

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.109/MP/2022 along with IA No.17/2022**

- Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 seeking for quashing of the communications containing letters dated 16.12.2020 and 11.02.2022, issued by the Respondents thereby misinterpreting the provision of "Misdeclaration" provided under the Article 11 of the Pilot Agreement for Procurement of Power (PAPP)/ Pilot Power Supply Agreement (PPSA), and accordingly seeking directions upon the said Respondent to refund the amount of Rs. 46.16 Lakhs already deducted & to not deduct any amount (including Rs. 25.35 crores as indicated in PTC letter dated 11.02.2022) on this account from the monthly energy bills issued / to be issued by the Petitioner alongwith interest/ carrying cost, and consequent directions to adhere to the provisions of the PAPP/ PPSA in their letter and spirit.
- Date of Hearing : 24.4.2023
- Coram : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Jindal India Thermal Power Limited (JITPL)
- Respondents : PTC India Limited (PTCIL) and Anr.
- Parties Present : Shri Sajan Poovayya, Sr. Advocate, JITPL  
Shri Lakshyajit Singh Bagdwal, Advocate, JITPL  
Shri Harshit Singh, Advocate, JITPL  
Shri Ravi Kishore, Advocate, PTCIL  
Shri Keshav Singh, Advocate, PTCIL  
Shri Dhruv Tripathi, Advocate, PTCIL  
Ms. Anisha Upadhyay, Advocate, BSPHCL  
Shri Nishant Kumar, Advocate, BSPHCL

**Record of Proceedings**

During the course of hearing, learned senior counsel for the Petitioner and the learned counsel for the Respondents, PTCIL and BSHPCL made their respective submissions in the matter. Learned senior counsel for the Petitioner and the learned counsel for the Respondent, PTCIL, *inter alia*, submitted that the present matter is squarely covered by the order of the Commission dated 16.12.2022 in Petition No. 94/MP/2022 (SKS Power Generation (Chhattisgarh) Ltd. v. PTCIL and Anr.) and insofar as the issue of prior notification of the reduced Availability is concerned, the generator had duly notified the reduced availability on-day ahead basis to PTCIL, which in turn had notified such availability to the Respondent, BSHPCL on the basis of which only BSHPCL could have scheduled the energy from the generating station



of the Petitioner. Learned senior counsel for the Petitioner further added that at relevant point of time, Respondent No.2, BSHPCL also did not raise any dispute under Article 11.6 of the Agreement(s) with regard to amount under the invoices on the aforesaid ground of non-notification of reduced availability by the generator/PTCIL. On the other hand, learned counsel for the Respondent, BSHPCL submitted that under Article 11.2 of the Pilot Power Supply Agreement, the Aggregator/PTCIL was required to notify the reduced Availability to BSHPCL failing which the declared availability shall be deemed to be 100% of the contracted capacity at all times. Learned counsel for the Respondent, BSHPCL submitted that the Respondent, PTCIL has failed to produce any documents indicating that it had notified BSHPCL about the reduced availability in terms thereof.

2. After hearing the learned senior counsel for the Petitioner and the learned counsel for the Respondents, the Commission ordered as under:

(i) The parties to furnish the following details, on affidavit, within three weeks with copy to the other side, who may file their response/ comments thereof, if any, within two weeks thereafter:

(a) In regard to the claim of the Petitioner that it can declare any availability, including below 85% of the contracted capacity, the Petitioner to furnish the relevance of clause 10.3 of PPA i.e. 'Substitute Supply' and circumstances under which this clause is applicable.

(b) The Petitioner to furnish the reasons for declaring monthly availability lower than 85 % of the contracted capacity, for the respective months and the actions taken towards compliance of clause 10.3 of PPA i.e. 'Substitute Supply'.

(c) During the disputed period, the Petitioner to furnish day-wise the following information along with supporting documents w.r.t. availability declared for the Respondent:

Date	Installed Capacity	DC	Availability declared to Long Term beneficiaries	Availability declared to Respondent	Availability declared for other MTOA Beneficiaries	Availability declared for Short term beneficiaries	Total Energy scheduled by RLDC	Actual Energy Generated	Actual Energy supplied to beneficiaries	Actual Energy Generated		Money received for energy sold in exchange
										DAM + TAM	Bilateral	

(d) The Respondent No. 1, PTC, to furnish the day-wise availability received from the Petitioner and day-wise availability declared to the Respondent No. 2 i.e. BSHPCL, along with the supporting documents.

(e) The Respondent No. 2, BSHPCL, to furnish the day-wise, availability received from Respondent No. 1, PTC.

(ii) The interim direction issued vide Record of Proceedings for hearing dated 14.6.2022 shall continue till the disposal of the matter.

3. Subject to the above, the Commission reserved the order in the matter.

**By order of the Commission**

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