

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 94/MP/2022**

- Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 for seeking issuance of urgent directions upon the Respondents for making immediate payment of an amount of Rs. 39,50,89,662/- which has been illegally deducted by them from the monthly energy bills issued by the Petitioner for the period commencing from May' 21 to October' 21, and Rs. 26,50,88,621/- for the period November' 21 to December' 21 by unilaterally revising PAPP/ PPSA tariff on amount of a skewed and deliberate misinterpretation of the "Misdeclaration" provisions provided under the Article 11 of the Pilot Agreement for Procurement of Power/Pilot Power Supply Agreement alongwith interest/ carrying cost, and consequent judicial command for adhering to the provisions of the PAPP/ PPSA in their letter and spirit.
- Date of Hearing : 9.9.2022
- Coram : Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : SKS Power Generation (Chhattisgarh) Limited (SKSPGCL)
- Respondents : PTC India Limited (PTC) and Anr.
- Parties Present : Shri Buddy Ranganadhan, Advocate, SKSPGCL  
Shri Hemant Singh, Advocate, SKSPGCL  
Shri Lakshyjit Singh Bagdwal, Advocate, SKSPGCL  
Shri Harshit Singh, Advocate, SKSPGCL  
Shri Ravi Kishore, Advocate, PTC

**Record of Proceedings**

At the outset, the learned counsel for the Petitioner submitted that the pleadings in the matter have been completed and in terms of direction of the Commission vide Record of Proceedings for the hearing dated 15.7.2022, Respondent No.2, BSPHCL has filed its reply and the Petitioner has file rejoinder thereof. The learned counsel further submitted that dispute in the matter involved the illegal deductions made by the Respondent No.2, BSPHCL by misinterpreting "Mis-declaration" provisions provided under Article 11 of the Pilot Agreement for Procurement of Power (PAPP)/ Pilot Power Supply Agreement (PPSA). The learned counsel further referred to the provisions of Article 10 and Article 11 of the PAPP/PPSA and mainly submitted as under:

- (a) Article 11.2.1 of the PAPP/PPSA categorically states that the declared availability would be normally be deemed to be 100% of contracted capacity at all times, unless it is "otherwise notified by the supplier/aggregator". In other words, in case the Petitioner is not able to declare the 100% of contracted



capacity, then whatever is declared by the Petitioner would be the “Declared Availability” and in the present case, it is undisputed that the availability, which was declared by the Petitioner, had been supplied by the Petitioner.

(b) Thus, there is no mis-declaration by the Petitioner in terms of Article 11.2.4 which states that mis-declaration is only if availability is determined lower than either 100% of contracted capacity or the reduced availability notified by the supplier.

(c) As per Article 10.1.3, the aggregator/Utility is required to schedule at least 55% of the contracted capacity or declared capacity, whichever is lower, failing which compensation is attracted as per Article 10.2.2 of the PPAP/PPSA. Thus, the threshold for the minimum off-take of power is also at 55% and aggregator/Utility is given flexibility for the balance 45%.

(d) As per Article 11.6, aggregator/Utility is required to notify the supplier a disputed amount within 10 days of receiving of invoice. However, in the present case, BSPHCL/PTC proceeded to make the deduction towards mis-declaration after a span of about 9 months.

2. Learned counsel for the Respondent No.1, PTC submitted that the PTC supports the case of the Petitioner and that in the present case, there is no mis-declaration as alleged by the Respondent No.2, BSPHCL.

3. None was present on behalf of the Respondent No.2 despite notice.

4. After hearing the learned counsel for the Petitioner and the Respondent No.1, the Commission permitted the parties including Respondent No.2 to file their respective written submissions, if any, within two weeks with copy to other side.

5. Subject to the above, the Commission reserved the matter for order.

**By order of the Commission**

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