

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Diary No. 49/2023**

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 : 7.2.2023

Coram : Shri I.S. Jha, Member  
Shri Arun Goyal, Member  
Shri P.K. Singh, Member

Petitioner : Uttar Pradesh Power Corporation Limited (UPPCL) & Ors.

Respondents : Teesta Urja Limited (TUL) & Ors.

Parties present : Shri. Sitiesh Mukherjee, Advocate, UPPCL

**Record of Proceedings**

The matter was mentioned by learned counsel for the Petitioner.

2. Learned counsel for the Petitioner, UPPCL, submitted that the Petitioners, Uttar Pradesh Power Corporation Limited (UPPCL), Paschimanchal Vidyut Vitran Nigam Limited, Purvanchal Vidyut Vitran Nigam Limited, Madhyanchal Vidyut Vitran Nigam Limited and Dakshinanchal Vidyut Vitran Nigam Limited have filed the Petition being Diary No. 49/2023 inter alia for setting aside of the letter dated 30.1.2023 issued by Respondent No. 1, Teesta Urja Limited (TUL) purportedly under Clause 19.2 of the Power Purchase Agreement dated 17.5.2021 conveying its intention to terminate the aforesaid PPA. Learned counsel mainly submitted as under:

(a) Ministry of Power (MOP), vide Order No. 23/22/2019- R&R dated 28.6.2019 issued an order with respect to "*Opening and maintaining of adequate Letter of Credit (LC) as Payment Security Mechanism under Power Purchase Agreements by Distribution Licensees-Reg.*". Subsequently, a procedure and a corrigendum were issued on 17.7.2019.

(b) Pursuant to the competitive bidding process, TUL was selected as the successful bidder. Thereafter, on 17.5.2021, HPPA was executed between the Petitioners and TUL for supply of 265 MW from HPP to the Petitioners.

(c) Uttar Pradesh Electricity Regulatory Commission (UPERC), vide its order dated 27.8.2021 in Petition No. 1744 of 2021, adopted the tariff discovered pursuant to the aforesaid bidding process and approved the HPPA. Subsequently, on 16.7.2021 and 8.10.2021, the Petitioners and TUL executed two supplementary agreements to the HPPA wherein under the 16.07.2021 agreement, design, energy was modified corresponding to the Petitioner's share of 265MW. Subsequently, UPERC vide order dated 26.10.2021 approved the aforesaid supplementary agreements and directed that the date of commencement of power supply shall be taken as appointed date for the purpose of HPPA.

(d) Thereafter, on 3.6.2022, MOP notified the Electricity (Late Payment Surcharges and Related Matters) Rules, 2022 [LPS Rules], *inter alia* to strengthen the regulatory provisions for recovery of outstanding dues of generating companies, inter-State transmission licensees, and electricity trading licensees from distribution companies, bearing in mind the financial implications and stake holders' ability to pay.

(e) On 31.3.2022, TUL issued a letter to the Petitioners, stating that as per Clause 13.2.1 of the HPPA, the Petitioners were required to provide an unconditional, revolving and irrevocable Letter of Credit (LC) for recovery of payment dues against monthly invoices. However, the Petitioner has not provided the same. Despite the Petitioner not having provided the said LC, TUL supplied power from 20.10.2021 (Appointed Date) till 31.10.2021 to the Petitioners. In addition to the LC, the Petitioner was also obligated to execute a 'Default Escrow Agreement' (DEA) and 'Deed of Hypothecation' (DOH) as per Clauses 13.1.1 and 13.1.2 of the HPPA, within 180 days from the appointed date. [collectively LC, DEA and DOH referred as PSM].

(f) Thereafter, TUL conveyed that it will not be able to supply power to the Petitioner from 1.5.2022 as the Petitioner did not provide Payment Security Mechanism. In response, the Petitioner stated that it will make advance payment in accordance with the MOP orders and requested TUL to intimate the payable amount and schedule the power accordingly. However, neither intimation was given by TUL to the Petitioner nor power was supplied to the Petitioner.

3. Learned counsel further submitted that the Respondent, TUL may be directed not to take any coercive action in the interim or that third party rights may not be created. He further submitted that in terms of LPS Rules, advance payments can be made in lieu of establishing payment security mechanism. He added that although advance payment of Rs. 26 crore was made by UPPCL prior to commencement of supply on 1.5.2022, TUL illegally remitted back such amount after unilaterally deducting LPS and has failed to commence supply.

4. After hearing the learned counsel for the Petitioner, the Commission observed that the application for grant of stay on the letter dated 30.1.2023 shall be considered during the next date of hearing. The Commission directed to issue notice to the Respondents.

5. The matter shall be listed for hearing on 14.2.2023.

**By order of the Commission**

**Sd/-**

**(T.D. Pant)**

**Joint Chief (Legal)**