



Delhi Electricity Regulatory Commission
Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi –110017.

No. F.11(2081)/DERC/2022-23/7677

Petition No. 10/2023

In the matter of: **Petition u/S 86(1)(b) &(f) of the EA 2003 seeking approval for executing a mutual foreclosure agreement to terminate the Power Purchase Agreement dated 23.03.2011 between TPDDL and THDC Limited qua TPDDL's share in Tehri Pumped Storage Plant.**

Tata Power Delhi Distribution Limited

... Petitioner

Versus.

THDC India Ltd.

.... Respondent

Coram:

Hon'ble Dr. A. K. Ambasht, Member

Appearance:

1. Sri Venkatesh, Advocate, TPDDL
2. Ms. Anushree, Advocate, THDC

ORDER

(Date of Order: 18.05.2023)

1. The Instant Petition has been filed by Tata Power Delhi Distribution Ltd. (TPDDL) for seeking approval for executing mutual foreclosure agreement to terminate the Power Purchase Agreement dated 23.03.2011 between Tata Power Delhi Distribution Limited (TPDDL) and THDC Limited qua TPDDL's share in Tehri Pumped Storage Plant.
2. The Petitioner has made the following prayers in its Petition:
 - a. *Allow the Petition and grant approval to enable the parties to execute an agreement to record the mutual foreclosure of the PPA qua the Petitioner's share in the project, i.e. 184.08MW in terms of Article 14 of the PPA.*

WEAR FACE MASK

WASH HANDS REGULARLY

MAINTAIN SOCIAL DISTANCING

3. The Petitioner has submitted the following:
- i. The Petitioner is a regulated entity and the tariff for procurement of electricity by the Petitioner, as well as determination of tariff and other factors contributing to the overall revenue requirement of the Petitioner, is subject to the approval of the Commission. Thus, any and all expenses or income of the Petitioner are accordingly regulated by the Commission.
 - ii. On 19.04.2006, Delhi Transco Limited (DTL) and the Respondent executed a Power Purchase Agreement (PPA) for purchase of power from the Project to be constructed by the Respondent.
 - iii. On 28.06.2006, the Government of NCT of Delhi (GoNCTD) issued a set of policy directives to the Commission under which the Distribution Licensees of Delhi (including the Petitioner) were required to make their own arrangements for procurement of power for supply to the consumers w.e.f. 01.04.2007.
 - iv. Consequently, on 31.03.2007 the Commission, vide its Order No. F.17(115)(Engg.)/DERC/2006-07/4757, reassigned all the existing Power Purchase Agreements executed by DTL to the Distribution Licensees of Delhi based on their load profile. In view of the same, 175MW from the Project (which was at the time yet to be constructed and commissioned) was assigned to TPDDL.
 - v. Subsequently, on 23.03.2011, North Delhi Power Ltd. (Predecessor of TPDDL) and the Respondent executed a PPA for, inter alia, purchase of 175MW of power from the Project in terms of the directions issued by the Commission vide its Order dated 31.03.2007. Article 14 of the PPA clearly indicated that the project was at the time of entering into the PPA yet to be commissioned and expressly states that the tentative COD of the Project was 31.12.2014. Further, the said Article provided that the parties may mutually rescind the Agreement on such terms as the parties may mutually agree.
 - vi. The aforementioned COD of 31.12.2014 envisaged under Article 14 of the PPA, the Project has not been Commissioned till date. The inordinate and unexplained delay of almost nine(9) years in commissioning of the Project has caused severe financial implication on TPDDL.
 - vii. On 27.02.2014, the Commission vide its Order No. F.3(288)/Tariff/DERC/2013-14/4052 reviewed its Order dated 31.03.2007 and reassigned all the existing Power Purchase Agreements executed by DTL to the Distribution Licensees, including North Delhi Power Limited (predecessor of TPDDL) of Delhi and

based on their load profile. In view of the same revised quantum of 184.08MW of power from the Project was assigned to TPDDL.

- viii. On 13.01.2016, the Petitioner, vide its letter to the Respondent, requested the Respondent to submit the latest cost estimates alongwith the realistic assumptions for tariff projections of the Project. The levelized tariff of the Project, which was around Rs. 4.51/kWh was not realistic as it did not include the cost of input (off peak) energy conversion ratio and transmission losses.
- ix. On 19.04.2016 the Petitioner, vide its letter to the Respondent, reiterated that the levelized tariff of Rs. 4.51/kWh intimated by the Respondent only included fixed charges and did not factor the conversion charges. Further, after considering all the relevant components, the estimated tariff of the Project was expected to be Rs. 7/kWh. That the said tariff was exorbitantly higher than other long-term sources available in the market. Accordingly, the Respondent was requested to explore measures such as refinancing of the Project Cost to ensure availability of power at a lower cost.
- x. On 12.10.2016, the Respondent vide its letter to GoNCTD, *inter alia*, stated that the expected COD of the Project was in September, 2019. Further, the Respondent requested GoNCTD to direct the Delhi Distribution Companies, including the Petitioner, to execute the LTA Agreement with PGCIL. Subsequently, on 18.10.2016, GoNCTD vide its letter to the Petitioner, requested to take necessary action in this regard.
- xi. On 25.10.2016, the Petitioner, vide its letter to GoNCTD, *inter alia*, stated as follows:
 - a. As per information provided by the Respondent, the expected COD of the Project was in September, 2019, as against the expected COD in December, 2014 in terms of the PPA.
 - b. Due to the inordinate delay in commissioning of the Project, the Petitioner has made alternate arrangements to procure power.
 - c. Due to the said delay, the tariff of the Project was bound to increase, which would ultimately increase the power purchase cost and retail tariffs.
 - d. The tariff offered by the Respondent was not aligned with the prevailing market conditions.

Accordingly, it was requested that GoNCTD may take up the issue with the Respondent and direct them to provide an effective landed tariff.

- xii. Thereafter, considering the huge delay in commission of the project and the resultant increase in estimated tariff, on 09.12.2016 and 22.12.2016, the Petitioner, vide its letters to the Commission, sought advice from the Commission regarding execution of LTA Agreement for the Project. This was primarily owing to the fact that there was an exorbitant delay in commissioning of the Project and the resultant effect on the tariff was estimated to be around Rs. 8/kWh.
- xiii. On 11.01.2017, the Commission vide its letter, allowed the Petitioner to surrender its share of power from the Project after considering the Demand Availability Scenario till 2025. On 06.10.2017, GoNCTD, vide its letter to the Secretary, Ministry of Power, Government of India *inter alia*, stated that considering the delay in commissioning of various power projects, including the Project, the Delhi DISCOMs have had to arrange power from alternate sources on long term basis and no longer require power from these delayed projects. Accordingly, it was requested that the re-allocation of power from such delayed projects may be considered.
- xiv. In view of the above, the Petitioner was constrained to terminate the PPA entered into with the Respondent by its Termination Notice, *inter alia*, due to the following reasons:
 - a. There has been an unexplained delay of almost seven (7) years in commission of the Project.
 - b. The levelized tariff calculated by the Respondent at the time of execution of the PPA was Rs. 4.51/kWh, which is now expected to be around Rs. 10/- to Rs. 11/- per kWh. This hike in tariff is solely attributable to the delay in commissioning of the Project and the resultant increase in associated costs.
 - c. Due to the said delay in commissioning of the Project, the Petitioner had to make alternative arrangements to meet its power purchase requirements, which resulted in severe financial implications upon the Petitioner.
 - d. Considering the delay in commissioning of the Project as well as hike in the expected tariff, the purchase of power from the Project at such high rates is impractical/imprudent and significantly different from the estimated tariff at the time of executing the PPA.

- xv. On 29.01.2021, the Respondent by its letter refused to accept the Termination Notice on the ground that the construction of the Project is still underway, and that the Petitioner is bound by the terms of the PPA. Being aggrieved, on 21.05.2021, the Petitioner filed a Petition before the Hon'ble CERC being Petition No. 119/MP, praying for appointment of an arbitrator for adjudication of the disputes between the parties in terms of Article 12 of the PPA. The Petition was heard and reserved for Orders.
- xvi. On 03.01.2023, the Respondent issued a letter to Petitioner and gave its acceptance to the Termination Notice dated 12.01.2021 issued by the Petitioner i.e., to foreclose/terminate the PPA dated 23.03.2011 in respect of procurement of power (i.e. 184.08MW) by the Petitioner from the Project. Further, by the said letter the Respondent has conveyed its willingness to execute a foreclosure agreement pursuant to its acceptance of the Termination Notice, without any cost or risk to the Respondent.
- xvii. By the letter dated 18.01.2023, the Respondent through its counsel, placed on record the letter dated 03.01.2023 issued by it to the Petitioner before the Hon'ble CERC. By the said letter it was stated that the order in Petition No. 119/MP/2021 was reserved and still awaited and that the Respondent has accepted the Termination Notice issued by the Petitioner by its letter dated 03.01.2023.
- xviii. By its letter dated 31.01.2023, the Petitioner intimated the Commission regarding the Respondent's acceptance of the Termination Notice issued by the Petitioner *qua* the Petitioner's share of power (i.e., around 184.08 MW) from the project under the PPA. The Petitioner further intimated the Commission that the same was acceptable to the Petitioner and that it is accordingly engaging with the Respondent for execution of a mutual foreclosure agreement.
- xix. On 07.02.2023, the Hon'ble CERC by its Order in Petition No. 119/MP/2021 disposed of the said Petition as having become infructuous. The Hon'ble CERC, in doing so, noted that the Respondent, by its letter dated 03.01.2023 has accepted the Termination Notice issued by the Petitioner, and in view of the same the disputes between the parties stand mutually settled and the prayer seeking appointment of an arbitrator to resolve disputes do not survive for the consideration of the Hon'ble CERC. The Hon'ble CERC further

permitted the parties to execute a formal foreclosure agreement to record the understanding, in terms of the Respondent's letter dated 03.01.2023.

COMMISSION ANALYSIS

4. TPDDL has submitted Petition at DERC on 21/02/2022 under Section 86 (1) (b) & (f) of the Electricity Act, 2003 seeking approval for executing a mutual foreclosure agreement to terminate the Power Purchase Agreement dated 23/03/2011 between TPDDL & THDC Ltd. qua TPDDL's share in Tehri PSP.
5. Total allocation to State of Delhi from Tehri PSP is 600MW, out of which TPDDL allocation is 184.08 MW in terms of DERC Order dated 27/02/2014. The execution of Tehri PSP (4x250 MW) was approved at the cost of Rs. 1657.6 Crore with tentative COD as 31/12/2014 however the COD for Tehri PSP has been revised two times due to execution delays and resulted to increase in associated costs. The Revised cost estimate-II stands at Rs. 4825.6 Crore (including Interest During Construction (IDC) & Fixed Cost of Rs. 1089.80 Crore) and the expected Commissioning for Box-up of Tehri PSP Unit-1 & 2 is stated as Mar' 23.
6. Due to high estimated Tariff from Tehri PSP, TPDDL filed Petition no. 119/MP/2021 for appointment of an 'Arbitrator' to adjudicate the alleged disputes between the parties in terms of Article 12 of PPA dated 23/03/2011. During proceedings at Hon'ble CERC on 17/01/2023, THDC mentioned that they have agreed for the termination of the PPA vide letter dated 3/1/2023.
7. Hon'ble CERC has decided the matter as amicably settled between TPDDL & THDC. Hence, TPDDL's Petition to appoint an Arbitrator stands infructuous and the same doesn't survive for consideration. However, TPDDL & THDC were permitted to execute the foreclosure termination agreement in terms of letter dated 3/01/2023 vide Hon'ble CERC Order dated 7/02/2023, summarized as follows:

"8. ...

With the Respondent agreeing to the termination of the PPA (by the Petitioner) vide its letter dated 3.1.2023 and the Petitioner having confirmed the same (as in para 6 above), the alleged disputes stand mutually settled by the parties herein. In this background, the prayer of the Petitioner in this petition, seeking appointment of an arbitrator for adjudication of the disputes, in terms of Article 12 of the PPA, do not survive for consideration of the Commission. In other words, the prayer of the Petitioner in paragraph 1 above, has been rendered infructuous. Accordingly, the petition is disposed of as infructuous. The parties are permitted to execute a formal foreclosure termination agreement to record the understanding, in terms of the said letter dated 3.1.2023."

8. It is stated that Pumped Storage Technology can efficiently meet objective of storage requirement to serve peaking load/ ramp up load, it is only appropriate that such Energy Storage through PSP should not be surrendered for State of Delhi as a whole. Further, Pumped Storage Projects have a long service life of more than 40-50 years which is more than any other Energy Storage technology available.
9. The Commission observes from Para 7 of CERC Order dated 7/02/2023 that THDC wants to avoid long drawn litigation and has agreed to pre-mature foreclosure/termination of PPA with TPDDL without any risk and cost and CERC has permitted the parties i.e. TPDDL and THDC to execute a formal foreclosure agreement. Accordingly, the Commission allows the prayer of the Petitioner for foreclosure of PPA with respect to TPDDL share of 184.08 MW in Tehri PSP.
10. Since, power from Tehri PSP was allocated to the State of Delhi, therefore, the Commission is of view that THDC shall offer the surrendered share of TPDDL only to other Delhi DISCOMs' i.e., BRPL and BYPL, and not to any other State, due to their persistent ongoing shortages in meeting the demand and delay in materialization of 500 MW BSES DISCOMs' tender whose in principle approval was granted by the Commission vide Order dated 18/08/2022.
11. In view of above, the Petition is disposed of with above directions to parties. BSES DISCOMs are further directed to file separate Petition in this regard. Ordered accordingly.

Sd/-
(Dr. A.K. Ambast)
Member