

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 258/MP/2019

Subject : Petition under Section 79(1) (f) of the Electricity Act, 2003 read with Article 17 of the Power Purchase Agreement (PPA) dated 20.1.2009 for adjudication of dispute with respect to non-payment of amount towards the level of lifting penalty paid to the coal supplied by Jhajjar Power Limited in terms of Article 1.2.8 of the Schedule 7 of the PPA for Contract Year 2016-17.

Petitioner : Jhajjar Power Limited (JPL)

Respondent : Tata Power Trading Company Limited (TPTCL)

Date of Hearing : 5.5.2020

Coram : Shri P. K. Pujari, Chairperson
Shri I. S. Jha, Member
Shri Arun Goyal, Member

Parties present : Shri Aniket Prason, Advocate, JPL
Ms. Priya Dhankhar, Advocate, JPL
Shri Sudipta, JPL
Shri Nitish Gupta, Advocate, TPDDL

Record of Proceedings

The matter was listed for hearing through video conferencing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed *inter alia* seeking direction to the Respondent, Tata Power Trading Corporation Limited (TPTCL) to pay the Petitioner in terms of Article 1.2.8 of Schedule 7 of the PPA entered into with TPTCL for the contract year 2016-17.

3. Learned counsel submitted that procurers of the Petitioner's 1320 MW (2x660 MW) generating station, namely, Haryana Utilities and the Respondent, TPTCL have not scheduled the power from the generating station corresponding to their respective Minimum off-take Guarantee for the contract year 2016-17, which led to the low level of lifting of coal by the Petitioner under its Fuel Supply Agreements entered into with various coal companies, namely, Central Coalfields Limited (CCL), Eastern Coalfields Limited (ECL), Northern Coalfields Limited (NCL) and Bharat Coking Coal Limited (BCCL) and consequently the coal companies have imposed penalty in terms of Clause 4.6 of FSAs. The Petitioner was required to pay penalty of Rs. 4,44,77,904/- to the respective coal companies (except for CCL that is yet to raise its claim), on account of TPTCL not scheduling the power corresponding to its Minimum off-take Guarantee. TPTCL is liable to reimburse this amount in terms of Article 1.2.8 of Schedule 7 of PPA. Learned counsel submitted that Haryana Utilities,



which are the beneficiaries of 90% of power generated from the Petitioner's generating station, have already paid their shares of penalty. However, the Respondent, TPTCL has denied to pay its share. Accordingly, the Petitioner has filed the present Petition seeking direction to TPTCL to reimburse the aforesaid outstanding principal amount along with the late payment surcharge in terms of Article 11.3.4 read with Article 11.6.8 of the PPA. Learned counsel requested to issue notice to the Respondent.

4. Learned counsel for the Applicant, Tata Power Delhi Distribution Limited (TPDDL) submitted that TPDDL has filed IA No. 21/2020 in the instant Petition, *inter-alia*, seeking impleadment as party to the present proceedings and to allow TPDDL to file its reply to the Petition. Learned counsel submitted that since on the basis of the Power Purchase Agreement dated 20.1.2009, TPTCL has entered into Power Sale Agreement (PSA) with TPDDL on back-to-back arrangement, any legal/contractual adjudication by the Commission in the present Petition will have direct impact on TPDDL. Learned counsel submitted that the Commission, in its orders dated 18.4.2016 and 4.2.2020 in Petition No. 319/MP/2013 and Petition No. 114/MP/2018 respectively, has already observed that the PPA executed between the Petitioner and TPTCL and the PSA executed between TPTCL and TPDDL are inextricably intertwined and there is a contractual relationship between the Petitioner and TPDDL. Accordingly, TPDDL is a necessary and proper party to the present proceedings.

5. In response, learned counsel for the Petitioner submitted that the Petitioner has filed reply to the IA filed by TPDDL objecting its impleadment as party to the Petition. According to the Petitioner, there is no privity of contract between the Petitioner and TPDDL. However, in view of the earlier orders of the Commission in Petition No. 319/MP/2013 and 114/MP/2018, the Petitioner will implead TPDDL as party to the Petition if the Commission so directs.

6. After hearing the learned counsels for the Petitioner and the Applicant, TPDDL, the Commission admitted the Petition and directed to issue notice to the Respondent. The Commission directed the Petitioner to implead TPDDL as party to the Petition and file the revised memo of parties by 18.5.2020. Accordingly, the Commission disposed of IA No. 21/2020.

7. The Commission directed the Petitioner to serve copy of the Petition on the Respondents including TPDDL immediately, if not already served. The Respondents were directed to file their reply by 5.6.2020 with an advance copy to the Petitioner who may file its rejoinder, if any, by 26.6.2020. The Commission directed that due date of filing of reply and/or rejoinder should be strictly complied with.

8. The Petition shall be listed for hearing in due course for which separate notice will be issued.

By order of the Commission

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

