

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 5/MP/2017

Coram:

**Shri Jishnu Barua, Chairperson
Shri I.S Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member**

Date of Order: 25th June, 2023

In the matter of

Petition under Section 79(1) (f) and 79(1) (b) of the Electricity Act, 2003 in connection with the disputes and differences arising under the Power Purchase Agreement dated 12.5.2008 between the Petitioner and Respondent No. 1.

And

In the matter of

Maithon Power Limited,
34 Sant Tukaram Road, Carnac Bunder,
Mumbai - 400009

...Petitioner

Vs

1. Tata Power Delhi Distribution Limited,
33kv Grid Substation Building, Hudson lane
Kingsway Camp, New Delhi – 110019

2. Tata Power Trading Company Limited,
34 Sant Tukaram Road, Carnac Bunder,
Mumbai-400 009

...Respondents

Parties Present:

Shri Shreshth Sharma, Advocate, MPL
Shri Nishant Talwar, Advocate, MPL
Ms. Doel Bose, Advocate, BRPL
Shri Ayush Mangal Gupta, Advocate, TPDDL



ORDER

Petition No. 5/MP/2017 has been filed by the Petitioner, Maithon Power Limited seeking the following relief(s):

- “(a) Issue appropriate directions to Respondent No. 1 to pay to the Petitioner an amount of Rs 1.25 Crores as Differential Price on account of the difference between the Normative PPA Tariff and the lower TPTCL Rate at which Respondent No.2 has charged Respondent No. 1 from time to time, as set out in detail in Table 3 above along with such carrying cost as this Hon'ble Commission may deem just and proper;*
- (b) Issue appropriate directions to Respondent No. 1 to pay to the Petitioner STOA Charges amounting to Rs 1.27 Crores which Respondent No. 2 had erroneously charged to the Petitioner;*
- (c) Declare that the Petitioner is entitled to recover 100% Capacity charges under the PPA on achieving normative availability of 80% (as defined in Clause 7.1 of the PPA);*
- (d) Pass such further and other Order(s) as this Hon'ble Commission may deem fit in the facts and circumstances of the present case.”*

Background

2. Respondent No.1, Tata Power Delhi Distribution Limited (*erstwhile NDPL*), on 17.9.2007, issued tender for procurement of power on short/medium basis for itself and also for BRPL and BYPL, through competitive bidding process. BRPL and BYPL had authorized TPDDL to act as the nodal agency for carrying out such procurement of power on their behalf, as per tender documents and terms and conditions set out in the draft PPA. In response, the Petitioner, MPL submitted its bid on 30.10.2007 for supply of 309 MW power pm medium-term basis from its generating Unit-I of Maithon Right Bank Thermal Power Plant, which was to be commissioned on 1.10.2010. The Petitioner was declared as lowest bidder and on 28.3.2008, DERC issued direction to TPDDL to issue LOI to Petitioner. On 29.3.2008, TPDDL issued LOI to the Petitioner to supply 309 MW of power to BRPL and itself ('Procurers'), which was to be shared in the ratio of 50:50 between the Procurers (i.e 154.5 MW) each to BRPL and TPDDL. BYPL



did not opt to procure power from the Petitioner. Subsequently, on 12.5.2008, the Petitioner executed PPA with TPDDL for supply of 154.5 MW power on round the clock basis, for the period from 1.10.2010 to 31.3.2012. The DERC vide its order dated 10.6.2009 adopted the tariff of Rs. 3.48/kWh (as quoted by Petitioner) for supply to BRPL under the PPA.

3. Certain disputes had arisen between the Petitioner and the Respondent TPDDL in relation to the said PPA, on the following issues:

- (a) Under recovery of price for the power supplied through Respondent No.2 TPTCL (trading company) in terms of PPA.*
- (b) Recovery of STOA charges paid by the Petitioner to the Respondent No.2 towards supply of power to Respondent No.1.*
- (c) Scheduling in respect of normative availability and Monthly Availability adjustment;*

4. The Petitioner has submitted that it had filed Petition No. 1/2012 before DERC raising the aforesaid issues, and DERC vide its order dated 10.9.2013, rejected the said petition, holding that it has no jurisdiction to adjudicate the disputes, as the Petitioner has a composite scheme for generation and supply of electricity. This order was challenged by the Petitioner before APTEL in Appeal No. 307/2013 and APTEL vide its judgment dated 14.7.2016, upheld the decision of DERC, thereby relegating the parties to this Commission, for adjudication of disputes. In the above background, the Petitioner has filed this petition under Section 79(1)(f) read with Section 79(1)(b) of the Act seeking the reliefs, as stated in paragraph 1 above.



Hearing dated 16.5.2017

5. This Petition was heard on 'admission' on 16.5.2017 and the Commission 'admitted;' the petition, with directions to the parties, to complete pleadings in the matter.

6. This Petition was tagged with Petition No.4/MP/2017 (MPL v BRPL & anr) and listed for hearing on various dates (27.7.2017, 14.9.2017, 11.1.2018, 19.4.2018, 5.7.2018, 11.12.2018, 15.2.2019, 16.4.2019, 4.7.2019, 20.8.2019, 5.3.2020 (through virtual mode), 22.10.2021, 21.4.2022, 15.7.2022). However, these petitions could not be finally heard, either due to paucity of time, or due to non-availability of counsel or due to the request of parties to complete pleadings in these matters. Reply in the matter has been filed by the Respondent TPDDL and the Petitioner has filed its rejoinder to the said reply.

7. Thereafter, the Petitioner vide an additional affidavit dated 25.3.2022, has claimed Rs 48.22 crore (after truing-up) against supply of power to the Respondent TPDDL, for the period from April, 2011 to March, 2012 along with Late Payment Surcharge @1.25% per month.

Hearing dated 22.9.2022

8. Though this Petition was listed on 22.9.2022 (along with Petition No.4/MP/2017) the same could not be taken up for hearing due to paucity of time. The Commission, however, requested the parties to explore possibilities for an amicable settlement of all outstanding issues and accordingly, postponed the hearing of the petitions. The parties



were also directed to file reconciliation statement, if any, based on the amicable settlement.

Hearing dated 25.11.2022

9. During the hearing of the learned counsels for the Petitioner and the Respondent TPDDL submitted that negotiations for settlement between the parties were at an advance stage and accordingly, prayed for postponement of hearing of the petitions. The Commission, accepted the said request and postponed the hearing, with directions to the parties to file a joint affidavit, spelling out the settlement arrived at between the parties and thereafter, to mention the same for listing of the petitions, for hearing, if any.

10. In compliance to the above directions, the Petitioner and the Respondent TPDDL has filed IA No.39/2023, vide joint affidavit dated 2.6.2023, with the following prayers:

“10. Considering the aforesaid amicable and unequivocal settlement reached between the Parties, in terms of the binding MOU dated 26.5.2023, the Petitioner and Respondent No.1 jointly through the present joint application pray that this Hon’ble Commission may be pleased to take on record the binding MOU executed between the Petitioner and Respondent No.1 on 26.5.2023 and dispose of the Petition in terms of the binding MOU;

PRAYER

(a) Take on record the binding MoU dated 26.5.2023 executed between the Petitioner and Respondent No. 1;

(b) Dispose of the captioned Petition in terms of the MOU dated 26.5.2023, holding that the parties shall be governed and bound by the terms of the MOU dated 26.5.2023;

(c) xxx

Hearing dated 6.6.2023

11. During the proceedings of the Commission, on 6.6.2023, the learned counsels for the Petitioner and the Respondents, mentioned, that the parties in the petitions, had settled their disputes amicably and a joint affidavit has been filed, in compliance to the directions of the Commission. Accordingly, the learned counsels prayed that the



settlement arrived at between the parties may be taken on record and the petitions may be disposed of in terms of the same.

Decision

12. As stated, the Petitioner and the Respondent TPDDL, have filed a joint application (IA No.39/2023) vide affidavit dated 2.6.2023, stating that an amicable and unequivocal settlement has been reached between the parties, in terms of a binding Memorandum of Understanding (MOU) dated 26.5.2023. Both the parties in their joint affidavit, have prayed to take the said MOU on record, and to dispose of the petition accordingly.

13. In view of the submissions of the parties, the MOU dated 26.5.2023 is taken on record. Some of the relevant clauses in the said MOU, are extracted below:

I. SETTLEMENT TERMS

1.1 The Recitals stated hereinabove form part and parcel of the substantive provisions of this MoU and are incorporated in the substantive portion of this MoU by mere reference.

1.2 After mutual discussion and deliberation, the Parties agree that TPDDL will pay INR 48.22 Crores for the power supplied under the PPA (As per the Final Bill) and the payment of INR 48.22 Crores is exclusive of any late payment surcharge and no late payment surcharge will be payable by TPDDL on the same.

1.3 The payment of INR 48.22 Crores as agreed between the Parties shall be made by TPDDL within 15 days from the date when CERC issues appropriate Order.

1.4 Within 15 days from the Effective Date, both the parties agree to file appropriate Applications / Affidavit before CERC in Petition No. 5/MP/2017 and withdraw their respective claims in Petition No.05/MP/2017.

1.5 The Parties hereby agree, acknowledge and undertake that they shall not, either collectively or individually or otherwise, directly or indirectly either through itself, its affiliates or any third party or person, in any manner whatsoever, file any opposition, revocation or cancellation or any other proceedings disputing, contesting, opposing or challenging this MoU and/or the execution hereof. The Parties agree to relinquish any claim(s) / obligation / performance in relation to the disputes as being subject matter of Petition No 05/MP/2017 to the extent not covered under this MoU.



Xxx

II. COSTS AND EXPENSES

3.1 Each Party hereto shall bear its own expenses, costs and attorney fees in negotiation, preparation and execution of this MoU and all related and/or ancillary documents.

3.2 The Parties agree that pursuant to the execution and fulfilment of this MoU, they shall have no claims whatsoever against each other or, its directors, affiliates, group companies, related entities, parent companies, subsidiaries, including their respective directors, officers, employees, representatives and/or agents except for as specifically set forth in this MoU.”

14. The Respondent No.2 TPTCL has also filed an additional affidavit dated 2.6.2023 and has prayed that the same may be taken on record. The said additional affidavit is taken on record. In the said affidavit, TPTCL has submitted that the following:

9. The Respondent herein acknowledges and confirms to the Hon'ble Commission that it has no claims whatsoever against the Petitioner (MPL) and / or Respondent No.1 (TPDDL) either in relation to or under the PPA. The Respondent herein also acknowledges and confirms that it would not raise any claims / challenges against the Petitioner and / or Respondent No. 1 under or in relation to the PPA, either before this Hon'ble Commission or any other fora”

15. In consideration of the submissions of the parties that all disputes between the Petitioner and the Respondent TPDDL, have been amicably resolved in terms of the MOU dated 26.5.2023 (filed vide affidavit dated 2.6.2023 in IA No.39/2023), Petition No.5/MP/2017, is disposed of accordingly.

16. Petition No.5/MP/2017 along with IA No.39/2023, is disposed of in terms of the above.

**Sd/-
(P.K. Singh)
Member**

**Sd/-
(Arun Goyal)
Member**

**Sd/-
(I.S. Jha)
Member**

**Sd/-
(Jishnu Barua)
Chairperson**

