

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.285/MP/2019

Coram:

Shri P. K. Pujari, Chairperson

Shri I.S Jha, Member

Shri P. K. Singh, Member

Date of Order: 21.03.2022

In the matter of:

Petition under Section 79 (1) (b) and 79(1)(f) of the Electricity Act, 2003 seeking approval of Guidelines/Mechanism for procurement of coal from alternate sources (i.e. other than the linkage coal) under the Power Purchase Agreement dated 7.8.2008.

And in the matter of:

Jhajjar Power Limited,

Village Khanpur, Tehsil Matenhail,

District Jhajjar,

Haryana – 124 142

...Petitioner

Versus

1. Uttar Haryana Bijli Vitran Nigam Limited,

Haryana Power Purchase Centre,

Shakti Bhawan, Sector - 6,

Panchkula, Haryana – 134109

2. Dakshin Haryana Bijli Vitran Limited,

(through their joint forum)

Haryana Power Purchase Centre,

Shakti Bhawan, Sector - 6,

Panchkula, Haryana – 134109

3. Tata Power Trading Company Limited,

Shatabdi Bhawan, 2nd Floor, B-12 & B-13, Sector 4,

Noida – 201301

4. Tata Power Delhi Distribution Limited,

Sub-Station Building, NDPL House,

Hudson Lane, Kingsway Camp,

Delhi – 110 009

...Respondents

Parties Present

Shri Sajan Poovayya, Sr. Advocate, JPL
Shri Ramanuj Kumar, Advocate, JPL
Shri Manpreet Lamba, Advocate, JPL
Ms. Priyal Modi, Advocate, JPL
Shri Pratibhanu Singh Kharola, Advocate,
JPL Shri Nitish Gupta, Advocate, TPDDL
Shri Avdesh Mandloi, Advocate, TPDDL
Shri Nishant Talwar, Advocate, TPDDL
Shri M. G. Ramachandran, Sr. Advocate, Haryana Utilities
Shri Shubham Arya, Advocate, Haryana Utilities
Ms. Poorva Saigal, Advocate, Haryana Utilities
Shri Venkatesh, Advocate, TPTCL
Ms. Mehak Verma, Advocate, TPTCL
Shri Ashutosh K. Srivastava, Advocate, TPTCL
Shri Naveen Munjal, JPL
Ms. Sudipta Ghosh, JPL
Ms. Bikita Kaur, JPL
Shri Ravi Dabbiru, TPTCL

ORDER

Jhajjar Power Limited (hereinafter to be referred as 'the Petitioner') has filed the present petition seeking directions to put in place suitable guidelines/ mechanism for procurement of coal from alternate sources (i.e., other than the domestic linkage coal) in light of the consistent shortage in supply of linkage coal by Coal India Limited (CIL) and directions regarding persistent delays by the Respondent 1, Uttar Haryana Bijli Vitran Nigam Limited (UHBVNL) and Respondent 2, Dakshin Haryana Bijli Vitran Limited (DHBVNL) to approve procurement of alternate coal in accordance with their obligations under Power Purchase Agreement entered into with them.

2. The Petitioner has made the following prayers:

a) Hold and declare that the Respondent 1 & 2 are obligated to provide timely approvals to the Petitioner for procurement of coal from alternate sources in accordance with the Article 7.2.1 of the PPA1;

b) Pending hearing and final disposal of the present Petition, grant permission to the Petitioner to procure up to one (1) million ton of coal per

annum from alternate sources which may include the e-auction coal and/or imported coal to operate the Plant;

c) Issue the following guidelines for procurement of coal from alternate sources by the Petitioner to mitigate the shortage of domestic linkage coal:

(i) At the commencement of each financial quarter, the Petitioner will furnish to the Respondents a statement of anticipated shortfall of linkage coal during that quarter;

(ii) The Petitioner's statement will indicate the possible sources for procurement of shortfall coal such as e-auction coal and/or imported coal and/or a combination of these two sources;

(iii) The Petitioner will propose to procure imported coal through a transparent competitive bidding process;

(iv) E-auction coal will be procured based on the availability/auction calendar published by CIL and its subsidiaries;

(v) The Respondents shall have a period of thirty (30) days to approve or disapprove the request for procurement of coal from alternate sources proposed by the Petitioner;

(vi) If the Respondents fail to approve the Petitioner's request within thirty (30) days, the Petitioner's proposal for procurement of coal from alternate sources shall be deemed to be rejected by the Respondents;

d) In case of actual or deemed rejection of the Petitioner's request for procurement of coal from alternate sources, the Respondents shall be obligated to pay full Capacity Charges and incentives as specified in the respective PPAs on the basis of declared technical availability of the Plant and shall not be entitled to levy any penalty on the Petitioner for its inability to achieve 75% Availability during the relevant Contract Year;

e) Allow costs of the present Petition to the Petitioner; and

f) Pass any or such further orders as may be deemed fit and proper in the facts and circumstances of the case.

Submissions of the Petitioner

3. The Petitioner owns and operates a coal based thermal generating station of 1,320 MW capacity comprising of two units of 660 MW each at Matenhail, District Jhajjar, Haryana (herein after called "Plant"), which supplies power to the States of Haryana i.e Respondent No. 1, Uttar Haryana Bijli Vitran Nigam Limited and

Respondent No. 2, Dakshin Haryana Bijli Vitran Nigam Limited 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.

4. The Petitioner and the Respondent No. 1 and Respondent No. 2 executed a Power Purchase Agreement (herein after called "PPA1") 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 Plant 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 Plant outside the State of Haryana. The 10% net capacity of the Plant was tied-up with Tata Power Trading Company Limited (TPTCL) *vide* a Power Purchase Agreement dated January 20.1.2009, for sale of 123.72 MW power (herein after called "PPA 2"). The duration of PPA2 is 25 years and the tariff is identical to that of PPA1. TPTCL executed a Power Sale Agreement (PSA) with 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.

5. The Plant was conceptualized as a composite scheme and 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 called "Bidding Guidelines").

6. HPGCL, on behalf of the Respondent No. 1 & Respondent No. 2, identified the Plant to be coal-based with a coal linkage secured from Coal India Limited (CIL) and/or its subsidiaries. The Plant 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* a Letter of Intent dated 23,7.2008 (herein after called "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 PPA1 for sale/purchase of 90% of net capacity from the Plant, i.e., 1113.5 MW in aggregate for the benefit of the Respondent No. 1 & Respondent No. 2.

7. The Request for Proposal (herein after called "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 a 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 24.10.2008.

8. The Petitioner executed the FSA with CCL on 7.6.2012. The LOA itself contemplated that in case the incremental coal demand is greater than the incremental coal availability, the coal supplier will meet the balance demand through imported coal. This was consistent with the New Domestic Coal Distribution Policy, 2007 (herein after called "NCDP") which provides that any shortfall in the supply of domestic coal would be met by importation of coal.

9. Due to shortage of domestic coal in the country, the supply of linkage coal to Independent Power Producers (IPPs) had been far from satisfactory and the coal companies failed to supply coal anywhere close to 100% of the Annual Contracted Quantity (ACQ) committed under the FSA. The issue of shortage of supply of linkage coal to the Petitioner and other IPPs in general was also acknowledged by various Governmental agencies pursuant to which power stations and power utilities were expressly permitted to rely upon imported coal to meet the shortfall in supply of linkage coal and for seeking a pass through of the additional cost under the PPA. In this regard, on 20.5.2013, this Commission issued a statutory advice to the Ministry of Power under Section 79 (2) of the Act, *inter alia*, recognizing the shortage in availability of domestic coal and impact on tariff under the concluded PPAs. In response thereto, the Ministry of Power vide its letter dated 31.7.2013, *inter alia*, recognised the unavailability of domestic coal and the inability of CIL to supply adequate coal under various FSAs. The letter further directed CIL that to meet

balance FSA obligations, it may import and supply coal to Thermal Power Plants (TPPs) on a cost plus basis and also gave TPPs the liberty to import coal themselves. The higher cost of import/market based e-auction coal was directed to be considered for being made a pass through on a case to case basis by the Central Electricity Regulatory Commission (CERC)/ State Electricity Regulatory Commission (SERC) to the extent of shortfall in the linkage coal quantity.

10. In addition, the Ministry of Coal, Government of India (MoC) notified the SHAKTI Scheme on 22.5.2017 which acknowledges that coal supply under the LOA/ FSA regime may continue to be restricted to 75% ACQ even beyond March 31, 2017. To address the continuing shortage of linkage coal supply, the Ministry of Power (MoP) held a meeting with the coal based power stations on 9.2.2018 wherein it was, *inter alia*, directed that domestic coal companies to make efforts to supply coal beyond ACQ so that the import of coal for blending is brought to zero. On 30.5.2018, the Ministry of Power advised the Central / State power utilities to plan for import of coal in view of less availability of domestic coal and constraints of Railways and domestic coal companies.

11. The Petitioner vide its letter dated 16.11.2018 cited its concern to MoP regarding discriminatory allocation of railway rakes to IPPs and availability loss for approximately 80 days suffered by one of its units due to unavailability of coal.

12. CEA vide its letter dated 31.1.2019 advised the power utilities to furnish their likely program for import of coal during 2019-20 in view of insufficient coal stock at power plants.

13. Since the commissioning of the Plant, the Petitioner has encountered significant shortfall in supply of linkage coal to the Plant. With a view to help resolve the issue, the Petitioner through its various letters requested CIL to carve out the linkage to its other subsidiaries to improve coal realization under the FSA. A summary of the annual coal supplies received by the Petitioner from the CIL's subsidiaries in the last four (4) years and the PLF that can be achieved with such supply of coal is as under:

Contract Year	Coal Company	ACQ (in MTPA)	Actual Supply (in MTPA)	Corresponding PLF**
2013-14	CCL	4.594	2.340	38.01%
	ECL	0.235	0.196	
	NCL	0.235	0.205	
	BCCL	0.000	0.000	
	Total	5.065	2.742	
2014-15	CCL	3.837	2.028	40.89%
	ECL	0.500	0.409	
	NCL	0.500	0.371	
	BCCL	0.199	0.141	
	Total	5.036	2.949	
2015-16	CCL	3.048	1.785	42.42%
	ECL	0.500	0.343	
	NCL	0.500	0.333	
	BCCL	0.889	0.600	
	Total	4.937	3.060	
2016-17	CCL	3.048	1.018	22.74%
	ECL	0.500	0.151	
	NCL	0.500	0.193	
	BCCL	0.889	0.279	
	Total	4.937	1.641	

14. Faced with persistent shortage of supply of linkage coal, the Petitioner was left with no option but to seek alternate sources of coal within the framework of the PPA1. As per Article 7.2.1 of the PPA1 provides that the Seller shall enter into Fuel Supply Agreement only on the basis of the consent of the Procurers and the Procurers shall not unreasonably withhold its consent, if the Seller satisfies the Procurer that the FSA intended to be entered into is on the best commercial terms

that would be available to any third party in its procurement of coal for any Project similar to the Project in question.

15. The Respondent No. 1 & Respondent No. 2 vide their letter dated 5.6.2012 specifically instructed the Petitioner not to import coal through CIL without their express consent and approval. The Petitioner had sought approval from Respondent No. 1 & Respondent No. 2 to procure coal from alternate sources on various occasions, since the commissioning of the Plant. The Petitioner could not declare full Availability of the Plant owing to lack of timely responses, refusal to approve and imposition of unreasonable and impractical conditions by the Respondent No. 1 & Respondent No. 2 for procurement of coal from alternate sources. While the Respondent No. 1 & Respondent No. 2 have granted permission to import coal on one or two occasions when they were in urgent need of power, such occasional and few approvals have not helped the Petitioner in running the plant consistently at full Availability. Consequently, the Petitioner has been deprived of its right to receive payment of full Capacity Charge and incentives in 2012-13 and 2018-19, which it is otherwise entitled to under the PPA1.

16. The delay and lack of timely approval by the Respondent No.1 & Respondent No. 2 to the Petitioner's request to procure coal from alternate sources despite being fully aware of the continued shortage in supply of linkage coal has resulted in a situation where the Petitioner is unable to operate the Plant at full load as per the PPAs despite having made investments to the tune of approximately Rs.6300 crore in setting up the Plant.

17. The Petitioner has continued to seek approval of the Respondent No. 1 & Respondent No. 2 for procurement of coal from alternative domestic and imported

sources and barring two or three occasions, the Respondents No. 1 & Respondent No. 2 have continued to ignore the Petitioner's repeated requests in clear violation of their obligations under Article 7.2.1 of the PPA1.

18. The Plant being a Case 2 project, it is the Respondents' primary responsibility to arrange fuel for the Plant so that it is able to operate at full Availability and meet the scheduled energy/despatch instructions of the Respondents. By failing to ensure supply of adequate quantity of coal to the Plant, the Respondent No. 1 & Respondent No. 2 have failed to comply with their obligation under the PPA1 and the RFP. The Appellate Tribunal in its order dated 7.04.2016 in Appeal No. 56 & Appeal No. 84 of 2013 (*TSPL v. PSPCL*) has held as follows:

"12.33 ...Further, the bidding was conducted under Case-2, Scenario-4 of the Standard Bidding documents and as per guidelines specified by Govt of India under Section 63 of Electricity Act, 2003, the procurer has to arrange fuel for the contracted capacity of the Generating Plant."

19. The Petitioner suffered a shortfall of approximately 2.181 MTPA of coal (assuming GCV of 3600 Kcal and up to 80% materialization under the FSA and 85% PLF) and due to continued shortage of linkage coal has been forced to shut down at least one of its Units for 26 days in FY 2017-18 and 88 days in FY 2018-19. The resulting loss in Capacity Charge and incentives suffered by the Petitioner is as under:

	TPTCL	HPPC	Total
Availability Loss (in Rs.)	2,75,81,988	24,82,37,888	27,58,19,875
Incentive Loss (in Rs.)	1,27,33,031	11,45,60,238	12,72,93,270
Total Loss due to Coal shortage (in Rs.)	4,03,15,019	36,27,98,126	40,31,13,145

20. Against unreasonable withholding of consent by Respondent No. 1 & Respondent No. 2 for procurement of coal from alternate sources, the Petitioner has

no remedy under the PPAs except to declare a non-natural force majeure event under Article 12.3(ii) of the PPAs. However, Article 12 is not intended to address perpetual shortage of linkage coal experienced by the Petitioner. In addition, the relief for a force majeure event requires repeated intervention of this Commission. As a result, the remedy technically available to the Petitioner under Article 12 of the PPAs cannot practically be resorted to every year for continued shortfall in supply of linkage coal to the Petitioner. Therefore, there is a need to evolve a permanent mechanism for procurement of alternate/supplementary coal without being subjected to the unreasonable actions on the part of the Respondent No. 1 & Respondent No. 2. In fact such a mechanism would be beneficial to the Respondents as well as there would be no need to approach this Commission every time for relief on account of a Direct Non Natural Force Majeure event.

21. The belated direction of the Respondent No. 1 & Respondent No. 2 to seek approval of the Appropriate Commission to procure e-auction coal is without any merit since the PPA1 which contains Article 7.2.1 that requires the Respondent No. 1 & Respondent No. 2 to provide consent for procurement of coal from alternative sources and not unreasonably withhold the same have already been approved by the Appropriate Commission. Further, this Commission has already held that the fuel cost is a pass-through in tariff under the PPAs and therefore, the Respondent No. 1 & Respondent No. 2 do not have any justification for their actions and omissions or can take refuge under the pretext of a possible increase in tariff on account of procurement of coal from alternate sources. In fact, contrary to the stand taken by the Respondent No. 1 & Respondent No. 2 with respect to approval for e-auction coal, they have approved procurement of imported coal on two occasions without any reference to the Appropriate Commission. In addition, the Haryana

Electricity Regulatory Commission (herein after called "HERC") vide its letter dated 08.7.2011, on the very question of approval for import of coal, has already advised HPGCL that the instant project being operated under a Section 63 PPA tariff for which was discovered by a competitive bidding and adopted by the HERC, all issues relating to fuel shortage need to be dealt with in terms of the provisions of the PPA. Further, the price of e-auction coal is determined by coal companies through a government approved mechanism. Therefore, the stand of the Respondent No. 1 & Respondent No. 2 with regard to procurement of e-auction coal is self-contradictory and self-serving. In any event, e-auction coal is at best a limited and temporary relief, since e-auction coal cannot fulfil the entire shortfall in linkage coal as it is not available throughout the year and there are is no assurance with respect to the quantities that would be supplied. Further, even this temporary and limited relief is subject to the irregular e-auctions held by the coal companies.

22. The Petitioner has been denied timely approvals/consents by the Respondent No. 1 & Respondent No. 2 to procure alternate coal despite there being an express provision in the PPA1 thereby depriving it from operating the Plant at full capacity. Against the same, Respondent No. 1 & Respondent No. 2 have sought to impose penalty for lower Availability or, deduct the Capacity Charge payment for the Plant being unable to reach the Normative Availability. In essence, the Petitioner is not only deprived of its right to receive full Capacity Charge and incentives, but also penalised for no fault on its part.

23. The fuel cost is a complete pass-through in tariff under Schedule 7, paragraph 1.2.3 of the PPA. Such being the case and in-light of the Petitioner's consistent stand that it will procure alternate coal through a competitive bidding process, all the

elements of Article 7.2.1(b) of the PPA1 stand fulfilled and there can conceivably be no basis for the Respondent No. 1 & Respondent No. 2 to withhold their consent for procurement of alternate coal. The tariff under the PPA, having been adopted under Section 63 of the Act the protection of consumer interests are already taken care of.

24. The shortage of linkage coal is a persistent problem and the same has been recognised by multiple government agencies including the Ministry of Power and this Commission and such shortage requires a permanent resolution that is not subject to the arbitrary and unreasonable actions of the Respondent No. 1 & Respondent No. 2.

25. Thus, it is imperative that an efficient mechanism be put in place by this Commission so that it helps both parties perform their respective obligations under the PPA. Such a mechanism would also promote consumer interest by ensuring availability of higher quantum of power from the Plant at a competitively determined tariff.

Hearing dated 25.11.2019

26. The matter was heard on 25.11.2019. The Commission vide Record of Proceeding dated 25.11.2019 admitted the Petition and directed the parties to complete the pleadings.

Submissions of Respondents No. 1 and 2

27. The Respondent No. 1 and Respondent No. 2 vide affidavit dated 23.1.2020 have submitted as under:

a) The petition filed by the Petitioner is premature as the Petitioner has not demonstrated any shortage of coal in the current financial year i.e. FY 2019-20 and therefore there is no cause of action that has arisen to file the present petition. Hence, the petition is liable to be rejected in terms of Order 7 Rule 11 of the Code of Civil Procedure.

b) The Petitioner has prayed for general directions to the Respondent No. 1 and Respondent No. 2 to give timely approvals for procurement of coal from alternate sources to grant permission to procure 1 million tons of coal per annum from alternate sources and that the Petitioner will be liable to deemed capacity charges in case the request to procure from alternate coal is rejected. There is no basis for the prayers sought by the Petitioner as the Petitioner has not explained as to how there is a coal shortage as on date and how it's affecting its capacity to declare availability in the current FY 2019-20.

c) As per Clause 1.2.5 of the Schedule 7 of the PPA, if the Petitioner fails to achieve the availability of 75% in a financial year, penalty is imposed on the Petitioner at the rate specified therein. Thus, the issue to be considered is that whether the Petitioner had enough coal stock to achieve availability up to 75%.

d) Further, in order to achieve 100% availability in a contract year the daily coal requirement for the Petitioner vis-a-vis generation and sale of electricity to the Procurers [for 1320 MW (2x660 MW)] is 20506 tonnes. The normative availability as per the PPA dated 7.8.2008 is 80%. To ensure that such normative availability of 80% is achieved by the Petitioner in a contract year, the total coal required on a daily basis for generation and supply to the Procurers is 16405 tonnes. Similarly in order to avoid any penalty in terms of Clause 1.2.5 of Schedule 7, the daily coal requirement for 75% availability is 15379.67 tonnes. The same has been computed in terms of the following table:

Daily coal required										
Total Plant Capacity (Mw) (A)	Time (in Hrs) (B)	Number of day (C)	Units Generated in a day at 100% PLF (KWh) $D=(B*C*1000)$	Units Generated at Normative Availability 80% (KWh) $(E)=(D*0.8)$	SHR (Kcal/Kwh) (as per Schedule 11) (F)	Average GCV (for FY 2018-19) (G)	Specific Coal Consumption per unit (in Kg) (H)	Total Coal required for generation at 100% Availability (in Tons) $I=(H*D)$	Total Coal required for generation at Normative Availability of 80% (in Tons) $J=(H*E)$	Total Coal required for generation at Availability of 75% (in Tons) (K)
1320	24	1	31680000	25344000	2396	3701.57	0.647292905	20506.23	16404.99	15379.67

e) In view of the above, if the Petitioner has on a daily basis equal to or more than 20506.23 tonnes of coal (for 100% availability); or 16404.99 tonnes (for 80% normative availability) or 15379.67 tonnes (for 75% availability for the purposes of penalty) then it cannot be said that there was any shortage of coal which has prejudiced the Petitioner in any manner.

f) A perusal of the statement and the daily opening stock of coal from 1.4.2017 onwards clearly shows adequate stock of coal except few dates. The Petitioner always had more than 20506.23 tonnes of coal i.e. to achieve 100% availability. Similarly, the daily opening stock was always more than 15379.67 tonnes, the daily coal stock requirement to avoid imposition of penalty in terms of Clause 1.2.5 of Schedule 7 of the PPA. Thus, it is incorrect on the part of the Petitioner to allege that they did not have sufficient coal stock or that they haven't been able to declare availability due to any default on the part of the Respondent No. 1 and Respondent No. 2.

g) There was no persistent delays by the Respondent No. 1 and Respondent No. 2 in granting consent to the Petitioner for alternate coal for the alleged shortage in coal from the coal linkage. There was no shortage of coal faced by the Petitioner in the financial year 2019-20 and the Petitioner cannot make general allegations against the Respondent No. 1 and Respondent No. 2 by way of this present petition. The Petitioner always had more than the requisite coal stock on a daily basis for achieving 100% PLF.

h) The Respondent No. 1 and Respondent No. 2 have always given timely approvals to the Petitioner and have also bonafidely helped the Petitioner by writing letters to the Ministry of Railways and Ministry of Coal. In the 45th and 46th meeting of Steering Committee for Power Planning dated 15.5.2018 and 5.7.2018 respectively, the road map for purchase of imported coal has been laid down.

i) The plant availability of the Petitioner's power plant during FY 2018-19 and 2019-20 (up to October 2019) is 77.62% & 95.26% respectively. Further, sufficient coal was available with the Petitioner for meeting the

schedule of Haryana for 2017-18 and 2019-20 (up to November 2019). The lower availability during FY 2018-19 is not on account of coal shortage but due to lower declaration of plant availability by the Petitioner to save its O & M expenses. The Petitioner on occasions, despite sufficient stock of coal, declared availability for one unit only to avoid start-up operations of other unit which resulted in availability of 77.62 % during FY 2018-19

j) The only obligation assumed by the Respondent No. 1 and Respondent No. 2 was limited to make available the coal linkage from the CCL for supply of 5.21 MTPA. The Respondent No.1 and Respondent No. 2 fulfilled their obligation in terms of Article 3.1.2 A of the PPA within the time stipulated there under. In terms of the definition of the Fuel Supply Agreement and Articles 3.1.2 (ii) and 4.1 (a) and (b) of the PPA, the responsibility for executing the FSA with the CCL was that of the Petitioner. It was for the Petitioner to take appropriate steps and actions to finalise the FSA with CCL in regard to the delivery of the coal to the extent of the coal linkage given i.e. 5.21 MTPA. On 7.6.2012, the Petitioner signed the FSA. Thus, the obligation was always on the Petitioner to sign the FSA with CCL and ensure that adequate coal is available for supply of contracted capacity to the procurers.

k) From the perusal of the records it is evident that sufficient coal was available with the Petitioner for meeting the schedule of Haryana for FY 2017-18 and 2018-19. The lower availability during FY 2018-19 is not on account of coal shortage but due to lower declaration of plant availability by the Petitioner to save on its O & M expenses. The Petitioner at occasions, despite availability of coal, declared availability for one unit only to avoid start-up operations of other unit which resulted in availability of 77.62 % during FY 2018-19

l) Whenever required, the Respondent No. 1 and Respondent No. 2 have given consents to the Petitioner to make arrangements for alternate coal in terms of Article 7.2.1 of the PPA. Further, approval for procurement of alternate coal has also been consented in the past by the HPPC on merit, as

admitted by the Petitioner in the Petition. Article 7.2.1 of the PPA provides a mechanism for fuel procurement when the same is in the best commercial terms. A blanket approval for procurement of alternate coal would be against the provisions of PPA as it would lead to increase in variable cost of generation which in turn shall have to be passed on to the consumers at large.

28. Tata Power Trading Company Limited (TPTCL) in its reply vide affidavit dated 15.1.2020 has submitted that present Petition in no manner affects its rights and liabilities as it is merely an intermediary between the Petitioner and TPDDL. Moreover, no relief whatsoever has been sought against it in the present Petition. TPTCL has submitted that that it has entered into a PPA for purchase of electricity from 10% of the Available Capacity from the Petitioner and simultaneously on back to back basis has entered into a Power Sale Agreement (PSA) with Tata Power Distribution Company Limited for supply of the same. Therefore, the role of Respondent TPTCL in the present Petition is only of an intermediary.

29. Tata Power Delhi Distribution Company Limited (TPDDCL) in its reply vide affidavit dated 20.9.2021 has submitted as under :

- a) Since, in the present case 90% of power is being procured by Haryana DISCOMs and only 10% of remaining power is been sold to the answering Respondent, therefore, the requirement of obtaining prior-approval to the fuel supply arrangement from the answering Respondent is not necessitated under the Tata PSA and the Petitioner (in line with the provisions of the Tata PSA) is permitted to procure coal from alternative source even if no approval from the answering Respondent has been obtained and the Haryana DISCOMs have approved such arrangement. Therefore, the Tata PPA / Tata PSA is required to be read and interpreted independently / separately and this Commission while adjudicating the present dispute shall not bundle the entire dispute under one umbrella without considering the provisions of the

Tata PSA / Tata PPA which by itself is an independent contract. Since no prior-approval from the answering Respondent (or TPTCL) is required under the Tata PSA or Tata PPA, therefore, any alleged delay on part of Haryana DISCOMs under the Haryana PPA shall not make the answering Respondent liable for such default or delay and this Commission while adjudicating the present dispute ought to not make the answering Respondent liable jointly with the Haryana DISCOMs for such delay (if held to be any) or severally.

b) The Petitioner in the present Petition has accepted that the power from the Petitioner's power project was primarily sourced to Haryana DISCOMs and the 10% of the power is been sold to TPTCL (which ultimately is been procured by TPDDCL under the back-to-back arrangement) in order to qualify the project as mega power project under the composite scheme. Since the power from the Petitioner's power project is primarily sourced to Haryana DISCOMs and the power sourced to TPDDCL is only in order to bring the mega power project under the composite scheme, therefore, considering the fact that the shortfall in coal supply (as pleaded in the present Petition) is not due to any default on the part of answering Respondent, therefore, no claim under the present Petition shall be allowed to be made against the answering Respondent and the answering Respondent shall not be made liable to compensate or pay any losses (or compensation) to the Petitioner during the present proceedings.

c) The Petitioner in the present Petition has submitted that it has been affected by Non-Natural Force Majeure event and is entitled for payment of capacity charges, on account of the non-availability of sufficient coal at site to operate both units of the Plant at full capacity due to the Haryana DISCOMs allegedly withholding consent for procurement of additional coal from alternative sources. Before taking the plea of force majeure, the issue of non-grant of approval by the Haryana DISCOMs, has to be first declared as an event of force majeure by an appropriate court of law / forum in terms of Article 12.3 (ii) (1) (b) of the of the Tata PSA. Therefore, till the time it is

decided by this Commission that the alleged non-grant of approval by the Haryana DISCOMs was unlawful, unreasonable and discriminatory and covered under the Force Majeure clause, the Petitioner cannot claim for relief on account of Force Majeure.

d) The present Petition filed before this Commission is limited to seeking declaration / directions pertaining to the mechanism / guidelines (as proposed by the Petitioner) for procuring coal from alternative source. No monetary claim has been pleaded or prayed under the present Petition. Therefore, the Petitioner by merely referring that it has been deprived of its right to receive capacity charges or incentives, cannot seek any monetary gain / relief through the present proceedings.

e) Further, the Petitioner as per its own admission was seeking to arrange imported coal from the open market. Such imported coal being costlier source, the Petitioner cannot be entitled to claim availability / incentive on such costlier fuel. If the Petitioner would have procured imported coal, then it would have claimed availability, which would result in an increase in the per unit cost of generation. The burden of this increase in cost will ultimately fall on the consumers of the answering Respondent. The consumers cannot be burdened with a higher cost of power, and as a regulated entity it is the answering Respondent's responsibility to ensure availability of inexpensive power to its consumers. The power from the Petitioner's Plant is already purchased at a higher tariff. Moreover, since no monetary claim has been specifically pleaded in the present Petition, no claim on account of capacity charges or incentives should be allowed by this Commission during the present proceedings.

f) The Commission in its various decisions has held that the inability of the generator to procure coal resulting in shortfall in availability, cannot be passed onto the procurers. In this regard, the findings of this Commission in its *Order dated 21.02.2019 in Petition No. 89/MP/2018 titled Aravali Power Company Private Limited v HPPC and Ors.* and *Order dated 28.08.2019 in Petition No. 46/MP/2018 in the case of NTPC Limited v CSPDCL &Ors* is

important. A perusal of the above decisions, clarifies that the responsibility to arrange fuel lies with the generator, and as such the procurer of power cannot be burdened as a consequence of shortage of coal. The consumers of the answering Respondent herein, cannot be burdened on account of failure of the generator to procure coal, when the said reasons are not on attributable to the answering Respondent.

g) The answering Respondent was not part of the bidding process and the PSA executed with the answering Respondent was subsequent to the bidding process where in the answering Respondent has accepted to pay the tariff discovered during the bidding process and procure remaining 10% of capacity from the Petitioner (through TPTCL). Since the answering Respondent was not part of the bidding process and was not obligated to arrange adequate source of fuel supply for the Petitioner's project, no claim on this account can be raised against the answering Respondent. The Petitioner by simply stating that since the present project been established Petitioner was under case 2 bidding and under case 2 bidding the fuel supply was to be arranged by the procurers, cannot raise any claim against the answering Respondent to the extent the answering Respondent was not part of the bidding process and was not obligated to arrange adequate fuel supply for the Petitioner.

h) The Petitioner on one hand has been claiming minimum coal off take penalty from answering Respondent for FY 2016-17 and on other hand is claiming deemed availability due to coal shortages for 2018-19. The same shows gaps in the FSA entered into between Petitioner and Coal Companies due to which the Respondents are suffering for opposite reasons in different years. It may be noted that till date the answering Respondent is unaware of any claim made by the petitioner before any forum against Coal Companies for not providing coal as per the FSA. In this respect it is important to note that as per Clause 4.6.1 of FSA, if the level of delivery is less than 80% of the ACQ in a year, the defaulting party is liable to pay compensation to other party for such shortfall in level of delivery. The Petitioner has not detailed any

claim raised on this account but stressing its inability to declare availability and loss of incentives due to coal shortage for which the petitioner is seeking damages from answering Respondent. The Petitioner has also not shared any penal provisions/ liabilities upon CIL for not providing coal under the FSA to Petitioner. Clearly once such an instance as prayed by Petitioner is declared Force Majeure by this Commission, the same would become a recurring phenomenon without any efforts on the part of Petitioner or Coal Companies. This would lead to costs being imposed upon the Respondent without getting any commensurate power quantum. Despite the inefficiencies of the Petitioner, the respondent is being made to bear the Transmission charges for the tied up capacity without getting power due to issues like Coal shortages which are primarily between Petitioner and Coal companies.

Rejoinders of the Petitioner

30. The Petitioner in its Rejoinder dated 9.8.2020 to the reply filed by Respondent No. 1 and Respondent No. 2 has denied their submissions. The Petitioner has mainly submitted as under:

a) There is no case for the application of Order 7 Rule 11 of the Code of Civil Procedure, 1908 when it is evident from the Petition that the Respondent No. 1 and Respondent No. 2 have refused to act in accordance with the provisions of the PPA 1 to the detriment of the Petitioner. In any event, this Commission is not bound by the provisions of the Code of Civil Procedure, 1908 in exercise of its powers under Section 79(1)(b) read with Section 79(1)(f) of the Act.

b) There was shortfall of approximately 2.181 MTPA of linkage coal due to which the Petitioner was unable to achieve Normative Availability in 2018-19 and could not receive 100% Capacity Charges under the respective PPAs and achieved Availability lower than 85% during FY 2018-19 which deprived the Petitioner of the right to receive Incentives in terms of the respective PPAs.

c) In response to the Respondent No. 1 and Respondent No. 2 submissions that the main aspect to be considered by this Commission is whether the Petitioner had enough coal stock to achieve Availability up to 75% as per Clause 1.2.5 of Schedule 7 of the PPA 1 in a given Contract Year, the Petitioner has submitted that Clause 1.1 and Clause 1.2.4 of Schedule 7 of the PPA1 clearly states that the Petitioner shall be entitled to claim full Capacity Charges when it achieves Normative Availability @ 80% and, in addition, shall be entitled to receive incentive at the rate of 40% of the Quoted Non-Escalable Capacity Charges (subject to a maximum of 25 paise/kWh) once the Petitioner exceeds 85% Availability in a Contract Year. However, in order to achieve Normative Availability, and beyond (for Incentives), the Petitioner needs consistent supply of linkage coal throughout the year. The Petitioner is entitled to recover the entire Capacity Charges only when it achieves Normative Availability. The Petitioner has been incurring costs to ensure technical Availability of its plant and is bound to incur losses in case of non-recovery of Capacity Charges on account of Availability being less than 80%, including, zero / nil incentives.

d) The Petitioner set up the plant to operate at full capacity and expected the Respondent No. 1 and Respondent No. 2 to abide by their express obligations and not frustrate the Petitioner's attempts to maximize Availability and PLF under the PPAs. The despatches made by Respondent No. 1 and Respondent No. 2 have remained significantly below the Availability leading to a position where lower than Normative Availability may mean financial gains to the Respondent No. 1 and Respondent No. 2 and severe financial loss to the Petitioner.

e) The scheduled generation for FY 2018-19 shows that despite the Plant Availability at 77.62%, Respondent No. 1 and Respondent No. 2 had despatched the Plant only to the extent of 59.62%.

f) As per the CEA norms, the optimum coal stock that is required to be maintained by a thermal plant located more than 1000 kms away from the coal mine is for 30 days. Further, any coal stock for less than 7 days is

categorized “critical” and coal stock for less than 4 days is categorized as “super critical”.

g) The submission of the Respondent No. 1 and Respondent No. 2 in relation to the opening stock and the closing stock available with the Petitioner does not in any way establish that there was no coal shortage faced by the Petitioner during the relevant year. The statement pertaining to the alleged plant availability for FY 2017-18; FY 2018-19; and FY 2019-20 merely records the opening and closing stock of coal. The availability of a plant is measured on a day to day basis. Calculating the availability of a plant or the coal stock available based on the opening and closing stock is a deliberate attempt of the Respondent No. 1 and Respondent No. 2 to mislead this Commission into believing that the Petitioner’s plant allegedly always had sufficient coal to achieve 100% Availability.

h) A mechanism for procurement of coal from alternate sources will avoid any loss of Availability to the Petitioner in the event there is a shortage of linkage coal in the future. Such a mechanism will not only assist the Petitioner in operating its plant at full capacity as per the terms of the PPA 1 but also save the valuable time of this Commission by avoiding repeated invocation of the dispute resolution mechanism under the PPA 1 and the Electricity Act, 2003.

i) The contentions of the Respondent No. 1 and Respondent No. 2 that timely consents / approvals were given to the Petitioner for procurement of coal from alternate sources are false. The letters mentioned in the Reply were consents granted to the Petitioner for procurement of coal under the FSA through ‘Rail-cum-Road” (RCR) mode or coal on “as is where is” from various CIL subsidiaries. The procuring of coal *via* RCR is a mode provided in the existing FSAs with the CIL subsidiaries and such supplies are considered a part of the Annual Contracted Quantity (ACQ) under the FSAs. Therefore, RCR coal is not an alternate source of coal as is being sought to be projected by the Respondent No. 1 and Respondent No. 2. In addition, despite such

consents from the Respondent No. 1 and Respondent No. 2, the full extent of shortage in supply of linkage coal was not addressed or mitigated.

j) The minutes of the Steering Meeting itself establishes that the Respondent No. 1 and Respondent No. 2 had decided to limit the approval to procure only 'as is where is coal' for the Petitioner and had decided to not approve requests for obtaining imported coal and the e-auction coal. However, coal sourced on an "as is where is" basis is an integral part of the FSAs. Therefore, the Steering Committee too acknowledged the shortfall of linkage coal faced by the Petitioner but did not grant the required approvals to the Petitioner.

k) The Steering Committee in its 46th meeting held on 5.7.2018, while dealing with the issue of shortage of linkage coal being faced by the Petitioner, had decided that the Petitioner be allowed to float a tender through E-Portal for 1.5 lakh tonnes of imported coal to discover price within 10 days. However, it was also recorded in the minutes that the Respondent No. 1 and Respondent No. 2 shall intimate Petitioner "*that the above shall not be construed as consent of HPPC for procurement of imported coal as the decision regarding permission will be taken after discovery of price and conditions prevalent at that time*". Accordingly, the Petitioner was asked to conduct the tender through e-portal. The Petitioner chose to do so through the e-portal of MSTC (a Government of India Enterprise). The result of the said tender was duly shared with the Respondent No. 1 and Respondent No. 2 *vide* letter dated 23.7.2018. The Respondent No. 1 and Respondent No. 2, *vide* letter dated 8.8.2018 on the pretext of the allegedly high transaction fees charged by MSTC (which is a Government of India entity) directed the Petitioner to conduct another tender, i.e., first to engage the agency providing e-portal services and then re-conduct the tender for imported coal through the selected agency. The Petitioner, in due compliance with the directions of the Respondent No. 1 and Respondent No. 2, conducted a fresh tender to engage the agency for providing e-portal services and shared the discovered price with Respondent No. 1 and Respondent No. 2. The Respondent No. 1

and Respondent No. 2 did not reply to the Petitioner's letters despite being fully aware of the coal shortage situation. On the contrary, they on the pretext of saving costs, restricted the Petitioner from procuring coal through alternate sources causing significant financial loss to Petitioner.

l) The assertion of Respondent No. 1 and Respondent No. 2 that the Petitioner at occasions, despite sufficient stock of coal, declared availability of its single unit only, to avoid start-up operations of other unit which resulted in Availability of 77.62% during FY 2018-19, is completely false. It is a technically established fact that thermal power plants are not designed for frequent shutdowns and start-ups. The said fact has also been recognized by this Commission in its 5th amendment of the Grid Code and has proposed for compensation to generating companies in case they are forced to shut-down or start-up beyond a specified number of times in a particular year. When all the units of a generating station are shutdown, the generating station requires additional time to bring the units back into operation. Therefore, shutting down both the units of the Plant would have further affected the Petitioner's ability to supply power to Respondent No. 1 and Respondent No. 2 as and when it obtained adequate supplies of coal. In any event, the Petitioner's plant was technically available @ 90.85% during FY 2018-19 and the primary factor preventing the Petitioner from declaring its capacity up to the technical Availability was the shortfall in supply of linkage coal at the relevant time. The despatch schedule provided by the Respondent No. 1 and Respondent No. 2 corroborates the aforementioned submission of the Petitioner. Further, the Petitioner, in order to ensure maximum supply of power to the Respondent No. 1 and Respondent No. 2 had consumed every tonne of coal available with it, and the Plant achieved the best possible Availability that could have been achieved with the limited supply of linkage coal during FY 2018-19. Further, between April 2018 to November 2018, the Petitioner had received 2,505,610 tonnes of coal after accounting for transit losses and during the same period the Petitioner had consumed 2,586,627 tonnes of coal. The additional consumption of 81,016 tonnes was utilized by the Petitioner from the existing stock available at plant . It is an admitted fact that the Petitioner achieved

more than 80% Availability between December 2018 to March 2019 when it finally received sufficient coal supplies to operate the Plant and this helped to raise the annual cumulative Availability to 77.62% in FY 2018-19 but still fell short of the Normative Availability threshold. Therefore, the averment that the Petitioner had sufficient coal stock to operate the Plant is false and misleading.

m) The Respondent No. 1 and Respondent No. 2 have wrongly contended that their obligation was limited to arranging linkage of coal from CCL for supply of 5.21 MTPA and that any further obligation to procure coal and ensure adequate supply of coal from CCL was upon the Petitioner.

Analysis and Decision

31. We have heard the submissions of the parties and perused the documents available on record. The Petitioner in the instant case has sought a relief in the form of declaration that the Respondent No. 1 & Respondent No. 2 are obligated to provide timely approvals to the Petitioner for procurement of coal from alternate sources in accordance with the Article 7.2.1 of the PPA1.

32. The prayers sought by the Petitioner has been countered by the Respondent No. 1 and Respondent No. 2 on the premise that the plaint of the Petitioner is liable to be rejected under Order 7 Rule 11 of the Civil Procedure Code, 1908 as the Petitioner has failed to disclose any cause of action since it has not demonstrated any shortage of coal in the current financial year i.e FY 2019-2020. It has been further contended that there was no persistent delays by the Respondent No. 1 and Respondent No. 2 in granting consent to the Petitioner for alternate coal for the alleged shortage in coal from the coal linkage. Further, there was sufficient coal was available with the Petitioner for meeting the schedule of Haryana for FY 2017-18 and FY 2018-19. The lower availability during FY 2018-19 is not on account of coal

shortage but due to lower declaration of plant availability by the Petitioner to save on its O & M expenses. The Petitioner on occasions, despite availability of coal, declared availability of one unit only to avoid start-up operations of other unit which resulted in availability of 77.62 % during FY 2018-19.

33. Tata Power Delhi Distribution Limited i.e. the Respondent No. 4 has stated that the power from the Petitioner's power project is primarily sourced to Haryana DISCOMs and the power sourced to it is only in order to bring the project under mega power project and make it a composite scheme. Therefore, considering the fact that the shortfall in coal supply is not due to any default on its part and therefore, no claim under the present Petition shall be allowed to be made against it and it shall not be made liable to compensate or pay any losses (or compensation) to the Petitioner during the present proceedings

34. We have considered the submissions of the parties. The Petitioner has approached this Commission, seeking

- a) Declaration that the Respondent No. 1 & Respondent No. 2 are obligated to provide timely approvals to the Petitioner for procurement of coal from alternate sources in accordance with the Article 7.2.1 of the PPA1;
- b) Permission to procure up to one (1) million ton of coal per annum from alternate sources which may include the e-auction coal and/or imported coal to operate the Plant;
- c) In case of actual or deemed rejection of the Petitioner's request for procurement of coal from alternate sources, obligate the Respondents to pay full Capacity Charges and incentives as specified in the respective PPAs.

- d) Issuance of the guidelines for procurement of coal from alternate sources by the Petitioner to mitigate the shortage of domestic linkage coal;

35. We observe that the Petitioner has filed the instant Petition under Section 79(1)(b) and Section 79(1)(f) of the Electricity Act, 2003. Section 79(1) of the Act reads as under:

“Section 79. (Functions of Central Commission):

(1) The Central Commission shall discharge the following functions, namely:-

(a) to regulate the tariff of generating companies owned or controlled by the Central Government;

(b) to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State;

(c) to regulate the inter-State transmission of electricity ;

(d) to determine tariff for inter-State transmission of electricity;

(e) to issue licenses to persons to function as transmission licensee and electricity trader with respect to their inter-State operations;

(f) to adjudicate upon disputes involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) above and to refer any dispute for arbitration;

(g) to levy fees for the purposes of this Act;

(h) to specify Grid Code having regard to Grid Standards;

(i) to specify and enforce the standards with respect to quality, continuity and reliability of service by licensees;

(j) to fix the trading margin in the inter-State trading of electricity, if considered, necessary;

(k) to discharge such other functions as may be assigned under this Act.”

36. Section 79(1)(b) of the Act empowers the Commission to regulate the tariff of generating companies other than those owned or controlled by the Central Government, if such generating companies enter into or otherwise have a composite scheme for generation and sale of electricity in more than one State. The Petitioner

in the instant Petition is not seeking for regulating tariff. Thus, Section 79(1)(b) is not applicable in the present case. Section 79(1)(f) of the Act empowers this Commission to adjudicate upon the dispute involving generating companies or transmission licensee in regard to matters connected with clauses (a) to (d) of Section 79(1) of the Act. Clause (a) of Section 79(1) of the Act is applicable in case of generating companies owned or controlled by the Central Government. The Petitioner in the instant Petition is not a generating company owned or controlled by the Central Government and hence, Section 79(1)(a) is not applicable in the present case. Further, clause (c) and clause (d) of section 79(1) of the Act are also not applicable as these deal with regulating the inter-State transmission of electricity and determination tariff for inter-State transmission of electricity, as the Petitioner in the instant Petition is not engaged in inter-State transmission of electricity. Hence, we are of the view that no dispute within the meaning of Section 79(1)(f) of the Act has been brought by the Petitioner in the present petition before us.

37. We also observe that that the Petitioner has not sought any relief, including any monetary compensation. The Petitioner has merely sought directions in the form of advance declaration that the Respondent No. 1 and Respondent No. 2 shall give timely approvals to the Petitioner for procurement of coal from alternate sources in accordance with the Article 7.2.1 of the PPA1. Section 7.2.1 of the PPA executed between the Petitioner and Respondent No. 1 and Respondent No. 2 provides as under:

“7.2.1 The Seller shall enter into the Fuel Supply Agreement (FSA) on the basis of :

- a) Advice of the Procurers;*
- b) With the express written consent of the Procurer which shall not be unreasonably withheld, if the Seller satisfies the Procurer that the FSA intended to be entered into by the Seller is on the best commercial terms that would be available to any third party in its procurement of coal for any project similar to the Project in question;*

- c) *Approval of HERC, if required under the Competitive Bidding Guidelines; and*
- d) *Prudent Utility Practices.*

38. Article 7.2.1 of the PPA obliges the Petitioner to enter into Fuel Supply Agreement subject to the conditions specified therein. Further, it also binds the procurers to give express written consent and not to unreasonably withhold the consent. Thus, in terms of the provisions of the PPA, procurers are already bound to give approval to the Petitioner, if the FSA intended to be entered into by the Seller is on the best commercial terms. However, in spite of having such a specific provision in the PPA, the Petitioner is seeking a declaration in advance that the Respondent No. 1 and Respondent No. 2 shall give timely approvals to the Petitioner for procurement of coal from alternate sources in accordance with the Article 7.2.1 of the PPA1. We are of the considered view that the parties are governed as per the terms of the PPA and as no dispute within the meaning of Section 79(1)(f) has been raised before us seeking any relief, any declarations in advance in anticipation of a dispute as prayed by the Petitioner is unwarranted at this stage. Thus, the prayer of the Petitioner seeking declaration that Respondent No. 1 & Respondent No. 2 are obligated to provide timely approvals to the Petitioner for procurement of coal from alternate sources in accordance with the Article 7.2.1 of the PPA1 cannot be granted.

39. In the light of above findings, the prayer of the Petitioner that in case of actual or deemed rejection of the Petitioner's request for procurement of coal from alternate sources, the Respondents shall be obligated to pay full Capacity Charges and incentives as specified in the respective PPAs is premature and therefore, cannot be granted. The rights and obligations of the parties are governed by PPA executed

between the parties. As already observed, at present the Petitioner has not placed on record any dispute within the meaning of Section 79(1)(f) of the Act and therefore, no relief can be granted at this stage.

40. The Petitioner has also sought issuance of appropriate guidelines for procurement of coal from alternate sources by the Petitioner to mitigate the shortage of domestic linkage coal. We are of the view that the Commission is not the appropriate forum for issuing such guidelines.

41. Petition No. 285/MP/2019 is disposed of in terms of above.

(P K. Singh)
Member

(I. S. Jha)
Member

(P. K. Pujari)
Chairperson