

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.54/MP/2019**

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 seeking various reliefs against Respondents in terms of PPAs dated 25.07.2013.

Petitioner : TRN Energy Private Limited

Respondent : PTC India Ltd & Ors

Date of hearing : **17.9.2019**

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

Parties present : Shri Sourav Roy, Advocate, TRN EPL  
Shri Gaurav Majumdar, Advocate, TRN EPL  
Shri Harsh Anand, Advocate, TRN EPL  
Shri Praveen, TRN EPL  
Shri Sanjay Sen, Senior Advocate, PTC  
Shri Ravi Kishore, Advocate, PTC  
Shri Rajshree Chaudhary, Advocate, PTC  
Shri H.L Chaudhary, PTC  
Shri Deepak, PTC  
Shri Rajiv Srivastava, Advocate, UPPCL  
Shri Tushar Mathur, Advocate, PGCIL  
Ms. Suparna Srivastava, Advocate, PGCIL  
Shri K.K Jain, PGCIL  
Ms. Anita A. Srivastava, PGCIL

**Record of Proceedings**

During the hearing, the learned counsel for the Petitioner submitted that the Respondent PTC has failed to ensure payments towards capacity charges & energy charges, transmission charge, establishment of Payment Security Mechanism (PSM) and had applied the second year tariff instead of first year tariff from the delivery date in terms of the PPA's dated 25.7.2013. The learned Counsel made the following submissions:

- (a) The Petitioner has entered into agreement with the Respondent PTC (PTC PPA) for supply of power based on the PPA entered into by PTC with the Respondent discoms (Procurer PPA). This agreement is on back to back basis subject to the exceptions/ deviations as expressly mentioned in the PTC PPA. There is privity of contract between the Petitioner and the Respondent PTC and the same is not interlinked with the obligations of Respondent PTC



in the Procurer PPA. As per Recital B of the Procurer PPA the Respondent PTC is the 'Seller' for sale and supply of electricity in bulk to the Procurer(s). Similarly, Article 15.4 (Third Party Beneficiaries), Article 15.6 (Entirety), Article 15.10 (Relationship of the Parties) and Article 15.22 (Independent Entity) make it clear that there is no privity between the Petitioner and the Respondent discoms.

- (b) The obligations of the Respondent PTC have been provided under Regulation 7 of the CERC Trading License Regulations and the same has not been fulfilled by the Respondent.
- (c) The Respondent PTC has transferred all its obligation on the Petitioner. Articles 12.2 and 5.2 of the PTC PPA provide that the Respondent is required to hold the Petitioner harmless from the breaches of the Procurer PPA.
- (d) In terms of Article 6.4 of the PTC PPA, PTC is required to make payments to the Petitioner for power supplied, within the due date plus one day. However the Respondent has not been releasing the payment within the due date and even when payments are made, they are released in parts instead of full bill payment.
- (e) In terms of the PTC PPA the Respondent PTC has failed to establish the PSM since the commencement of supply of power from May, 2017. This has resulted in insufficient availability of working capital for the project.
- (f) In terms of Article 1.1 of the PTC PPA, the Aggregate Contracted Capacity (ACC) was 390 MW and the delivery date was 17.5.2017. Therefore, the first year tariff shall be applicable from the COD of the Unit i.e. 17.5.2017.
- (g) PGCIL has operationalized only 150 MW LTA out of 390 MW with effect from 2.12.2016 and the balance 240 MW was operationalized on 20.4.2017 on the commissioning of 800 kV HVDC Champa-Kurushehtra Phase I. As per Article 4.6.1 of the Procurer PPA the tariff payments for interim period of supply from 2.12.2016 to 16.5.2017 is not to be treated as the first contract year. The first contract year under the provisions of the PPA shall commence from the delivery date of 17.5.2017. The Respondent PTC and the discoms herein are under an obligation to revise the schedule delivery date.
- (h) As per Article 8.3.6 (a) of the PTC PPA, for payment of any bill before due date, rebate shall be payable at the rate of 2.25% of the full amount due under the provisional bill, credited to the Petitioner's account. The rebate amount shall reduce at the rate of 0.05% for each day upto the sixth day of the month. However, the Respondent PTC has been deducting rebate upto 2.25% even when full payment is not made within the due date.
- (i) As per Article 4.4.1 of the Schedule 4 of the PPA, the Petitioner is required to pay transmission charges to PGCIL which in turn are to be reimbursed by PTC. Therefore, the Petitioner is required to make the payment of monthly transmission charges to PGCIL and upon submission of request for



reimbursement to PTC alongwith the details of payment made to PGCIL, PTC is required to reimburse the transmission charges to the Petitioner.

- (j) As Respondent PTC was not making timely reimbursement of bills towards transmission charges, the Petitioner had requested the Respondent UPPCL to directly make payment to PGCIL and accordingly UPPCL had made a payment of ₹25 crore directly to PGCIL on 19.12.2018. Thereafter, based on the request of the Petitioner the Respondent UPPCL made a payment of ₹ 33 crore directly to PGCIL from 5.11.2018 to 26.11.2018 and the Petitioner raised the bills for the same to PTC. However, the Respondent UPPCL inadvertently adjusted the aforesaid amounts against the payment of power supply charges to the Petitioner through Respondent PTC.
- (k) The Respondent PTC has failed to fulfill its obligations under the PTC PPA in terms of full payment of monthly bills within due date, timely reimbursement of transmission charges, deduction of rebate in compliance with the said PPA and establishment of PSM in favour of Petitioner. Since the Respondent PTC is unilaterally recovering trading margin from the Petitioner and the Petitioner is not receiving any benefit in exchange, the PTC PPA may be declared void by the Commission (*Sections 2(1)(e) and 10 of the Contract Act was referred to*).
- (l) The Respondent PTC in its reply has mainly submitted that since the PPAs were on back to back basis, the establishment of PSM by Respondent PTC is dependent upon the establishment of the same by the Respondent discoms. This submission is not tenable since the Petitioner has no privity of contract with Respondent discoms.

2. The learned counsel for the Petitioner circulated copies containing details of calculation with regard to the release of payments of monthly/supplementary bills, including the details of rebate availed by PTC from provisional/ final bills. The learned Senior counsel for the Respondent PTC objected to the above and prayed that the Petitioner may be directed to submit the aforesaid documents on affidavit, to enable PTC to file its reply on the same.

3. The learned Senior counsel for the PTC made the following submissions:

- (a) In terms of Recitals A, E & F of the PTC PPA, it is evident that the contract entered into by the parties are on back to back basis and therefore the Procurer PPA shall be read along with the PTC PPA. The Procurer PPA has been annexed to the PTC PPA and form the basis for execution of PTC PPA. Hence, both the PTC PPA and the Procurer PPA are interlinked and the Petitioner is aware of the same.
- (b) PTC has been making payments to the Petitioner as per the terms of PPA and in some cases the payments have been made in advance even before the bills were raised by the Petitioner. Upto July, 2019 there has been no outstanding payments. The cash flow constraints faced by the Petitioner is on its account and PTC cannot be held responsible for the same.



- (c) As regards the establishment of PSM, PTC is under no contractual obligation to open LC in the absence of the establishment of PSM from Procurers. However, the issue has been settled by the Commission in Jindal case, wherein, it was held that PTC was under an obligation to open LC irrespective of the same being established by the Procurers. The Commission may, however consider as to whether in the present case there has been mutual arrangement between the parties with regard to the establishment of PSM.
- (d) The issue of applicability of the first contract year tariff from the COD of the Unit is subject to the interpretation of the terms of the contract by the Commission. PTC has continued to raise bills on the Respondent discoms as per the first contract year tariff for the period from 17.5.2017, but the Respondent discoms have made payments as per second year contract tariff and accordingly, PTC made payments to the Petitioner.
- (e) The submission of the Petitioner that PTC had deducted excess rebate is subject to verification. According to the Respondent, there has been no occasion where the rebate has been deducted without making full payments.
- (f) The reimbursement of transmission charges by the PTC to the Petitioner is based on the payments made by the Petitioner to PGCIL. Since, the Petitioner has not made payments to PGCIL, the question of reimbursement of the same by the Respondent PTC does not arise.
- (g) The calculation sheets containing the payment status of the bills including the outstanding amount due as circulated by the Petitioner is subject to verification by the PTC. Accordingly, the Commission may grant some time to PTC to furnish comments on the same.

4. In response to the above, the learned counsel for the Petitioner clarified that the Respondent PTC has not furnished LC in terms of the provisions of the Article 8.4.1 of the PTC PPA, but has only furnished a weekly conditional LC. The learned Counsel also submitted that the bill payments made in advance by the Respondent PTC is in the nature of usury loan. Even otherwise, PTC has deducted excess rebate without making full payments to the Petitioner in terms of the provisions of the PPA. The learned counsel further added that since PTC was not performing obligations in terms of PPA, trading margin should not be made applicable to the said Respondent. The learned Senior counsel for the Respondent PTC submitted that he would seek instructions from the Respondent with regard to the submission of the Petitioner that weekly conditional LC has been furnished by PTC.

5. The learned counsel for the Respondent, PGCIL submitted that since the Petitioner had defaulted in the payment of transmission charges, PGCIL was constrained to regulate the power supply of the Petitioner.

6. The Commission after hearing the parties, directed the Petitioner and Respondent PTC to undertake reconciliation of the outstanding amounts with respect to (i) the deduction of rebate and (ii) the application of first contract year



tariff from 17.5.2017 and submit the said reconciliation statement, on affidavit, on or before 11.10.2019.

7. Matter is Part-heard. The Petition shall be listed for hearing in due course for which separate notice will be issued to the parties.

**By order of the Commission**

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

