

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 170/MP/2021

Coram:

Shri P.K. Pujari, Chairperson

Shri I.S. Jha, Member

Shri Arun Goyal, Member

Shri Pravas Kumar Singh, Member

Date of Order: 4th January, 2022

In the matter of

Petition under Section 79(1)(b) for approval of the amendment of tariff and PPA on account of allocation of coal linkage under the SHAKTI Scheme of the Government of India.

And

In the matter of

KSK Mahanadi Power Company Limited,
8-2-293/82/A, Road No. 22, Jubilee Hills,
Hyderabad – 500033

....Petitioner

Vs.

1. Tamil Nadu Generation and Distribution Corporation Limited,
No. 144, Anna Salai,
Chennai – 600 002

2. Madhyanchal Vidyut Vitran Nigam Limited (MVVNL),
(Through the Managing Director)
4A, Gokhale Marg,
Lucknow – 226001

3. Paschimanchal Vidyut Vitran Nigam Limited (PaVVNL),
(Through the Managing Director)
UrjaBhawan, Victoria Park,
Meerut – 250001

4. Purvanchal Vidyut Vitran Nigam Limited (PuVVNL),
(Through the Managing Director)
DLW Bhikharipur,
Varanasi – 221 004

 5. Dakshinanchal Vidyut Vitran Nigam Limited (DVVNL),
(Through the Managing Director)
Urja Bhawan, NH-2 (Agra-Delhi Bypass Road), Sikandra,
Agra-282002
- Respondents**

Parties present:

Shri Anand K. Ganesan, Advocate, KSKMPCL
Shri Ashwin Ramanathan, Advocate, KSKMPCL
Ms. Anusha Nagarajan, Advocate, TANGEDCO

ORDER

The Petitioner has filed this Petition with the following prayers:

“(a) Approve the Amendment to the PPAs between Petitioner and Respondents 1 to 5 for passing on discount to the Procurers as provided in para 11 and 12 above as provided for in Clause (B)(ii)(b) of the SHAKTI Policy dated 22/05/2017 and Lols issued by SECL; and

(b) Pass such other order(s) as the Hon’ble Commission may deem just in the facts of the present case.”

Background

2. The Petitioner, KSK Mahanadi Power Company Ltd., is a company incorporated under the Companies Act, 1956 and presently existing under the provisions of the Companies Act, 2013. The Petitioner is a generating company within the meaning of section 2(28) of the Electricity Act, 2003 and is in the process of establishing a 3600 MW (6x600 MW) coal-based generating station at Village Nariyara, Tehsil Akaltara and District Janjgir-Champa in the State of Chhattisgarh (in short, “the generating station”). The present petition has been filed to obtain the

approval of the Commission for revision in tariff pursuant to the discount to be offered for generation and supply of electricity by the Petitioner to the Respondents using coal available under the coal linkage as per the SHAKTI (Scheme for Harnessing and Allocating Koyala Transparently in India) Policy of Government of India.

3. The Respondents are licensees operating under the provisions of the Electricity Act, 2003. The Respondent No. 1 is the distribution licensee in the State of Tamil Nadu. The Respondent No. 2 to Respondent No. 5 are the distribution licensees in the State of Uttar Pradesh. PPAs between the Petitioner and Respondent No. 1 to Respondent No. 5 have been entered into under Case-1 bid and the tariff under Section 63 of Electricity Act, 2003 was adopted by respective State Electricity Regulatory Commissions. The Petitioner has entered into the following Power Purchase Agreements (PPAs) with the Respondents for supply of electricity from the generating station of the Petitioner:

Sr. No.	Purchaser	Date of PPA	PPA quantum (in MW)
1	UP Discoms	26.02.2014	1000
2	TANGEDCO	27.11.2013	500

4. In addition to the above, the Petitioner has entered into a PPA dated 18.10.2013 with Chhattisgarh State Power Trading Company (CSP Tradeco), towards host state obligatory power supply of 5% / 7.5% of net generated power at variable cost in terms of MOU dated 13.02.2008 and Implementation Agreement dated 13.08.2009 between the Petitioner and Government of Chhattisgarh. The Petitioner is, however, not seeking approval of amendment to PPA entered into with CSP Tradeco PPA.

5. The Government of India had on 22.05.2017 issued the SHAKTI Policy. In accordance with Clause (B)(ii) of the SHAKTI Policy, the Petitioner was eligible to apply for coal linkage to be granted for generation and supply of electricity to the Respondents under the respective long term PPAs.

6. The Petitioner participated in the third round of auction of coal linkages, dated 30.01.2020 under the SHAKTI Policy, for IPPs (independent power producers) having already concluded long term PPAs. The Petitioner was successful in obtaining coal linkages and allocation of coal from South Eastern Coalfields Limited (SECL) in the above auction. SECL has issued a Letter of Intent dated 10.07.2020, declaring the Petitioner as Provisional Successful Bidder and allocating coal from the following sources:

Sl. No	Source	Mode	Indicative Range of Grades	Source Grade	Quantity allocated (MT)	Offered discount (Paise/KWh)
1	Others (Korba & Mand-Raigarh)	Rail/Road/ Captive mode deployed by consumer	G10-G15	G 11	4,34,200	7

7. In terms of the SHAKTI Policy and the terms of the Lol issued to the Petitioner, approval of the Appropriate Commission is required to be obtained for the amended PPA, incorporating the discount offered by the generators. The SHAKTI Policy, inter-alia, provides as under:

“(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.”

8. In terms of the Lol, the Petitioner is required to comply with certain provisions of the scheme document including submission of the approval order of the appropriate Commission (Commission in this case) along with copies of the

amended PPAs, to SECL in order to be declared as the successful bidder. Thereafter, the Petitioner would be entitled to sign and execute the Fuel Supply Agreement (FSA). In terms of the above, the PPA between the Petitioner and the Respondent No. 1 has been amended vide Addendum No. 3 dated 18.02.2021. Schedule 4A has been amended to provide for the methodology for adjustment of the discount in the monthly bills to the Procurers.

9. The Petitioner has submitted that the generation and supply of power to the Respondents is from the generating station as a whole, and not from any particular unit of the generating station. Therefore, the generation of electricity using coal available under the coal linkage in terms of the SHAKTI scheme is to be apportioned to all respondents in a proportionate manner with reference to their respective capacities. The formula inserted in Schedule 4A of the PPAs captures the said apportionment amongst all the Procurers. The Petitioner has stated that the discounts offered on the tariff are also uniform to all the procurers out of the electricity generated and supplied using coal under the SHAKTI scheme. The Petitioner has added that the application of the formula for providing discount is uniform to all the Procurers.

10. The Petitioner in respect of jurisdiction of the Commission has submitted that it has PPAs for supply of electricity to more than one State and the supply by the Petitioner to the Respondents is also on inter-State basis. The Hon'ble Supreme Court, in the case of Energy Watchdog v. Central Electricity Regulatory Commission & Ors, (2017) 14 SCC 80, has settled the jurisdiction of the Commission in respect of inter-State supply under Section 79(1)(b) of the Electricity Act, 2003 and is squarely applicable to the present case.

11. During the hearing of the Petition on 30.09.2021, the learned counsel for the Petitioner, KSKMPCL mainly reiterated the submissions captured above.

12. Respondent No. 1, TANGEDCO vide Reply dated 16.11.2021 has mainly submitted as under:

a) The Petitioner has signed the amended PPA with the Respondent 1 vide Addendum No.3 dated 18.02.2021 for receiving linkage coal under Shakti Policy and to pass on the discount by adopting the values of Gross Calorific Value (GCV) and Station Heat Rate (SHR) in the formula provided in Schedule 4A of PPA for calculating the total generation units.

b) The Schedule 4A of PPA has been amended to provide the methodology for adjustment of the discount in the monthly bills to the Respondent No.1. In the amended PPA, the value of Gross Calorific Value (GCV) of coal is mentioned as "Average of the GCV band of coal received under Shakti Policy FSA from Source 1 for the month in kCal/kg as per the invoice raised by coal source". In the amended PPA, the Station Heat Rate (SHR) is mentioned as "Gross SHR as specified in the Central Electricity Regulatory Commission Terms and conditions of Tariff Regulations as modified and amended from time to time. The discount amount is calculated with reference to the total units generated from the linkage coal received under the Shakti Scheme.

c) Accordingly, the Commission may approve the amended PPA executed between the Petitioner and Respondent No. 1 to pass on the discount for supply of electricity to the Respondent No. 1 using the coal received under (B)(ii) of the SHAKTI Policy.

13. Respondent No. 2 to Respondent No. 5 (UP Discoms) have not furnished any reply to the petition.

Analysis and Decision

(A) Jurisdiction of the Commission

14. The Petitioner has entered into separate PPAs with TANGEDCO, Discoms of the State of UP and Chhattisgarh State Power Trading Company for supply of power at different points in time and for different quantum. The Petitioner not only has PPAs for supply of electricity to more than one State, the supply by the Petitioner to the Respondents is also on inter-State basis. Sub-section (1)(b) of Section 79 of the Electricity Act, 2003 provides that this 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 the Civil Appeals titled Energy Watchdog v CERC & ors (2017 (4) SCALE 580) has explained the composite scheme and jurisdiction of this Commission for regulating the tariff of the 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."

15. In light of the decision of the Hon'ble Supreme Court, this Commission has the jurisdiction to regulate the tariff of the generating station of the Petitioner under Section 79(1)(b) of the Electricity Act, 2003 since it has the PPAs to supply electricity in three States.

(B) Approvals sought

16. The Petitioner has sought approval of the amendments to the PPAs between the Petitioner and Respondent No. 1 to Respondent No. 5 for passing on discount as provided for in Clause (B)(ii)(b) of the SHAKTI Policy and Lols issued by SECL. The relevant portions of Clause (B) of the SHAKTI Policy guidelines for allocation of Coal linkages to power sector 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):

(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.”

17. In accordance with the above scheme, the Petitioner, who had already concluded 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 clause (B)(ii) of 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.

18. LOIs under the Shakti scheme to the Petitioner provides as under:

Sl. No.	Source	Mode	Indicative Range of Grades	Source Grade	Quantity allocated (MT)	Offered discount (paise/kWh)
1	Others (Korba & Mand-Raigarh)	Rail/Road/Captive mode deployed by consumer	G10-G15	G 11	4,34,200	7

19. In terms of the above, the Petitioner has entered into Supplementary Agreements with the Respondent No. 1 to Respondent No. 5 thereby amending the respective PPAs by insertion of Schedule 4A to provide for the methodology for adjustment of discount in the monthly bills. However, in case of CSP Tradeco, the Petitioner is currently not seeking any approval for amendment to PPA.

20. The details of the amended/ supplementary PPAs are as under (the Petitioner has submitted copy in the Petition):

Procurer	Date of Original PPA	Date of Amended / Supplementary PPA
TANGEDCO (Respondent No.1)	27.11.2013	Addendum No.3 dated 18.02.2021
UP Discoms (Respondent No. 2 to Respondent No. 5)	26.02.2014	Addendum dated 23.12.2020

21. Considering the fact that the amended/supplementary PPAs provide for the methodology for adjustment of the discount in the monthly bills to the Procurers in terms of the 'SHAKTI scheme', the amendments to the PPAs between (i) the Petitioner and Respondent No. 1, TANGEDCO and (ii) between the Petitioner and Respondent No. 2 to Respondent No. 5 i.e. the UP Discoms as stated above are approved. Issues, if any, arising out of such adjustment shall be mutually settled by the parties.

22. Petition No. 170/MP/2021 is disposed of in terms of the above.

Sd/
(P.K Singh)
Member

Sd/
(Arun Goyal)
Member

Sd/
(I.S Jha)
Member

Sd/
(P. K. Pujari)
Chairperson