

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 363/MP/2019

Coram:

**Shri I.S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member**

Date of Order: 20th October, 2022

In the matter of

Petition under Section 79(1) (f) of the Electricity Act, 2003 and Article 18 of the Power Purchase Agreement (PPA) dated 7.8.2008 for approval of the amendment of the PPA.

And

In the matter of

Jhajjar Power Limited (JPL),
Village: Khanpur Khurd,
Tehsil: Matenhail,
District: Jhajjar-124142, Haryana

...Petitioner

Vs

1. Uttar Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Plot No. C-16,
Sector 6, Panchkula-60062, Haryana

2. Dakshin Haryana Bijli Vitran Nigam Limited,
Vidyut Sadan, Vidyut Nagar,
Hisar-125005, Haryana

3. Haryana Power Purchase Centre,
Shakti Bhawan,
Sector-6, Panchkula, Haryana- 160062

...Respondents

Parties present:

Ms. Shikha Ohri, Advocate, JPL
Shri Parinay Deep Shah, Advocate, JPL
Shri Tarun Bajaj, JPL
Shri Shubham Arya, Advocate, Haryana Utilities
Shri Ravi Nair, Advocate, Haryana Utilities



ORDER

The Petitioner, Jhajjar Power Limited, has filed the present Petition seeking approval of the amendment to clause 1.2.3 of Schedule 7 and clause 1.3 of Schedule 12 of the Power Purchase Agreement ('PPA') dated 7.8.2008 signed between the Petitioner and the Respondents, Haryana Utilities, in terms of the Petitioner's letter dated 10.4.2018. The Petitioner has made the following prayers:

- “(a) Allow the amendment to Clause 1.2.3 of Schedule 7 and Clause 1.3 of Schedule 12 of the PPA I in terms of Petitioner's letter dated 10.04.2018 and as explained in paragraph III (5) of the Petition;*
- (b) Condone any shortcomings/deficiencies in the Petition; and*
- (c) Grant an expeditious hearing of the Petition.”*

2. The Petitioner has mainly submitted as under:

(a) The Petitioner owns and operates a coal based thermal generating station of 1320 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 generating station supplies power to two States, namely, the State of Haryana and the National Capital Territory of Delhi. 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 generating 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 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. The PSA was approved by the Delhi Electricity Regulatory Commission on 13.5.2010 under Section 86 (1) (b) of the Act.

(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) As per Article 11 of the PPA 7.8.2008, from the COD of the first Unit, the Respondents (i.e. Procurers) are liable to pay the Petitioner/Seller the monthly tariff payment on or before the due date which comprises of tariff for every contract year, determined in accordance with Schedule 7 of the PPA dated 7.8.2008.

(e) Due to some anomalies in the existing language of the PPA, the parties had certain disagreements with respect to the interpretation of the billing methodology of monthly energy charges as set out in Article 11 read with Schedule 7 of PPA. Presently, the language of Schedule 7 of the PPA is phrased in a manner that does not capture and reflect the intent of the parties at the time of executing the PPA. The disagreement between the parties on interpretation of the provision of Schedule 7 has resulted in various claims/ counter claims by the parties.

(f) To resolve the disagreements with regard to billing methodology of monthly energy charges to be adopted between the parties, the Respondent No.3, as the representative of Haryana Utilities vide its letter 12.3.2018 proposed amendments to the billing methodology in the PPA. The Petitioner vide its letter dated 10.4.2018 accepted the proposed methodology. Accordingly, vide letter dated 10.4.2018, the Parties have resolved all their disagreements with regard to billing methodology for monthly energy charges which is to be adopted as per the terms recorded in the letter.

(g) In terms of the agreement reached between the parties vide letter dated 10.4.2018, as a one-time settlement, the Petitioner has *inter alia* agreed to withdraw its claim of Rs. 109.44 crore raised by it on the Respondents, vide letters dated 23.6.2017 and dated 7.7.2017. The Petitioner has further agreed to not to claim late payment surcharge for amounts deducted and/or withheld by the Respondents from the payments due against monthly invoices of the Petitioner, if it was solely owing to the disagreement on the calculation of Monthly Energy Charges. The Respondents have also agreed to immediately release such amounts in response.

3. In view of the foregoing, the Petitioner has sought approval of the amendments to Clause 1.2.3 of Schedule 7 & Clause 1.3 of Schedule 12 of PPA- I in terms of Article 18.1 of PPA- I and Petitioner's letter dated 10.4.2018.

4. The matter was admitted on 12.12.2019 and notices were issued to the parties to file their replies. Haryana Utilities have filed their common reply and the Petitioner has not filed rejoinder thereof.

Reply of the Respondents

5. The Respondents, Uttar Haryana Bijli Vitran Nigam Limited, Dakshin Haryana Bijli Vitran Nigam Limited and Haryana Power Purchase Centre vide their joint reply dated 27.1.2020 has submitted that Haryana Utilities are agreeable to the amendment sought by the Petitioner in the PPA dated 7.8.2008. It has been further submitted that Haryana Utilities have perused the proposed amendments and the detailed illustration given for calculating the energy charges payable by the Haryana Utilities to the Petitioner and the same is consented to by them. Accordingly, proposed amendment to Cause 1.2.3 of Schedule 7 and Clause 1.3 of Schedule 12 of the PPA dated 7.8.2008 may be allowed.

Analysis and Decision

6. Through this Petitioner, the Petitioner has sought approval of the proposed amendment to Cause 1.2.3 of Schedule 7 and Clause 1.3 of Schedule 12 of the PPA dated 7.8.2008.

7. The Petitioner has submitted that due to certain anomalies in the existing language of the PPA, the parties had certain disagreements with respect to the interpretation of the billing methodology of monthly energy charges as set out in

Article 11 read with Schedule 7 of PPA. Relevant Portion of Article 11 read and Schedule 7 of PPA dated 7.8.2008 are extracted as under:

“11. ARTICLE 11 BILLING AND PAYMENT

11.1 GENERAL

From the COD of the first Unit, Procurers shall pay the Seller the Monthly Tariff Payment, on or before the Due Date, comprising of Tariff for every Contract Year, determined in accordance with this Article 11 and Schedule 7. All Tariff payments by Procurers shall be in Indian Rupees.

Schedule 7: Tariff

1.1 General

i. The method of determination of Tariff Payments for any Contract Year during the Term of Agreement shall be in accordance with this Schedule.

ii. The Tariff shall be paid in two parts comprising of Capacity and Energy Charge,

iii. For the purpose of payments, the Tariff will be Quoted Tariff, escalated as provided in this Schedule 7 for the applicable Contract Year as per Schedule 11.

iv. The full Capacity Charges shall be payable based on the Contracted Capacity at Normative Availability and Incentive shall be provided for Availability beyond 85% as provided in this Schedule shall be given. In case of Availability being lower than the Normative Availability, the Capacity Charge shall be payable on proportionate basis in addition to the penalty to be paid by Seller as provided in this Schedule.

1.2 Monthly Tariff Payment

1.2.1 Components of Monthly Tariff Payment

The Monthly Bill for any Month in a Contract Year shall consist of the following:

i. Monthly Capacity Charge Payment in accordance with Article 1.2.2 below;
ii. Monthly Energy Charge for Scheduled Energy in accordance with Article 1.2.3 below;

iii. Incentive payment determined in accordance with Article 1.2.4 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first Month of the next Contract year);

iv. Penalty Payment determined in accordance with Article 1.2.8 below (applicable on annual basis and included only in the Monthly Tariff Payment for the first Month of the next Contract Year).

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1.2.3 Monthly Energy Charge

The Monthly Energy Charge for Month m will be calculated as under:

$$MEP_m = \frac{QNHR \times FCOAL_m \times AEOM}{PCV_m}$$

Where,

MEP_m is the Energy Charge payment for Month "m" (in Rs.);



QNHR is the Quoted Net Heat Rate, as provided in Schedule 11 (in kCal/kwh);

FCOALm is the weighted average invoiced rate of coal incurred by the Seller in purchasing, and transporting the coal for the Project during the Month immediately preceding the Month "m" (in Rs/Kg),

Provided that in the event washing of coal is required under the environmental protection laws, regulations or clearance, the cost of washing the coal shall be considered as part of the coal purchasing cost subject to the following:

(i) in the event the coal washing is carried out by CIL/CIL's subsidiary, the cost shall be considered at actuals; and (ii) in the event the coal washing is carried out by any other entity the considered cost shall be lower of the: (a) actual cost of washing the coal; and (b) minimum cost of washing the coal as charged by CIL/CIL's subsidiary supplying coal to the Project; and

PCVm is the weighted average Gross Calorific Value of the coal for the Month immediately preceding the Month "m" determined in a manner specified in Schedule 17 (in kCal/kg)."

AEOm is the Scheduled Energy during the month (in kWh)."

8. The Petitioner has submitted that in order to resolve the anomalies in the above quoted provisions regarding methodology of monthly charges to be adopted between the parties, the Haryana Utilities vide letter dated 12.3.2018 proposed amendment to the billing methodology in the PPA and the Petitioner vide its letter dated 10.4.2018 accepted the same. The Petitioner has submitted that all anomalies have been resolved and the same are to be adopted as per the terms recorded in the letter dated 10.4.2018. The amendments proposed in the letter dated 1.4.2018 are extracted as under:

PPA Provision of the PPA dated 7.8.2008	Present clause in the PPA	Proposed Changes in the PPA
Clause 1.2.3 of Schedule 7.	PCVm is the weighted average Gross Calorific Value of the coal for the Month <u>immediately preceding the Month</u> "m" determined in a manner specified in Schedule <u>17</u> (in kCal/kg)	PCVm is the weighted average Gross Calorific Value of the coal for the current Month 'm' determined in a manner specified in Schedule <u>12</u> (in kCal/kg)



<p>Clause 1.3 of Schedule 12.</p>	<p>For the purposes of calculating the weighted average of the GCV ("As Received") of the coal delivered to mill bunkers of the Power Station during any particular Month, the measurement will be based on the <u>arithmetic</u> average of the GCV of each Lot sampled by the Seller during the period beginning on (and including) the last day of the <u>immediately preceding Month</u> or, in case of the first ever measurement of GCV,</p> <p>the first day of such Month and ending on (but excluding) the last day of such Month. The weighted average GCV of coal consumed by the Seller shall always be expressed in kCal/Kg.</p>	<p>For the purposes of calculating the weighted average of the GCV ("As Received") of the coal delivered to mill bunkers of the Power Station during any particular Month, the measurement will be based on the <u>weighted</u> average of the GCV of each Lot sampled by the Seller during the period beginning on (and including) the last day of the <u>Current month "m"</u> <u>or</u>, in case of the first ever measurement of GCV, the first day of</p> <p>such Month and ending on (but excluding) the last day of such Month. The weighted average GCV of coal consumed by the Seller shall always be expressed in kCal/Kg.</p>
<p>Clause 1.2.3 of Schedule 7</p>	<p>F_{COALm} is the weighted average invoiced rate of coal incurred by the Seller in purchasing, and transporting the coal for the Project during the Month immediately preceding the Month "m" (in Rs/kg)</p>	<p>F_{COALm} <u>for domestic coal</u> is the <u>running weighted average invoiced rate of domestic coal</u> incurred by the Seller in purchasing and transporting the <u>domestic coal</u> for the Project <u>since the supply of domestic coal started to JPL till</u> the Month immediately preceding Month "m" (in Rs/kg)</p> <p>F_{COALm} <u>for imported coal</u> is the <u>running weighted average invoiced rate of imported Coal</u> incurred by the Seller in <u>purchasing and</u></p>

		<u>transporting the imported coal for the Project received up to current Month "m" (in Rs/kg)</u>
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9. We have considered the submissions of the Petitioner and the Respondents.

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.”

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.

10. It is noticed that the proposed amendment, as per the Petitioner, is aimed at resolving the disagreement between the parties with regard to billing methodology of monthly energy charges and to bring the language of Schedule 7 of the PPA in line with the intent of the of the parties at the time of entering into the PPA. Moreover, during the course of hearing on 22.9.2022, learned counsel for both the Petitioner as well as the Respondents, Haryana Utilities clearly stated that the parties were agreeable to the proposed amendment to the PPA dated 7.8.2008 as specified in the petition and accordingly, prayed to allow such amendment.

11. Since all the parties to the original PPA are agreeable to the proposed amendment to the PPA dated 7.8.2008 and have jointly prayed for approval of the proposed amendment as quoted in paragraph 8 above, we hereby approve the proposed amendment to Clause 1.2.3 of Schedule 7 & Clause 1.3 of Schedule 12 of the PPA subject to signing of Supplementary Power Purchase Agreement by the

Petitioner and the Haryana Utilities incorporating the above amendment. The parties are directed to place a copy of the signed Supplementary Power Purchase Agreement on the Commission`s record.

12. The Petition No. 363/MP/2019 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(I.S. Jha)
Member

