

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 108/MP/2022 along with IA No. 16/IA/2022**

Subject : Petition under Section 79 of the Electricity Act, 2003 read with Article 11 and 22 of the Agreement for Procurement of Power dated 25.10.2021 seeking directions to PTC India Limited/ Kerala State Electricity Board Limited to make payment of entire Capacity Charges to Jindal India Thermal Power Limited in terms of the APP dated 25.10.2021.

Date of Hearing : 14.6.2022

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

Petitioner : Jindal India Thermal Power Limited (JITPL)

Respondents : PTC India Ltd. and Anr.

Parties Present : Shri Amit Kapur, Advocate, JITPL  
Shri Akshat Jain, Advocate, JITPL  
Shri Pratush Singh, Advocate, JITPL  
Shri Pulak Srivastava, JITPL  
Shri Ravi Kishore, Advocate, PTC

**Record of Proceedings**

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed challenging the arbitrary and unreasonable actions of the Respondents regarding (i) unilateral deduction of amounts from the monthly bills raised by the Petitioner, (ii) unilateral reduction of the Petitioner's availability for the month of January, 2022 to 140.69 MUs instead of 160.51 MUs actually declared by the Petitioner, and (iii) arbitrarily restricting/capping the Petitioner's daily availability/ declared capacity upto maximum of 85% on a daily basis for the purpose of payment of capacity charges in the complete violation of Agreement of Power Purchase('APP') and the Electricity Act, 2003 ('the Act'). Learned counsel further referred to the Record of the Proceedings ('RoP') for the hearing dated 21.4.2022 and re-iterated his submissions. Learned counsel further submitted as under:

(a) By relying upon the Article 11.3.2 of the APP, the Respondents have arbitrarily restricted/capped the Petitioner's daily Availability/ Declared Capacity up to the maximum of 85% or actual whichever is lower. As a result, for the payment of capacity charges, the Respondent, KSEBL has considered the Petitioner's availability for the month of January, 2022 as 140.69 MUs instead of 160.51 MUs actually declared by the Petitioner and proceeded to illegally deduct an amount of Rs. 3.26 crore from the monthly capacity charges billed by the Petitioner.



(b) Similar deductions have been made by KSEBL for the months February, April and May, 2022 and so far, approximately Rs.12.09 crore has already been deducted from the monthly capacity charges billed by the Petitioner.

(c) As per the contractual framework in terms of Article 5.1.4, Article 11.1.1, 11.1.2, Article 11.2, Article 11.3.1, Article 11.3.2, Article 11.4.3, Article 11.5.1 and Article 11.5.3 of the APP, it is evident that the payment of capacity charge cannot be restricted/capped corresponding to the daily availability upto maximum of 85% and KSEBL/PTC is mandated to make payment of capacity charges to the Petitioner every month based on the cumulative availability of Power Plant as declared by the Petitioner.

(d) The Petitioner has already filed the details called for by the Commission vide the RoP for the hearing dated 21.4.2022 vide affidavit dated 13.5.2022.

(e) Despite the direction of the Commission, no reply has been filed by the Respondent, KSEBL.

(f) Further, in the said RoP, the Commission had noted that the prayer of the Petitioner for grant of interim direction will be taken-up during the next hearing after taking into account the response of the Respondents thereon, if any. Accordingly, the Commission may consider the interim direction as prayed for by the Petitioner and restrain the Respondents from making such deduction and further direct them to make full payment of capacity charges under the monthly invoices based on the monthly cumulative availability declared by the Petitioner.

3. Learned counsel for the Respondent, PTC submitted that PTC has already filed its reply in the matter, wherein it has submitted that PTC does not agree with KSEBL's interpretation of Article 11.3.2. Since the subject matter is already before the Commission, PTC shall abide by the decision of the Commission in this regard.

4. None was present on behalf of the Respondent, KSEBL.

5. After hearing the learned counsels for the Petitioner and the Respondent, PTC, the Commission deemed it appropriate to give one last opportunity to Respondent, KSEBL to file its reply, if any, within two weeks with copy to the Petitioner, who may file its rejoinder, if any, within in two weeks thereafter. The Petitioner was also permitted to upload its note of arguments within a week. The Commission further directed the Respondents not to make any further deduction from the monthly invoices raised by the Petitioner on the ground which is subject matter of the present case till the next date of hearing in the matter. The Petitioner was directed to ensure that the respondents are correctly mapped on the Commission portal.

6. The Petition shall be listed for hearing in due course for which notice will be issued separately.

**By order of the Commission**  
**Sd/-**  
**(T.D. Pant)**  
**Joint Chief (Law)**

