

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELH**

Petition No.91/MP/2018

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.07.2012 as amended on 19.12.2014 and 23.01.2018 in regard to non-payment of tariff and unilateral deduction of the monthly energy bills of the Petitioner by the Respondents.

Petition No.53/MP/2021

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.7.2012 as amended on 19.12.2014 and 23.1.2018 in regard to non-payment of tariff and unilateral deduction of capacity charges under the Bills of the Petitioner by the Respondents.

**Petition No.61/MP/2021
along with IA. 28/2021 & 42/2022**

Subject : Petition under Section 79(1)(f) and (k) of the Electricity Act, 2003 for adjudication of disputes arising on account of termination of the Power Purchase Agreement dated 31.7.2012 by the Respondent Nos. 1 and 2.

Petition No.149/MP/2021

Subject : Petition under Section 79(1)(b) read with Section 79(1)(f) and other applicable provisions of the Electricity Act, 2003 seeking adjudication of disputes and differences under the Power Purchase Agreement dated 31.7.2012 as amended on 19.12.2014 and 23.1.2018 in regard to non-payment of tariff and unilateral deduction of capacity charges under the Bills of the Petitioner by the Respondents.

Petitioner : KSKMPCL

Respondents : APSPDCL & 3 ors.

Date of Hearing : **29.5.2023**

Coram : Shri Jishnu Barua, Chairperson
Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties Present : Shri Anand K. Ganesan, Advocate, KSKMPCL
Ms. Aishwarya Subramani, Advocate, KSKMPCL
Shri Sanjay Sen, Senior Advocate, AP Discoms
Shri S. Vallinayagam, Advocate, AP Discoms
Ms. Ruth Elwin, Advocate, AP Discoms



Record of Proceedings

These 'part-heard matters' were called out for hearing.

2. During the course of the hearing, the learned counsel for the Petitioner submitted that the Respondent AP Discoms have not furnished the details/information sought by this Commission vide ROP of the hearing dated 12.7.2022 and 18.10.2022. He further submitted that, in terms of the directions of the Commission, the parties had undertaken the reconciliation exercise and signed a joint reconciliation statement on 5.1.2023, indicating the claims of the Petitioner and the amounts admitted by the Respondents. While pointing out that there is a substantial difference between the details furnished by the Petitioner and the present contention of the Respondents, the learned counsel, submitted that the position now taken by the Respondents is contrary to the specific pleadings, the PPA, and the conduct of the Respondents over the years.

3. The learned Senior Counsel for the Respondent AP Discoms, clarified that in terms of the directions of the Commission vide ROP dated 18.10.2022, the Respondent AP Discoms and the Petitioner, have reconciled all the energy & transmission bills for the period from April 2017 to February 2021 and accordingly, the detailed breakup of the amount claimed by the Petitioner, and the deductions accepted by the Petitioner, the amount admitted by the Respondent AP Discoms, the amount disallowed by AP Discoms along with reasons, the date-wise payments made along with surcharge & rebate have been filed as Annexures to the reply dated 5.1.2023. Accordingly, the learned Senior Counsel mainly submitted as under:

- (a) Payment towards Energy & Transmission bills, has been adjusted in terms of Article 8.3.2 of the PPA, which provides for appropriation firstly towards LPS, then towards earlier unpaid monthly bills, if any, and thereafter, towards the current monthly bills.
- (b) As per Article 12.1 of the PPA, the generator (Petitioner herein) is responsible for payment of transmission charges to PGCIL. The Respondent AP Discoms are required to reimburse the payment made by the Petitioner, on submitting proof of payment [Article 4.3.1 (b) of the PPA was referred to].
- (c) The first regulation of power supply was imposed by PGCIL on the Petitioner, on 29.3.2018, for reasons of non-payment of transmission charges, which is the default of the Petitioner under Article 4.3.1 (b) of the PPA. The second regulation of power supply was imposed from 14.1.2019 to 27.4.2019.
- (d) As regards the non-supply of power by the Petitioner to the extent of 98 MW from 25.6.2020 onwards, due to curtailment of STOA by SRLDC, it is evident from the notice of PGCIL dated 16.6.2020 that the Petitioner had not liquidated the outstanding dues of 'other corridors' (as mentioned therein) and also not reinstated the LC, and therefore, the STOA was curtailed. There are no outstanding transmission bills from the Respondent AP Discoms to the Petitioner, as on 25.6.2020.
- (e) The claim of the Petitioner for capacity charges during the periods of regulation of power supply, can only be made if the Petitioner demonstrates that it had sufficient capacity to declare availability to the Respondents. For this, the Respondent Discoms have filed IA No.26/2023 before this Commission, seeking



appropriate reliefs on this count, which may be taken on record, and the Petitioner may be directed to furnish the required details.

- (f) The Petitioner is wrongly claiming capacity charges during the power regulation period, without having reserve power during the said period to supply power through MTOA to the Respondent AP Discoms.

4. In response to the above, the learned counsel for the Petitioner mainly clarified as under:

- (a) Article 8.3.2 of the PPA, has no application to the reimbursement of transmission bills, and is not subject to a rebate or adjustment of the monthly bills. Only capacity charges and energy charges are covered by the monthly bill, which is for appropriation in terms of Article 8.32. Thus, the contention of the Respondents that transmission charges are adjusted in terms of Article 8.3.2 namely first towards the late payment surcharge, then towards the outstanding monthly bills, and thereafter against the current monthly bills, and that there has been no default, is misconceived and denied. However, the transmission charges dues for 2017-18, were eventually paid by the Respondent AP discoms only in 2019-20.
- (b) Article 4.3.1(b) of the PPA makes it clear that the Procurer (Respondent herein) shall be responsible for payment of transmission charges. In case of payment by Seller (Petitioner herein), the Procurer shall reimburse the same. This clear obligation cannot be sought to be avoided, as suggested by the Respondents. The transmission charges are on a reimbursement basis, and therefore the actual charges levied by PGCIL are payable by the Respondents. Further, the capacity charges cannot be avoided when the inability to supply itself arose due to default of the Respondents.
- (c) The Regulation of power supply was admittedly due to non-payment of transmission charges. The responsibility of the Petitioner to provide the contracted capacity is up to the Injection Point (i.e. CTU injection Point). Further, from Interconnection Point to the Delivery Point, it is the responsibility of the Respondent to pay the transmission charges and bear transmission losses. In any event, when the Respondents have admittedly not reimbursed the Petitioner for the actual transmission charges, the question of their seeking to make any claim against the Petitioner does not arise.
- (d) As recorded in the joint reconciliation statement, the total claim of the Petitioner is Rs 1196.09 crore (approx.), as against the amount of Rs 421.03 crore admitted as payable by the Respondent AP Discoms. There is no bill dispute raised by the Respondents on any of the invoices of the Petitioner in terms of Article 8.6.2 of the PPA, for all the claims of the Petitioner that are pending adjudication in the present petitions. Therefore, the bills have to be taken as being conclusive as per Article 8.6.1; In this regard, the detailed submissions made by the Petitioner in its rejoinder filed in Petition No. 91/MP/2018, may be considered.
- (e) The invocation of the Seller's event of default, in terms of Article 11.1 of the PPA, by the Respondent AP Discoms for non-supply of power since 13.7.2020 is misconceived, as the same was on account of the Respondents own default in making regular payments.



- (f) Though the Petitioner offered to supply power, after the withdrawal of the regulation of power supply, by PGCIL, on 18.12.2020, the termination notice of the PPA was issued by the Respondent Discoms, consequent to the offer of such supply. The Respondent discoms cannot take advantage of their own wrong, as the regulation of power supply was imposed only due to the respondent's default.
- (g) The Petitioner submitted its STOA Application to WRLDC and sought confirmation to start power scheduling of 400 MW to Respondent AP discoms from 19.12.2020 and also sought consent of Respondent No. 3 (APTRANSCO), on the Day-Ahead STOA Application. Thereafter, the said consent was granted by APTRANSCO vide email dated 18.12.2020 at 17:59 hours. However, APTRANSCO vide email dated 18.12.2020 at 19:06 hours, cancelled its consent, stating that the PPA was under termination.
- (h) In terms of Article 11.3.2 of the PPA, the consultative process must go on for 90 days following the Preliminary Seller's default notice. Thereafter, within seven (7) days following the expiry of the consultation period, the Procurer(s) may terminate the agreement by giving a written termination notice of thirty (30) days. This is in contrast to the procedure in the case of a Procurer's event of default, wherein the termination can be done after a period of seven (7) days following the consultation period.
- (i) The Respondent AP discoms claim for penalty for Rs 482 crores (approx) from the Petitioner, is only with the intent to offset the Petitioners claim.

5. The Commission, after hearing these matters, permitted the learned counsel for the parties, to upload the notes of their arguments, made during the hearing. At the request of the learned counsels, the Commission also permitted the Petitioner and the Respondents to file their written submissions (not exceeding three pages), in these petitions, with copies to each other, on or before **3.7.2023**. The parties shall complete their submissions within the due dates mentioned, and no extension of time shall be granted.

6. Subject to the above, order in these petitions was reserved.

By order of the Commission

Sd/-
(B. Sreekumar)
Joint Chief (Law)

