

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.261/MP/2021

Coram:

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

Date of Order: 11th January, 2023

In the matter of:

Petition under Section 79(1)(b) of the Electricity Act, 2003 for approval of Supplementary Agreements (Amendments) of PPAs on account of rationalization of coal.

And

In the matter of

Jhabua Power Limited
Unit No. 303 & 307, 3rd Floor,
ABW Tower, M.G. Road,
Gurugram, Haryana 122002

..... **Petitioner**

Vs

1. Madhya Pradesh Power Management Company Limited,
E-4, Area Colony, Bhopal,
Madhya Pradesh-462016
2. Kerala State Electricity Board Limited,
8th Floor, Vyduthi Bhavanam, Pattom,
Thiruvananthapuram, Kerala-695004
3. PTC India Limited,
2nd Floor, NBCC Tower,
15 Bhikhaji Cama Place,
New Delhi-110066
4. West Bengal State Electricity Company Limited,
Vidyut Bhavan, 7th Floor, DJ Block, Sector-II
Salt Lake, Kolkata, West Bengal-700071

.... **Respondents**

Parties Present:

Ms. Swapna Seshadri, Advocate, JPL
Shri Anand K. Ganesan, Advocate, JPL
Ms. Harsha Manav, Advocate, JPL



ORDER

The Petitioner, Jhabua Power Limited (in short 'JPL') has filed this petition seeking approval of Supplementary PPA/Addendums to be entered into by the Petitioner, on account of rationalization of coal linkage, in terms of the Ministry of Coal (MOC), GOI letter dated 15.5.2018. Accordingly, the Petitioner has made the following prayers:

- (A) Approve the execution of Agreement/Addendum between Jhabua and MPPMCL as attached in Annexure-I;
- (B) Approve the execution of Agreement/Addendum between Jhabua and KSEBL as attached in Annexure-J;
- (C) Approve the execution of Agreement/Addendum between Jhabua and PTC/WBSEDCL as attached in Annexure-K;

2. The Petitioner, is a generating company as defined under section 2(28) of the Electricity Act, 2003 and has set up a coal based thermal generating station, comprising of one unit of 600 MW, located near village Barela-Gorakhpur, Tehsil-Ghansore of Seoni District, Madhya Pradesh. The Petitioner has entered into agreements for sale of electricity with the Respondents, as tabulated below:

Date of PSA/PPA	Procurer	Quantum (% or MW of Installed Capacity)	Tenure (Yrs)
27.6.2011	Government of Madhya Pradesh	5%	25
5.1.2011	Madhya Pradesh Power Management Company Limited	30%	20
26.12.2014	Kerala State Electricity Board Limited	100 MW	25
31.12.2014	Kerala State Electricity Board Limited	115 MW	25
26.10.2018	West Bengal State Electricity Development Company Limited (through PTC)	106.7 MW (100 MW ex-bus)	03

Submissions of the Petitioner

3. In support the prayers above, the Petitioner, in the petition, has made the following submissions:



- (a) On 15.5.2018, the MOC issued guidelines giving a methodology for rationalization of IPPs. One of the conditions for processing the request of IPPs on the said letter is that the saving in cost need to be passed on the Distribution Companies through a Supplementary Agreement, to be approved by the Commission.
- (b) In terms of the above, MOC, GOI issued letter dated 25.8.2020, calling for Expression of Interest (Eoi) from various IPPs for the Coal Rationalization and the Petitioner vide its letter dated 8.9.2020 submitted the Eoi to Coal India Limited (CIL). Thereafter, on 21.7.2021, the Petitioner received letter from CIL, approving the rationalization of coal linkage, subject to the approval of the Supplementary Agreement / Addendum to be given by the Appropriate Commission.
- (c) As the Petitioner has separate PPAs with each of the Distribution licensees, it has duly informed the Respondents regarding the Eoi and the steps taken for Coal Rationalization vide various letters during the period from 3.8.2021 to 30.9.2021.
- (d) The Petitioner had on 30.9.2021, prepared and sent the draft Agreements/ Addendums to be entered into between the Petitioner and the Respondents, to each of the Respondents. The approval of this Commission is to be obtained for execution of the amended Fuel Supply Agreement with CIL and/or its subsidiaries.
- (e) The entire purport of the rationalization of coal is that the benefits of the same shall be passed on to ultimate consumer of electricity, only when the Petitioner is able to draw the coal from the new source (NCL instead of MCL) as per approved rationalization.

4. Accordingly, the Petitioner has submitted that the Commission may accord approval to the execution of the Supplementary PPA/Addendums in respect of the coal linkage rationalization. It has also submitted that the only difference in the case of PPAs with Respondent MPMCL and KSEBL, in contrast to that of PTC/WBSEDCL, is that these PSA (based on two-part tariff structure) have the inbuilt mechanism for pass through of the variations in the landed fuel cost/kg, on a monthly basis, by capturing the actual cost of coal and the actual cost of transportation. However, the PPA with PTC/WBSEDCL has lumpsum, single part, non-escalable tariff structure. The Petitioner has also submitted that the present petition would fall within the jurisdiction of this Commission, in terms of section 79(1)(b) of the Electricity Act, 2003.



Hearing dated 22.2.2022

5. During the hearing of the petition on 'admission', the learned counsel for the Petitioner submitted that the Petitioner is selling power to the Respondent, MPPMCL (holding company), the Respondent KSEBL (distribution licensee) through various long-term PPAs and to the Respondent WBSEDCL by medium-term PSA, through PTC (Power Trading Corporation Ltd.) and, therefore, falls within the jurisdiction of this Commission in terms of Section 79(1)(b) of the Electricity Act, 2003. The learned counsel also submitted that in terms of the methodology for coal linkage rationalization issued by the MOC vide letter dated 15.5.2018, the savings in cost, is to be passed on to the distribution companies, through supplementary agreements, which are required to be approved by this Commission. The learned counsel further submitted that since all the Respondents herein, have agreed to the coal rationalization proposed by the Petitioner in terms of the MOC letter, the Commission may grant approval to the Supplementary Agreements/ Addendums to PPAs, to be executed by the Petitioner with each of the Respondents. Accordingly, the Commission 'admitted' the Petition, with directions to the Petitioner to furnish the signed copy of the supplementary agreements/ addendums to the PPAs, executed by the Petitioner with the Respondents herein, with respect to coal rationalization.

6. In compliance to the aforesaid directions, the Petitioner vide affidavit dated 16.6.2022 and 30.6.2022 has furnished certain additional information, including copies of the mutually signed supplementary agreement between the Petitioner and the Respondent MPPMCL.



Hearing dated 15.12.2022

7. During the hearing of the petition, the learned counsel for the Petitioner circulated note of submissions and submitted that in the light of the MOC Notification dated 15.5.2018 for coal linkage rationalization for IPPs and Article 16.2.1 of the PPA dated 5.1.2011, the draft SPPA, which was executed by the parties, was approved by MPERC vide its order dated 11.10.2022 in Petition No.46/2022. She further submitted that since the approval of the PSAs (dated 26.12.2014 & 31.12.2014) was rejected by the Kerala Electricity Regulatory Commission (KERC), by order dated 25.6.2022, an appeal has been filed by the Petitioner before APTEL, which is pending. Hence, the learned counsel submitted that the approval of SPPA with KSEBL is presently not being sought, but liberty may be granted to approach this Commission as and when required. The learned counsel also pointed out that since the PPA signed by the Petitioner with the Respondent WBSEDCL (through PTC), for three years from 26.10.2018, has come to an end due to efflux of time, no approval of SPPA with WBSECL is being sought. Accordingly, the learned counsel has prayed that the petition may be disposed of, giving liberty to the Petitioner to file fresh petition, if required, owing to subsequent developments. At the request of the learned counsel, the Commission permitted the Petitioner to upload the note of arguments along with annexures, which has been complied by the Petitioner. None appeared on behalf of the Respondents, despite notice.

Analysis and Decision

8. We have considered the submissions of the Petitioner and the documents on record. The Petitioner has executed PPAs dated 5.1.2011 and 27.6.2011 with the Respondent MPMCL and the Government of Madhya Pradesh for supply of 30% and 5% electricity



from the installed capacity of the project. It has also signed PPAs dated 26.12.2014 and 31.12.2014 with the Respondent KSEBL, for supply of 100 MW and 115 MW respectively from the project. It is noticed that the Petitioner, in terms of the MOC, GOI Notification dated 15.5.2018 for coal linkage rationalization and Article 16.2.1 of the PPA, had executed draft SPPA with the Respondent MPPMCL. Accordingly, the Respondent MPPMCL, during the pendency of this petition, had filed Petition No. 46/2022, before the MPERC, for approval of the draft SPPA and the same had been approved by the said Commission, vide its order dated 11.10.2022. The relevant portion of order is extracted below:

“9. In view of the above facts and considering Articles 16.2.1 of PPA dated 5.1.2011, the Commission hereby accords approval to the draft Supplementary Agreement (to PPA dated 5.1.2011) filed by the Petitioner with the subject petition. A copy of the aforesaid approved draft Supplementary Agreement is annexed as Annexure-I with this order. The aforesaid Supplementary Agreement shall come into effect from the date of execution by all the parties who signed PPA on 5.1.2011. The parties are directed to file a copy of duly approved Supplementary Agreement to the Commission on execution of the same by all parties in PPA.”

9. In the above background, the prayer of the Petitioner, in this petition, to approve the SPPA/Addendum to the PPA, executed with the Respondent MPPMCL, do not survive for consideration. Accordingly, the prayer (A) of the Petitioner, in paragraph 1 above, is disposed of as infructuous.

10. As regards prayer (B) of the Petitioner, to approve the SPPA/Addendum to agreement between the Petitioner and KSEBL, it is noticed from records that KSERC vide order dated 25.6.2022 in O.P. No. 11/2022 had rejected the approval of the PSAs dated 26.12.2014 and 31.12.2014, signed by the Petitioner with Respondent KSEBL. The Petitioner has challenged this order before the APTEL and the same is pending. In view of this, and considering the submissions of the learned counsel for the Petitioner that no approval of SPPA with Respondent KSEBL is being sought now, we do not grant any



approval of the SPPA with the Respondent KSEBL. Accordingly, the prayer (B) of the Petitioner, in paragraph 1 above, is disposed of.

11. As regards prayer (C) of the Petitioner to approve the SPPA/Addendum to the agreement between the Petitioner and PTC/WBSEDCL, we notice from the submissions of the Petitioner, that the PPA signed on 26.10.2018, for a period of 3 years, has come to an end due to efflux of time. In view of this, the prayer (B) of the Petitioner, in paragraph 1 above, has not been considered.

12. Further, the prayer of the Petitioner to grant liberty to approach this Commission, if required, based on subsequent developments, is allowed and the same will be considered in accordance with law.

13. Petition No. 261/MP/2021 is disposed of in terms of the above.

Sd/-
(Pravas Kumar Singh)
Member

Sd/-
(Arun Goyal)
Member

Sd/-
(I. S. Jha)
Member

