

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.53/MP/2023 along with IA No. 11/2023**

- Subject : Petition under Section 79 of Electricity Act, 2003, including Sections 79(1)(b) and 79(1)(f) read with the provisions of Power Purchase Agreement dated 17.05.2021 executed between the Petitioners and the Respondent No. 1, Teesta Urja Limited seeking setting aside of the letter dated 30.01.2023 issued by Respondent No. 1 purportedly under Clause 19.2 of the Power Purchase Agreement conveying its intention to terminate the aforesaid agreement and its consequential actions thereof.
- Date of Hearing : **8.6.2023**
- Coram : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioners : Uttar Pradesh Power Corporation Limited (UPPCL) & Ors.
- Respondents : Teesta Urja Limited & Anr.
- Parties Present : Shri Sitiesh Mukherjee, Advocate, UPPCL  
Shri Deepak Raizada, UPPCL  
Shri Vishwajeet Tyagi, Advocate, TUL

**Record of Proceedings**

At the outset, learned counsel for the Petitioner submitted that pursuant to the direction of the Commission vide Record of Proceedings for the hearing dated 30.5.2023, a meeting was held between the Petitioner and the Respondent, Teesta Urja Limited (TUL), on 3.6.2023, to arrive at a mutually agreed form of Payment Security Mechanism (PSM) documents. Learned counsel referred to the minutes of the said meeting and mainly submitted the following:

(a) As to the Letter of Credit (LC), UPPCL offered to provide the same LC to TUL as established for its other agreement with TUL and also stated that it is agreeable to remove the word 'manually' as mentioned in the LC. However, TUL did not agree to the UPPCL's above offer.

(b) As to the Default Escrow Account (DEA), UPPCL offered to execute DEA with the removal of Article 3.5 of the DEA format under the HPPA and also mentioned that TUL was wrongly insisting that UPPCL should furnish 30% of its consolidated or global monthly revenue into DEA and also that it would furnish DEA in terms of Article 13.1.1 of the HPPA in which revenue equivalent to 30% of annual capacity charges shall be routed every month, which amounts to approximately Rs. 59.79 crore. However, TUL also did not accept the said offer.

(c) In the said meeting, UPPCL also offered to always provide a 10 day unsecured advance payment in line with the Government of India, Ministry of

Power's Order dated 28.6.2019 read with Procedure and Corrigendum dated 17.7.2019 and the Electricity (Late Payment Surcharge and related matters) Rules, 2022.

(d) Moreover, to address its concerns, UPPCL also clarified & confirmed that in the event, advance payment is not made to TUL, it can stop the power supply. UPPCL also indicated that this arrangement could be for the entire term of the HPPA.

(e) UPPCL also requested TUL that the 4-tier payment security (advance payment, monthly payments on bill presentation, LC & DEA) were substantial arrangement qua PSM and once again requested TUL to commence the supply under the HPPA.

(f) TUL vide its affidavit dated 6.6.2023 has also furnished its clarification on the points of disputes/ differences. As to the LC, it has pointed out that UPPCL had conveyed its inability to delete the requirement of 'Service Completion Certificate from UPPCL'. However, the said aspect was not discussed in the meeting, and as such, UPPCL is willing to delete such a requirement in the LC.

(g) TUL has also referred to Clause 2 of the draft LC i.e. Schedule E of the HPPA to insist that the LC should be automatically and compulsorily renewed every year by the Bank, 2 months prior to the date of expiry for the period of the financial year that commences immediately after expiry date and shall continue to be so renewed until the end of the contract period.

(h) Against this, UPPCL has proposed the renewal of LC every year and also 2 months prior to the date of expiry of the period of financial year but on advice of UPPCL. Renewal of such LC each year by the Bank itself attracts substantial upfront margin, and it is not the standard industry practice.

(i) Article 13.2.2 of the HPPA provides that the LC shall be substantially in the form specified in Schedule E and Article 1.4.2 of the HPPA provides that in case of conflict between clauses of the HPPA and the Schedule, the clauses in the HPPA will prevail. Thus, the LC, as agreed to be provided by UPPCL, is in substantial compliance with the provisions of HPPA.

2. Learned counsel for the Respondent No.1, at the outset, prayed for adjournment. Learned counsel submitted that the main counsel for the Respondent and the arguing senior counsel had already expressed their inability to appear today on the previous occasion. Accordingly, the Respondent has also circulated a letter requesting an adjournment and keeping the matter in the first week of July, 2023. Learned counsel also added that, in compliance with the direction of the Commission dated 30.5.2023, a meeting was held between TUL and the Petitioner. However, the parties could not arrive at a mutually agreed upon form of PSM documents. Learned counsel also urged that no interim direction be issued in the matter.

3. Keeping in view the detailed submissions already made by both sides on 30.5.2023 and the outcome of their attempts to arrive at a mutually agreed form of PSM documents as brought on record by the respective additional affidavit, the Commission, taking into account the onset of the summer season and high demand period, deemed it appropriate to put in place a temporary arrangement for the resumption of power supply by TUL to UPPCL under the HPPA. However, keeping in

view the concerns of TUL, the Commission ordered that such arrangements for the resumption of supply shall be subject to the following conditions:

(a) In addition to the LC & Escrow accounts as per the HPPA, UPPCL to make an advance payment to TUL equivalent to 1 (one) month's average supply bill. For the subsequent month, such an advance will be deposited by UPPCL, three days prior to the beginning of each month.

(b) UPPCL to provide LC to TUL, which will not include the word 'manually' as agreed to in the Meeting dated 3.6.2023. In addition, UPPCL will provide the DEA and Deed of Hypothecation in the format as agreed to by it.

(c) UPPCL to comply with the above PSM within a week from the date of issuance of this Record of Proceedings subject to which TUL will resume the supply under the HPPA immediately after that. In case, UPPCL fails to comply within the given timeline, TUL will not be obligated to resume the supply. In addition, if there is a default on the part of UPPCL to clear its dues against the supply of power at any time during the above interim arrangement, TUL will be at liberty to act in terms of the PPA.

(d) The above arrangement is purely *ad-interim* in nature and will continue till next date of hearing and will also be subject to the outcome of the present petition.

4. The matter to be listed for hearing on **11.8.2023**.

**By order of the Commission**

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