

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No: 264/MP/2022

Coram:

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

Date of Order: 30th August, 2025

In the matter of

Petition under Section 79 of the Electricity Act, 2003 for execution of Order dated 15.8.2020 passed in Petition No. 158/MP/2019; and initiation of proceedings/ appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 and Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 against the Respondents for non-compliance of the Order dated 15.8.2020 passed by the Commission in Petition No.158/MP/2019

And

In the matter of

Adhunik Power and Natural Resources Limited,
468, 1st Floor, Udyog Vihar,
Phase-3, Gurugram-122016,
Haryana

...Petitioner

Vs.

1. PTC India Limited
2nd Floor, NBCC Tower
15 Bhikaji Cama Place,
New Delhi – 110066
2. Tamil Nadu Generation and Distribution Corporation Limited
NPKRR Maligai, 6th Floor, Eastern Wing,
144, Anna Salai, Chennai– 600002,
Tamil Nadu

...Respondents

Parties Present:

Shri Deepak Khurana, Advocate, APNRL
Shri Ravi Kishore, Advocate, PTCIL
Shri Keshav Singh, Advocate, PTCIL
Ms. Anusha Nagarajan, Advocate, TANGEDCO
Ms. Aakanksha Bhola, Advocate, TANGEDCO
Shri Prajeet Ghosh, Advocate, TANGEDCO

ORDER

The Petitioner, Adhunik Power and Natural Resources Limited ('APNRL'), has set up a 540 MW (2×270 MW) thermal power project at Saraikela - Kharsawan in the State of Jharkhand. In 2013, APNRL, through Respondent No. 2/ PTC, participated in the TBCB process under Case-1 bidding for the supply of 100 MW. The Letter of Intent (LOI) was issued by Respondent No. 1/ TANGEDCO on 14.11.2013. Thereafter, on 18.12.2013, TANGEDCO and PTC entered into a Power Purchase Agreement ('TANGEDCO-PPA') for the supply of 100 MW of power for a period of fifteen years. On 19.12.2013, the Petitioner entered into a back-to-back PPA with PTC ('PTC-PPA'). The Petition approached the Commission seeking declaration that the deductions made by the Respondents towards capacity charges from the bills raised by the Petitioner for the months of December, 2018 to February, 2019, are illegal and wrongful and requested for a consequent direction to the Respondents, to jointly and severally, pay the deducted/ withheld amounts against the bills raised for the said months. The Petitioner made the following prayers:

"(a) Pass an Order declaring that the deductions made by the Respondents towards penalty imposed and capacity charges as detailed in the Petition from the bills raised by the Petitioner for the months of December, 2018, January, 2019 and February, 2019 is illegal and wrongful;

(b) Direct the Respondents, jointly and severally, to forthwith pay the deducted/withheld amounts against the bills raised for the month of December, 2018, January, 2019 and February, 2019, i.e. penalty imposed and unpaid capacity charges, due to the Petitioner as detailed in Annexure P-24;

(c) Grant carrying cost/interest @ 1.25% per month from the date(s) on which the said amount(s) became due to the Petitioner till the actual realization of the same; and

(d) Pending hearing and final disposal of the Petition, pass an ad-interim Order directing the Respondents, jointly and severally to pay 75% of the amounts due to the Petitioner of the amount claimed above."

2. The Commission, vide its order dated 15.8.2020, examined the claims of the Petitioner and decided the matter on the following issues:

(i) TANGEDCO PPA and PTC PPA are interlinked to each other, and the rights and obligations arising out of any one of the PPA are also reflected in the other PPA, even though the power was supplied through PTC, being an inter-State trading licensee. Thus, the obligation of payment for supply of power by the Petitioner, including furnishing of Stand by Letter of Credit ('LC'), rests both on PTC as well as TANGEDCO in light of their respective PPAs.

(ii) Both PTC and TANGEDCO have failed in making the payment to the Petitioner against the bills raised and providing the LC in terms of the PTC and TANGEDCO PPA. The Respondent PTC had the appropriate remedy available in case TANGEDCO failed to provide the LC or make timely payment of dues for the energy supplied.

(iii) The Petitioner is entitled to a refund of the capacity charges, including the penalty withheld/ deducted by the Respondents. PTC is liable to pay such amount, including the LPS, in terms of Article 8.4.3 of the PTC-PPA. Further, PTC shall be entitled to the said amount from TANGEDCO in terms of TANGEDCO-PPA, and such payment shall be made by TANGEDCO to PTC along with LPS.

3. Aggrieved with the Commission's order dated 15.8.2020, PTC filed an Appeal No. 168 of 2020 before the Appellate Tribunal for Electricity (the 'APTEL'). In the Appeal, PTC challenged the Commission's order dated 15.8.2020 on the following counts:

(i) Despite being noted in the order dated 15.8.2020 that TANGEDCO-PPA and PTC-PPA were back-to-back agreements, PTC was erroneously directed to pay APNRL and recover the amount from TANGEDCO. Instead, TANGEDCO ought to have been directed to pay PTC, who would then, in turn, remit the payment to the Petitioner.

(ii) The order dated 15.8.2020 misinterpreted Article 8.5 of the PPA by imposing liability without determining whether ARNPL sold power to a third party or if the capacity was available during the relevant period.

4. During the pendency of the Appeal before the APTEL, the Petitioner ARNPL

approached the Commission through the present Petition bearing Petition No. 264/MP/2022 seeking execution of the Commission's order dated 15.8.2020 in Petition No. 158/MP/2019 and for initiation of proceedings/ appropriate action under Section 142 read with Section 149 of the Electricity Act, 2003 (the 'Act').

Proceedings before the Commission

5. The matter was heard on several occasions. The matter was first listed for admission on 10.1.2023, at which time the Commission admitted the Petition and directed PTC to confirm receipt of payment from TANGEDCO and pay to the Petitioner within a week, if received. In case no payment has been made under the order dated 15.8.2020, TANGEDCO shall pay Rs. 29.52 crore within two weeks.

6. The matter was reserved for order by the Commission vide the Record of Proceedings dated 21.3.2023. Further, the Commission directed respondents, PTC and TANGEDCO, to furnish information regarding the bills received from the Petitioner pertaining to the period from December 2018 to February 2019 and the communication exchanged between them regarding the claim of the Petitioner for Rs. 63.41 crore, particularly, regarding the amount in excess of charges admitted by TANGEDCO. The Petitioner was also directed to furnish information regarding Energy Supplied to other beneficiaries, Energy sold through exchange, etc. PTC filed its compliance affidavit on 16.5.2023.

7. The matter was again listed on 31.5.2023, whereby the Petitioner sought time for filing its response to the false averments of PTCIL that it had returned the Petitioner's bills, and thereafter no reply was received from the Petitioner, and thus PTCIL raised the bills on TANGEDCO as per the actual availability declared by the Petitioner for the scheduling purpose.

8. Vide Record of Proceedings dated 19.7.2023, the Petitioner and the

Respondents, PTC and TANGEDCO, were directed to file certain submissions and also directed to file information pertaining to the period from December 2018 to February 2019, pre and post the order dated 15.8.2020 in Petition No. 158/MP/2019.

9. The matter was again listed on 13.12.2024, wherein PTC apprised the Commission about an appeal filed by PTC against the order of the Commission dated 15.8.2020 bearing Appeal No. 168 of 2020, listed for the hearing on 16.12.2024. Accordingly, PTC requested for deferment of the matter. The Commission acceded to the request and deferred the matter. Further, Respondent, PTC, was directed to provide the proper justification for not verifying the bills amounting to Rs 21.87 crore and also not raising the same with TANGEDCO. The Petitioner and the Respondents were also directed to provide the current status of the bill amount raised and paid, indicating the disputed amount that has been paid.

10. During the hearing on 8.5.2025, the Petitioner requested an adjournment in the matter as the APTEL was to pronounce the judgment in Appeal No.168 of 2020. On the request of the Petitioner, the Commission adjourned the matter.

11. The matter was again listed for the hearing on 3.7.2025, wherein the Petitioner apprised the Commission that the Appeal No.168 of 2020, filed by the Respondent, PTCIL, has been dismissed by the APTEL in its judgment dated 8.5.2025. The Respondents are, however, yet to make any payment in terms of the Commission's order dated 15.8.2020. The Petitioner sought liberty to file an affidavit to place on record the updated details of its claims in terms of the said order. Considering that, the Commission adjourned the matter and permitted the Petitioner to file its additional affidavit and also directed the parties to file their brief notes.

12. The matter was finally heard at length on 16.7.2025, whereby the parties made their respective detailed submissions. After hearing the parties, the matter was

reserved for order, and the parties were directed to file their written submissions.

13. The gist of the submissions made by the Petitioner is as follows:

(i) By virtue of the Order dated 15.8.2020 in Petition No. 158/MP/2019, the entitlement of the Petitioner for reimbursement of penalties illegally deducted/ withheld by the Respondents from the invoices of the Petitioner came to be adjudicated, and an appropriate order was passed for reimbursement by the Commission.

(ii) Pursuant to the aforementioned Order, the Petitioner has been continuously requesting and urging the Respondents to release the amount due to the Petitioner in terms of the said Order; however, to no avail. All requests & pleas of the Petitioner for payment of the said amount have been ignored by the Respondents.

(iii) Appeal No.168 of 2020, filed by the Respondent, PTCIL, against the said order, has also been dismissed by the APTEL in its judgment dated 8.5.2025. The Respondents are, however, yet to make any payment in terms of the Commission's order dated 15.8.2020

(iv) During the hearing dated 16.7.2025, PTC raised the following objections; (a) Adhunik had not demonstrated as to how much of power was sold to third party; (b) It has to be ascertained that the Plant was operational and in a position to generate power; (c) Adhunik had confirmed vide its e-mail dated 29.6.2021 that PTC may release the amount along with LPS after PTC gets the payment from TANGEDCO; and (d) in view of Section 47 of the Code of Civil Procedure, the aforesaid objections and disputes are required to be adjudicated by the Commission even in execution proceedings. TANGEDCO sought to support the above objections.

(v) It is pertinent to note that in the original Petition filed by the Petitioner (Petition No. 158/MP/2020) wherein the Petitioner agitated its claim for unpaid capacity charges under Article 8.5 of the PPA, PTC and TANGEDCO both admitted the claim of the Petitioner in clear, categorical, and unambiguous

terms. The said claim was allowed by the Commission in the order dated 15.8.2020. Therefore, it is wholly impermissible for the said Respondents to contend in the present proceedings (whose scope is limited) that the Petitioner is not entitled to the claim of capacity charges. In fact, the Appeal against the said order already stands dismissed by the APTEL.

(vi) In the present execution proceedings, PTC is seeking to raise disputes on the merits of the claim made by the Petitioner, and that too, after having admitted the said claim in the original proceeding culminating in the order. The purported objections raised by the Respondents with regard to availability of Plant to dispute the Petitioner's claim, firstly amounts to going behind the order dated 15.8.2020 passed by the Commission (which is impermissible in law in execution proceedings), secondly, the said objections are in face of clear and unequivocal admission of the Petitioner's claim and Respondents' corresponding liability, made by Respondents before the Commission and recorded in the order dated 15.8.2020.

(vii) With regard to PTC's contention that Adhunik has not demonstrated how much power was sold to third parties, it would be relevant to note that the APTEL has already noted that such an argument is beyond the scope of PTC's original pleadings before CERC and is legally unsustainable. Further, APTEL noted that such contentions were not raised in the original proceedings; therefore, PTC was precluded from introducing the same in the Appeal.

(viii) With regard to PTC's contention that Adhunik had confirmed vide its e-mail dated 29.6.2021 that PTC may release the amount along with LPS after PTC gets the payment from TANGEDCO, it would be relevant to note that the APTEL has categorically, in Para 90, 91, noted that PTC is ultimately liable for the payment. APTEL further noted that TANGEDCO is liable to pay the energy charges to PTC under the Procurer-PPA, as also ruled by the Commission under Para 46 of the Impugned Order; however, PTC cannot shirk its liability from complying with the provisions of the PTC-PPA *inter-alia*, making payment to APNRL.

(ix) PTC has also admitted the liability in the present execution Petition. In fact, in the affidavit filed on 4.2.2025 in response to RoP dated 6.1.2025, PTC

has admitted that it had not verified the Bills raised by Adhunik after receiving the same in March 2019, and it did not raise corresponding bills on TANGEDCO, as it was purportedly under *bona fide* belief that the Appeal against the order dated 15.8.2020 was pending before the APTEL, and further that TANGEDCO had agreed to payment of the capacity charges amount with LPS. In this regard, it is submitted that neither the pendency of the Appeal nor TANGEDCO's purported agreement to pay the amount can be a justification for not raising the Bills by PTC on TANGEDCO.

(x) By the said affidavit dated 4.2.2025, PTC for the first time placed on record of this Commission that it had now raised the Bills on TANGEDCO on 31.1.2025 and placed on record a copy of the said Bills. A perusal of the Bills filed by PTC would reveal that PTC has now raised Bills for an amount of Rs 21,87,09,622 on TANGEDCO for the 'Differential Capacity Charges for the period of Dec 2018 to Feb 19' (See description in the Bill).

(xi) Further, PTC has also filed a Chart showing the current status of bill amount raised and paid, and has admitted that the total Bills raised by Adhunik for the month of December 2018, January 2019, and February 2019 were for an amount of Rs 63,52,12,370. However, the amount purportedly verified by PTC was only Rs 41,65,02,748 because Bills for an amount of Rs 21,87,09,622 were not raised by PTC on TANGEDCO (which is entirely PTC's fault), and which Bills have now been raised by PTC on 31.01.2025 (Rs 41,65,02,748+21,87,09,622= Rs 63,52,12,370). The total amount verified and paid by PTC is shown to be Rs 28,89,22,075, leaving the balance amount of Rs 34,62,90,296. Out of the said amount of Rs 34,62,90,296, an amount of Rs 6,40,89,209 was considered in the Liquidation Plan by TANGEDCO and Rs 1,31,55,831 was considered for third-party sales (total Rs 7,72,45,040), thereby leaving the balance principal outstanding amount of Rs 26,90,45,255. Thus, as per PTC's submission, the amount outstanding to Adhunik for the period in question, i.e. from December 2018 to February 2019, is Rs 26,90,45,255. This is only the principal amount, on which LPS, as per PPA, shall be payable.

(xii) As per the updated computation filed by the Petitioner in its affidavit dated 9.7.2025, there is a difference of Rs 33,89,952 between the Petitioner's

claim and PTC's computation of the principal amount. As per the said computation furnished by the Petitioner, the principal amount is Rs 33,65,24,416, including the amount of Rs 6,40,89,209 considered towards the Liquidation Plan (after subtracting the third-party sales). Whereas as per the PTC, the principal amount payable is Rs 33,31,34,464, including the amount of Rs 6,40,89,209 considered towards Liquidation Plan (after subtracting the third-party sales).

(xiii) On the above amount, LPS payable is calculated, and the amount Rs 6,40,89,209 is considered in the Liquidation Plan is reduced. Thus, a total amount of Rs 68,32,08,265, inclusive of LPS up to 30.6.2025, is due and payable by PTC to Adhunik under the order dated 15.8.2020. The Petitioner is further entitled to LPS as per the provisions of the PPA till the date of payment.

Submissions of PTC

14. PTC has made the following submissions:

(i) As per Article 8.5 of the PPA, it is evident that in case of failure to make payment, the Petitioner was initially entitled to sell 25% of the contracted power to a third party, and in case of further delay in payment, the Petitioner was entitled to sell 100% of the capacity to a third party. Further, the amount received by the Petitioner from the sale to a third party was to be adjusted against the liability of PTC/TANGEDCO. Further, the Petitioner has not demonstrated how much of the power was sold to a third party.

(ii) It has to be ascertained that the plant of the Petitioner was operational or was in a position to generate power for sale to TANGEDCO through PTC. In case the plant was shut down due to technical reasons or otherwise, then naturally, PTC/TANGEDCO was not liable to make the payment towards capacity charges to the Petitioner.

(iii) The Commission, vide ROP dated 21.3.2023, had directed the Petitioner to furnish the details of the total energy scheduled by RLDC/SLDC, total energy generated, Old stock, Status of Unit 1 (running/shutdown), Status of Unit 2 (running/shutdown), Energy supplied to TANGEDCO, Energy associated with TANGEDCO but supplied to another beneficiary, etc.

(iv) The same were provided by the Petitioner vide affidavit dated 15.5.2023. From the same, it may be noted that on a daily basis, coal stock is more or less equal to that required for energy generation for that day only. Hence, it appears that it is not the actual coal stock. Further, from 6th January 2019 to 28th February 2019, Unit 2 has been allegedly shown as under shutdown due to coal shortage. Thereafter, Unit 1 was under forced outage from 14th January 2019 (23:10 Hrs) to 21st January 2019 (20:00 Hrs). During the shutdown of both Units (From 15th January to 20th January), the coal stock was shown as zero. A more intriguing fact is that after the shutdown of Unit 1 at 23:10 Hrs of 14th January 2019, coal stock immediately became zero from 00:00 Hrs of 15th January 2019. Similarly, after Unit 1 was put on bar at 20:00 Hrs of 21st January, coal stock is shown as 425 MT, which is a little more or equal to what is required for the generation of energy of 585.6 MWh on that day. From 22nd January 2019 onwards again daily coal stock has been shown as little more or equal to what is required for the energy generation on that day.

(v) The Petitioner had submitted the Provisional and Monthly Bill for December 2018 on 31.12.2018 and 5.1.2019, respectively, and did not consider the capacity due to the alleged outage of the unit due to the alleged coal shortage. However, the Petitioner revised its bills for December 2018 and January 2019 in March 2019 by incorporating the availability due to alleged coal shortage and submitted a supplementary bill on 2.3.2019.

(vi) Similarly, for the month of January 2019, the Provisional and Monthly Bill were raised on 31.1.2019 and 5.2.2019 by the Petitioner. Thereafter, the Petitioner revised the bills and submitted supplementary bills for January 2019 in March 2019 by incorporating the availability due to alleged coal shortage and also submitted a supplementary bill on 2.3.2019.

(vii) However, while raising the Provisional and Monthly invoices for the month of February 2019, the Petitioner included the capacity due to alleged coal shortage and raised Provisional bills and Monthly bills on 2.3.2019 and 5.3.2019.

(viii) The above information and subsequent objection raised by Respondent No.1 are crucial to adjudicate the dispute, and these objections are to be taken into consideration while passing any order in the instant execution petition.

(ix) The Petitioner was not in a position to supply power on account of the outage of the plant and thus is not entitled to any capacity charges. The coal stock shown by the Petitioner was, in fact, the backwards calculation wherein the coal stocks were shown as the coal required for power generated on a particular day and not the actual coal stock. This is further evident that all of a sudden, the coal stock comes to a level when the plant starts generating power. Thus, without adjudicating whether the plant was in a position to generate power for a particular period, the onus for making payment cannot be placed on PTC/TANGEDCO.

(xi) During the course of the hearing on 21.5.2020, TANGEDCO did not dispute the claim of the Petitioner and thus, is liable to make the payment. After passing of the order dated 15.8.2020 in Petition No.158/MP/2019, the Petitioner vide an email dated 29.6.2021 to PTC had confirmed that PTC may release APNRL's claim of Rs . 33.65 crore along with the LPS after PTC gets the payment from TANGEDCO of its portion of the capacity charge. This clearly indicates that even the Petitioner has recognised the fact that PTC is liable to make the payment only when it has received corresponding payment from TANGEDCO. In case the Commission imposes any liability on PTC, a direction may be issued to TANGEDCO to make the corresponding payment to PTC.

Submissions of TANGEDCO

15. TANGEDCO has made the following submissions:

(i) From the data submitted by the Petitioner, it was apparent that between 6.12.2019 and 7.2.2019, Unit-II of the plant was under forced outage; further, between 14.1.2019 and 21.1.2019, even Unit-I of Adhunik's plant was under forced outage. Despite this, the Petitioner included the capacity which was not available due to the outages in the invoices raised upon PTC and claimed capacity charges for the same.

(ii) The APTEL in its judgment has categorically held that TANGEDCO cannot be made liable for the payments due to the Petitioner under the order dated 15.8.2020. The APTEL has agreed with TANGEDCO's submission that even if PTC was supplying power procured from the Petitioner to TANGEDCO, under a back-to-back basis, PTC's obligations to make the payment to the Petitioner under its PPA were independent. Thus, TANGEDCO is not liable for making any payment to the Petitioner under the present Petition.

(iii) During the entire period of pendency of the present Petition, PTC did not raise any invoices against TANGEDCO, calling upon it to pay the amount which is the subject matter of the dispute in this present Petition. In fact, PTC, by way of its affidavit dated 16.5.2023, has given details of the discrepancies between the invoices that the Petitioner has raised upon PTC, and the invoices which PTC has raised upon TANGEDCO in turn. It is PTC's specific stand that it did not raise invoices under the *bona fide* belief that as (sic) the order of the Commission was challenged before the APTEL". The above conduct of PTC is also noted by the APTEL in its judgment dated 8.5.2025.

(iv) At a very belated stage, that is, on 31.1.2025, PTC raised invoices upon TANGEDCO, calling upon it to make payment of amounts payable by PTC to the Petitioner for the period between December 2018 and January 2019. Such conduct of PTC is contrary to PTC's own submissions made before the Commission and before the APTEL. At this stage, PTC raising an invoice upon TANGEDCO as a reaction to TANGEDCO's stand in the present Petition, has severely prejudiced TANGEDCO, as it has been deprived of an opportunity to include the said amount in the LPS Rules, which it could have done had the invoices been raised in a timely manner.

(v) The Petitioner claimed capacity charges for the period of non-supply (between December 2018 to February 2019) under Article 8.5 of the PTC-PPA, which provides that the Petitioner may stop supply of power to PTC for default in payment of invoices and sell power to third parties. However, no proof of power supply to third parties was submitted by Adhunik before the Commission.

(vi) From the data submitted by the Petitioner in compliance with the RoP dated 21.3.2023 and 19.7.2023, it is clear that between 6.12.2018 and 7.2.2019, Unit-II of the Petitioner's plant was under forced outage; further, between 14.1.2019 and 21.1.2019, even Unit-I of the Petitioner's plant was under forced outage. Despite this, the Petitioner included the capacity which was not available due to the outages in the invoices raised upon PTC and claimed capacity charges for the same. As only some capacity was available, the Petitioner could not have claimed capacity charges to the extent capacity was unavailable, especially considering that such capacity could also not have been sold to third parties.

(vii) The Petitioner, during the proceedings, did not justify the implications of the unavailability of its plant, but merely contended that such factors cannot be gone into at the stage of execution. As the sector regulator, the Commission is empowered to regulate its own procedure and is not bound by the provisions of the Code of Civil Procedure, 1908, which provides for a strict procedure for execution of decrees. The Commission is not bound by the provisions of the CPC, and can take into consideration all information, including information it itself called for by way of its RoPs dated 21.3.2023 and 19.7.2023, in the present proceedings.

(viii) The Petitioner wrongfully suppressed the above details from this Commission at the time of the hearing of the previous proceedings. The said details directly affect the Petitioner's entitlement to capacity charges for the period between December 2018 to February 2019, as part of its capacity was not available during this period – either for supply under the PTC-PPA or for sale to third parties. This is especially relevant considering that the Petitioner made its claim for capacity charges under Article 8.5 of the PPA, which contemplates payment of capacity charges if power is sold to third parties on account of default in payment of invoices. Thus, the order dated 15.8.2020, having been obtained by the Petitioner through concealment of material facts, is a nullity. The Petitioner is not entitled to payment under the said order.

(ix) No relief against TANGEDCO/ Respondent No. 2 can be granted in the present Petition.

Analysis and Decision

16. We have considered the submissions of the Petitioner and Respondents. The Petitioner had filed Petition No. 158/MP/2019 *inter alia* seeking a declaration that the deductions made by the Respondents towards capacity charges from the bills raised by the Petitioner for the months of December 2018, January 2019 and February 2019 are illegal and wrongful. The Commission, after hearing the parties, vide order dated 15.8.2020 *inter alia* held that PTC is liable to pay such amount, including the LPS, in terms of Article 8.4.3 of the PTC-PPA. Further, PTC shall be entitled to the said amount from TANGEDCO in terms of TANGEDCO-PPA, and such payment shall be made by TANGEDCO to PTC along with LPS. Aggrieved by the Commission's above decision, the Petitioner and TANGEDCO approached the APTEL. The APTEL, vide its judgment dated 8.5.2025 in Appeal No. 168 of 2020 & IA No. 1818 of 2024, upheld the order dated 15.8.2020 of the Commission. The APTEL, in its judgment, ordered as follows:

- (i) PTC is liable to make the payment to ARNPL, irrespective of whether it receives payment from TANGEDCO.
- (ii) The back-to-back nature of the agreements does not negate PTC's independent financial obligations under the PPA.

17. The relevant excerpts of the APTEL's judgment dated 8.5.2025 are as follows:

76. After hearing the Learned Counsel for the Appellant and the Learned Counsel for the Respondents at length and carefully considering their respective submissions, we have also examined the written pleadings and relevant material on record. Upon due consideration of the arguments advanced and the documents placed before us, the following issue arises for determination in this Appeal:

Whether, in the case of a back-to-back contract, PTC can be held liable for payment without first receiving the corresponding amount from TANGEDCO.

77. In case the answer to the above question is affirmative, the appeal shall be required to be dismissed, as the sole question before the CERC was the same, the issues framed by the CERC were as follows:

Issue No. 1: In terms of PTC-PPA and Procurer-PPA, whose obligation is it for payment towards supply of power by the Petitioner?

Issue No. 2: Whether payment obligation of PTC in terms of PTC-PPA is contingent upon the payment obligations of TANGEDCO under Procurer-PPA?

Issue No. 3: Whether the Petitioner has rightly invoked Article 8.5 of the PTC-PPA? Whether the Petitioner is entitled to capacity charges along with penalties deducted/ withheld by the Respondent from the invoices for the months of December 2018, January 2019 and February 2019?

78. From the above, the main issue that emerges is whether PTC should pay the APNRL in the absence of receiving payment from TANGEDCO under the back-to-back PTC-PPA.

79. APNRL raised invoices for capacity charges for December 2018, January 2019, and February 2019. PTC withheld these payments, citing the non-receipt of payments from TANGEDCO.

80. APNRL claimed that under Article 8.5 of the PTC-PPA, it was entitled to capacity charges irrespective of whether it sold power to third parties due to PTC's default. CERC ruled in favor of APNRL, holding that PTC's obligation to pay was independent of TANGEDCO's payments.

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82. The Appellant's main argument is that the CERC after recognizing that the Procurer-PPA and PTC-PPA were back-to-back agreements, still held the Appellant liable to pay Respondent No.2.

83. Also contended that the Commission passed the order based on misinterpreting Article 8.5 of the PPA by imposing liability without determining whether Respondent No.2 sold power to a third party or if the capacity was available during the relevant period, which is essential for adjudicating Respondent No. 2's claim.

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85. The Appellant argued that the Procurer-PPA and PTC-PPA were back-to-back agreements, therefore, the CERC should have directed Respondent No.3 to pay the Appellant, who would then remit the payment to Respondent No.2.

86. Appellant contended that under the back-to-back agreement, the Appellant was only acting like a conduit/ intermediary in the whole transaction, placing reliance on the following cases decided by this Tribunal:

d) PTC India Ltd. v. Uttarakhand Electricity Regulatory Commission and Others, Appeal No. 88 of 2010;

e) Lanco Power Ltd. v. Haryana Electricity Regulatory Commission and Other, Appeal No. 51 ND 52 of 2011;

f) *PTC India Ltd. v. Uttarakhand Electricity Regulatory Commission and Others*, Appeal No. 168 of 2014;

...

89. None of the above cases has touched upon the issue pertaining to the instant case, as such we decline to accept the contention of the Appellant except that it is acting as a trader under the provisions of the Electricity Act, 2003.

90. Further, argued that the understanding between the parties, as evidenced by Respondent No.2's email dated 29.06.2021, wherein it expressly stated that PTC should release APNRL's claim of ₹33.65 crore with late payment surcharge only after receiving the corresponding payment from TANGEDCO. This confirms that Respondent No.3 is ultimately liable for the payment.

91. Undisputedly, TANGEDCO is liable to pay the energy charges to PTC under the Procurer-PPA, as also ruled by the Commission under para 46 of the Impugned Order, however, PTC cannot shirk its liability from complying with the provisions of the PTC-PPA inter-alia making payment to APNRL.

92. After examining the Impugned Order, it is just and proper that the CERC has rightly interpreted the relevant provisions of the PPA/PSA before arriving at the final conclusion after recording and considering the submissions made by PTC, the relevant paragraphs no. 27, 29, 30, 31, 33, and 34 of the Impugned Order are important to note:

"27. In terms of Articles 6 and 8 of the PTC-PPA, PTC is required to pay to the Petitioner as per the tariff agreed under Procurer-PPA minus its trading margin. Also, PTC is required to pay towards the supply of power to the Petitioner by the Due Date, as defined under the Procurer-PPA, plus one day. In terms of Article 8.4, PTC is required to provide adequate payment security to the Petitioner, inter-alia, by providing Stand by Letter of Credit/ Bank Guarantee. In terms of Article 8.4.11.1, PTC is required to provide Stand by Letter of Credit to the Petitioner 25 days before the Scheduled Delivery Date under Procurer-PPA and to be renewed annually for an amount as specified in Article 8.4.11.2. PTC is also required to restore and renew the Stand by Letter of Credit, from time to time as per Articles 8.4.11.3 and 8.4.11.5.

.....

29. The above Articles in Procurer-PPA are mostly on the lines of PTC-PPA with minor changes in the time frame such as 'Due Date', furnishing/ reinstating of LC, etc. indicating their back-to-back nature and inter-connectedness thereby implying that TANGEDCO is liable to pay to PTC and that PTC is liable to pay to the Petitioner. However, payment to the Petitioner by PTC including furnishing LC in favour of the Petitioner is not conditional upon the payment to be made and furnishing of LC by TANGEDCO to PTC.

30. PTC has contended that since PPAs are back-to-back in nature, the financial obligations of PTC qua payment against supply of power and furnishing of LC under PTC-PPA is subject to the payment and furnishing of LC by TANGEDCO under Procurer-PPA. PTC has further contended

that it is not functioning as a Merchant Trader in the instant case and its role is that of an intermediary between the Petitioner and TANGEDCO without taking upon itself the financial and commercial risks. In support of its contentions, PTC has relied upon various judgments of APTEL and Hon'ble High Court of Delhi.

31. It is not in dispute that the terms of PPAs i.e. PTC-PPA as well as Procurer PPA make it clear that supply to TANGEDCO is from an identified source i.e. the Petitioner's generating station and that end consumer/ ultimate beneficiary of the Petitioner's generating station to the extent of 100 MW is TANGEDCO. Also, as noted above, both the PPAs are back-to-back in nature and are inextricably linked. However, having said that, in our view in terms of provisions of Articles 6 and 8 of the PTC-PPA, it does not follow that the payment obligation of PTC to the Petitioner is conditional upon corresponding obligation of TANGEDCO. The commercial and financial risk undertaken by trader has to be ascertained from the express provisions of the PPAs, which in present case clearly establish that they are not conditional as claimed by PTC. We also note that in PTC-PPA, PTC has suitably modified timeframe for various financial obligations qua the Petitioner such as 'Due Date' for payment of invoices, for furnishing/ reinstating of LC, etc., which appears to be solely for the purpose of safeguarding/ limiting its commercial and financial risks.

.....
33. PTC has argued that it cannot make payment indefinitely from its own resources. The rights/ remedies available to the Petitioner under PTC-PPA are on back-to-back basis of rights/ remedies available to PTC under Procurer-PPA. Perusal of the provisions of Procurer-PPA clearly indicates that PTC has appropriate remedy available in case TANGEDCO fails to provide LC or make timely payments of dues for the energy supplied. Needless to say, both PTC and TANGEDCO have failed in making payment to the Petitioner against bills raised and providing LC in terms of the PTC-PPA/ Procurer-PPA and the same has led to filing of this Petition.

34. Thus, in our view, in terms of the provisions of the PTC-PPA, the Respondent PTC is liable to make payment to the Petitioner for electricity supplied to TANGEDCO and also provide LC to the Petitioner in terms of the PTC-PPA."

93. We are satisfied that after detailed deliberation/examination, the Central Commission has correctly interpreted the provisions under the two PPAs and the obligations of signatories therein.

...
97. We agree with APNRL's submissions that PTC acting as an electricity trader has a crucial risk-mitigation role, as recognized in the CERC Trading Licence Regulations, 2020 and its Statement of Reasons. Despite charging a trading margin, PTC did not fulfill its obligations, including opening a Letter of Credit ("LC") facility in favor of APNRL and ensuring timely payments for electricity supplied under the PTC-PPA.

...

99. ... it is clear that the CERC has while specifying the conditions for a trading licence considered the following:

- traders shall play an important role in risk mitigation in the Indian power market.
- several contracts have been brought to the notice where traders have not discharged their duties with respect to the provision of adequate payment security mechanisms.
- in select instances, the default risk and late payment risk have also not been subsumed by the traders.
- the payment is made by the trader to seller only upon receipt of funds from the buyer Discoms

100. Accordingly, the CERC ensured that the above is not repeated in the future by incorporating a provision that the traders should provide an escrow arrangement or irrevocable, unconditional, and revolving letter of credit in favor of the seller.

101. The Regulation thus provided that the Trading Licensee shall make payment of dues by the agreed due date to the seller for the purchase of the agreed quantum of electricity through an escrow arrangement or irrevocable, unconditional, and revolving letter of credit in favor of the seller.

...

107. The Appellant also argued that the CERC while determining the liability of Respondent No.3 and the Appellant, under the provisions of Clause 8.5 of the Procurer-PPA, failed to examine whether Respondent No.2 had sold power to third parties and received payments, which should have been offset against its claim.

108. On examination of the Impugned Order, we agree with the submissions of the APNRL that this argument is beyond the scope of PTC's original pleadings before CERC and is legally unsustainable.

109. From the documents placed before us, it is seen that PTC in its reply before CERC, has not disputed APNRL's entitlement to payments. Since PTC did not raise this contention in the original proceedings, it is precluded from introducing it in the present appeal...

112. The CERC, in Para 40 to 43 recorded that:

40. The Petitioner vide its letter dated 11.12.2018 informed PTC regarding delay in payment of the monthly invoices by the due date as well as failure to provide LC in favour of the Petitioner. The Petitioner in the said letter also indicated that the Petitioner would be constrained to invoke provisions of Article 8.5.2 read with Article 8.5.8 of the PTC-PPA in case LC is not provided to the Petitioner and outstanding dues are not paid along with late payment surcharge. The Petitioner also informed PTC to consider the said letter as notice under Article 8.5.2 to enable PTC to take needful action. In response, PTC vide its letter dated 17.12.2018 contested the invocation under said Articles by the Petitioner only on the ground that the PPAs entered into between the parties are back-to-back in nature. It also forwarded the said letter of the Petitioner

dated 11.12.2018 to TANGEDCO vide its letter dated 12.12.2018. Thus, requirement of notice in terms of provisions of the PPAs has been satisfied. Subsequently, the Petitioner vide its letter dated 18.12.2018, once again citing the outstanding dues and non-opening of LC, intimated to PTC that it would invoke the provisions of Article 8.5.2 read with Article 8.5.5 of the PTC-PPA and requested PTC to arrange for sale of total contracted capacity to third parties w.e.f. 20.12.2018.

...

42. It is not in dispute that there has been delay on part of the Respondents to make timely payment towards the invoices raised by the Petitioner. TANGEDCO in its letter dated 4.1.2019 has clearly admitted that since it is facing severe financial crisis, payment towards energy bills under long-term PPAs are outstanding. TANGEDCO further informed that steps are being taken by it to mobilize funds through various sources and sequential payment will be maintained as and when financial position would improve. PTC in its various letters as well as submissions has taken a stand that since the PPAs are of back-to-back nature, the liability of PTC to make payment as well as furnishing of LC is subject to receipt of the same from TANGEDCO under Procurer-PPA.

43. It is also not in dispute that neither payment security mechanism in the form of LC was provided to the Petitioner in terms of Article 8.4.11 of the PTC-PPA to cater to the invoices raised by the Petitioner, nor the invoices raised by the Petitioner were being paid by the due date in terms of the PPAs. Accordingly, in our view, the Petitioner was entitled to invoke the provisions of Article 8.5.2 read with Article 8.5.5 of the PTC-PPA which provides for third party sale of default electricity and consequently to receive the capacity charges towards such default electricity in terms of Article 8.5.8 of the PTC-PPA.

113. We are satisfied that PTC's attempt to dispute liability at this stage is legally impermissible, it had already admitted liability before CERC and TANGEDCO.

114. On being asked, the APNRL submitted that it has, through its letter dated 23.11.2020, requested payment of outstanding dues while duly adjusting ₹1,01,14,173 as surplus revenue through sale to third parties under Article 8.5.7 of the PTC-PPA. This adjustment was made against the claimed capacity charges of ₹36,62,81,844 for December 2018, January 2019, and February 2019, as reflected in the REA Bills submitted before CERC.

116. TANGEDCO submitted that the CERC in the Impugned Order directed PTC to pay APNRL the claimed amounts, recognizing the back-to-back nature of the PTC-PPA with APNRL and the TANGEDCO-PPA, inter-alia, permitting PTC to recover the paid amounts from TANGEDCO.

117. However, PTC has not issued any invoices to TANGEDCO for the relevant amounts, in fact, in an affidavit dated 16.05.2023 filed before CERC in the execution proceedings, PTC highlighted discrepancies between the invoices raised by APNRL on PTC and those raised by PTC on TANGEDCO, and claiming that it did not raise invoices based on a bona fide belief that the CERC order was under challenge before this Tribunal.

118. The conduct of the Appellant is unwarranted and deserves strong condemnation.

119. TANGEDCO further pleaded that the PTC-PPA and TANGEDCO-PPA are back-to-back agreements, they contain distinct billing provisions. Under the PTC-PPA, APNRL must submit monthly bills to PTC within nine days of the following month, while PTC, under the TANGEDCO-PPA, must invoice TANGEDCO within ten days. Therefore, TANGEDCO is only liable for invoices raised by PTC, not those raised by APNRL. The independent existence of these agreements must be upheld, even if they are considered back-to-back.

120. We agree with the submissions of the TANGEDCO that the independent existence of these agreements must be upheld, even if they are considered back-to-back.

121. We are satisfied that there is an utter failure on the part of the Appellant in honoring the agreements signed by it after noting the submissions of the TANGEDCO that it has consistently maintained that it cannot release payment to PTC without receiving a corresponding invoice, even this position is evident from APNRL's letter to PTC dated 15.06.2021, wherein APNRL referred to discussions with TANGEDCO regarding the release of the amount covered under the impugned order. In the said letter, TANGEDCO reiterated that payment could only be made if PTC raised an invoice.

122. The Appellant also filed an IA no. 1818 of 2024 seeking permission to place additional documents.

123. The Appellant has not placed any argument in support of reasons for filing the additional document, however, TANGEDCO invited our attention to Order XLI Rule 27 of the Code of Civil Procedure, 1908, stating that this Tribunal as the Appellate forum can take on record the additional details.

124. TANGEDCO claimed that these are crucial details regarding the APNRL plant's availability. Given their significance, this Tribunal must consider them when determining APNRL's entitlement to capacity charges for December 2018 to February 2019.

125. We find no merit in the contention of the Appellant and TANGEDCO. The issue before this Tribunal is not to adjudicate the quantum of entitlement of capacity charges. The only issue before this Tribunal is whether PTC is bound to pay the APNRL under the PTC-PPA, even if no payment is made by TANGEDCO to PTC under the Procurer-PPA.

...

127. It is a settled principle of law that any additional evidence that was not placed before the original court shall not be allowed except in exceptional circumstances.

...

131. We do not find any reason to allow the IA and take the additional documents on record, accordingly, the IA is dismissed as devoid of merit.

132. In the light of the above, it is concluded that:

a) PTC is liable to make payments to APNRL, irrespective of whether it receives payments from TANGEDCO.

b) The back-to-back nature of the agreements does not negate PTC's independent financial obligations under the PPA.

133. Therefore, we do not find any infirmity in the Impugned Order, and is upheld.

18. We have perused the APTEL order dated 8.5.2025 passed in Appeal No. 168/2020. The said Appeal was filed by PTC against the Commission's order dated 15.8.2020 in Petition No. 158/MP/2019. We also note that the APTEL has categorically upheld all the findings on the three issues identified in the Commission's Order, i.e. (i) In terms of PTC-PPA and Procurer-PPA, whose obligation is it for payment towards supply of power by the Petitioner; (ii) whether payment obligation of PTC in terms of PTC-PPA is contingent upon the payment obligations of TANGEDCO under Procurer-PPA; and (iii) whether the Petitioner has rightly invoked Article 8.5 of the PTC-PPA. Whether the Petitioner is entitled to capacity charges along with penalties deducted/ withheld by the Respondent from the invoices for the months of December 2018, January 2019 and February 2019. The APTEL categorically has held that PTC is liable to make payment to ARNPL, irrespective of whether it receives payment from TANGEDCO. Further, the back-to-back nature of the agreements does not negate PTC's independent financial obligations under the PPA.

19. The issue being agitated in the present execution Petition revolves around the objections which were already addressed by the Commission in the impugned order, the findings of which were also affirmed by the APTEL in Appeal No. 168/2020. The issue with respect to the role of PTC being a trader has already been settled. Both the PPAs, i.e. PTC-APNRL and PTC-TANGEDCO, are back-to-back and interlinked in nature. The payment liability of PTC to APNRL is not conditional upon receiving the

payment from TANGEDCO, as per the terms agreed in the PPA. Further, PTC's status as an intermediary cannot fully absolve it from the payment responsibility.

20. Regarding another contention of PTC that the Commission has ignored whether the Petitioner sold power to third parties and if such earnings should be set off, it is noted that PTC neither raised such objections during the proceedings before the Commission. Furthermore, the same averments were also rejected by the APTEL, as they were not pleaded before the Commission in the original proceedings.

21. Moreover, in the present execution Petition, the Respondents, PTC and TANGEDCO, have raised contention that the Petitioner is not liable for the claim of capacity charges as in Unit-II of the Petitioner, there was a forced outage between 6.12.2018 to 7.2.2019, and also there was a forced outage in Unit-II of the Petitioner's plant between 14.1.2019 to 21.1.2019. Further, they have sought to raise disputes on the merits of the claim made by the Petitioner, and that too, after having admitted the said claim in the original proceeding culminating in the order. It is relevant to note here that during the proceedings before the Commission, PTC and TANGEDCO have admitted the claims of the Petitioner for the unpaid capacity charges under Article 8.5 of the PPA, which was allowed by the Commission in the order dated 15.8.2020. At the present stage of the execution proceedings, the Respondents cannot be permitted to raise this issue, belatedly, wherein the scope of the Petition is limited, considering the fact that the APTEL has already dismissed the appeal filed by PTC.

22. Consequently, in terms of the order dated 15.8.2020 in Petition No. 158/MP/2019, which has already been upheld by APTEL, PTC is liable to make payment to the Petitioner for electricity supplied to TANGEDCO and also provide an LC to the Petitioner in terms of the PTC-PPA. Furthermore, the obligation of payment

for the supply of power by the Petitioner not only rests with PTC under the PTC-PPA, but by virtue of the back-to-back nature of the PPAs, also rests on TANGEDCO under the Procurer-PPA. Therefore, both PTC and TANGEDCO are required to fulfil their respective obligations, including payment towards the supply of power by the Petitioner and furnishing of LC therein.

23. As already held in the order dated 15.8.2020, that the Petitioner is entitled to a refund of the capacity charges, including the penalty withheld/ deducted by the Respondents, the same being contrary to the provisions of the PTC-PPA and Procurer-PPA, PTC is liable to pay such amount, including the late payment surcharge in terms of Article 8.4.3 of the PTC-PPA. Further, PPAs being back-to-back in nature, PTC shall be entitled to the said amount from TANGEDCO in terms of Procurer-PPA and such payment shall be made by TANGEDCO to PTC along with Late Payment Surcharge (LPS) in terms of provisions of the Procurer-PPA. Therefore, PTC is directed to pay its outstanding liability, including the LPS, to the Petitioner, calculated for the period beyond the due date till the payment of the entire principal amount, within sixty days from the date of this order.

24. Accordingly, Petition No. 264/MP/2022 is disposed of in terms of the above discussions and findings.

Sd/-
(Ravinder Singh Dhillon)
Member

sd/-
(Harish Dudani)
Member

sd/-
(Ramesh Babu V.)
Member

sd/-
(Jishnu Barua)
Chairperson