

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.145/MP/2021

Subject : Petition for adjudication of disputes with the Respondents with regard to the tariff payable under the PPA dated 27.11.2013 and addendums dated 11.1.2018 and 28.6.2018.

Petitioner : KSK Mahanadi Power Limited

Respondent : TANGEDCO

Date of Hearing : **7.3.2023**

Coram : Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties Present : Shri Anand K. Ganesan, Advocate, KSKMPCL
Ms. Swapna Seshadri, Advocate, KSKMPCL
Ms. Kriti Soni, Advocate, KSKMPCL
Ms. Aishwarya Subramani, Advocate, KSKMPCL
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Shri Rahul Ranjan, Advocate, TANGEDCO

Record of Proceedings

During the hearing, the learned counsel for the Petitioner submitted that the present petition has been filed seeking adjudication of disputes with regard to the wrongful and unilateral deduction of amounts from the monthly transmission charges reimbursement, made by the Respondent. Referring to clause 5.1.1 of the PPA dated 27.11.2013, the learned counsel submitted that the Petitioner is obligated to make available for sale, an aggregate contracted capacity of 500 MW, on an annual basis, to the Respondent. He also submitted that in terms of Clause 4.3.1 of the PPA (Procurer's obligation), the responsibility for payment of transmission charges including POC, non POC charges, and RLDC/SLDC charges, are with the Respondent and is also mandated to reimburse any of these charges, if paid by the Petitioner. The learned counsel also submitted that while it was not able to make available the full contracted capacity to the Respondent, from the month of October, 2017 onwards, due to problems relating to shortage of coal, the Respondent made deductions in capacity charges paid to the Petitioner, under the monthly bills and also resorted to short payment of POC charges, in proportion to the declared capacity. Accordingly, the learned counsel contended that the liability to pay transmission charges is solely on the Respondent and is in no way dependant on the capacity made available by the Petitioner. He further contended that the obligation of the Petitioner under the PPA, is to maintain a cumulative availability 85% of the contracted capacity, only on an 'annual basis', and not on monthly basis. The learned counsel added that in terms of Clause 4.3.1(b) of the PPA, the procurer liable for payment of transmission charges for the 'contracted capacity' and does not restrict the payment to the 'declared capacity'. The learned counsel accordingly prayed that the relief(s) prayed for in the petition may be allowed.



2. The learned counsel for the Respondent, TANGEDCO mainly submitted that since the Petitioner had declared “0” MW to the Respondent and scheduled full generated power to Uttar Pradesh, instead of declaring the available quantum proportionately to their long-term customers, the Respondent had restricted the transmission charges for the month of October, 2017. She also submitted that as the Petitioner had not supplied power up to the aggregate contracted capacity to the Respondent, and not declared the quantum to the Respondent proportionately from the Petitioner’s power plant’s available capacity for the period from November, 2017 to April, 2018, the POC charges was deducted by the Respondent. The learned counsel added that in case of availability being below 85%, the capacity charges shall be payable on proportionate basis, in addition to penalty to be paid by seller, as provided in Schedule 4, if capacity made available is less than 80% of the contracted capacity. She further contended that in terms of Clause 4.3.1 read with the definition of the term ‘transmission charges’ under Clause 1.1 of the PPA, the Respondent is obligated to make payment of transmission charges for usage of the intervening CTU network, for transmission of power from injection point to delivery point.

3. At the request of the learned counsel for the parties, the Commission permitted them to file their written submissions, along with reference to judgments relied upon by them in the matter, on or before **14.4.2023**. The parties shall ensure the completion of pleadings within the due dates mentioned and no extension of time shall be granted for any reason.

4. Subject to the above, order in in the petition was reserved.

By order of the Commission

Sd/-
(B. Sreekumar)
Joint Chief (Law)

