

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 224/MP/2018

Subject : Petition invoking section 79(1)(b) and section 79(1)(f) of the Electricity Act, 2003 seeking directions for applicability of the provisions of PPAs dated 18.1.2014 and 20.1.2014 for the purpose of calculation of penalties for maintaining the availability below 80% for a contract year.

Date of Hearing : 15.11.2018

Coram : Shri P.K. Pujari, Chairperson
Dr. M.K. Iyer, Member

Petitioner : MB Power Limited

Respondents : UPPCL & others

Parties present : Shri Amit Kapur, Advocate, MBPL
Shri Ashutosh K. Srivastava, Advocate, MBPL
Shri Akshat Jain, Advocate, MBPL
Shri Rahul Sharma, MBPL
Shri Rajiv Srivastava, Advocate, UPPCL
Shri Arpit Shukla, Advocate, UPPCL
Ms. Harshita Sinha, Advocate, UPPCL
Shri Abhishek Gupta, MBPL
Ms. Rajshree Chaudhary, Advocate, PTC
Shri Ravi Kishore, Advocate, PTC

Record of Proceedings

During the hearing, the learned counsel for the Petitioner, MBPL mainly submitted as under:

- (a) The PPA dated 18.1.2014 was executed between PTC and the Procurers (discoms of UP) for supply of 361 MW power from the Petitioner's project through back to back PPA between PTC and the Petitioner.
- (b) Clause 4.2.5.1 of Schedule 4 of the said PPA dated 18.1.2014 provides that in case the availability for a contract year is less than 80%, the seller shall pay a penalty of 20% of the simple average capacity charge for all months in a contract year applied on the energy corresponding to the difference between 80% and availability during such contract period.
- (c) Since the annual availability for 2015-16 of the Petitioner was more than 80%, no penalty would be applicable for the said period. The Petitioner requested PTC to release the penalty amount of ₹124158362 deducted by PTC. Similarly, the Petitioner requested PTC to release the amount of ₹156850438 deducted towards penalty for 2016-17 as the Petitioner had declared availability of 81.82%. Since PTC had also claimed rebate on the said penalty amounts, the Petitioner requested PTC to release the amount of



₹284508233 including rebate for the period 2015-17. However, PTC wrote to the Petitioner that the penalty deducted for 2015-16 & 2016-17 were paid back to the Petitioner.

(d) Based on the letter dated 11.1.2018 of the Chief Engineer (Planning), UPPCL, Bill verification memo was issued by UPPCL deducting an amount of ₹172218751 on monthly standalone basis for the period corresponding to commencement of power supply till December, 2017.

(e) UPPCL has wrongfully computed the availability of the project on stand-alone monthly basis, instead of considering the same on cumulative basis as prescribed under the PPA and has arbitrarily imposed penalty on the Petitioner on account of such erroneous computation of availability. UPPCL/ PTC have imposed penalty unilaterally and the same is contrary to clauses 4.5.2.1 and 8.7 of PPA dated 18.1.2014.

Accordingly, the learned counsel for the Petitioner prayed that reliefs prayed for may be allowed.

2. In response, the learned counsel for the Respondent, UPPCL submitted that the PPA dated 18.1.2014 contains provisions which are required to be amended. The learned counsel for the Respondent, PTC however clarified that since it was acting as a conduit between the parties, it had requested UPPCL vide letter dated 12.2.2018 to refund the penalty amount deducted to the Petitioner.

3. The Commission after hearing the parties reserved order in the Petition.

By order of the Commission

**Sd/-
(B.Sreekumar)
Deputy Chief (Law)**

