

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 216/MP/2018

Coram:

**Shri P.K.Pujari, Chairperson
Shri A.K. Singhal, Member
Dr. M.K. Iyer, Member**

Date of Order: 10th August, 2018

In the matter of

Petition under sections 79(1)(b) read with 79(1)(f) of the Electricity Act, 2003 read with Regulation 111 of the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 seeking approval of the Supplementary Power Purchase Agreement dated 15.2.2018 executed between the Petitioner and the Respondent to pass on the discount on tariff under the SHAKTI Scheme -2017 issued by the Ministry of Coal, Government of India

And

In the matter of

Adhunik Power & Natural Resources Limited
9B, 9th Floor, Hansalaya Building,
15, Barakhamba Road, Connaught Place,
New Delhi-110001

.....Petitioner

Vs

Jharkhand Bijli Vitran Nigam Limited,
Engineering Building, HEC, Dhurwa,
Ranchi-834004
Jharkhand

.....Respondent

Parties present:

Shri Deepak Khurana, Advocate, APNRL
Shri Ajit Kumar, Senior Advocate, JBVNL
Shri Navin Kumar, Advocate, JBVNL
Ms. Aparajita Bhardwaj, Advocate, JBVNL
Shri Himanshu Shekhar, JBVNL
Shri K. Mano Raj, APNRL
Shri Sunil Kumar, JBVNL



ORDER

The Petitioner has filed this Petition with the following prayers:

“(a) Pass an order approving the supplementary power purchase agreement dated 15.2.2018 executed between the Petitioner and the Respondent in terms of SHAKTI scheme;

“(b) Pass such other and further order or orders as this Hon’ble Commission may deem fit and proper under the facts and circumstances of the present case and in the interest of justice.”

Background

2. The Petitioner, Adhunik Power & Natural Resources Limited is a company incorporated under the Companies Act, 1956 and is a generating company within the meaning of section 28(2) of the Electricity Act, 2003 (hereinafter called ‘the 2003 Act’). The Petitioner has set up a Thermal Power Project with an installed capacity of 540 MW (2 x 270 MW) (hereinafter referred to as ‘the Project’) at Saraikela-Kharsawn District in the State of Jharkhand pursuant to a Memorandum of Understanding (MOU) executed between the Petitioner and the Government of Jharkhand on 31.10.2005 and extended from time to time. As per the MOU read with the extension thereto, the Government of Jharkhand or Distribution licensees authorized by the Government has the first right of claim on purchase upto 25% of power delivered by the Project of the Petitioner and 12% of the total power generated at variable cost.

3. Pursuant to the MOU, the Petitioner executed a Power Purchase Agreement (PPA) with the Jharkhand State Electricity Board (*now Jharkhand Urja Vikas Nigam Ltd*) on 8.9.2012 for supply of contracted capacity of 122.85 MW (25% of 491.4 MW i.e gross capacity of two units of 270 MW each, totaling to 540 MW less normative auxiliary consumption) from the Project on long term basis. In terms of the PPA, 63.882 MW capacity i.e. 13% of the net capacity would be supplied to the Respondent and the balance 58.968 MW capacity i.e. 12% would be supplied at variable charges



only. The Petitioner and the Respondent executed a Supplementary PPA on 6.11.2017 for purchase of additional 66 MW of power as per clause 5.2 of the National Tariff Policy, 2016. The terms and conditions of the Supplementary PPA are same as that of the PPA dated 8.9.2012.

4. Unit-I of the Project achieved commercial operation on 21.1.2013 and Unit-II achieved commercial operation on 19.5.2013. In terms of Clause 3.1(ii) and (iii) of the PPA dated 8.9.2012, the tariff payable is to be determined by the State Electricity Regulatory Commission or any other competent authority authorized from time to time. The Petitioner has been supplying 122.85 MW power to the Respondent on long term basis from 21.7.2013 onwards by utilizing the linkage coal to the extent available and also after procuring from open market.

5. The Ministry of Coal, Govt. of India vide Circular No. 23011/15/2016-CPD/CLD dated 22.5.2017 introduced a 'New More Transparent Coal Allocation Policy for Power Sector, 2017', namely, SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) (hereinafter called the 'SHAKTI scheme') for the purpose of providing linkage coal to the IPPs having already concluded long term PPA with discoms. Thereafter, Coal India Limited (CIL) invited Expression of Interest (EOI) under the SHAKTI scheme on 4.8.2017 and further issued a Scheme document on 16.8.2017 for auction of coal linkage for IPPs having already concluded long term PPAs.

6. The Petitioner participated in the auction process under the 'SHAKTI scheme' and offered a discount of three (3) paise per kWh for securing coal linkage for supply of 122.85 MW power as per PPA with the Respondent, JBVNL for 25 years and also for supply of 100 MW of power under long term PPA (15 years) with TANGEDCO through



PTC on back to back basis. Accordingly, the Central Coalfields Ltd (CCL) issued Letter of Intent (LOI) dated 21.12.2017 declaring the Petitioner as Provisional successful bidder and allocating 900,000 tonnes of coal (G-11 grade) against the above mentioned PPAs.

7. The Petitioner has submitted that as per the LOI issued by CCL in its favour, the Petitioner was required to sign the FSA within 90 days from the date of LOI after executing the amended PPA duly approved by the Commission. Though the Petitioner was required to accept the LOI within a period of 45 days from the date of issuance of LOI, Coal India Ltd vide its corrigendums dated 3.2.2018 and 27.2.2018 has extended the deadline by 45 days, thereby enabling the Petitioner to comply with the requirements of SHAKTI Scheme for securing the linkage coal.

8. The Petitioner has stated that it is supplying 100 MW power to TANGEDCO through PTC under long term PPA executed between PTC and TANGEDCO and long term PPA dated 19.12.2013 between Petitioner and PTC on back to back basis. The Commission by order dated 18.5.2018 in Petition No. 84/MP/2018 had approved the Supplementary PPA executed between PTC and TANGEDCO in respect of the aforesaid supply of 100 MW of power for passing of discount in tariff to the Procurer in terms of Clause (B)(ii)(b) of the SHAKTI scheme. In respect of the 122.85 MW supply of power by the Petitioner to the Respondent, JBVNL, the Petitioner and Respondent executed a Supplementary PPA on 15.2.2018 for passing of discount of 3 paise per kWh in tariff to the Respondent in terms of the aforesaid provisions of the SHAKTI scheme.

9. Pursuant to the execution of the Supplementary PPA dated 15.2.2018, the Respondent filed petition (Case No.3 of 2018) before the Jharkhand State Electricity Regulatory Commission (JSERC) on 5.3.2018 seeking approval of the supplementary



PPA dated 15.2.2018 to avail the discount in tariff under the SHAKTI scheme. However, in view of the Commission's order dated 18.5.2018 in Petition No. 84/MP/2018 (for TANGEDCO supply) and Order dated 6.6.2018 in Petition No. 305/MP/2015 holding that this Commission has the jurisdiction to regulate the tariff of the Project of the Petitioner under Section 79(1)(b) of the 2003 Act, the JSERC by order dated 18.7.2018 disposed of the said Petition giving liberty to the Petitioner to approach this Commission for approval of the Supplementary PPA dated 15.2.2018 under the SHAKTI scheme. Pursuant to the said order of JSERC, the present Petition has been filed by the Petitioner seeking approval of the Supplementary PPA dated 15.2.2018 executed between the Petitioner and the Respondent.

10. The learned counsel for the Petitioner during the hearing on 7.8.2018 prayed for approval of the said supplementary PPA dated 15.2.2018 under the SHAKTI Scheme. This was not objected to by the learned counsel appearing for the Respondent. The supplementary PPA dated 15.2.2018 has been placed on record.

Analysis and decision

(A) Issue of Jurisdiction

11. The Petitioner is supplying power to the distribution licensees situated in more than one State by execution of (a) PPA dated 28.9.2012 with Respondent, JBVNL for supply of 122.85 MW (b) PPA dated 25.3.2011 for supply of 100 MW to WBSEDCL through PTC on back to back basis and (c) PPA dated 19.12.2013 for supply of 100 MW to TANGEDCO through PTC on back to back basis. Accordingly, the Petitioner has a composite scheme for supply of power in more than one State in terms of Section 79(1)(b) of the Electricity Act, 2003. The Commission in order dated 18.5.2018 in Petition No. 84/MP/2018 filed by the Petitioner for approval of Supplementary PPAs dated 8.5.2018 & 10.5.2018 in respect of supply to TANGEDCO under the 'SHAKTI



scheme' had decided that this Commission has the jurisdiction to regulate the tariff of the Project of the Petitioner, in terms of Section 79(1)(b) of the 2003 Act, in light of the judgment of the Hon'ble Supreme Court dated 11.4.2017 in Energy Watchdog case.

(B) Reliefs

12. The Petitioner has sought the approval of supplementary PPA dated 15.2.2018 entered into between the Petitioner and Respondent, JBVNL for passing on the discount in tariff to the Procurers in terms of clause (B)(ii)(b) of the 'SHAKTI scheme' of the GOI dated 22.5.2017 and the LOIs issued by CIL. The relevant portions of Clause (B) of the Policy guidelines for allocation of Coal linkages to Power Sector under 'SHAKTI scheme' are extracted under:

“(B) The following shall be considered under a New More Transparent Coal Allocation Policy for Power Sector, 2017-SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India):

(i) CIL/SCCL may grant Coal linkages for Central Government and State Government Gencos at the notified price of CIL/SCCL. Similarly, coal linkages may be granted for JVs formed between or within CPSUs and State Govt/PSUs. The recommendations shall be made by Ministry of Power.

(ii) CIL/SCCL may grant coal linkages on notified price on auction basis for power producers/IPPs having already concluded long term PPAs (both under section 62 and section 63 of The Electricity Act, 2003) based on domestic coal. Power producers/IPPs, participating in auction will bid for discount on the tariff (in paise/unit). Bid Evaluation Criteria shall be the non-zero Levellised Value of the discount (applying a pre-notified discount rate) quoted by the bidders on the existing tariff for each year of the balance period of the PPA. Ministry of Coal may, in consultation with Ministry of Power, work out a methodology on normative basis to be used in the bidding process for allocation of coal linkages to IPPs with PPAs.

(a) The discount by generating companies would be adjusted from the gross amount of bill at the time of billing, i.e., the original bill shall be raised as per the terms and conditions of the PPA and the discount would be reduced from the gross amount of the bill. The discount shall be computed with reference to scheduled generation from linkage coal supplied under this auction. This would be applicable to both the PPAs contracted under Section 62 as well as Section 63 of the Electricity Act, 2003.

(b) Accordingly, PPA may be amended or supplemented mutually between the developer and the procurer to pass on the discount to the procurer and the approval of the Appropriate Commission obtained, as per the provisions of the PPA or Regulations.



(c) FSA shall be signed with the successful bidders after the terms and conditions for signing of FSA are met and the Appropriate Commission has approved the amendment or supplement to the PPA.

(iii) CIL/SCCL may grant future coal linkages on auction basis for power producers/ IPPs without PPAs that are either commissioned or to be commissioned. All such power producers/IPPAs may participate in this auction and bid for premium above the notified price of the coal company. The methodology for bidding of linkages shall be similar to the bidding methodology in the policy on auction of linkages of Non-Regulated Sector dated 15.02.2016. Coal drawal will be permitted only against valid long term and medium term PPA with Discoms/State Designated Agencies (SDAs), which the successful bidder shall be required to procure and submit within two years of completion of auction process...”

13. In accordance with the above scheme, the Petitioner, who had already concluded the long term PPAs based on domestic coal was eligible to participate in the bidding process. The grant of coal linkage on notified price from each source will be based on the discount offered by the power producer on the existing tariff for the balance period of the PPA. The discount would be computed with reference to linkage coal supplied and received under the ‘SHAKTI scheme’. Moreover, the discount offered by the generating companies would be adjusted from the gross amount of the monthly bill raised in terms of the PPA.

14. The quantum of coal allocation by CCL in the LOI dated 21.12.2017 against the above mentioned PPAs with TANGEDCO and JBVNL is extracted under:

Sl. No	Source	Grade	Quantity allocated (Tonne)	Offered discount (Paise / KWh)	LoI Reference No. (Enclosed as Annexure -1 to the amendment)
1	Central Coalfields Limited	G 11	900,000	3	CCL/HQ/C-4/M&S/SHAKTI b(ii)/Adhunik/15522 dated 21.12.2017

15. The details of the supplementary PPA dated 15.2.2018 executed between the Petitioner and Respondent, JBVNL are as under:

“1. APNRL shall offer a discount of 3 paise per unit for the contracted capacity of 122.85 MW supplied to JBVNL by using coal supplied under the long term FSA signed between APNRL and CCL under the SHAKTI scheme.”



2. The above mentioned discount is applicable only on the units supplied using coal procured under the SHAKTI scheme.

3. Discount will be deducted from the gross bill raised by the Seller and shall be subject to quarterly reconciliation. The methodology for computation of discount as per terms and conditions of revised PPA is as follows:

Particulars	Details
Annual Coal Quantity (CQ) million tonnes purchased from CCL under FSA	1.Road Mode: Coal quantity as per delivery order of CCL with applicable transit loss 2.Rail Mode: Coal quantity as per railway receipt and invoice of CCL with applicable transit loss
Coal GCV (GCV)	As per sampling report done by independent agency at plant
Auxiliary Consumption (AUXn)	As per JSERC norms
Station Heat Rate (SHR)	As per JSERC norms
Number of units generated (KWHg) using SHAKTI coal	$KWHg = CQ * (GCV / SHR)$
Number of units supplied (KWHs) to JBVNL	$KWHs = KWHg * (1 - AUXn)$
DISCOUNT (DISC) in paisa/kWh	Discount applicable as per discount stream annexed to the LOI issued by CCL
Total Bill Discount applicable	Total Discount = $KWHs * DISC / 100$

Where:

(a) $CQ = \frac{\text{Total coal purchased from CCL under SHAKTI scheme during the month} \times 122.85 \text{ MW}}{(100 \text{ MW} \div 122.85 \text{ MW})}$

Where, 122.85 MW and 100 MW are the long term PPA quantum between APNRL and PTC for supply of power to TANGEDCO and JBVNL respectively.

(b) AUXn is the normative Auxiliary consumption during the month as specified in the JSERC Tariff Regulations as notified from time to time.

16. Since the amendments to the Procurer PPA dated 8.9.2012 has been carried out through supplementary PPA dated 15.2.2018 by the parties pursuant to the SHAKTI Scheme, we approve the said amendments in terms of Article 15 of the PPA. Issues, if any, arising out of such adjustment shall be mutually settled by the parties.

17. Petition No. 216/MP/2018 is disposed of in terms of the above.

Sd/-
(Dr. M.K.Iyer)
Member

Sd/-
(A. K. Singhal)
Member

Sd/-
(P. K. Pujari)
Chairperson

