

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 109/MP/2022 along with IA No. 17/IA/2022**

Subject : Petition under Sections 79(1)(b) and 79(1)(f) of the Electricity Act, 2003 seeking for quashing of the communications containing letters dated 16.12.2020 and 11.02.2022, issued by the Respondents thereby misinterpreting the provision of "Misdeclaration" provided under the Article 11 of the Pilot Agreement for Procurement of Power (PAPP)/ Pilot Power Supply Agreement (PPSA), and accordingly seeking directions upon the said Respondent to refund the amount of Rs. 46.16 Lakhs already deducted & to not deduct any amount (including Rs. 25.35 crores as indicated in PTC letter dated 11.02.2022) on this account from the monthly energy bills issued / to be issued by the Petitioner alongwith interest/ carrying cost, and consequent directions to adhere to the provisions of the PAPP/ PPSA in their letter and spirit.

Date of Hearing : 21.2.2023

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 Buddy Ranganadhan, Advocate, JITPL  
Shri Hemant Singh, Advocate, JITPL  
Shri Lakshyajit Singh Bagdwal, Advocate, JITPL  
Shri Harshit Singh, Advocate, JITPL  
Shri Pulak Srivastava, Advocate, JITPL  
Shri Mridul Chakravarty, Advocate, JITPL  
Shri Dev Kajana, Advocate, PTC  
Ms. Anisha Upadhyay, Advocate, BSPHCL  
Shri Nishant Kumar, Advocate, BSPHCL  
Shri Dhruv Tripathi, PTC

**Record of Proceedings**

At the outset, learned proxy counsel for the Respondent No.1 prayed for short adjournment due to non-availability of the arguing counsel.

2. Learned counsel for the Petitioner submitted that the matter is now squarely covered by the order of this Commission dated 16.12.2022 in Petition No. 94/MP/2022 (SKS Power Generation (Chhattisgarh) Limited v. PTCIL and Anr.).

3. Learned counsel for the Respondent No.2, BSPHCL submitted that unlike the provisions of Pilot Agreement for Power Purchase (PAPP), Article 11.2.1 of the Pilot Agreement for Power Supply (PAPS) executed between PTCIL and BSPHCL



provides that “*Unless otherwise notified by the Aggregator, the declared Availability shall be deemed to be 100% thereof all time*” and in the present case, PTCIL being the Aggregator did not notify the reduced declared Availability to BSPHCL. Learned counsel further submitted that since above aspect being related to interpretation of Article 11.2.1 of PAPS, a question of law, the Respondent may be permitted to file its submission thereon.

4. In response, learned counsel for the Petitioner submitted the above contention raised by BSHPCCL is merely an afterthought. Learned counsel further pointed out that such contention is not only beyond the reply filed by the Respondent but also contrary to the averments made in the said reply particularly at paragraph 7 wherein the Respondent itself has sought to place on record the data with respect to the availability of power as declared by the Petitioner through PTCIL. Learned counsel further opposed the submission that the aforesaid issue is a question of law and stated that whether or not PTCIL notified the reduced availability to the Respondent can only be question of fact and the Respondent cannot be permitted to raise such aspect at this stage.

5. After hearing the learned counsel for the parties and the request for adjournment by the learned proxy counsel for PTCIL, the Commission decided to adjourn the matter. Meanwhile, the Respondent No.2 was directed to file its submissions with regard to Article 11.2.1 of the PAPS & the declaration of availability by PTCIL, if any, within two weeks with copy to the other side, who may file their response thereon, if any, within two weeks thereafter.

6. The Petition shall be listed for hearing on 18.4.2023.

**By order of the Commission**

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