

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.211/MP/2022

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 8.4.1, 8.4.2 and 8.4.11 of Schedule I of Power Purchase Agreement dated 20.01.2014 read with CERC (Procedure, Terms and Conditions for grant of trading licence and other related matters) Regulations, 2020 seeking directions to PTC India Ltd. to comply with its statutory and contractual obligation to establish and operate a valid Escrow Arrangement and Letter of Credit as Payment Security Mechanism in favour of MB Power (Madhya Pradesh) Limited.

Date of Hearing : 22.12.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : MB Power (Madhya Pradesh) Limited (MBPMPL)

Respondents : PTC India Limited (PTC) and 5 Ors.

Parties Present : Shri Amit Kapur, Advocate, MBPMPL
Shri Akshat Jain, Advocate, MBPMPL
Shri Sagnik Maitra, Advocate, MBPMPL
Shri Abhishek Gupta, MBPMPL
Shri Ravi Kishore, Advocate, PTC
Shri Keshav Singh, Advocate, PTC
Shri Karan Arora, Advocate, UPPCL
Shri Shubham Mudgal, Advocate, UPPCL

Record of Proceedings

Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter-alia*, seeking directions to the Respondent No.1, PTC (a) to comply with its statutory and contractual obligation to (i) establish a valid Letter of Credit (LC) as payment security mechanism in favour of the Petitioner, and (ii) execute a default escrow agreement for establishment and operation of Default Escrow Account as payment security mechanism; and (b) to charge trading margin of only 2 paise/unit in terms of the Commission's regulations for power supplied to the Petitioner to Respondents No. 2 to 6, UP Discoms through PTC until a valid and appropriate LC and/or Escrow Arrangement is provided to the Petitioner by PTC. Learned counsel further submitted as under:

(a) In terms of Article 8.4.1 & Article 8.4.2 of Schedule I to the Power Purchase Agreement entered into between the Petitioner and PTC (PTC-PPA) for procurement of 361 MW of power from the Petitioner's Project for onward supply to UP Discoms on back-to-back basis, the PTC was mandated to provide a monthly unconditional, revolving and irrevocable LC to the Petitioner as Payment Security Mechanism.

(b) Moreover, LC was to be provided not later than one month prior to commencement of power supply under PPA which was 26.8.2015, with a term of 12 months and to be renewed annually. Also, LC has to be for an amount equal to 1.1 times the average monthly tariff payments of the previous contract year.

(c) Further, as per Article 8.4.11 of Schedule I of PTC-PPA, PTC was mandated to execute separate Default Escrow Agreement and to establish & operate the Default Escrow Account for an amount equal to 1.1 times the average monthly tariff payments of the previous contract year.

(d) In terms of Regulation 9(10) of the Trading Licence Regulations, 2020, PTC was mandated to provide an Escrow Arrangement and/or an irrevocable, unconditional and revolving LC to the seller for an amount equivalent to 1.1 times the average monthly bill amount with a validity of one year. Moreover, Regulation 8(1)(d)&(f) provide that for transaction under long-term contracts and back-to-back contracts where Escrow Arrangement and/or LC has not been provided by trading licensee, trading licensee shall not charge the trading margin exceeding 2 paise/kWh.

(e) Even after acknowledging its obligations, PTC has neither provided a valid and appropriate LC nor the Escrow Arrangement to the Petitioner till date.

(f) Despite PTC being under contractual obligation to provide LC by 26.7.2015, it provided the LC for the first time vide LC dated 15.10.2020 and that too was deficient.

(g) Swift copies of all three LCs, namely, LC dated 15.10.2020, LC dated 15.9.2021 and amended LC dated 4.6.2022 provided by PTC are deficient and contrary to the terms of the PPA and the Commission's Trading Licence Regulations, 2020.

(h) For instance, the amended LC dated 4.6.2022 only covers the payment under monthly bills and does not cover the payment under Supplementary Bills. Moreover, LC has been provided for an amount of Rs. 109.90 crore as against Rs. 117.89 crore as required under Article 8.4.2(ii) of Schedule I of PTC-PPA. Also, for its encashment, the Petitioner is required to provide the bank (i) certification about the correctness of undisputed bill, and (ii) quantity of energy supplied to PTC which has to be duly supported with monthly REA data issued by WRPC of implemented scheduled downloaded from WRLDC-WRPC website. These deviations are contrary to the provisions of the PTC-PPA.

(i) Despite PTC having neither provided a valid LC nor established an Escrow Arrangement in favour of the Petitioner, it has charged the trading margin of 8 paise/kWh from the Petitioner for the power supplied to UP Discoms for the period 2.1.2020 till date, which is in complete violation of the provisions of the Trading Licence Regulations, 2020.

2. At the outset, learned counsel for the Respondent, PTC sought additional time to file reply to the Petition. Learned counsel submitted that insofar as Regulation 9(10) of the Trading Licence Regulations, 2020 is concerned, the said regulation envisages security mechanism for payment of dues by way of escrow arrangement or LC whereas the regular dues under the PTC-PPA are being paid by PTC directly. Learned counsel further submitted that the Trading Licence Regulations, 2009, as prevailing at the time of entering into the PTC-PPA, provided for payment security

mechanism to be as may be mutually agreed between the seller and licensee. He added that unlike BGs, encashment of LCs is always subject to certain conditions and certain certifications as referred to by the Petitioner are self-certification and not the certifications required from PTC. Learned counsel submitted that on number of occasions, the Petitioner had also directly written to UPPCL for the escrow arrangements.

3. Learned counsel for the Respondent No.2, UPPCL prayed for an adjournment on the ground of the arguing counsel being occupied before another forum.

4. Considering the submissions made by the learned counsel for the parties, the Commission permitted the Respondent, PTC to file its reply within two weeks with copy to the Petitioner, who may file its rejoinder(s) within two weeks thereafter.

5. The Petition shall be listed for hearing on 21.2.2023.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**