

BEFORE THE HONOURABLE ANDHRA PRADESH ELECTRICITY
REGULATORY COMMISSION
AT ITS OFFICE AT 4th FLOOR SINGARENI BHAVAN, REDHILLS, HYDERABAD

O.P.No. 52 of 2019

In the matter of:

Resolving the issues in the matter of adjudication of the disputes / differences with APPDCL as specified in para 12 of the order of Hon'ble Commission in O.P.No.21 of 2016 dated 13-07-2018 in the matter of amended and restated Power Purchase Agreement dated 24-08-2016 entered with APPDCL by APDISCOMs for procurement of power from 2 x 800 MW Sri Damodaram Sanjeevaiah Thermal Power Station (SDSTPS), Krishnapatnam, Nellore District.

Between:

1. Southern Power Distribution Company of Andhra Pradesh Limited, Beside Srinivasa Kalyanamandapam, Tiruchanur Road, Tirupathi - 517501
2. Eastern Power Distribution Company Of Andhra Pradesh Limited, P&T Colony, Seethammadhara, Visakhapatnam- 530020.

...Applicants

And

Andhra Pradesh Power Development Company Limited,
Vidyut Soudha, Vijayawada - 520004.

...Respondent

Petition filed under section 86 (1) (f) of the Electricity Act, 2003.

1. The Petitioners submit that erstwhile four APDISCOMs entered into Power Purchase Agreement Dated 22.11.2010 with APPDCL for procurement of power from 2 x 800 MW Sri Damodaram Sanjeevaiah Thermal Power Station (SDSTPS), Krishnapatnam.
2. Subsequently, after bifurcation of the A.P. State into two states viz., Telangana and Andhra Pradesh w.e.f. 2nd June 2014 as per the Re-organization Act 2014, the APDISCOMs viz., APEPDCL & APSPDCL have separately entered into Amended and Restated Power Purchase Agreement on 24.08.2016 with APPDCL for total capacity.
3. Hon'ble Commission vide its order dated 13.07.2018 issued in principle approval to the amended and restated PPA dated 24.08.2016 entered by APDISCOMs with APPDCL and directed both the parties, to finalise the following issues through discussions and make suitable

amendments to the amended PPA and submit to the Hon'ble Commission for consent within 60 days from the date of order. The relevant portion of the order is extracted:

- a. Payment of fixed charges on normative availability of power of 85% of the capacity and the incentive also to commence from above 85%.*
 - b. Non-payment of fixed charges for backing down & third party sales by APPDCL in such an eventuality and*
 - c. Deletion of stipulation to claim fixed charges during force majeure.*
4. In pursuance of the aforesaid directions, the Petitioner (APDISCOMs) have conducted meetings with Respondent (APPDCL) to arrive at consensus on the above issues. No consensus was reached between the parties on two issues i.e., about enhancement of normative availability from 80% to 85% and non-payment of fixed charges for backing down & third party sales. But consensus arrived on the aspect of non-payment of fixed charges during Force Majeure period to the effect that if the force Majeure event is not approved by the Petitioner, there is no liability of fixed charges to DISCOMs. Accordingly, a letter was addressed to Hon'ble APERC on 22.02.2019 with a request to decide the said disagreed two controversial issues between the parties.
5. Subsequently, Hon'ble Commission while disposing the petition in O.P. No. 47 of 2017 in its order dated 02.03.2019, with regard to the tariff determination of Sri Damodaram Sanjeevaiah Thermal Power Station (SDSTPS), (2 x 800 MW) Stage-I directed either of the parties or both (APDISCOMs, APPDCL) to approach the Hon'ble Commission through an appropriate petition for adjudication of the aforesaid unsettled issues. Further, the Hon'ble Commission directed APDISCOMs, vide letter dated 22.03.2019 to take appropriate action as per the directions of the Hon'ble Commission at Para 11(f) of its order dated 02.03.2019 in O.P. No. 47 of 2017.
6. In view of the above, the petitioners herewith files the present petition for adjudication of the following unsettled issues as submitted below:

- a) *Issue with regard to Payment of fixed charges on normative availability of power of 85% of the capacity and the incentive also to commence from above 85%:*

APERC Regulation 1 of 2008 does not provide the norms for 800MW capacity, whereas CERC in its Regulation 2014 has notified the Normative Annual Plant Availability Factor for 800 MW capacity as 85%. Hence, APDISCOMs agree for annual PLF of 85% as against 80% for payment of fixed charges and incentive for PLF above 85% without allowing the APPDCL for additional procurement of imported coal. Further, it is to submit that since SDSTPS is a super critical technology thermal power plant, the stand of APDISCOMs for adoption of PLF 85% is justified. The stand of Respondent that any further enhancement of availability norm from 80% to 85% leads to procurement of additional imported coal is not tenable.

- b) *Non-payment of fixed charges for backing down & third party sales by APPDCL in such an eventuality:*

With regard to non-payment of fixed charges for backing down & third party sales by APPDCL, the Respondent agreed for the proposal of the Petitioners in the specific events which are stated hereunder.

- i. No third party sale will be allowed. In case if APDISCOMs request APPDCL to make available the certain capacity to third parties for sale of power, then APDISCOMs shall not be liable to pay fixed charges.
- ii. If APDISCOM requests to make available the capacity and APPDCL misdeclares, then APDISCOMs shall not be liable to pay fixed charges and APPDCL shall be liable to pay penalties.

Though the same was agreed by the Respondent, however the Respondent has not accepted to amend the suitable clauses as proposed by Petitioner (enclosed) and to incorporate the same in PPA.

- c) *Deletion of stipulation to claim fixed charges during force majeure:*



On this aspect both parties agreed to incorporate the following:
"Non-payment of fixed charges during the Force Majeure period, if, Force Majeure event is not approved by the Petitioner. However, Petitioner agreed for payment of fixed charges duly disallowing the RoE, in case the Force Majeure event is agreed, since the Respondent generator has to honor his commitments."

7. In view of the responses received from the Respondent generator on the said three issues, the petitioner APDISCOMs submit that, since no consensus was reached between the parties on aforesaid two issues i.e., enhancement of normative availability from 80% to 85%, non-payment of fixed charges for backing down & third party sales, the Hon'ble Commission is empowered to decide the same by adjudication. On the said aspect of powers of adjudication the Hon'ble Supreme Court in a case between Tata Power Company Ltd., Versus Maharashtra Electricity Regulatory Commission (MERC) passed in the year 2009, held that the Hon'ble Commission has powers to grant approval and also to adjudicate the differences.
8. The requisite court fee of Rs. 10,000/- is paid.

PRAYER:

9. In view of the above submissions, it is prayed that, the Hon'ble Commission may be pleased to pass orders in respect of two issues i.e., (i) Enhancement of Normative Availability from 80% to 85%,
(ii) Non-payment of fixed charges for backing down & third party sales.

Encl: As above


CHIEF GENERAL MANAGER
PROJECTS & IPC
APSPDCL : TIRUPATHI

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**BEFORE THE HONOURABLE ANDHRA PRADESH ELECTRICITY
REGULATORY COMMISSION**

AT ITS OFFICE AT IVTH FLOOR SINGARENI BHAVAN, RED HILLS, HYDERABAD

O P No. 52 of 2019

In the matter of : Petition filed by APDISCOMs for resolving the issues in the matter of adjudication of the disputes / differences with APPDCL as specified in para 12 of the order of Hon'ble Commission in O.P.No.21 of 2016 dated 13-07-2018 in the matter of amended and restated Power Purchase Agreement dated 24-08-2016 entered with APPDCL by APDISCOMs for procurement of power from 2 x 800 MW Sri Damodaram Sanjeevaiah Thermal Power Station (SDSTPS), Krishnapatnam, Nellore District.

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- 2) Eastern Power Distribution Company of Andhra Pradesh Limited, P&T Colony, Seethammadhara, Vishakhapatnam - 530 020

..... Applicants


AND

Andhra Pradesh Power Development Company Limited, Vidyut Soudha,
Vijayawada - 520004.

VERIFICATION AFFIDAVIT

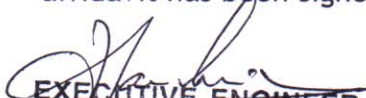
I, K.Santhosha Rao, S/o K. Yosupu, aged about 56 years resident of Tirupathi working as Chief General Manager/APSPDCL duly authorized by the parties to make this Affidavit on their behalf do hereby solemnly affirm and state as follows on behalf of Applicant.

1. I am Chief General Manager (Projects & IPC)/APSPDCL, I am competent and duly authorized by the Petitioners/Applicants 1 & 2 to affirm, swear, execute and file this Petition in the present proceedings.
2. I have read and understood the contents of the accompanying Affidavit drafted pursuant to my instructions. The statements made in the accompanying Affidavit now shown to me are true to my knowledge derived from the official records made available to me and are based on information and advice received which I believe to be true and correct.


**DEPONENT
CHIEF GENERAL MANAGER
PROJECTS & IPC
APSPDCL : : TIRUPATHI**

VERIFICATION:

I, solemnly affirm at Tirupathi on this 3rd day of June '2019 that the affidavit has been signed in my presence.


**EXECUTIVE ENGINEER
ATTESTED
TIRUPATHI**

Annexure-I

- 2.1 (c) Notwithstanding anything to the above, in case APDISCOMs do not avail power up to the Declared Capacity in any time block provided by APPDCL means APPDCL is asked to back down, APPDCL shall have the option to sell such Declared Capacity, in such time block, not availed by APDISCOMs to any third party or require the payment of Fixed charge from APDISCOMs towards such un-availed Declared Capacity not sold to third parties. DISCOMs shall not be required to pay Fixed Charge corresponding to such time blocks sold to third parties.
- 2.1 (d) In the event the annual Plant Load Factor (PLF) exceeds Target PLF for Incentive as a result of the aggregate energy exported to APDISCOMs and to third parties under separate commercial arrangements on the conditions as stated in clause 2.1(c) above, APDISCOMs shall pay to the APPDCL an Incentive Payment, as stated in "this Agreement".

However the Procurers, notwithstanding the sale to third party as aforesaid, shall continue to pay the Incentive Payment for the energy exported by APPDCL over and above Target availability excluding the energy exported to the third parties of "this Agreement".

It is further clarified that the Incentive Payment to be paid inter-se in the events stated above by the parties for export of energy beyond Target PLF shall be calculated for each financial year during the tenure of "this Agreement".

- 2.3.6 In the event that the capacity at any time is determined to be lower than the declared capacity i.e., the day ahead capacity declared by APPDCL is known as mis-declaration
- 3.2.4 The quantum of penalty for the first mis-declaration for any duration/block in a day shall be the charges corresponding to two days fixed charges. For the second mis-declaration the penalty shall be equivalent to fixed charges for four days and for subsequent mis- declarations, the penalty shall be multiplied in the geometrical progression over a period of a month.