

**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)

Respondents : Tata Power Company Limited (TPCL) and Ors.

Date of Hearing : **3.3.2026**

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 Sanjay Sen, Sr. Advocate, TPCL
Ms. Shubhi Sharma, Advocate, TPCL
Ms. Sambhavi Jha, Advocate, TPCL
Ms. Vandana Ragwani, Advocate, TPCL
Shri Shryeshthy Ramesh Sharma, Advocate, TPCL
Shri Aashwyn Singh, Advocate, TPCL
Shri Vedant Choudhary, Advocate, TPCL

Record of Proceedings

At the outset, the learned senior counsel for the Respondent, TPCL, submitted that in terms of the recent judgment of APTEL dated 25.2.2026 in Appeal Nos. 348 of 2025 and Ors., the question of referring the instant case to arbitration no longer arises, as there is admittedly no application on behalf of TPCL under Section 8(1) of the A&C Act seeking reference to arbitration. However, as noted in the said judgment, the Commission has to examine whether the subject matter of dispute falls within the ambit of Section 79(1)(b) of the Act for adjudication of such dispute under Section 79(1)(f) of the Act or else non-suit the parties on the ground of lack of inherent jurisdiction to adjudicate the dispute. The learned senior counsel, while seeking liberty to file a brief note to place the implications of the said judgment, submitted that the dispute in this case is one of breach of contractual obligations, and the reduction of capacity charges by 20% was merely a measure of damages.

2. In response, the learned senior counsel for the Petitioner submitted that the findings of the APTEL in the judgment dated 25.2.2026 leaves no doubt that only this Commission has the jurisdiction to adjudicate the dispute raised in this case. The learned senior counsel further submitted that the dispute in this case is clearly a tariff dispute since TPCL's failure to maintain the Average Availability as per Article 14.1(iv) of the PPA entitles the Petitioner to the 20% reduction in capacity charges in terms of Article 14.3.4 of the PPA. The learned senior counsel, while seeking liberty to file a response to TPCL's note, submitted that any attempt to prolong the proceedings of the case may not be allowed, and the case be heard on merit as well.

3. After hearing the learned senior counsels for the parties, the Commission permitted the Respondent, TPCL, to file its comprehensive note on jurisdiction (in light of APTEL's judgment dated 25.2.2026) as well as merits within two weeks, with a copy to the Petitioner, who may also file its comprehensive note, within two weeks thereafter.

4. In addition, the Commission further directed the parties to file the following information/ clarification, on an affidavit, within two weeks:

- (i) The Respondent, TPTCL, to place on record the Plant-level Availability data for the relevant period and clarify whether the Average Availability achieved in respect of the Contracted Capacity allocated to other Procurers was also below 65%; in the event the same was not below 65%, the Respondent shall specify the factual position and the relevant contractual provisions relied upon to justify such distinction, and indicate whether the alleged failure to achieve 65% Availability under Article 14.1(iv) subsists uniformly across all Procurers.
- (ii) The Petitioner, PSPCL, to clarify and place on record whether, in its understanding, non-compliance with the requirement of joint decision-making or approval of Majority Procurers under the PPA would render the Preliminary Default Notice invalid, and further to specify, with reference to Schedule 12 and Article 14.3.1 of the PPA, the legal basis under which PSPCL, acting individually and not as Lead Procurer, issued the Procurer Preliminary Default Notice, and whether such issuance satisfies the requirement of joint action by the Procurers.

5. The Petition will be listed for final hearing on **9.4.2026**.

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