

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 393/MP/2018

Coram:

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

Date of Order: 6th June, 2019

In the matter of

Petition under Section 79(1)(f) of the Electricity Act, 2003 directing PTC to establish the Payment Security Mechanism

And

In the matter of

JSW Hydro Energy Limited
4th Floor, NTH Complex, A-2,
Shaheed Jeet Singh Marg,
Qutub Institutional Area,
New Delhi- 110067

.....Petitioner

Vs

1. PTC India Limited
2nd Floor, NBCC Tower,
15, Bhikaji Cama Place
New Delhi- 110066

.....Respondent No. 1

2. Ajmer Vidyut Vitran Nigam Ltd.
Old Power House, Hathi Bhata,
Jaipur Road, Ajmer

3. Jaipur Vidyut Vitran Nigam Ltd.
Vidyut Bhawan, Janpath,
Jaipur - 302005

4. Jodhpur Vidyut Vitran Nigam Ltd.
New Power house, Industrial Area,
Jodhpur

5. Haryana Power Purchase Centre,
Shakti Bhawan, Sector VI,
Panchkula - 134019

6. Punjab State Power Corporation Ltd.
The Mall, Patiala - 147001



7. Uttar Pradesh Power Corporation Ltd.
Shakti Bhawan, 14, Ashoka Road,
Lucknow - 226001

..... Proforma Respondents

Parties present:

Shri Aman Anand, Advocate, JSW
Shri Aman Dixit, Advocate, JSW
Shri Basava Prabhu Patil, Advocate, JSW
Shri Anurag Agarwal, JSW
Shri Aashish Anand Bernard, Advocate, PTC
Shri Paramhans Sahani, Advocate, PTC
Shri H.L.Choudhary, PTC
Shri Ashwin Ramanathan, Advocate, PSPCL

Interim Order

The Petitioner, JSW Hydro Energy Limited has filed this Petition seeking the following reliefs:

“(a) Direct the respondent No. 1 to establish the payment security mechanism in favour of the Petitioner in accordance with the provisions of the Agreement; and

(b) Pass any such further order(s) which this Hon’ble Commission may deem just and proper in favour of the Petitioner.”

2. The Petition was admitted on 7.2.2019 and the Commission issued notice to the Respondents. The Respondent No. 1, PTC vide affidavit dated 28.2.2019 has filed its reply on ‘maintainability’ of the Petition and the Petitioner vide affidavit dated 8.3.2019 has filed its rejoinder to the said reply.

3. During the hearing on 28.5.2019, the learned counsel for the Petitioner submitted that the PPA dated 21.3.2006, the Settlement Agreement dated 5.8.2013 and the Supplementary Agreement dated 1.12.2017 together form the entire contract between the Petitioner and the Respondent No. 1 PTC. He also pointed out that the Commission in its order dated 30.3.2017 had determined the tariff of the generating station of the Petitioner for the period 2014-19. The learned counsel further submitted that in terms of Article 9.5 of the said PPA, PTC



is obligated to establish any Payment Security Mechanism in favour of the Petitioner. He, however, submitted that PTC has failed to establish the Payment Security Mechanism, despite repeated reminders.

4. The learned counsel for Respondent PTC submitted that reply in the matter has been filed only on maintainability and not on merits. He, however, submitted that PTC has received Letter of Credit (LC) from the Respondents, Rajasthan and Punjab and the same has been handed over to the Petitioner, which has been accepted by them. He further submitted that as regards the issuance of LC by the Respondents, Haryana and Uttar Pradesh, the same is being discussed and after receipt of LCs from these Respondents, the same shall be provided as back to back LC to the Petitioner.

5. In response to the above, the learned counsel for the Petitioner referred to Article 9.5.1 of the PPA and submitted that PTC is bound to provide to the Petitioner a monthly revolving and irrevocable LC opened and maintained by PTC. He further submitted that the obligation to establish a Payment Security Mechanism was not dependent on the beneficiaries establishing the same in favour of PTC. To this, the learned counsel for PTC referred to Article 4.2 (viii) of the PPA and submitted that PTC's obligation is only to obtain, establish and maintain the Payment Security Mechanism in accordance with the PPA. Since LCs have been received from some of the beneficiaries and handed over to the Petitioner, the same is in compliance with the above provision of the PPA. The learned counsel for PTC however prayed that time may be granted to file reply on merits and matter may thereafter be heard by the Commission.



6. The learned counsel for the Petitioner pointed out that since PTC has not established the Payment Security Mechanism, the same is in violation of Regulation 7(h) of the CERC (Procedure, Terms and Conditions for grant of Trading License and other related matters) Regulations, 2009. The learned counsel for PTC added that in case the Commission is of the view that LC is to be established by PTC in favour of the Petitioner, the Commission may direct the Petitioner to return the LCs submitted by the beneficiaries.

Analysis and decision

7. The submissions have been considered. Article 9.5.1 of the PPA provides as under:

“9.5.1 PTC shall provide to the Company a monthly revolving and irrevocable Letter of Credit opened and maintained by PTC which may be drawn upon by the Company in accordance with Article 9.5.2 through 9.5.6 in respect of all payments due under this Agreement“

8. Regulations 7(h) of the Trading License Regulations provides as under:

“7. Obligations of the Licensee:

h) The licensee shall carry out trading in accordance with the agreed terms and conditions, and may take such safeguards as he may consider necessary with regard to payment security mechanism from the buyers, but shall always ensure timely payment of dues to the seller for purchase of the agreed quantum of electricity either through a letter of credit or any other appropriate instrument or as may be mutually agreed between the seller and the licensee.

9. Thus, in terms of Article 9.5 of the PPA dated 21.3.2006, Payment Security Mechanism in the form of monthly revolving irrevocable LC is to be provided to the Petitioner by PTC. Also, in terms of Regulation 7(h) of the Trading License regulations, a statutory obligation is cast on PTC to carry out trading in accordance with the terms and conditions and to take such safeguards as considered necessary, with regard to Payment Security Mechanism. Admittedly, in the present case, the Respondent PTC has not established any Payment Security Mechanism in



favour of the Petitioner in line with the above provisions. Therefore, pending adjudication of the dispute, we direct the Respondent PTC to open a monthly revolving irrevocable LC without linkage to back to back LCs in favour of the Petitioner on or before **4.6.2019** and to inform the same to the Commission by an affidavit. Accordingly, the LCs received from the beneficiaries Rajasthan and Punjab, stated to have been handed over to the Petitioner, may be returned by the Petitioner to PTC.

10. The Respondent PTC is granted time to file its reply on 'merits' on or before **14.6.2019**, with copy to the Petitioner who may file its rejoinder, if any, by 21.6.2019. Matter shall be listed for hearing on maintainability as well as on merits, in due course, for which notice will be issued to the parties.

Sd/-
(I.S.Jha)
Member

Sd/-
(Dr.M.K.Iyer)
Member

Sd/-
(P.K.Pujari)
Chairperson

