

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 14 of 2009
Date hearing: 22.01.2013
Date of Order: 23.01.2013**

In the matter of Petition for approval of Power Sale Agreement dated 26.02.2009 signed between PSEB and TATA Power Trading Co. Ltd., (TPTCL) for purchase of 300 MW Power from 1050 MW Maithon Right Bank Thermal Power Project, Dhanbad, District Jharkhand and related matters.

AND

In the matter of: Punjab State Electricity Board, The Mall, Patiala
(now Punjab State Power Corporation Limited).

AND

In the matter of: Interlocutory Application in Petition No.14 of 2009 under Regulation 69, 71 and 72 of Punjab State Electricity Regulatory Commission (Conduct of Business Regulations) 2005 ("PSERC Conduct of Business Regulations") filed under Section 86(1)(b) read with Section 2(39) and Section 14 of the Electricity Act ("Act") , read with Regulations 46(6)(a) and 57(1) of PSERC Conduct of Business Regulations for the approval of Power Sale Agreement dated 26.02.2009 signed between erstwhile Punjab State Electricity Board ("PSEB") now Punjab State Power Corporation Limited ("PSPCL") and Tata Power Trading Company Limited (TPTCL) for purchase of 300 MW power from 1050 MW Maithon Right Bank Thermal Power Project ("Maithon RBTPP"), District Dhanbad, Jharkand and related matters.

AND

In the matter of: Tata Power Trading Company Limited, A 34 Corporate Centre, Sant Tukaram Road, Carnac Bunder, Mumbai-400009.

Present: Smt.Romila Dubey, Chairperson
 Shri Gurinderjit Singh, Member

For PSPCL: Shri G.S.Kohli, C.E./ARR & TR
 Shri Parmjit Singh, Dy.CE/ISB
 Shri Sanjeev Gupta, SE/TR-2
 Shri Rajesh Gupta, Addl.SE/ISB
 Shri Tajender K.Joshi, Advocate

For TPTCL: Shri V.K.Goyal, Sr. Advisor

ORDER

Tata Power Trading Company Limited (TPTCL) has filed this Interlocutory Application in Petition No.14 of 2009 under Regulations 69, 71 and 72 of Punjab State Electricity Regulatory Commission (Conduct of Business) Regulations, 2005 and Section 2 (39) and Section 14 of the Electricity Act, read with Regulations 46 (6) (a) and 57 (1) of PSERC (Conduct of Business) Regulations, 2005 for the approval of Power Sale Agreement dated 26.02.2009 (PSA) signed between erstwhile Punjab State Electricity Board (PSEB) now Punjab State Power Corporation Limited (PSPCL) and TPTCL for purchase of 300 MW power from 1050 MW Maithon Right Bank Thermal Power Project, District Dhanbad, Jharkand.

The applicant has submitted that pursuant to signing of PSA on 26.02.2009, erstwhile PSEB filed Petition No.14 of 2009 seeking approval of PSA under Section 86 (1) (b) of the Electricity Act, 2003. The applicant was not a party to this petition though it was a necessary party. The Commission issued Order dated 19.01.2011 directing PSPCL to first try and procure power through competitive bidding process and then determine whether it would still be beneficial to procure power from the Project. The relevant excerpts of the Order are as follows:-

“In these circumstances, the Commission observes that it would be advisable for PSPCL to consider initiating the process of obtaining power to the requisite extent under the Competitive Bidding Route and then determine whether it would still be beneficial to go in for the PSA under consideration. Having undertaken this exercise, PSPCL would be free to again approach the Commission for approval of this PSA.”

The applicant made further submissions that it would be beneficial for the PSPCL to procure power from this Project and that the applicant is at severe financial disadvantage pending approval of the PSA by the Commission. The applicant made following prayer :

- (a) Admit the Application;
- (b) Approve the Power Sale Agreement between TPTCL and PSPCL;

- (c) Provide an opportunity to the Applicant to present its case prior to the finalization of the decision in the matter. The Applicant believes that such an approach would provide a fair treatment to all the stakeholders and may eliminate the need for a review or clarification.
- (d) Pass such further and other orders, as the Commission may deem fit and proper, keeping in view the facts and circumstances of the case.

Interlocutory Application was admitted vide Order dated 27.09.2012 and PSPCL was directed to file reply by 17.10.2012. After seeking an extension in time to file reply, PSPCL filed reply vide C.E./ARR & TR affidavit dated 29.11.2012. PSPCL submitted in its reply that as per article 3.4 of PSA any party to the PSA could terminate the PSA by giving a written notice of termination to the other party after 26 months from effective date which is the date of signing of PSA i.e. 26.02.2009. TPTCL invoked the article 3.4.1 of the PSA and sent a termination notice dated 10.2.2012 and specifically stated therein that the TPCL has terminated the PSA dated 26.02.2009. As per article 3.4.1, the PSA stands terminated within seven days from the date of termination notice. So the PSA stood terminated with effect from 17.02.2010. Once the PSA is terminated the applicant / TPTCL can not ask for the approval of the same. TPTCL has intentionally concealed these facts from the Commission and has not approached this Commission with clean hands. As such the application of TPTCL is liable to be dismissed with heavy costs. After seeking extension in time for filing rejoinder to the reply of PSPCL, TPTCL filed the same vide affidavit dated 17.12.2012. PSPCL filed reply to the rejoinder vide C.E./ARR & TR memo no.5027/29 dated 08.01.2013. PSPCL again submitted that TPTCL has terminated the PSA by issuing letter dated 10.02.2012 and thereafter there was no offer or acceptance on the part of PSPCL and denied the contents of the rejoinder as totally wrong and reiterated the contents of its reply. PSPCL prayed that the application filed by TPTCL may be dismissed with costs.

An affidavit of Shri Sanjeev Mehra, Managing Director of the applicant / Tata Power Trading Company Limited (TPTCL) was filed during the hearing on 22.01.2013, stating therein that in view of the reply filed by Punjab State Power Corporation Limited (PSPCL) dated 29.11.2012, contesting the validity

of the PSA, the applicant without prejudice to its rights and contentions, seeks liberty to withdraw the instant Interim Application with liberty to file appropriate petitions / applications, as may be necessary, in order to secure its rights.

The applicant is allowed to withdraw the Interlocutory Application accordingly.

Interlocutory Application is dismissed as withdrawn.

Sd/-
(Gurinderjit Singh)
Member

Sd/-
(Romila Dubey)
Chairperson

Chandigarh
Dated: 23.01.2013