

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 79/MP/2023

Subject : Petition under Section 79(1)(b) and (f) and Section 63 of the Electricity Act, 2003 for adjudication and recovery of the amount payable by Tata Power Company Limited on account of the Sellers Event of Default in terms of Article 14.1(iv) as read with 14.3.4 of the Power Purchase Agreement dated 22.04.2007.

Petitioner : Punjab State Power Corporation Limited (PSPCL)

Respondent : Tata Power Company Limited (TPCL) and 7 Ors.

Date of Hearing : **8.7.2025**

Coram : Shri Jishnu Barua, Chairperson
Shri Ramesh Babu V., Member
Shri Harish Dudani, Member
Shri Ravinder Singh Dhillon, Member

Parties Present : Shri M. G. Ramachandran, Sr. Advocate, PSPCL
Ms. Poorva Saigal, Advocate, PSPCL
Ms. Pallavi Saigal, Advocate, PSPCL
Shri Rishabh Saxena, Advocate, PSPCL
Shri Aneesh Bajaj, Advocate, PSPCL
Ms. Shirin Gupta, Advocate, PSPCL
Shri Venkatesh, Advocate, TPTCL
Shri Shryeshth Sharma, Advocate, TPTCL
Shri Ashutosh Srivastava, Advocate, TPTCL
Shri Mohit Mansharamani, Advocate, TPTCL
Shri Sanjay Sen, Senior Advocate, TPCL
Ms. Shubhi Sharma, Advocate, TPTCL
Shri Divyansh Kasana, Advocate, TPTCL

Record of Proceedings

Learned senior counsel for the Petitioner submitted that the present Petition has been filed *inter-alia* seeking recovery of the amount payable by Respondent No.1, TPCL, on account of its failure to achieve an average availability of 65% for a period of twelve (12) consecutive months' during the period from 1.8.2020 to 31.7.2021, which constitutes a seller's event of default within the meaning of Article 14.1(iv) of the Power Purchase Agreement dated 22.4.2007 ('the PPA') entered into between TPCL and the Petitioner along with other Procurers. Learned senior counsel further referred to his note of arguments and mainly submitted as under:

(a) According to Article 14.1(iv) of the PPA, the seller will be considered in default, after the Commercial Operation Date (COD) of all units of the Power Station, if they fail to maintain an average availability of 65% either for twelve (12) consecutive months or for twelve (12) months in total within any continuous thirty-six (36) month period. Pursuant to the above provisions, TPCL is required to ensure



an average availability of 65% over any continuous 12-month period. Failure to meet this requirement will trigger the consequences set out in Article 14.3.4 of the PPA.

(b) Tata Power had failed to maintain the Average Availability of 65% for the period of 12 consecutive months, i.e., from August 2020 to July 2021. Since the average availability achieved by Tata Power for the period from August 2020 to July 2021 is only 62.82%, the Petitioner is entitled to a recovery of 20% capacity charges for the aforementioned 12 months' period.

(c) Tata Power's contention that Article 14.1(iv) specifies that the availability of the 12 non-consecutive months to be individually less than 65% is misconceived. The interpretation made by Tata Power would amount to rendering the word 'Average Availability' used in Article 14.1 (iv), redundant and purposeless. The expression does not indicate that the availability in each of the 12 months has to be below 65%. The interpretation made by Tata Power would amount to rendering the word 'Average Availability' used in Article 14.1 (iv) to a nullity.

2. Learned senior counsel and learned counsel for the Respondent, TPTCL, submitted that since the dispute involved in the matter pertains to a breach of the obligations specified in the PPA, it is an arbitrable dispute. He further submitted that the Petitioner had previously filed two Petitions before the Punjab State Electricity Regulatory Commission (PSERC), raising similar issues. PSERC accepted the Petitioner's interpretation and passed the orders in its favour, which are currently under challenge in the appeals filed before the APTEL, wherein the APTEL has granted a stay on their operation. Given that the outcome of those proceedings may have a bearing on the present case, the learned senior counsel requested that the Commission consider listing the matter after the disposal of the said appeals by the APTEL.

3. In response, the learned senior counsel for the Petitioner submitted that since the dispute involved in the matter clearly relates to the regulation of tariff, it is not required to be referred to the arbitration. He further submitted that the issue involved, in the appeals pending before the APTEL, pertains to the second part of Article 14(iv), i.e., the Seller, after having achieved the COD of all Units of the Power station, fails to achieve the Average Availability of 65% for twelve (12) months in total within any continuous thirty-six (36) month period, whereas in the present case, the dispute relates to the former part. He also added that insofar as the interim stay by the APTEL is concerned, it is well settled that a stay order issued by a court does not render the original order *non est*.

4. Whereas, learned senior counsel and learned counsel for the Respondent, TPTCL, submitted that the issue involved in those appeals pertains to the term "Average Availability of 65%", which is common to both the eventualities provided in Article 14(iv). Learned senior counsel sought liberty to file a note of arguments in the matter.

5. Considering the submissions made by the learned senior counsel and counsel for the parties, the Commission permitted both parties to file/upload their brief note of arguments in the matter within three weeks, with a copy to the other side.

6. The matter remained part-heard and will be listed for hearing on **19.8.2025**.

By order of the Commission
Sd/-
(T.D. Pant)
Joint Chief (Law)