEB shall have paid for purchase of such Electrical Output, derived from such sales shall be set off against amounts due to the Company from the HSEB under this Agreement.

In such an event if the third parties is (are) already consumer(s) of HSEB, then existing contract(s) between HSEB and such third party(ies) shall remain suspended, except for pending payment obligations, for the duration of such agreement (s).”

HSEB default has been elaborated in clause 5.2 of Article 5 of PPA which has defined the default as “ if an amount due to equal to one months billing at 75% PLF payable by HSEB to the company shall remain unpaid more than 60 days after the payment became due”. As per MPGL argument PPA stipulates that a third party sale can only take place when the respondent admits a default or default is established by a legal proceeding. It was argued that MPGL could not resort to third party sale when the respondent continued to dispute its own default. In this context the Commission has examined the relevant portion of PPA which confirms that the default on the part of HSEB has taken place which has compelled MPGL to sort out the dispute through mutual negotiations and thereafter to resort to arbitration proceedings.

The second argument taken up by MPGL was that grid system of HVPN/distribution utilities did not permit sale of power to a third party as the capacity was not available. It was stated that the capacity utilization of the Grid system in the State of Haryana has been 99.6% leaving no capacity available for MPGL to utilize the grid to sale to any third party. Without going into the details of capacity utilization of the grid in Haryana during the disputed years, it would be suffice to say that transmitting about 22 MW of power at any given time, presuming the plants to be in their optimum generation capacity would not have been a problem since this constitute a very insignificant percentage of total power

handled by the grid on any given day. The prioritization of the transmission of such power would be the responsibility of SLDC which has to check up the urgency and the precedence of the power as per the legally binding document between the parties. This become significant if one reads the relevant section 5.4(b)(I) of PPA which shows that in the event of any request for third party sale, " HSEB shall wheel the energy and will charge the applicable wheeling charges not exceeding 20% of energy wheeled and recorded by the main meter". The stipulation in the PPA envisages that sale of power to a third party could be possible only with the consent and cooperation of the respondent. This is more so keeping in view the location of the petitioner where it has to depend on the transmission and distribution network of the respondent for any evacuation of power. However, no document has been produced before us to show that the petitioner had ever made any application to HSEB and that was declined by them. It would thus be seen that had the petitioner made any request it would have been mandatory for the HSEB/HVPSNL to allow wheeling of power to third party. Even otherwise also Haryana grid system has to take into account the power flowing from MPGL plant in a normal condition of their relationship between the parties.

The Commission finds it difficult to accept that MPGL had tried to carry out third party sale when HPGCL defaulted in its obligation. As per their plea there was no taker for their power which they got to know

through survey in the market and inquiring from some of the possible customers including DLF etc. Since no documentary evidence was put up before us to show as to whom the power was offered for sale and also the quantity and the rate of such power, the Commission can not agree with the argument put up by the petitioner. The opportunity of third party sale was incorporated in the PPA to provide relief to the investor to make good whole or part of his loss in case of default on the part of HSEB either deliberately or otherwise. It is agreed that this facility was extended to the petitioner as a matter of right and not as an obligation. Nevertheless it is certain that no investor would like to remain idle and suffer financial loss when he has another window of opportunity available to sell power. Total inaction on the part of MPGL in not exploring and not availing the opportunity of third party sale is baffling to the Commission and difficult to explain. This act on the part of the petitioner also raises doubts as to their capability of generating power either because of lack of fuel or for technical reason. To raise demand of deemed generation year after year in such circumstances make the action of MPGL highly suspect.

HPCC has mentioned Commission's order dated May 10,2005 as one of the reasons for suspension of purchase of power from MPGL. The relevant portion of the Commission's order which is a part of ARR order 2005-06 is reproduced below:-

“G. Availability of power from IPPs(Magnum).

Magnum (liquid fuel based plant) provided 73.08 MUs (upto Feb.2005) to HVPNL as against 50 MUs approved by the Commission in its order dated 7.3.2005. HVPNL has proposed to procure 100 MUs from this source during FY 2005-06. The Commission is disallowing this being the most expensive source. The Commission, however, reiterates that the licensee, as submitted during public hearing, shall negotiate the existing PPA and submit it for approval of the Commission."

As a follow up HVPNL issued notice of suspension of purchasing power on 16.1.2006 to MPGL. The latter replied pleading a number of reasons as to why the same could not be done or justified. Without going into the merit of HPGCL and the jurisdiction of Commission to pass any order in a dispute between a licensee and a generator, it would be appropriate to examine the said order of the Commission and the background thereof in greater detail.

`Admittedly the order dated 10.5.2005 was part of ARR order of the Commission for the year 2005-06 and this specific direction was incorporated in response to a submission made by the licensee in the hearing. It would be relevant to remember in this context that Commission hardly passes any order suo-moto or in isolation. Most of the Commission's order are in response to prayer made by different parties including licensees either in cases of dispute or otherwise. In the instant case one has to read the order in its totality and not in bits and pieces. The very nature of the order shows that the direction to stop purchase of

power being the most expensive one at that point of time was conditional to the renegotiation of PPA. It is an admitted fact that the parties entered into dialogues thereafter from time to time to modify the PPA and to find out a workable solution. At the end that did not yield any positive result.

ARR order is generally valid for the financial year it relates to unless extended again for the subsequent year by a fresh order of the Commission. It is an interesting point to note in this context that in the subsequent years, the petitioner came to the Commission and orders were passed from time to time on the subject regarding purchase of power, disposal of accumulated stock of oil and lubricants etc. However, the fact of suspension of PPA by HVPNL was never brought to the notice of the Commission till the parties went for arbitration and this fact was mentioned in one of the submissions before the Arbitrators from the side of HPCC. In the given circumstances Commission feels it would be appropriate to ignore this development in the relationship between the parties.

As per Section 61 of the Electricity Act 2003 the Commission has to safeguard the interest of the consumers. In order to keep the burden on the consumer light and to prevent any tariff shock, the Commission has been allowing purchase of power on cost basis. It was observed by the Commission that the cost of power from MPGL was on the higher side. Consequently it disallowed the purchase proposed in 2003-04

allowing the fixed cost to be paid. MPGL could supply about 95 MU in 2002-03. Next year too MPGL supplied only 27.49 MU of energy against 50 MUs allowed to be purchased. Thereafter the Commission directed the parties to renegotiate the PPA.

For the year 2005-06 power in peak hours was allowed to be purchased from MPGL to the extent of availability of fuel with the petitioner estimated for 3MU, whereas actual drawn by the respondent was 5.751 MU. No satisfactory explanations could be furnished by the respondents for procurement of this costlier power.

In the ARR order for 2006-07 the Commission was initially reluctant to give sanction for drawal of power from MPGL on the ground that the parties were involved in litigation and also that the renegotiation of the existing PPA was not carried out by the parties and submitted for approval. However, on subsequent petition HPGCL wanted to purchase power on the ground that MPGL had refused to renegotiate PPA and since the arbitration was pending where MPGL has claimed deemed generation charges, HPGCL wanted to have sanction for purchase of power from MPGL during peak hours only to mitigate such possible losses. The Commission accepted the plea of HPGCL and allowed purchase of power from MPGL during peak hours in 2007-08 subject to certain terms and conditions. However, nothing has been placed on file regarding

follow up action taken by HPGCL. As the papers submitted by MPGL, purchase from 2006-07 has been shown as nil.

It is observed that the total cost of the Magnum Power project was Rs.80 crores on the basis of which the fixed charge component of Rs.1.29 per kWh was worked out in the PPA. As per the pleadings of the respondents and not controverted by the petitioner a second hand power plant was procured by the petitioner and the total cost of the project came to be Rs.43 crore. It is but natural that the fixed cost component would get substantially reduced on reworking based on the actual cost of the plant. With regard to the question of fixed cost component of the tariff MPGL has mentioned that rates specified in the PPA was never negotiated, rather it was offered by the respondent on take it or leave it basis. For Sihi Sikandarpur Road Site there was only one bidder namely MPGL which agreed to match the lowest bid price of Rs.2.40 per unit (Kwh) with the constant cost of Rs.1.29 per unit. The rate was never negotiated and the break up of Rs.2.40 was not discussed. It was explained by the petitioner that there was no condition that the plant being set up must be a new one. A second hand plant was imported with the consent and knowledge of the respondent. The PPA was finalized much after the import of the second hand plant at a concessional duty. It was categorically stated by MPGL that if condition of PPA was that, the plant has to be a new one, the respondent could

have refused to enter into the PPA. However, respondent agreed to the terms and conditions including a second hand plant and accordingly the PPA was finalized.

Since this point was raised by the respondent while submitting their reply before the Hon'ble Arbitrator, the Commission thought it appropriate to examine the point. It is admitted fact that the tariff of Rs.2.40/ kWh provided in the PPA contained two elements namely fixed charge of Rs.1.29/kWh and variable charge of Rs.1.11/ kWh. From the submissions of the respondent (HPGCL) it is seen that the cost of power plant put up by petitioner was Rs.43 crores as against a projected cost of Rs. 80 crores. The fixed charge is intended to recover the cost of investment which is Rs.43 crores in this case as against a projected cost of Rs.80 crores. Obviously the fixed charged component of Rs.1.29/kWh will also get reduced correspondingly. By not reflecting the same in the fixed cost while calculating the tariff to be included in the PPA is a grave error on the part of the respondent.

Since the plant has been set up and the parties carried out financial transaction for few years on the basis of the tariff as per PPA it would not be advisable to reopen the issue at this stage. The Commission agrees with petitioner's argument that if HSEB was not happy with the proposed tariff they could have backed out from signing the PPA. It was also pointed out that the second hand plant was imported with the

consent to HSEB. However, the Commission orders that this issue may be looked into by the Power department of the State Govt. and they may take appropriate action as deemed fit after detailed enquiry.

COMMISSION'S ORDER :

ISSUE NO.1:

In view of the observations in the foregoing paragraphs it is difficult to discern a logical and consistent stand on the part of either of the parties. As per the declarations of MPGL year after year plant availability was shown to be less than 75% PLF and in one year i.e. 2003-04 suddenly it has been shown exceeding 75% PLF though actual generation was much less. The reason for low availability has been indicated by the claimant as not having sufficient availability of liquid fuel stock, frequent start-stop instructions from the respondent and disruption and occasional failure of grid. There has been no consistent stand on the part of the respondent either. Initially the stand was taken by the respondent that they were not under any obligation to purchase power if the petitioner does not demonstrate their ability to generate power to the extent of 75% of PLF. However, they carried on transactions with the petitioner even when the performance was of much lower PLF. Subsequently, the plea was taken that the Commission's order prohibited them to purchase power from the petitioner which, on detailed examination was not found to be based on

facts. To confuse the matter further, both the parties compromised their stand by agreeing to certain principles i.e. performance factor as decided in the meeting dated 5.8.2003 between the parties on the basis of which claims were to be settled which were not even mentioned in the PPA.

After detailed deliberation, the Commission feels that to uphold the principle of deemed generation charges which is one of the cornerstones of the PPA executed between the parties, which, till now has not been formally put to an end, despite advice from the Commission for renegotiating the same from time to time; it would be appropriate to order payment of deemed generation on the basis of the following details:-

As per the generation data including data for plant availability for the years 2002-03 onwards furnished by petitioner, M/s MPGL in their filing and the data relating to the years prior to 2002-03 furnished by the respondent, it is amply clear that the plant's capacity to generate i.e. availability since beginning has been less than 75% of annual PLF i.e. 143.79 MU except during the year 2003-04. In the year 2003-04, the petitioner has suddenly shown the plant availability of more than 90% PLF which is undoubtedly an aberration in the data and this jump in availability has nowhere been explained. Hence, it cannot be accepted as true keeping in view the past and future performance data relating to the plant availability. Subject to acceptance / reconciliation with the figures from the respondent, it would be logical to **accept the plant availability figure for the year 2002-03 as per petitioner's submission and keep the same for 2003-04 and 2004-05 up to Oct; 2004 as well, thereafter as one of the engines got damaged on 21.10.2004 admitted by the petitioner. Consequently, the plant availability during the remaining half**

of the year 2004-05 and during the year 2005-06 became 3/4th of the availability during the year 2002-03.

Since the declared plant availability has been less than 75% of the annual PLF at 143.79 MU as per clause 8.2(a) of the PPA, the purchase obligation of 75% thereof would also correspondingly get reduced. Hence the generation schedule given by the respondent has to be compared with the reduced purchase obligation. Whatever is the shortfall between the two would be treated as deemed generation charges which the respondent will have to pay. This is subject to the condition that actual generation achieved from 2002-03 onwards on year to year basis upto 2005-06 was atleast equal to the generation schedule given by the respondent.

The deemed generation charges may be calculated in the light of the above observation from 2002-03 to 2005-06 on the basis of mutually accepted generation data. Net amount may be calculated after adjusting all the payments/adhoc payments/advances and charges for supply of electricity as start up power.

From 2006-07 there has been no commercial transaction between the parties. MPGL admitted in their clarification that they could not run the plant from 2006-07 onwards because of refusal of permission from the respondent for purchase of liquid fuel. It is not understood as to why permission is needed for purchasing liquid fuel to run the plant from

the respondent as the same was not done in the earlier years nor was it stipulated in the PPA. Hence the Commission is not convinced regarding the capability of the running of the plant from 2006-07 onwards and consequently decides to ignore the expected unit generation figures submitted by the petitioner as per plant declared availability. The Commission has already elaborated its views on the point in the earlier paras. As per intimation of the petitioner the plant is lying closed at present and it would take five to six months to restart the same after receipt of part payment of the dues and other conditions.

ISSUE NO.2:

(a) Metering Claim for the deduction from the monthly bills:

The petitioner has mentioned that respondent wrongfully deducted 10% of the bill amount on the basis of wrong allegation that the meter installed by MPGL were at fault. According to them it is admitted fact that the main meter installed by MPGL was always functioning within the limits of accuracy, as per the test carried out from time to time. Hence, there was no question of deduction from their bill on this account. MPGL has referred to the relevant terms of PPA that it should be paid full as per the invoice of the bill raised without any deduction. Respondent had initially wrongly deducted 10% of the bill amount which after negotiation

5% of the same was released. Hence, now the claim is for the remaining 5%.

Refuting the claim of the petitioner, the respondent has asserted that even the original main meters installed by the claimant were defective. The replaced meters installed on July 12, 2001 were without testing and when they are tested by National Physical Laboratory (NPL) the discrepancies in reading between the main meters and check meters were found to be beyond the permissible limits. Though they had not deducted any amount on account of meter discrepancies till June/July, 2000 though this controversy had resulted in billing discrepancies even for the two years prior to July, 2000. They have justified deduction of 10% on adhoc basis which they say that 5% of the same was refunded and remaining 5% was with-held till the matter in discrepancies were decided by an expert on the subject. It was pointed out by the respondent that as per the negotiations with the petitioner, it was agreed by both the parties that the case would be sent to Prof. Dr. M.L. Kothari of I.I.T. Delhi to evolve a formula for correcting the past reading and arrive at a figure of deductions etc. Consequently, respondent has claimed that unless the expert opinion is available on the subject, the claim of the petitioner is unsustainable.

The Commission has examined the claim of both the parties and also taken note of the relevant article 10.3 and 10.4 main meters and

check meters are required to be off 0.2% accuracy and both are to be mandatory test checked for accuracy half yearly. Chronology of events in this regard is available in the affidavit of the respondent (Er. H.R.Satija) dated 20.7.2007, as given below:

i) On 23.8.1998 meters were installed by the petitioner and no check meter were installed by the respondent and hence these meters could not be got checked half yearly.

ii) On 20.1.2000 check meters were installed by the respondent and difference in the readings of two sets of meters was observed to be more than 0.2%.

iii) Main meters were got checked on 4.7.2000 in NPL and they were found to be within accuracy limits. They were reinstalled on 19.8.2000.

iv) One of the main meters stopped working on 26.8.2000. Both the main meters were sent to ABB for repair in Oct-2000. They were repaired and tested at NPL and were reinstalled on 2.3.2001. These again stopped working on 24.3.2001.

v) On 12.7.2001, the petitioners installed a new set of meters. They were got tested at NPL in September 2001 and found accurate.

vi) The difference between main and check meter continued to be more than permissible limits and the respondent deducted 10% amount of

the bill in Sep-2000 but later refunded 50% of the retained amount in March-2002 on a protest from the petitioner.

vii) On 20.2.2002, all the CTs of the petitioner and one CT of the respondent were checked at CPRI Bangalore, it was found that six CTs of the petitioner and one CT of the respondent had more than permissible error. Similarly on testing on 4.8.2002, the PTs of the respondent were tested by CPRI and the error was found that beyond the permissible limit.

viii) The plant remained closed from 1.9.2003 and restarted on 22.3.2004. In the meantime the petitioner and respondent changed the defectives CTs and PTs.

ix) The NPL CPRI and the M&P Division of HVPN could not give any opinion as to how the accounts were to be adjusted. There was no ISI standard for arriving at correction factor in such cases. The petitioner proposed in March-2004 that the matter may be referred to IIT, Delhi.

The Commission, observes that the default and defect lies on both the sides although the check and main meters were accurate but due to inaccuracy in some of the CT and PT which feeds current and voltage signals to the meters, the readings of main and check meter did not tally. The matter has already been over stretched and in the circumstance of the case, the commission decides the with-held amount by the respondent may be released to the petitioner as even IIT Delhi may not have any correction factor in such cases at such a belated stage. No

interest is allowed on this amount as the parties were frequently holding dialogue on the subject with the intention of settling the issue.

(b) Deduction on account of oil density:

The petitioner has mentioned that the respondent has wrongly withheld an amount of Rs.3,23,31,394/- on this account which it is bound to pay with interest to MPGL. They have pointed out that the respondent is maintaining unwarranted demand for conversion of fuel quantity from kiloliter (KL) to Metric Ton (MT) for purpose of billing. As a rule the Oil Companies bill furnace oil in KL. However, billing to the respondent is made in MT as per formula given in Schedule 4 of the PPA. As a result quantity in KL is to be converted into quantity in MT for purposes of billing to the respondent.

Justifying their stand the respondent has pointed out that the claim of the petitioner has been calculated. They have admitted a liability of only Rs.25 lacs on this account and have offered the same which the petitioner refused to accept. Hence, they have prayed that the issue should be clinched as per their offer.

The Commission has examined the case in detail. As per schedule 4 of PPA, the tariff is based on a formula using the cost of fuel by weight in metric tonnes and not by volume in kilo liter. The oil companies had been sending bills to the petitioner in Kilo Liter as a result the quantity of fuel in KL

is required to be converted into MT for determination of variable part of tariff. The contention of the petitioner is that furnace oil is received by them at site at high temperature of 55°C to 70°C. Higher the temperature and lower is its weight because the density is lower at higher temperature. The standard density is given at 15°C and therefore the density should be converted to 55°C by the respondents using ASTM tables. The respondent was converting KL to MT by converting density at 15°C at room temperature as per data collected from the MET Department. Both the parties discussed the matter with M/s Indian Oil Corporation who vide their letter dated 13.7.2000 and conveyed that conversion should be done at ambient temperature. The petitioner agreed to this suggestion and the respondent also consented and has accepted a claim of Rs. 25.00 lacs as against a claim sent by the petitioner is Rs. 3,23,31,394/-. This issue has already be settled and the Commission would not like to interfere in the matter.

(c) Interest on LADT

The dispute relating to payment of LADT has a long history with regard to interpretation as to whether it was the new tax levied in the state w.e.f. May 2000 or it existed in a different form at the time of signing of the PPA. The respondent has already reimbursed the petitioner all the amount paid by them to the government towards LADT, the claim of

interest thereon is still pending. The Commission understands that the case is under litigation at present as a result of an appeal filed before the Hon'ble Supreme Court. As the matter is subjudice, the Commission does not pass any order on this issue.

(d) Payment on interest:

The interest claimed by the petitioner on the due amount has been claimed by the petitioner @ 11.73%. As per article 11.2(b)(ii) of the PPA, that if the parties do not resolve a dispute arising under clause 11.2(b)(i), within 10 days with the receipt of notice, either party may initiate procedure as set forth in article 16. Upon the resolution of dispute the amount if any shall be paid within 30 days together with interest at a rate charged by HSEB banks on working capital loans calculated from the due date of payment. The Commission orders that interest as per provisions of PPA may be paid by the respondents instead of 11.73% as claimed by the petitioner.

(e) Return of original bank guarantee:

There is also dispute relating to return of original bank guarantee. In this context the petitioner has mentioned that at the time of signing of Memorandum of Understanding (MOU) with HSEB dated 20.8.1995 they had submitted a bank guarantee in favour of HSEB. On signing of the Power Purchase Agreement (PPA) the bank guarantee should have been

returned to them as there is no provision in the PPA with regard to extension of bank guarantee submitted by the petitioner at the time of execution of MOU. After signing of the PPA the terms of MOU come to an end, hence, the respondent was not entitled to retain the bank guarantee anymore. The respondent while submitting reply to this charge has said that the bank guarantee amounting to Rs.31.70 lacs was furnished under clause 1 of MOU to represent 10% of one month's billing and that has to remain with HSEB till the faithful execution of terms and execution of both of MOU and PPA.

The Commission has examined the issue and checked up the records. It is an admitted fact that the bank guarantee was not renewed after July 22, 2005 and hence the issue has lost its significance. Consequently, the Commission does not feel it appropriate to pass any order or direction on this issue.

(f) Miscellaneous Deductions:

The petitioner under this head has claimed a sum of Rs.1,44,73,434/- on account of illegal deduction and short supplies. The claim falls under quite a few heads relating to shortage in fuel supply, short supply of material by the third party to the power station, deduction of units from monthly bills, transportation charges, non release of LADT and not reimbursing the expenditure incurred on maintaining the standing

equipments etc. the respondent while replying the charges have rejected the entire claim after giving their version of the case in respect of each claim. The Commission has tried to find out the details in this case on the basis of the material available in the file. However, it is felt that the documents are too sketchy and no detailed evidence are available on any of the claims from either side. Hence, the Commission finds it prudent to leave it to the parties to sort it out among themselves.

ISSUE NO.3:

COUNTER CLAIM OF THE HSEB:

The respondent has put a long list of counter claims under different heads. They include generation loss due to unserved power, purchase of high cost energy, and refund of interest on advance of Rs.2.00 crores. The claims are not backed by convincing data. The plea regarding State GDP etc. are remotely related to the issues involved merit little consideration. Moreover, the figures quoted by the respondent are not supported by details to enable the Commission to arrive at any particular decision.

With regard to purchase of high cost energy from alternative sources as a result of failure of MPGL to supply power as per the PPA, the Commission finds that no timely notice has ever been served by the respondent on the petitioner. Moreover, besides the energy contracted

with the petitioner, still more energy has been purchased at different rates. The PPA does not contain any compensation to be paid to respondent for the failure of the petitioner to supply less energy, hence the commission is constrained not to allow any compensation to the respondent.

EXAMINATION OF PPA

While replying to the query of the Commission both the parties have admitted that the PPA was drafted on the basis of model PPA enacted by CEA/MOP, Govt. of India during that time. However, no copy of such model PPA was ever produced by either side while submitting their reply. Hence, the Commission has examined and analysed the entire PPA to find out its workability and relevance and apparent contraction.

The Commission finds that drafting/finalization of different clauses/sections of PPA were not done on the basis of principle of equitable apportionment of risk amongst the different stake holders. This is not withstanding the fact that in order to encourage private participation in the power generation sector some incentives are to be provided to them so as to encourage them for investment.

The PPA executed on 12.8.1998 contains the provisions authorizing the respondents for asking for less power during monsoon period but still imposing the rider of ensuring 75% PLF on annual basis. The period of monsoon and extent of less power indented has not been defined.

Therefore, these provisions render the implementation of PPA questionable. Thus less drawl by the respondents during monsoon period may jeopardize the clause relating to ensuring 75% PLF. It is also seen that the PPA provides for fixed charge payment to the petitioner by the respondents in case of drawl of power lesser than that corresponding to 75% PLF in the form of deemed generation charges but does not make a corresponding provision for compensating the respondent for failure of the petitioner for supplying/generating power lesser than that equivalent to 75% PLF. Further it does not provide any penalty for wrong declaration of availability, not generating power as per the declared availability.

The PPA does not provide mechanism to renegotiate and removal of any difficulty faced in the implementation of the PPA. The PPA therefore, is found to be based on contingencies, containing deficiencies and to an extent unworkable. Further in the 5th meeting of the Coordination Committee the issue of deemed generation was sought to be sorted out by introducing a new factor called the performance factor which was in fact the tacit admission of the parties about un-workability of the PPA because the PPA did not contain any such provision like performance factor. Summing up the Commission feels that PPA is theoretically improper and difficult to implement in actual practice. That is the reason which compelled HERC from time to time to advise the

parties to renegotiate the PPA and submit for approval to the Commission.

FINAL ORDER

The above order of the Commission on each issue needs to be given a concrete shape by calculating the due amount payable to the either party and whatever is the net to be paid to the petitioner as per the following directions:-

After calculating the due amount within a period of one month, first instalment of the same may be paid within a period of two months and the balance amount two months thereafter. This amount however would not be reimbursed by HERC through any claim or through FSA since the respondents have been claiming FSA in respect of MPGL under the head “Deemed Generation Charges” and the same stands recovered from the electricity consumers. Hence, whatsoever the excess recovery they have made from the consumer on this account, after settlement of account with MPGL in the light of the findings in the earlier paragraphs, the remaining amount either be refunded back to the consumer or to be adjusted against the future filing with the prior approval of HERC. FSA formula approved by the Commission itself provides for subsequent adjustment of /under/over recovery of the same.

In passing, the Commission would wish for the revival of the plant to augment the generating capacity in the State. It is advised that

both the parties may request a generation expert at the Central Electricity Authority (CEA) Govt. of India to pay a visit to the site to check up the present state of the plant in presence of both the parties. The fees for this maybe equally shared. Thereafter the parties may work out a scheme for operationalising the plant for the benefit of all the stakeholders by entering into a fresh PPA/renegotiating the existing one which is workable and takes into account the financial interest of both the parties and the interest of the consumers of Haryana at large.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 23rd March,2010.

Date: 23.03.2010

Place: Panchkula

Rohtash Dahiya
(Member)

Bhaskar Chatterjee
(Chairman)