

**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 Ors.

Date of Hearing : **14.5.2026**

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

Parties Present : Ms. Poorva Saigal, Advocate, PSPCL
Ms. Pallavi Saigal, Advocate, PSPCL
Shri Rishabh Saxena, Advocate, PSPCL
Shri Sanjay Sen, Sr. Advocate, TPCL
Shri Venkatesh, Advocate, TPCL
Shri Ashutosh Srivastava, Advocate, TPCL
Ms. Shubhi Sharma, Advocate, TPCL
Ms. Devishi Gupta, 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
Ms. Sneha Singh, Advocate, MSEDCL
Shri Vyom Chaturvedi, Advocate, MSEDCL

Record of Proceedings

During the hearing, the learned counsel for the Petitioner submitted that the learned senior counsel for the Petitioner had already made detailed arguments during previous hearings, and while recapitulating them, she mainly submitted as follows:

(a) The primary issue involved in the instant case is whether the failure of TPC to maintain the Average Availability of 65% during the period from 1.8.2020 to 31.7.2021 (a continuous period of 12 months) constitutes a Seller's Event of Default under Article 14.1(iv) of the PPA, entitling PSPCL to a 20% reduction in capacity charges under Article 14.3.4 of the PPA.

(b) Article 14.1(iv) *inter alia* provides that if the Seller fails to achieve *Average Availability* of 65% for a period of twelve consecutive months, it constitutes a Seller's Event of Default. The expression "*Average Availability*" refers to the average of 12 months and does not indicate that Availability in each of the 12 months has to be below 65%. The interpretation advanced by TPCL would amount to rendering the word "*Average Availability*" used in the said Article a nullity. The Average Availability achieved by TPCL for the period from 1.8.2020 to 31.7.2021 was only 62.82%.

(c) As regards the contentions of deficiency in the Preliminary Default Notice dated 7.12.2021 issued by PSPCL, it needs to be noted that, unlike the other clauses, clause (iv) of Article 14.1 does not require "joint" action by the procurers. The term "jointly" is clearly stated in regard to all the events where the lead procurer has to act. Also, Article 12, which provides a list of Articles under which the rights & obligations are to be undertaken by the procurers jointly and performed by the lead procurer, does not include Article 14.1(iv). The expression "shall have the right to", as contained in Article 14.3.1, gives a right to the procurers to act jointly; however, it does not cast a reciprocal obligation on the procurers to necessarily act jointly.

(d) The issue involved pertains to the mandatory reduction of the capacity charges on account of TPCL's failure to achieve the stipulated Average Availability, and is therefore, clearly a tariff-related dispute, which falls within the exclusive domain of this Commission under Section 79(1)(f) of the Act and cannot be relegated to arbitration, as held by the APTEL in the judgment dated 25.2.2026 in Appeal No.348 of 2025 and Ors.

2. In response, the learned senior counsel for the Respondent, TPCL, referred to the pleadings and mainly submitted as under:

(a) Article 14.3.1 of the PPA specifically states that "Upon the occurrence and continuation of any Seller Event of Default under Article 14.1, the Procurer *jointly* shall have the right to deliver to the Seller a Procurer Preliminary Default Notice". Thus, Article 14.3.1 gives a right to the Procurers to act jointly. Further Article 14.3.1 of the PPA makes it abundantly clear that upon the occurrence of any Seller Event of Default, either GUVNL, being the Lead Procurer, or all the Procurers jointly can deliver to the Seller/TPCL a Procurer Preliminary Default Notice. As such, PSPCL's Preliminary Default Notice dated 7.12.2021, issued in utter disregard of the unequivocal terms and provisions of the PPA, is invalid and untenable.

(b) Schedule 12 of the PPA provides a list of Articles under which rights and obligations of the Procurers (including all matters incidental thereto and related follow-up), which are required to be undertaken by the Procurers jointly, also includes Article 14.3.1. Thus, Article 14.3.1 clearly imposes a joint obligation to issue the default notice and does not merely acknowledge the Procurers' right to issue a Preliminary Default Notice. Accordingly, the term 'jointly' used in Article 14.3.1 cannot be interpreted in a manner that permits an individual affected Procurer to unilaterally invoke the remedy available under the PPA.

(c) The alleged breach complained of by PSPCL is a purely contractual dispute and does not fall within the ambit of clause 79(1)(b) of the Electricity Act. The adjudication of this dispute will in no way alter the tariff or terms relating to tariff under the PPA and in no way involves the exercise of this Commission's regulatory powers. The APTEL Judgment dated 25.2.2026, in Appeals filed by the Procurers, including PSPCL, has not rendered any finding as to whether the subject dispute in Specific Performance Petitions is tariff or non-tariff in nature or is covered under Section 79(1)(b). Thus, the issue of jurisdiction, dependent upon examination of whether a dispute is tariff or non-tariff in nature, has been reopened by the APTEL.

(d) The subject matter of the present Petition relates to the alleged breach of TPCL's obligation to maintain the stipulated Availability under the PPA and is a non-tariff dispute. The alleged breach complained of by PSPCL rests on the meaning afforded to the terms of the PPA, particularly 'Average Availability' and is a purely contractual dispute. Neither does it alter the tariff or terms relating to tariff under the PPA or requires this Commission to exercise its regulatory powers. A pure contractual dispute involving an interpretation of a term/phrase occurring in a contract, as is the case herein, cannot be regarded as a tariff dispute covered under Section 79(1)(b).

(e) Assuming arguendo that the instant dispute falls within Section 79(1)(b) and is decided by this Commission, and in favour of PSPCL, it will merely result in the award of an additional sum of money, being the penalty specified under Article 14.3.4 of the PPA to PSPCL. Such a decision of this Commission will in no way alter the tariff or terms relating to tariff under the PPA and will be the outcome of this Commission's determination of what is the meaning of the term 'Average Availability' occurring in Article 14.3.4 of the PPA and if TPCL was in breach of the obligation to maintain such Average Availability.

(f) APTEL's Judgment dated 25.2.2026 deems the DVC Judgment dated 28.8.2024 in Appeal No. 309 of 2019 titled as *Madhya Pradesh Power Management Company Limited v. Damodar Valley Corporation & Anr.*, as a binding precedent; however, it disregards the ratio laid down therein. Resultantly, the category of non-tariff disputes referable to arbitration under Section 79(1)(f) stands effectively extinguished by the interpretation adopted in the APTEL Judgment. The legal framework, as construed therein, leaves no room for such disputes to be referred through the statutory mechanism under the Act. Consequently, disputes are reduced to a binary classification, either tariff disputes falling within the regulatory jurisdiction of this Commission or purely civil/commercial disputes to be pursued before ordinary civil fora.

(g) The fact that APTEL proceeded to interpret Sections 79(1)(f) and 158 of the Electricity Act demonstrates that the DVC Judgment was not a mere application of Section 8 of the A&C Act, but a substantive determination of the statutory arbitration framework under the Act itself. Consequently, treating the DVC Judgment as confined to Section 8 of the A&C Act or as not determinative of this Commission's referral power under Section 79(1)(f) constitutes a clear misreading of the DVC Judgment.

(h) PSPCL's interpretation of Article 14.1(iv) of the PPA is incorrect. In terms of the said Article, the Average Availability of each of the 12 consecutive months needs to be individually less than 65% (and not collectively) for constituting a Seller's Event of Default. Also, the subject matter of the instant Petition is similar to the issue raised before the APTEL in Appeal No. 376 of 2022 titled *Talwandi Sabo Power Limited v. Punjab State Electricity Regulatory Commission and Ors.*

3. Due to a paucity of time, the arguments of the learned senior counsel for TPCL could not be concluded, and accordingly, the Commission, with the consent of both sides, adjourned the matter.

4. The matter remained part-heard and will be listed for final hearing on **14.7.2026**.

By order of the Commission

Sd/-

(T.D. Pant)

Joint Chief (Law)