

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 346/MP/2020

Subject : Petition under Section 79(1)(f) of the Electricity Act 2003 for adjudication of disputes between the Petitioner and the Respondent and for directions.

Petitioner : Damodar Valley Corporation

Respondent : Punjab State Power Corporation Limited

Date of Hearing : **14.3.2023**

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

Parties Present : Ms. Anushree Bardhan, Advocate, DVC
Shri Aneesh Bajaj, Advocate, DVC
Ms. Suparna Srivastava, Advocate, PSPCL
Shri Tejasvith Dhawan, Advocate, PSPCL
Ms. Divya Sharma, Advocate, PSPCL
Shri Tushar Mathur, Advocate, PSPCL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner mainly submitted that the Respondent is liable to pay the fixed charges for the Bokaro Thermal Power Station-A (BTPS-A) for the period 23.2.2017 to 25.3.2018 along with delayed payment surcharge and interest at the rate specified in the Tariff Regulations till full payment and discharge of outstanding dues.

2. The learned counsel for the Respondent mainly submitted that:
 - a) The single composite PPA dated 7.11.2006 was signed with the Petitioner for purchase of 700 MW scheduled power from the three generating stations including BTPS-A for 200 MW;
 - b) The PPA was a commercial bargain voluntary arrived by both the parties to restrict the liability to pay fixed charges only for the “scheduled power”, therefore the Respondent would bear fixed charges only from the date of scheduling of power;
 - c) No financial loss to the Petitioner was caused on account of non-scheduling of power from BTPS-A, rather it had earned a net gain of Rs. 173.48 crores from sale of power in open market.



3. On a specific query from the Commission regarding the reasons for claiming gain on account of sale of PSPCL share to other utilities during the disputed period, the learned counsel for the Respondent submitted that the allocated share of the Respondent had been diverted without the consent of the Respondent. She further submitted that on 2.8.2019 the Petitioner supplied to the Respondent calculation sheets in respect of net gain earned from sale of energy in the open market from BTPS-A, and the Petitioner proposed for adjustment of 50% share towards the fixed charges. However, the said proposal was rejected by the Respondent.

4. The learned counsel for the Petitioner further submitted that if there is a conflict between the PPA and the Tariff Regulations, the Regulations shall prevail. The Tariff Regulations explicitly provides that in the event of declaring capacity and the Respondent not scheduling power, the Petitioner is entitled to the capacity charges/fixed charges for such quantum as determined by the Commission.

5. After hearing the parties, the Commission directed parties to file following additional information, after serving copy to other, on or before **10.4.2023**:

I. For the Petitioner:

(a) *Furnish the following information for the period between 23.2.2017 to 25.3.2018:*

- i. *The total availability declared for Bokaro TPS A (500 MW) and the availability declared for each beneficiary, particularly, PSPCL w.r.t. 200 MW, along with the supporting documents.*
- ii. *Total Annual Fixed Charges, the AFC recovered from other beneficiaries, AFC amount under dispute etc,*
- iii. *Month wise energy supplied to each beneficiary, (energy was to be supplied to PSPCL under PPA), total energy sold to third party and revenue realized, (energy was to be supplied to PSPCL but sold to third party), and cost of energy charges etc,*
- iv. *The details of computation regarding the gain realized on account of energy associated with Punjab sold to third party*

(b) *The communication made to the Respondent regarding the delay in commissioning of generating station i.e. Bokaro TPS A and impact on the tariff.*

(c) *The details regarding the COD of Raghunathpur TPS and Durgapur TPS, application of LTA for supply of power from these plants to PSPCL, commencement of power supply, levy of fixed charges from COD to commencement of power supply etc,*

(d) *Considering the relevant clauses of PPA and communication exchanged between the parties, furnish the reasons for raising the bills and claiming the AFC prior to commencement of power supply or scheduled power, particularly from 23.2.2017 to 31.3.2017.*

(e) *The communication exchanged with PSPCL regarding the diversion of its power from BTPS A to third party.*



II. For the Respondent:

- (a) *The details regarding the communication made w.r.t. surplus power scenario in Punjab leading to discontinuing the scheduling of power of DTSP and non-signing of LTA agreement for BTSP A, prior to COD of BTSP A.*
- (b) *The details of communication exchanged w.r.t. share of gain realized on account of sale of power of PSPCL to third party during the period from 25.2.2017 to 25.3.2018.*
- (c) *The reasons for claiming gain on account of sale of power to third party prior to commencement of power supply, while declining to pay annual fixed charges for the same period*

III. *The parties shall furnish actions taken to supply of power and availing power, respectively, through MTOA or STOA, till the operationalization of LTA.*

IV. *The parties shall furnish the exchange of communication made between them regarding the negotiation of fixed charges and reduction in tariff thereof w.r.t. DTSP.*

6. The parties are also permitted to file their written submissions, on the additional information above, if any, on or before **24.4.2023**.

7. Subject to the above, the order in the above Petition was reserved.

By order of the Commission

Sd/-
(Deepak Pandey)
Assistant Chief (Law)

