

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 637/MP/2020**

- Subject : Petition under Section 79(1)(b) and (f) of the Electricity Act, 2003 read with Articles 12.3, 12.3(ii)(1)(b), 12.7(e) and 17 of the PPA dated 7.8.2008 (as amended vide Amendment Agreement dated 17.9.2008) and under Articles 12.3, 12.3(ii)(1)(b), 12.7(e) and 17 of the TPTCL PPA dated 20.1.2009 (as amended vide Amendment Agreement dated 12.10.2010) respectively, seeking recovery of the deemed Capacity Charges by Jhajjar Power Limited from the Procurers for the Contract Year 2018-19.
- Date of Hearing : 27.4.2021
- Coram : Shri P. K. Pujari, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Jhajjar Power Limited (JPL)
- Respondents : Uttar Haryana Bijli Vitran Nigam Limited and 2 Ors.
- Parties Present : Shri Aniket Prasoon, Advocate, JPL  
Ms. Akanksha Tanvi, Advocate, JPL  
Ms. Priya Dhankhar, Advocate, JPL  
Shri Venkatesh, Advocate, TPTCL  
Shri Rishub Kapoor, Advocate, TPTCL  
Ms. Anushree Bardhan, Advocate, Haryana Discoms  
Ms. Bikita Kaur, JPL  
Ms. Sudipta Ghosh, JPL

**Record of Proceedings**

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, for adjudication of dispute regarding recovery of capacity charges calculated on the basis of deemed normative availability as the Petitioner was constrained from declaring its full availability for 88 days during the contract year 2018-19 on account of persistent and unreasonable denial by the Respondent Nos. 1 & 2 ('Haryana Discoms') to approve procurement of coal from alternate sources (owing to shortfall in linkage coal supplies) in terms of the Power Purchase Agreement ('PPA'). Learned counsel mainly submitted the following:

(a) The Petitioner has set-up a 1320 MW (2x660 MW) Mahatma Gandhi Thermal Power Plant ('the generating station') at Jhajjar in the State of Haryana. Out of the total capacity, 90% of power generated from each unit is supplied to Haryana Discoms in terms of the PPA dated 7.8.2008 ('Haryana PPA') and balance 10% capacity is being supplied to Tata Power Trading Company Limited ('TPTCL') in terms of PPA dated 20.1.2009 ('TPTCL PPA').

(b) As per the construct of the PPAs, the Respondents are liable to pay full capacity charges to the Petitioner upon the generating station achieving the normative availability of 80% in contract year and additionally, an incentive if it achieves the availability beyond 85%.

(c) However, during the contract year 2018-19, the generating station, despite being in position to declare availability of 89.70%, on account of shortage of linkage coal under the FSAs, the Petitioner could only achieve the availability of 77.62%. Therefore, the Petitioner was unable to claim the full capacity charges and incentive in terms of the PPAs.

(d) The shortage of the coal at the generating station was due to the arbitrary and unreasonable actions of Haryana Discoms in refusing to approve, and/or imposing unreasonable/impractical conditions on procurement of coal from alternate sources to meet the coal shortfall under the FSAs. The Petitioner had repeatedly requested the Haryana Discoms for permission under Article 7.2.1(b) of the Haryana PPA for procurement of coal from the alternate sources.

(e) This denial or lack of timely approval, and/or imposition of unreasonable/impractical conditions by Haryana Discoms to procure coal from alternate sources, according to the Petitioner, qualifies as direct non-natural force majeure event as per Article 12.3(ii)(1)(b) of the Haryana PPA and accordingly, the Petitioner is entitled to claim the relief in terms of Article 12.7(e) of the PPA.

(f) The Commission in its order dated 25.1.2016 in Petition No. 170/MP/2013 has considered the similar issue of delay and/or non-grant of approval to the Petitioner to procure coal from alternate source by the Haryana Discoms for the contract year 2012-13 as force majeure event under Articles 12.3 and 12.3(ii)(1)(b) of the Haryana PPA and has provided the consequent relief under Article 12.7(e).

3 Learned counsel for the Respondent Nos. 1 & 2, Haryana Discoms, accepted the notice and sought time to file reply to the Petition.

4. Learned counsel appearing on behalf of the Respondent No.3, TPTCL accepted the notice. Learned counsel further submitted that despite invoking the jurisdiction of this Commission citing composite scheme in respect of its generating station on the basis of the TPTCL's back-to-back power supply arrangement with Tata Power Delhi Distribution Company Limited ('TPDDL'), the Petitioner has repeatedly failed to implead TPDDL as party in number of Petitions filed by it. It was further submitted that if the Petitioner refuses to acknowledge the entire back-to-back arrangement with TPDDL, there is no composite scheme in respect of its generating station and therefore, the Petition ought not to be admitted by the Commission.

5. In response, the learned counsel for the Petitioner sought liberty to implead TPDDL as party to the Petition and to file revised memo of parties.

6. After hearing the learned counsels for the Petitioner and the Respondents, the Commission ordered as:-

Admit. Issue notice to the Respondents who have not appeared.

7. The Petitioner to array TPDDL as Respondent, to file revised memo of parties by 7.5.2021. It was observed that the Petitioner should array TPDDL as Respondent to all the pending Petitions filed by it before the Commission.

8. The Petitioner to serve copy of the Petition on the Respondents including TPDDL immediately, if not already served. The Respondents to file their reply, if any, by 4.6.2021 with advance copy to the Petitioner, who may file its rejoinder, if any, by 30.6.2021.

9. 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)  
Joint Chief (Law)**