

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 186/MP/2022

Subject : Petition seeking direction to approve and take on record the Supplementary Agreement executed between JPL and Haryana DISCOMs on 27.5.2022 amending the Power Purchase Agreement dated 7.8.2008 (as amended vide Amendment Agreement dated 17.9.2008) signed between JPL and Haryana DISCOMs in terms of Article 18.1 thereof; and to take on record the Supplementary Agreement to be executed between JPL and TPTCL in terms of Article 18.1 of the Power Purchase Agreement dated 20.01.2009 (as amended vide Amendment Agreement dated 21.10.2010) pursuant to the same getting executed.

Date of Hearing : 5.8.2022

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri P. K. Singh, Member

Petitioner : Jhajjar Power Limited (JPL)

Respondents : Uttar Haryana Bijli Vitran Nigam Ltd. and 3 Ors.

Parties Present : Shri Aniket Prasoon, Advocate, JPL
Ms. Priya Dhankhar, Advocate, JPL
Ms. Aanandini Thakare, Advocate, JPL
Ms. Bikita Kaur, JPL
Shri Venkatesh, Advocate, TPTCL
Shri V. M. Kannan, Advocate, TPTCL
Ms. Isnain Muzamil, Advocate, TPTCL
Ms. Sarika Jerath, TPTCL
Ms. Aiyer Vaishnavi, TPTCL
Shri Nitish Gupta, Advocate, TPDDL
Ms. Parichita Chowdhury, Advocate, TPDDL
Shri Ravi Nair, Advocate, HPPC

Record of Proceedings

Case was called out for virtual hearing.

2. Learned counsel for the Petitioner submitted that the present Petition has been filed, *inter alia*, seeking direction to approve and take on record the Supplementary Agreement executed between the Petitioner and Haryana Utilities on 27.5.2022 amending the Power Purchase Agreement dated 7.8.2008 signed between the Petitioner and Haryana Utilities in terms of Article 18.1 thereof and to take on record the Supplementary Agreement to be executed between the Petitioner and TPTCL in terms of Article 18.1 of the PPA dated 20.1.2009 pursuant to the same getting executed. Learned counsel submitted that the aforesaid Supplementary Agreement has been signed for passing of the benefits of Government of India's coal



rationalization policy/scheme based on which the landed cost of coal is rationalized for thermal power projects based on shifting of quantum of coal from their existing linkage to other subsidiaries of Coal India Limited.

3. Learned counsel further pointed out that the Petitioner has also prayed to grant leave to the Petitioner to keep the present Petition alive till the time Delhi Electricity Regulatory Commission (DERC) in Petition No. 20/2022 grants approval to TPDDL to execute Supplementary Agreement with TPTCL (to the PSA) or as the case may be, in order for the Petitioner to execute a Supplementary Agreement with TPTCL and to bring the same on record by way of an additional affidavit for approval of the Commission. Learned counsel added that the said Petition filed by TPDDL before DERC was heard yesterday, wherein DERC expressed certain apprehension regarding its jurisdiction in view the judgment of Hon'ble Supreme Court in the case of *Energy Watchdog v. CERC and Ors.* and subsequently the matter was adjourned and is listed for hearing on 1.9.2022. Learned counsel submitted that in order to expedite the matter and to allay any apprehension with regard to jurisdiction, the Commission may kindly consider making certain observations to the effect that while this Commission will consider the Supplementary Agreement between the Petitioner and TPTCL, the approval of PSA or the Supplementary Agreement between TPTCL and TPDDL will be considered by DERC under Section 86(1)(b) of the Act. Learned counsel expressed urgency in the matter and placing reliance on the letter of Coal India Limited dated 21.7.2021 submitted that the approval of the Supplementary Agreement by the Commission is pre-requisite for signing of Fuel Supply Agreement of rationalized source.

4. Learned counsel for the Respondent, TPDDL submitted that TPDDL has filed Petition No. 20/2022 before the DERC under Section 86(1)(b) of the Act seeking permission to sign the Supplementary Agreement/PSA between TPDDL and TPTCL, pursuant to which the Petitioner and TPTCL will proceed to enter into the Supplementary Agreement on back-to-back basis. Learned counsel submitted that the parties are as such at *ad idem* that the purpose of entering into the Supplementary Agreement/PSA is for passing of the benefits of coal rationalization policy to the procurers and ultimately to the consumers. Learned counsel submitted that if the Commission deems fit TPDDL may file a suitable application to bring on record the aforesaid events and seek appropriate clarification in this regard.

5. Learned counsel for the Respondent, TPTCL submitted that as per Rule 8 of the Electricity Rules, 2005, it is clear that the tariff determined by the Central Commission for generating companies under Section 79(1)(a) or (b) of the Act shall not be subject to the re-determination by the State Commission, the State Commission is empowered to determine whether a distribution licensee in the State should enter into PPA or procurement process with such generating companies or not. Accordingly, while the Commission may consider the approval of the Supplementary Agreement between the Petitioner and TPTCL, in respect of the Supplementary Agreement/PSA between TPTCL and TPDDL, the parties be permitted to seek the approval of such Supplementary Agreement/PSA before DERC as per Section 86(1)(b) of the Act read with Rule 8 of the Electricity Rules, 2005.

6. Learned counsel for the Respondents, Haryana Utilities submitted that the Respondents have already signed the Supplementary Agreement with the Petitioner and support the prayers made by the Petitioner.

7. After hearing the learned counsel for the parties, the Commission directed the parties to file their respective written submissions covering the averments made during the course of hearing within two weeks with copy to each other.
8. Subject to the above, the Commission reserved the matter for order.

By order of the Commission

**Sd/-
(T.D. Pant)
Joint Chief (Law)**