

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 84/MP/2018

Coram:

Shri P.K.Pujari, Chairperson

Shri A.K. Singhal, Member

Shri A.S.Bakshi, Member

Dr. M.K. Iyer, Member

Date of Order: 18th May, 2018

In the matter of

Petition under section 79 (1) (b) and (f) for approval of the discount in tariff on account of allocation of coal linkage under the SHAKTI scheme of the 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

1. Tamil Nadu Generation and Distribution Corporation Ltd
NPKRR Maaligai, 6th Floor, Eastern Wing,
144, Annasalai,
Chennai - 600002

2. PTC India Limited,
2nd Floor, NBCC Towers
15, Bhikaji Cama Place
New Delhi-110066

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

....Respondents

Parties present:

Shri Hemant Singh, Advocate, APNRL
Shri Nishant Kumar, Advocate, APNRL
Shri Mrinal Navendu, APNRL
Shri Amit Kumar, APNRL



ORDER

The Petitioner has filed this Petition with the following prayers:

“(a) Approve the discount of ₹0.03/kWh in tariff as offered by the Petitioner to the Respondent No.1 in terms of the SHAKTI Policy dated 22.5.2017 and Lol issued by Central Coalfields Limited;

(b) Direct incorporation of the approved discount as may be approved in terms of prayer (a) so as to enable supply of coal under the SHAKTI Scheme; and

(b) Pass such other order(s) as the Hon’ble Commission may deem appropriate under the facts and circumstances of the present case.”

Background

2. The Petitioner, Adhunik Power & Natural Resources Limited, a company incorporated under the Companies Act, 1956 has set up a Thermal Power Project with an installed capacity of 540 MW (2 x 270 MW) ('the Project') at Saraikela-Kharsawn District in the State of Jharkhand. The Petitioner is a generating company within the meaning of section 2(28) of the Electricity Act, 2003.

3. In accordance with the Competitive Bidding Guidelines of the Central Govt. dated 19.1.2005 under section 63 of the Electricity Act, 2003, TANGEDCO (Respondent No.1) had initiated a competitive bidding process through issue of Request for Proposal' (RFP) for procurement of power for long term under Case-I bidding process for meeting the base load power requirements. Pursuant to the said bidding process, PTC (Respondent No.2) was selected as a 'Seller' for sale and supply of 100 MW power to TANGEDCO through the Petitioner. Consequently, Power Purchase Agreement was executed between PTC and TANGEDCO (Procurer PPA) on 18.12.2013 for supply of 100 MW power and accordingly back to back Power Purchase Agreement was executed between the Petitioner and PTC (PTC-APNRL PPA) on 19.12.2013. The tariff quoted in respect of the same was adopted by the Tamil Nadu Electricity Regulatory Commission (TNERC) by its order dated 29.7.2016.



4. The Petitioner vide its letter dated 10.2.2017 informed PTC that consequent to the cancellation of Ganeshpur Coal block by the Hon'ble Supreme Court of India vide its judgment dated 24.9.2014 in W.P.(C) No. 120/2012, the coal block allotted to the Petitioner stood cancelled. The Petitioner has been supplying power under the PPA by utilising the linkage coal to the extent available and also after procuring from open market from 1.1.2016.

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. Pursuant to this, the Petitioner vide letter dated 14.8.2017 to PTC sought issuance of verification certificate as suggested by TANGEDCO and accordingly PTC sought issuance of verification letter by TANGEDCO for participating in the said Scheme. Based on this, TANGEDCO issued verification certificates thereby verifying the validity of the PPA executed by the Petitioner and TANGEDCO on back to back basis.

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 long term PPA (15 years) with TANGEDCO for supply of 100 MW through PTC on back to back basis and for supply of 122.85 MW PPA with Jharkhand Bijili Vitaran Nigam Ltd (JBVNL) for 25 years. 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 corrigendum's 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 power to the distribution licensees situated in more than one State by execution of (a) PPA dated 28.9.2012 with 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 submitted that it 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. Hence, the Petitioner has submitted that in terms of the decision of the Hon'ble Supreme Court in Energy Watchdog case, the Commission has the jurisdiction to regulate the tariff of the Petitioner.

9. During the hearing of the Petition on 12.4.2018, the learned counsel for the Petitioner submitted that it was willing to offer discount of 0.03 paise per kWh on the levelised tariff of ₹4.91 per kWh under the SHAKTI Scheme, which was agreed to by TANGEDCO. Based on mutual consent as above, the Commission observed that the parties may enter into amended/Supplementary PPA incorporating their agreement and submit the same to the Commission.

10. Subsequently, the Petitioner has entered into a supplementary PPA with PTC on 8.5.2018 and PTC has entered into a supplementary PPA with TANGEDCO on back to



back basis on 10.5.2018, thereby amending the Procurer PPA dated 18.12.2013 and PTC-APNRL PPA dated 19.12.2013 vide Addendum No.1. Both the documents have been placed on record. The learned Counsel for the Petitioner during the hearing on 15.5.2018 prayed for approval of the said supplementary PPAs entered into pursuant to the SHAKTI Scheme.

Analysis and decision

(A) Issue of Jurisdiction

11. As stated in para 8 above, the Petitioner has entered into PPAs with the distribution licensees namely TANGEDCO, WBSEDCL and JBVNL i.e the discoms of the three States, for supply of power at different points in time and for different quantum. Sub-section (b) of Section 79(1) of the Electricity Act, 2003 provides that Central Commission shall regulate the tariff of generating company, if such generating company enters into or otherwise have a composite scheme for generation and sale of electricity in more than one State. The Hon'ble Supreme Court vide its judgment dated 11.4.2017 in Civil Appeals titled Energy Watchdog v CERC & ors (2017 (4) SCALE 580) has explained the composite scheme and decided the jurisdiction of this Commission for regulating the tariff of projects meeting the composite scheme as under:

“22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in sub-sections (c), (d) and (e) speaks of inter-State transmission and inter-State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub-clause(c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither



Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.”

12. In the light of the decision of the Hon’ble Supreme Court, this Commission has the jurisdiction to regulate the tariff of the Project of the Petitioner under Section 79 (1) (b) of the 2003 Act since it has entered into the PPAs for supply of electricity to the distribution companies located in more than one state.

(B) Reliefs

13. The Petitioner has sought the approval of supplementary PPA dated 8.5.2018 entered into between the Petitioner and PTC and supplementary PPA dated 10.5.2018 entered into between the PTC and TANGEDCO 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...”

14. 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.

15. 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

16. The details of the original /supplementary PPAs between the Petitioner and PTC and between PTC and TANGEDCO are as under:



Procurer	Date of Original PPA	Date of Amended / Supplementary PPAs
TANGEDCO (Respondent No.1)	18.12.2013 (PTC & TANGEDCO) and 19.12.2013 (PTC & APNRL)	Addendum No.1 dated 10.5.2018 and 8.5.2018

17. The Petitioner, in order to match the levelised tariff of ₹4.91 per kWh, has by letter dated 16.4.2018 to PTC revised their Quoted Escalable Energy Charge as ₹0.222 per kWh by offering a discount of ₹0.019 per kWh. Accordingly, the financial bid as per Schedule 8 of the Procurer PPA dated 18.12.2013 has been revised and enclosed as Annexure-III to the supplementary PPAs dated 8.5.2018 and 10.5.2018. Consequent to change of source from linkage and captive coal to linkage from the bidding process under the SHAKTI Scheme, Format 4.13(A) containing details of the generation source and primary fuel and Format 4.13 (B) containing details of primary fuel, furnished by the Petitioner at the time of bidding has been amended. Similarly, the definition of 'Fuel' and 'Monthly Bill' or 'Monthly Invoice' in Article I and 1.1 respectively has also been amended. In addition to amendment to clause 4.2.1 in Schedule 4 of the PPAs dated 18.12.2013/19.12.2013, Schedule 4A has been inserted to provide for the methodology for adjustment of discount in the monthly bills to the Procurers.

18. Since the amendments to the Procurer PPA dated 18.12.2013 and PTC-APNRL PPA dated 19.12.013 have been carried out through supplementary PPAs dated 8.5.2018 & 10.5.2018 by the parties pursuant to the SHAKTI Scheme, we approve the said amendments in terms of Article 15 of the PPAs. Issues, if any, arising out of such adjustment shall be mutually settled by the parties.

19. Petition No. 84/MP/2018 is disposed of in terms of the above.

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

Sd/-
(A. S. Bakshi)
Member

Sd/-
(A. K. Singhal)
Member

Sd/-
(P. K. Pujari)
Chairperson

