

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No.186/MP/2022**

**Coram:**

**Shri I. S.Jha, Member**

**Shri Arun Goyal, Member**

**Shri P. K. Singh, Member**

**Date of Order: 7<sup>th</sup> September, 2022**

**In the matter of:**

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.

**Jhajjar Power Limited,**

Village Khanpur, Tehsil Matenhail,  
District Jhajjar,  
Haryana - 124142

.... **Petitioner**

**Versus**

**1. Uttar Haryana Bijli Vitran Nigam Limited,**

Through their joint forum:  
Haryana Power Purchase Centre,  
Shakti Bhawan, Sector – 6,  
Panchkula, Haryana - 134109

**2. Dakshin Haryana Bijli Vitran Nigam Limited,**

Through their joint forum:  
Haryana Power Purchase Centre,  
Shakti Bhawan, Sector – 6,  
Panchkula, Haryana – 134109

**3. Tata Power Trading Company Limited,**

Through its Authorized Signatory  
Shatabdi Bhawan, 2<sup>nd</sup> Floor, B-12 & 13,  
Sector – 4, Noida, Uttar Pradesh – 201301

**4. Tata Power Delhi Distribution Limited,**

Through its Authorized Signatory  
Sub-Station Building, NDPL House,

Hudson Lines, Kingsway Camp,  
New Delhi – 110009

.... Respondents

**Parties present:**

Shri Aniket Prasoan, 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

**ORDER**

The Petitioner, Jhajjar Power Limited, has filed the present Petition 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 Power Purchase Agreement dated 20.1.2009 pursuant to the same getting executed. The Petitioner has made the following prayers:

*“(a) to approve the Supplementary Agreement executed between the Petitioner and Haryana DISCOMs dated 27.05.2022 allowing the amendment in the Haryana PPA pursuant to and in accordance with Article 18.1 of the Haryana PPA and accordingly take the said Supplementary Agreement on record;*

*(b) grant leave to the Petitioner to keep the present Petition alive, till the time Hon’ble DERC in Petition No. 20/2022 grants approval to TPDDL to execute a supplementary agreement with TPTCL (to the PSA) or as the case maybe, 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 this Hon’ble Commission; and*

(c) *Grant such order, or further relief(s) in the facts and circumstances of the case as this Hon'ble Commission may deem just and equitable in favour of the Petitioner.*"

2. The Petitioner has mainly submitted as under:

(a) The Petitioner owns and operates a coal based thermal power generating station of 1,320 MW capacity comprising of two units of 660 MW each at Matenhail, District Jhajjar, Haryana (hereinafter referred to as 'the generating station'), which supplies power to the States of Haryana and the National Capital Territory of Delhi in the ratio of 90:10. The Respondent No. 1 & Respondent No. 2 procure power through Haryana Power Purchase Centre (HPPC), which is a joint forum of UHBVNL and DHBVNL.

(b) The Petitioner and the Respondent No. 1, Uttar Haryana Bijli Vitran Nigam Limited, and Respondent No. 2, Dakshin Haryana Bijli Vitran Nigam Limited, executed a Power Purchase Agreement (hereinafter referred to as "Haryana PPA") dated 7.8.2008 (as amended vide Amendment Agreement dated 17.9.2008) pursuant to which the Petitioner agreed to supply 556.75 MW (net) power to each of the Respondent No. 1 & Respondent No. 2. In order that the generation station meets the qualification requirements of a Mega Power Project and being formulated as a composite scheme under the bid documents, the Petitioner negotiated sale of 10% of the net capacity of the generating station outside the State of Haryana, i.e., to the Respondent No. 3, Tata Power Trading Company Limited (TPTCL), vide Power Purchase Agreement dated January 20.1.2009, for sale of 123.72 MW power (herein after referred to as "TPTCL PPA"). The duration of TPTCL PPA is 25 years and the tariff is identical to that of Haryana PPA. TPTCL executed a Power Sale Agreement (PSA) with Respondent No.4, Tata Power Delhi Distribution Limited (TPDDL) on the same day, and agreed to sell the entire power contracted from the Petitioner to TPDDL for distribution in the National Capital Territory of Delhi i.e. outside the State of Haryana.

(c) The generating station was conceptualized as a composite scheme and was set up pursuant to an International Competitive Bid (ICB) process conducted by Haryana Power Generation Corporation Limited (HPGCL) to

design, own, construct, develop, finance, build, engineer, procure, commission, operate and maintain a power plant at Jhajjar District in the State of Haryana and supply 90% of the net power generated to the Respondent No. 1 & Respondent No. 2. As a nominated agency of the Respondents No. 1 & Respondent No. 2, HPGCL conducted the bidding process as per the “Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licenses” dated 19.1.2005 issued by the Ministry of Power, Government of India under Section 63 of the Act (herein after referred to as “Bidding Guidelines”). HPGCL, on behalf of the Respondent No. 1 & Respondent No. 2, identified the generating station to be coal-based with a coal linkage secured from Coal India Limited (CIL) and/or its subsidiaries. The generating station was conceptualized as a “Case 2” Scenario IV Project in terms of the Bidding Guidelines. Based on the representations made and conditions set out by HPGCL in the bid documents, China Light and Power Company Limited (CLP) emerged as the successful bidder and was consequently awarded the project vide Letter of Intent dated 23.7.2008 (“LOI”). Following the issuance of the LOI, CLP acquired 100% equity shares of the Petitioner from HPGCL and the Petitioner and the Respondent No. 1 & Respondent No. 2 executed the Haryana PPA for sale/purchase of 90% of net capacity from the generating station, i.e., 1113.5 MW in aggregate for the benefit of the Respondent No. 1 & Respondent No. 2.

(d) The Request for Proposal (“RfP”) had categorically stated that the Procurer(s) would complete the task of obtaining fuel linkage and assignment of Fuel Supply Agreement (FSA) (if executed after the effective date). Therefore, the assured availability of fuel for the term of the PPAs was the fundamental premise on which the bids were invited and the Petitioner (through CLP) was selected to design, construct, and operate the project. In compliance with their obligations under the Bid Documents, the Respondent No. 1 & Respondent No. 2 arranged fuel linkage of 5.21 MTPA of “E” grade coal from Central Coalfields Limited (“CCL”) and the Letter of Assurance (LOA) for this purpose was issued on 14.10.2008.

(e) Subsequently, due to poor materialization of coal from CCL, 2.162 MTPA out of 5.21 MTPA of ACQ of CCL was required to be reallocated to multiple subsidiaries of CIL. In the process of reallocation, the actual quantity allocated against 2.162 MTPA was 1.889 MTPA. This resulted in revised ACQ of 4.937 MTPA from financial year 2015-16 onwards. The Petitioner entered into FSA dated 7.6.2012 as amended on 14.10.2013, dated 23.10.2013, dated 18.10.2013 & dated 19.1.2015, with Central Coalfields Ltd. (CCL), Eastern Coalfields Ltd. (ECL), Northern Coalfields Ltd. (NCL), and Bharat Coking Coal Ltd. (BCCL), respectively, for 4.937 MPTA.

(f) On 15.5.2018, the Ministry of Coal (“MoC”) issued the methodology for linkage rationalization for Independent Power Producers (“IPPs”), whereby the coal linkage of a Thermal Power Plant (“TPP”) may be transferred from one coal company to another based on the coal availability and future coal production plan of the coal company. The underlying objective behind the exercise is meant to reduce the landed cost of coal due to reduction in transportation cost and cost of coal.

(g) Pursuant to the same, CIL on 25.8.2020 issued a notice inviting the Expression of Interest (“Eoi”) from IPPs for rationalizing their existing linkage. Accordingly, with a view to reduce the landed cost of coal, the Petitioner, post consultations with the Procurers (i.e., the Respondents) vide its letter dated 8.9.2020 submitted its Eoi requesting for rationalization of its existing linkages, by way of proposing two options viz. (a) shifting the linkages from ECL and BCCL to NCL, where there is maximum cost saving as per the formula provided in Eoi; and (b) shifting of linkages from ECL and BCCL to CCL, where cost saving could be relatively lesser than in option (a) but will still give a significant benefit to the Procurers. Accordingly, the Petitioner vide its letter dated 8.9.2020 requested CIL to consider shifting ECL linkage to NCL, to the maximum extent and the remaining, if any, to CCL. CIL vide its letter dated 21.7.2021 communicated to the Petitioner about the rationalized quantity of IPPs as under:

PLANT	SHR (kCal/kWh)	Sources (From)	Rationalized Sources (To)	
		ECL	NCL	
		Qty (MT)	Qty (MT)	Savings (Rs/kWh)
Jhajjar Power Ltd.	2396	0.5	0.621	0.47

(h) The Petitioner vide letter dated 23.7.2021, informed HPPC and TPTCL that CIL has accepted Petitioner's request for shifting its linkage of 0.500 MTPA from ECL to NCL with rationalized quantity of 0.621 MTPA and requested HPPC and TPTCL to provide its consent for signing FSA with NCL for 0.621 MTPA on standard FSA terms of coal companies and to issue a letter to ECL/NCL (with a copy to the Petitioner), confirming that the Haryana PPA and TPTCL PPA has enabling provisions for 100% pass-through of any reduction in fuel cost to Procurers and that the same will be applied while settling the bills of the Petitioner, in order to ensure that benefits pursuant to shifting of linkage are fully passed on to the Procurers.

(i) Subsequently, NCL vide its letter dated 26.7.2021, informed the Petitioner that as per the terms of the linkage rationalization methodology, the cost savings arising out of the said rationalization shall have to be passed on by the Petitioner to the Procurers through a Supplementary Agreement, which shall be approved by the Appropriate Commission. Therefore, in order to proceed further for signing of FSA in respect of the rationalized quantity to be supplied by NCL, the Petitioner was requested by NCL to submit the Supplementary Agreement, duly approved by the relevant Appropriate Commission.

(j) TPDDL vide its letter dated 28.7.2021 informed TPTCL that based on the Petitioner's representation, it grants consent for signing FSA between the Petitioner and NCL for 0.621 MTPA in place of 0.500 MTPA from ECL as per standard FSA terms of coal companies. In line with the same, TPDDL requested TPTCL to provide consent to the Petitioner for signing the FSA with modified coal linkage and to issue letter to ECL/NCL in line with Petitioner's letter dated 23.7.2021 to execute the FSA within timeline. Accordingly, TPTCL vide its letter dated 2.8.2021, informed CIL that the Petitioner's Plant being a

Case 2 power plant, the energy charges for such plants are based on the Net Quoted Heat Rate (NQHR) and therefore, any increase/decrease would be a pass through to TPTCL under Clause 1.2.3 of Schedule 7 of the TPTCL PPA. Accordingly, TPTCL informed CIL that as a beneficiary, it does not consider it necessary to sign a separate agreement for a provision which is already there in the existing TPTCL PPA, having approval of the State Regulator being Delhi Electricity Regulatory Commission (DERC).

(k) Subsequently, TPTCL vide separate letter dated 2.8.2021 provided consent to the Petitioner for signing the FSA with modified coal linkage. HPPC vide its letter dated 25.8.2021 accorded requisite consent to the Petitioner for signing of the FSA with NCL to implement linkage rationalization for shifting of 0.621 MTPA coal linkages from ECL to NCL. HPPC also stated that signing a Supplementary Agreement is not required in the present case in view of the terms of the existing PPA between the Petitioner and Haryana Discoms.

(l) On 9.9.2021, the Petitioner informed the Ministry of Power, Government of India that the Procurers have accorded their consent to the Petitioner and have further confirmed that, existing PPAs between the parties fully ensure 100% pass through of any cost benefit arising from shifting of linkage to the Procurers. However, CIL is insisting on the submission of Supplementary Agreement duly approved by the Regulator. Accordingly, the Petitioner requested the Ministry of Power, Government of India to take up the matter with MoC for issuance of necessary guidelines to CIL to accept the confirmation letters issued by the Procurers as sufficient documentation to meet the conditions to sign the new FSA with NCL and permit the Petitioner to sign the new FSA to implement the linkage rationalization scheme. In response, Ministry of Power, Government of India vide its notice dated 27.12.2021, informed that in consultation with MoC, CIL, and Central Electricity Authority, it has been decided that it would not be proper to make any change after bidding took place for linkage rationalization viz. requirement of Supplementary Agreement duly approved by the appropriate Commission and therefore, requested the bidders to adhere to the provisions of the EoI. Ministry of Power, Government of India

further clarified that the Supplementary Agreement to the relevant PPA(s) will be required to be signed.

(m) In view of aforesaid notice dated 27.12.2021, issued by Ministry of Power, Government of India, the Petitioner vide its letters dated 25.1.2022 and dated 1.2.2022, informed HPPC and TPTCL respectively that it will now be required to execute a Supplementary Agreement for signing the FSA with NCL and thereafter, approach the appropriate Commission for approval. Accordingly, the Petitioner shared a draft Supplementary Agreement with HPPC for its review and for providing the way forward for executing the same so that the Petitioner can approach this Commission for approval. In response, TPDDL vide its letter dated 11.2.2022 informed TPTCL that it is in the process of filing a Petition before DERC for seeking approval to enter into Supplementary Agreement to the PSA with TPTCL. Further, HPPC vide its letter dated 21.4.2022, shared with the Petitioner, the copy of draft Supplementary Agreement to be executed with it for signing an FSA with NCL and for taking further necessary action.

(n) On 27.5.2022, the Petitioner and Haryana Discoms executed the Supplementary Agreement to record their understanding (“Supplementary Agreement – Haryana Discoms”) and the copy of the Supplementary Agreement –Haryana Discoms was shared with TPTCL on 7.6.2022.

(o) Since the generating station supplies power to the State of Haryana and the National Capital Territory of Delhi in the ratio of 90:10, a similar Supplementary Agreement needs to be executed between the Petitioner and TPTCL as well. However, as mentioned above, since TPTCL has executed the PSA with TPDDL, which was approved by DERC vide its order dated 13.5.2010 in Petition No. 05/2009, TPDDL on 28.3.2022, approached DERC by way of Petition No. 20/2022 under Section 86(1)(b) of Electricity Act, 2003 *inter alia*, seeking approval to execute supplementary agreement with TPTCL in line with the draft Supplementary Agreement submitted by it before DERC, in furtherance of the provisions of the linkage rationalization methodology notified by CIL. Therefore, once DERC provides approval to TPDDL to execute a Supplementary Agreement with TPTCL (to the PSA) or as the case may be, the



Petitioner will consequently execute a Supplementary Agreement with TPTCL in terms of Article 18.1 of the TPTCL PPA and seek this Commission's approval for the same.

3. In view of the foregoing, the Petitioner has prayed for approval of the Supplementary Agreement executed with Haryana Discoms and further grant the Petitioner a leave to keep the present Petition alive till the time TPDDL gets approval from DERC 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 bring the same on record before this Commission by way of an additional affidavit, for its approval.

4. The matter was heard on 5.8.2022 through video conferencing. During the course of hearing 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 Electricity Act, 2003 ('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 deemed fit TPDDL may also 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 and 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 Discoms 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 parties were directed to file their respective written submissions covering the averments made during the course of hearing within two weeks with copy to each other. Pursuant to the above direction, TPDDL, TPTCL and the Petitioner have filed their respective written submissions which have been considered in the succeeding paragraphs.

### **Analysis and Decision**

8. Through this Petition, the Petitioner has sought approval of the proposed amendment by way of Supplementary Agreement executed between the Petitioner and Haryana Discoms. Main provisions of the Supplementary Agreement are extracted as under:

*“WHEREAS:*

*A. The Seller and the Procurer had entered into a power purchase agreement, setting out the terms and conditions for the construction, operation and maintenance of 1,320 MW (2X660MW) coal fired power plant located at village Khanpur, Tehsail-*

*Matenhail, district Jhajjar, Haryana (Project), sale of Contracted Capacity and supply of electricity by the Seller to the Procurer on 7 August 2008 ("PPA"-attached herewith as Annexure 1) subsequently amended on 17 September 2008.*

*B. The seller was issued a letter of assurance (LOA"-attached herewith as Annexure 2) dated 14 October 2008, bearing reference number CCL/HQ/C-4/LOA/Power/9326-31 BY Central Coalfields Limited ("CCL"). After obtaining the Procurer's approval, a Fuel Supply Agreement was executed between CCL and the Seller, for an Annual Contracted Quantity (ACQ") of 5.21 million tonnes per annum (mtpa), on 07 June, 2012 (FSA).*

*C. Coal India Limited ("CCL") vide letter bearing reference number CIL/S&M/LOA/47252 (New Pol)/726 dated 10 September 2013, had published the minutes of 21<sup>st</sup> Committee on letter of assurance ("CLOA") meeting regarding transfer of LOA of 5.0 lakh tonnes from CCL to Eastern Coalfields Limited ("ECL") and another 5.0 lakh tonnes to northern Coalfields Limited ("NCL") – attached herewith as Annexure 3. After obtaining the Procurer's approval, a fuel supply agreement was executed between ECL and the Seller, for the ACQ of 0.500 mtpa, on 23 October 2013 and another fuel supply agreement was executed between the Seller and NCL, for the ACQ of 0.500 mtpa, on 18 October 2013. Thereafter, after obtaining the Procurer's approval, a revised fuel supply agreement was executed between the Seller and CCL for the revised quantity of 4.048 mtpa on 24 October 2013.*

*D. Further, CIL vide letter bearing reference number CIL/S&M/LOA/47252(New Pol)/565 dated 25 July 2014, had communicated the minutes of 23<sup>rd</sup> CLOA meeting, regarding the transfer of LOA of 0.889 mtpa quantity from CCL to Bharat Coking Coal Limited ("BCCL") – attached herewith as Annexure 4. After obtaining the Procurer's approval, another fuel supply agreement was executed between the Seller and BCCL, for the ACQ 0.889 mtpa, on 19 January 2015. After obtaining the Procurer's approval, a side agreement in relation to the FSA was executed between the Seller and CCL for the reduced ACQ of 3.048 mtpa on 04 February 2015.*

*E. On 15 May 2018, the Ministry of Coal vide its letter bearing no. 23011/79/2014 – CPD/CLD (attached herewith as Annexure 5) issued the methodology for linkage rationalization for Independent Power Producers ("IPPs"), whereby the coal linkage of a Thermal power Plant of an IPP may be transferred from one coal company to another based on the coal availability and future coal production plan of the coal company. The underlying objective behind the exercise is to reduce the landed cost of coal due to reduction in transportation cost of coal.*

*F. In order to rationalize quantities of coal, the Seller, after due approval from the Procurer, had expressed its interest bearing refence number JPL/CIL/FD/010771 dated 8 September 2020 (Refer Annexure 6) against Expression of Interest invited by CIL.*

*G. CIL has approved the Seller's request to shift linkages of 0.500 mtpa from Eastern Coalfields Limited (ECL) to Northern Coalfields Limited (NCL) with rationalized quantity of 0.621 mtpa with one of the conditions being that saving of costs as indicated in point number 7 & 8, in the letter issued by the Ministry of Coal on 15 May 2018 bearing reference number 23011/79/2014 – CPD/CLD ("MOC Letter" – attached herewith as Annexure 5) & CIL letter number CIL/M&S/Linkage Rationalization/315 dated 21 July 2021 attached herewith as Annexure 7, for the transferred quantity, shall*

*be passed on to the Discoms/buyers, through a supplementary agreement which shall be approved by the appropriate Electricity Regulatory Commission.*

*H. The Parties are now desirous of executing this Supplementary Agreement, to factor in the conditions levied by CIL, for rationalization of the quantities of coal being supplied to the Supplier.*

**NOW, THEREFORE**, in consideration of the mutual promises contained therein, the sufficiency of which hereby acknowledged:

1. *The Seller's Project is a Case-2 power plant, wherein Monthly Energy Charge calculated as per the formula under Clause 1.2.3 of Schedule 7 of the PPA, is based on the Quoted Net heat Rate ("QNHR"), weighted average invoiced rate of coal ( $F^{coal/m}$ ) and the weighted average Gross Calorific Value of coal as fired for the month (PCVm). The Parties hereby undertake that Monthly Energy Charge shall continue to be calculated as per the said formula in PPA, to ensure that any benefit in the coal cost, including due to shifting linkages of coal, is automatically and fully passed onto the Procurer. Parties acknowledge that, this shall ensure full compliance with MOC Letter.*

2. *This Supplementary Agreement shall become effective from the date of approval of the same from the Hon'ble Central Electricity Regulatory Commission.*

3. *Any dispute(s) arising out of or in relation to this Supplementary Agreement shall be resolved in accordance with the dispute resolution mechanism specified in the PPA. The Supplementary Agreement and the PPA shall be governed by the applicable Laws of India.*

4. *The Parties agree that the terms contained herein shall form an integral part of the PPA and any reference to the PPA shall include a reference to the PPA along with this Supplementary Agreement and this Supplementary Agreement together with the PPA shall be read and construed as one document.*

5. *There shall be no adverse, directly or indirectly, bearing upon Haryana Discom's qua PPA dated 07.08.2008.*

6. *That all the terms & condition of signed PPA dated 07.08.2008 will remain the same."*

9. TPDDL in its written submissions has submitted that Supplementary PPA executed between the Petitioner and Haryana Discoms; and to be executed between the Petitioner and TPTCL are required to be approved by this Commission as well as by DERC for the Supplementary PSA to be executed between TPDDL and TPTCL in consumers interest as there is cost saving which will be transferred to the consumers completely. TPDDL has submitted that CIL vide its letter dated 21.7.2021 has intimated the indicative savings and rationalized quantity (calculated by CEA) as Rs.

0.47/kWh and 0.620 MT, respectively, and the said benefit will be passed on to TPDDL (being a Discom) under the Tata PSA, which ultimately will benefit the end consumers in Delhi. Therefore, it is essential that the Supplementary PPAs and Supplementary PSA be approved by the Appropriate Commission at the earliest. It has been further submitted that this Commission while approving the Supplementary PPA executed between the Petitioner and Haryana Discoms, may graciously clarify that the necessary jurisdiction to approve TPDDL's power procurement process and granting approval / consent to TPDDL to execute Supplementary PSA (between TPDDL and TPTCL) vests with DERC under Section 86(1)(b) of the Act and Rule 8 of Electricity Rules, 2005 ('the Electricity Rules').

10. TPTCL in its written submissions has submitted that this Commission is empowered to approve the Supplementary Agreement to be executed between the Petitioner and TPTCL under Section 79(1)(b) of the Act, and the Distribution Licensee (TPDDL) is at liberty to approach the concerned State Commission, i.e., DERC under Section 86(1)(b) of the Act for approval of the Supplementary Agreement to be executed between TPTCL and TPDDL. TPTCL has also submitted that as per Rule 8 of the Electricity Rules, State Commission is empowered to determine whether a Distribution Licensee in the State should enter into a PPA or procurement process with such generating companies or not while making it clear that the State Commission shall not re-determine the tariff approved by the Central Commission. TPTCL has further submitted that while approving the Supplementary Agreement executed between the Petitioner and Haryana Discoms, the Commission may observe that DERC has the necessary jurisdiction to approve the Supplementary Agreement to be executed between TPTCL and TPDDL in terms of Rule 8 of the Electricity Rules

granting liberty to the Petitioner/JPL to revive prayer (b) upon disposal of Petition No. 20 of 2022 pending before the DERC.

11. The Petitioner in its written submissions has submitted that the Supplementary Agreement has been executed as it is a pre-requisite for signing the Fuel Supply Agreement with NCL to effectuate the coal linkage rationalisation scheme. The Petitioner has also submitted that since Haryana Discoms have not objected to the approval of the Supplementary Agreement and rather have unequivocally supported the approval of the aforesaid Supplementary Agreement, it is clear that there is a consensus *ad-idem* between the parties; and therefore, the essence of requirement of a written agreement to amend the Haryana PPA in terms Article 18.1 of PPA is satisfied. Accordingly, the Petitioner prayed for approval of arrangement of coal linkage rationalization envisaged by way of the Supplementary Agreement by taking the same on record.

12. The Petitioner by way of its written submissions has further submitted that both TPTCL and TPDDL have agreed to execute the required Supplementary Agreement(s) to TPTCL PPA and TPTCL PSA respectively, only when the DERC provides approval to TPDDL to execute a supplementary agreement to the TPTCL PSA, and therefore, TPTCL would be able to execute a Supplementary Agreement with the Petitioner to the PPA dated 20.1.2009 in terms of Article 18.1 of TPTCL PPA after approval is obtained from DERC. In this regard, the Petitioner submitted that DERC during hearing dated 4.8.2022 of Petition No. 20/2022 relied on the judgment in Energy Watchdog v. Central Electricity Regulatory Commission and Ors., [reported as (2017) 14 SCC 80], and observed that the parties must approach this Commission to seek approval for signing the Supplementary Agreement to TPTCL PSA. However,

DERC also observed that in the event, this Commission opines/observes that DERC is the appropriate forum to approve the Supplementary Agreement to TPTCL PSA, then DERC is inclined to exercise its jurisdiction and grant necessary approval to TPDDL as sought by way of Petition No. 20 of 2022. Since TPDDL is operating under the territorial jurisdiction of DERC, any power procurement by TPDDL needs to be approved solely by DERC under Rule 8 of the Electricity Rules. Accordingly, the Petitioner prayed that this Commission may observe and/or clarify that only the DERC is bestowed with jurisdiction to approve signing of the Supplementary Agreement to TPTCL PSA in terms of Section 86(1)(b) of the Act read with Rule 8 of the Electricity Rules so as to expedite the process of passing the benefit of reduced energy charges to the consumers of Delhi pursuant to the coal rationalisation scheme.

13. The Petitioner has highlighted that signing of Supplementary Agreement(s) with both the Procurers are a pre-requisite for signing the Fuel Supply Agreement with NCL to effectuate the coal linkage rationalisation scheme. In the absence of the executed Supplementary Agreement(s) to TPTCL PPA and TPTCL PSA respectively, the linkage cannot be moved and the benefit of such scheme cannot be passed on the consumers of both Haryana and Delhi. Accordingly, the Petitioner has submitted that to ensure that this matter is decided expeditiously and solely in the interest of consumer of both the States, this Commission may allow execution of the draft Supplementary Agreement between JPL and TPTCL to the TPTCL PPA, the draft of which is similar to the Supplementary Agreement executed between the Petitioner, JPL and Haryana Discoms.

14. The Petitioner has prayed that the Commission while approving the Supplementary Agreement may observe that pursuant to execution of the aforesaid

Supplementary Agreement between the Petitioner and TPTCL to the TPTCL PPA, the same will be deemed to be approved for all practical purposes and that the parties can act accordingly. The Petitioner has submitted that the said prayer is aligned to the practice where State Commissions approve the model PPA(s) and observe that in so far as the Discom(s) execute such model PPA(s) with private generator(s), there is no requirement to seek specific approval of such executed PPA as the execution of the model PPA is considered to be deemed approved.

15. We have considered the submissions of the Petitioner and the Respondents and perused documents on record. Article 18.1 of the Haryana PPA dated 7.8.2008 provides as under:

*“18.1 Amendment*

*This Agreement may only be amended or supplemented by a written agreement between the Parties **and after duly obtaining the approval of the Appropriate Commission, where necessary.**”*

16. Perusal of the above provision reveals that Agreement can be only be amended and supplemented by the written agreement between the parties. It is further also clear that the approval of the Appropriate Commission is required to any amendment to the PPAs specifically in view of the requirement for implementation of coal rationalization scheme as highlighted by CIL and Ministry of Power, Government of India vide their correspondences discussed hereinabove.

17. The Petitioner has contended that in terms of the CEA's methodology for linkage rationalization for IPPs, the cost saving as calculated by CEA is indicative only. However, actual saving realized due to linkage rationalization is required to be passed on to the Procurers/relevant Discom through a Supplementary Agreement, which in turn is required to be approved by the Appropriate Commission.



18. It is noticed that the learned counsel for the Haryana Discoms during the course of hearing have submitted that the Haryana Discoms have already signed the Supplementary Agreement with the Petitioner and requested to approve the same. The Respondents, TPDDL and TPTCL have also supported the prayer of the Petitioner. Considering the interest of consumers in the State of Haryana who may avail the benefit of the reduced landed cost of coal pursuant to the implementation of coal rationalization scheme, the Commission in exercise its powers under Section 79 (1)(b) of the Act read with Article 18.1 of the PPA approves the Supplemental PPA to the Haryana PPA dated 7.8.2008 and takes the same on record.

19. With regard to prayer of the Petitioner for execution of Supplementary Agreement to TPTCL PPA and TPTCL PSA respectively, it is pertinent to note that the learned counsels for the Petitioner, TPTCL and TPDDL respectively in view of observations by DERC and in the consumer interest, have sought a clarification to the effect that the necessary jurisdiction to approve TPDDL's power procurement process and granting approval / consent to TPDDL to execute Supplementary PSA between TPDDL and TPTCL vests with DERC under Section 86(1)(b) of the Act, 2003 read with Rule 8 of the Electricity Rules. Such clarification is said to be necessary to expedite the process of approval by the DERC. In our view, the language of Rule 8 of the Electricity Rules read with DERC's order dated 13.5.2010 in Petition No. 05/2009 is clear; however, in the interest of end consumers who may avail the benefit of the reduced landed cost of coal pursuant to the implementation of coal rationalization scheme, it is clarified that DERC is bestowed with necessary jurisdiction to approve TPDDL's power procurement process and granting approval/ consent to TPDDL to

execute Supplementary Agreement to TPTCL PSA in terms of Section 86(1)(b) of the Act read with Rule 8 of the Electricity Rules.

20. Insofar as the relief sought by the Petitioner by way of seeking deemed approval of the Supplementary Agreement between JPL and TPTCL to the TPTCL PPA, to the extent it is signed in the format already shared with TPTCL and is similar to the Supplementary Agreement executed between JPL and Haryana Discoms, it is observed that the said relief is being sought to expedite the process of passing on the benefit of reduction of energy charges to the consumers in the State of Haryana and Delhi.

21. In light of the above discussions, it is apparent that the execution and the approval of the Supplementary Agreement(s) to the respective PPA and PSA in the present case have been necessitated for JPL to enter into the FSA with NCL to effectuate the coal linkage rationalisation scheme. As already noted above, the Supplementary Agreement have already been executed between JPL and Haryana Discoms. Moreover, the parties, namely, JPL, TPTCL and TPDDL, as clearly indicated by them, are already at ad-idem with regard to the execution of Supplementary Agreement(s) to TPTCL PPA and TPTCL PSA and such execution is currently pending for want of the prior approval of DERC to TPDDL for entering into Supplementary Agreement between TPTCL and TPDDL. In view of the above circumstances, this Commission keeping in view the consumer interest involved in the present case, which would get served by way of expeditiously passing on the benefit in the reduction in energy charges specifically to the consumers in the State of Delhi, finds it apposite to allow and approve the execution of the Supplementary Agreement to TPTCL PPA between JPL and TPTCL, which is going to be similar to the Supplementary

Agreement already executed between JPL and Haryana Discoms, subject to the signing/ execution of the Supplementary Agreement to TPTCL PSA between TPTCL and TPDDL. The Petitioner is directed to place on record the Supplementary Agreement to TPTCL PPA after its execution for the Commission`s record.

22. The Petition is disposed of in terms of the above.

Sd/-  
**(P. K. Singh)**  
Member

sd/-  
**(Arun Goyal)**  
Member

sd/-  
**(I. S. Jha)**  
Member