



February 2025

JSA successfully represented MB Power (Madhya Pradesh) Ltd. to secure payment of capacity charges and transmission charges withheld by Procurers

The Hon'ble Appellate Tribunal for Electricity ("APTEL") in its recent judgment dated January 17, 2025, in ***Uttar Pradesh Power Corporation Ltd. and Ors. vs. Central Electricity Regulatory Commission & Ors.***, reaffirmed Uttar Pradesh Power Corporation Limited's ("UPPCL") obligation to pay capacity charges and transmission charges for the capacity declared by MB Power (Madhya Pradesh) Ltd. ("MB Power")¹, even though the same was not scheduled.

Brief facts

1. UPPCL represents the distribution companies in Uttar Pradesh, i.e., Paschimanchal Vidyut Vitran Nigam Limited ("Paschimanchal"), Purvanchal Vidyut Vitran Nigam Limited ("Purvanchal"), Madhyanchal Vidyut Vitran Nigam Limited ("Madhyanchal") and Dakshinanchal Vidyut Vitran Nigam Limited ("Dakshinanchal") (collectively "UP Discoms" / "Procurers").
2. MB Power is a generating company operating a 1200 megawatt ("MW") (2 X 600 MW) thermal power project in District Anuppur, Madhya Pradesh ("Project"). PTC India Ltd. ("PTC") is a trading licensee in terms of the Electricity Act, 2003 ("Electricity Act").
3. On January 18, 2014, UP Discoms entered into a Power Purchase Agreement ("PPA") to procure 361 MW ("Contracted Capacity") power from PTC from the Project ("Procurer's PPA"). On January 20, 2014, PTC entered into a back-to-back PPA with UPPCL to procure 361 MW from MB Power for onward supply to UP Discoms ("PTC PPA").
4. While executing the PTC PPA, MB Power already had Long Term Open Access ("LTA") of 192 MW for Northern Region. Thereafter, MB Power applied for balance LTA of 169 MW and signed LTA Agreement with Central Transmission Utility of India Ltd. ("CTUIL").
5. Since operationalisation of LTA of 169 MW by CTUIL was taking time, MB Power, secured Medium Term Open Access ("MTOA") as an interim arrangement till operationalisation of the corresponding LTA. MB Power's existing MTOA of 169 MW was valid till October 29, 2016, on October 12, 2015, MB Power made an application to CTUIL for MTOA of 169 MW for 3 (three) years, which was granted with effect from October 30, 2016.
6. After expiry of the earlier MTOA, there was delay in operationalisation of the fresh MTOA for 169 MW and the same could only be partly operationalised (i.e., 85 MW out of 169 MW) with effect from November 10, 2016.

¹ MB Power was represented in the dispute by Amit Kapur, Akshat Jain and Shikhar Verma

7. While on March 30, 2017, MB Power was ready to schedule the Contracted Capacity with immediate effect, it was only on May 15, 2017, that UPPCL conveyed its consent for scheduling Contracted Capacity of 361 MW. For the period from April 1, 2017, to May 16, 2017, UP Discoms did not schedule the entire Contracted Capacity and did not pay capacity charges and transmission charges in respect of MB Power's Declared Capacity.
8. Subsequently, MB Power filed a petition before the Central Electricity Regulatory Commission ("**CERC**") *inter-alia* seeking directions to UP Discoms, for payment of capacity charges and transmission charges for the period from April 1, 2017, to May 16, 2017.
9. On April 30, 2019, CERC passed an Order ("**Impugned Order**") and held that UP Discoms wrongfully withheld payment of claimed capacity charges and transmission charges in MB Power's invoices for April and May 2017 and directed UPPCL to pay the amount with carrying cost.
10. The Impugned Order was challenged in appeal before APTEL by UPPCL.

Issues

1. Whether UP Discoms is liable to pay capacity charges and transmission charges for the period from April 1, 2017, to May 16, 2017, when UP Discoms scheduled only 277 MW out of the Contracted Capacity?
2. Whether MB Power was obligated to give 60 (sixty) days' preliminary notice plus additional 30 (thirty) days' final notice, prior to operationalisation of LTA for the Contracted Capacity?

Analysis and observations of APTEL

Re. Payment of capacity charges

1. MB Power commenced supply of Contracted Capacity on August 26, 2015. There was no prerequisite for availability of LTA for the entire Aggregate Contracted Capacity of prior to participation in the bidding process and signing of the PPAs.
2. UP Discoms, having accepted satisfaction of condition subsequent in terms of Article 3.1.1 of the Procurer's PPA, which included obtaining necessary permission for LTA, cannot now contend to the contrary.
3. UP Discoms had granted clearance for commencement of power supply in terms of Article 4.1 of the Procurer's PPA, making no distinction whether such supply should only be through LTA alone as UPSLDC's no objection certificate had been issued for availing MTOA.
4. There is no difference whether power is received under MTOA or LTA except for the priority in the grid operation. LTA users have the highest priority for scheduling and the least likelihood of curtailment in case of congestion while on the other hand in case of congestion, if curtailment of scheduling is required in the grid, MTOA users have higher priority than short-term access users but lower than LTA users.
5. In terms of Article 4.3.1 of the Procurer's PPA, it is the Procurer's obligation to ensure the availability of Interconnection Facilities and evacuation of power from the Delivery Point before the Scheduled Delivery Date or the Revised Scheduled Delivery Date.
6. UP Discoms are liable to pay capacity charges for the quantum (84 MW) which was not scheduled by them during the period from April 1, 2017 to May 16, 2017 even though the MB Power was in a position to schedule entire quantum of 361 MW through LTOA since April 1, 2017.
7. UP Discoms were aware of their liability to pay the Capacity Charges upon operationalisation of open access whether the power is scheduled or not.

Re. Preliminary notice and final notice

In terms of the Procurer's PPA, the requirement of preliminary notice of 60 (sixty) days and final notice of 30 (thirty) days is only before commencement of power supply. It cannot be the case that whenever there is disruption in supply or change in type of open access, the generator will have to provide a fresh 60 (sixty)/30 (thirty) day notice to the Procurer.

Re. Reimbursement of transmission charges

1. In terms of the PPA, UP Discoms are obligated to reimburse transmission charges to MB Power for the Contracted Capacity.
2. Once LTA is granted and operationalised for an applicant, such capacity is booked for that applicant and the Procurer is liable to pay charges for the same, whether such LTA is utilised or not.

Conclusion

The judgment passed by APTEL re-affirms the regulatory principles for payment of capacity charges and transmission charges in cases where the generating company has declared such capacity to be available, irrespective of whether such capacity is scheduled by the Procurer. The judgment provides regulatory certainty for generators and protects their interests in instances where the Procurers indulge in unilateral withholding of capacity charges and transmission charges.

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JSA has been regularly engaged in; (a) providing policy advice to Governments of Bangladesh and Maldives, as also the Government of India besides various Indian states. Also, JSA partners have presented expert testimony to the Parliamentary Standing Committees and the Forum of Regulators on challenges faced by the power sector and proposed legislative and policy changes, development financial institutions like the World Bank, the Asian Development Bank, DfID, USAID regulatory authorities and industry bodies; (b) advising project developers, investors, suppliers and contractors on commercial / transactional issues and all aspects of licensing, market structures, competition, performance standards and tariffs; (c) advising financial institutions and borrowers in relation to financing transactions; (d) Advising clients on sustainable development issues like clean development mechanism and environmental compliances; and (e) specialised dispute resolution.

MB Power was represented by Amit Kapur, Akshat Jain and Shikhar Verma

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41 Ranked Lawyers



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16 Ranked Lawyers



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