

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 53/MP/2023 alongwith IA No. 11/2023**

- Subject : Petition under Section 79 of Electricity Act, 2003, including Sections 79(1)(b) and 79(1)(f) read with the provisions of Power Purchase Agreement dated 17.05.2021 executed between the Petitioners and the Respondent No. 1, Teesta Urja Limited seeking setting aside of the letter dated 30.01.2023 issued by Respondent No. 1 purportedly under Clause 19.2 of the Power Purchase Agreement conveying its intention to terminate the aforesaid agreement and its consequential actions thereof.
- Date of Hearing : **25.5.2023**
- Coram : Shri Jishnu Barua, Chairperson  
Shri I. S. Jha, Member  
Shri Arun Goyal, Member  
Shri P. K. Singh, Member
- Petitioner : Uttar Pradesh Power Corporation Limited (UPPCL) and 4 Ors.
- Respondent : Teesta Urja Limited and Anr.
- Parties Present : Shri Sitiesh Mukherjee, Advocate, UPPCL  
Shri Tarun Johri, Advocate, TUL  
Shri Ankur Gupta, Advocate, TUL  
Shri Subhendu Mukherjee, GCIL

**Record of Proceedings**

At the outset, learned counsel for the Respondent, TUL submitted that the Petitioner had filed its rejoinder on 20.5.2023 and sought additional time to examine the said submissions and to file a brief affidavit thereon.

2. Learned counsel for the Petitioner while pointing out the differences/ disagreements between the parties in connection with the establishment of Letter of Credit (LC), Default Escrow Account (DEA) and Deed of Hypothecation (DOH), submitted that the Hydro Power Purchase Agreement (HPPA) itself provides that the aforementioned instruments are required to be “*substantially in a form*” similar to that given under Schedules C, D and E of the HPPA. Thus, it follows that the Petitioner is required to establish these instruments in letter and spirit as provided under Articles 13.1.1, 13.1.1 and 13.2.1 of the HPPA and minor deviations such as manually revolving LC instead of automatically revolving LC (which entails the payment of margin charges for the entire 25 years on an upfront basis) are permissible and do not interfere with the purpose of provisions of the Payment Security Mechanism under the HPPA. Learned counsel also submitted that TUL’s insistence, based upon its interpretation of Article 13.1.1 of HPPA, for execution of DEA in a bank account where at least 30% of UPPCL’s total monthly revenue is deposited, is also inequitable and absurd, as there is no bank account where 30% of its total monthly revenue is deposited. Learned counsel urged that an interim



direction ought to be issued to TUL to commence the supply of power under the HPPA and that to alleviate the concerns of payment security mechanism, if any, the Petitioner is willing and ready to pay the tariff one month in advance along with the LC and DEA arrangement(s).

3. Learned counsel for the Respondent, TUL submitted that the Petitioner has defaulted in providing the Payment Security Mechanism as per the provisions of the HPPA. Learned counsel submitted that the urgency for interim direction as, sought to be put forth by the Petitioner is misplaced as during the year 2022 also, there was no supply under the HPPA. However, neither the Petitioner approached the Commission nor were the defects in the payment security mechanism cured,. Learned counsel added that power was supplied under HPPA during October, 2021 and the payment against such supply was made by the Petitioner only belatedly, and that too in 10 tranches. Learned counsel urged that since the arguing counsel of the Respondent is not present today, no interim directions may be issued in the matter prior to giving the Respondent one opportunity for an oral hearing, and the Commission may permit a very short accommodation to the Respondent.

4. After hearing the learned counsel for the parties and based on their consent, the Commission adjourned the matter and decided to list it on 30.5.2023 for consideration of interim relief(s), if any, in the matter. The parties were permitted to file their respective affidavits/submissions, if any, prior to the above date.

**By order of the Commission**

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