

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No.145/MP/2024

Coram:

Shri Jishnu Barua, Chairperson

Shri Arun Goyal, Member

Shri P.K. Singh, Member

Date of Order: 18th May, 2024

In the matter of

Petition under 79 (1)(b) and (f) for approval of the discount in tariff on account of allocation of coal linkage under the SHAKTI Scheme of the Government of India.

And

In the matter of

Adhunik Power and Natural Resources Limited,

468 Square, 1st Floor,

Udyog Vihar, Phase-3,

Gurugram– 122 016, Haryana

...Petitioner

VERSUS

1. Tamil Nadu Generation and Distribution Corporation Limited,

NPKRR Maligai, 6th Floor,

Eastern Wing, 144, Anna Salai,

Chennai-600 002, Tamil Nadu

2. PTC India Limited,

2nd Floor, NBCC Tower 15,

Bhikaji Cama Place,

New Delhi-110066

...Respondents

Parties Present:

Shri Deepak Khurana, Advocate, APNRL

Shri Amit Griwan, APNRL

Ms. Anusha Nagrajan, Advocate, TANGEDCO

ORDER

The Petitioner, Adhunik Power & Natural Resources Limited ('APNRL'), has filed the present Petition with the following prayers:

“(a) Approve the discount of Rs. 0.13/kWh in tariff as offered by the Petitioner

in terms of the Letter of Intent dated 05.02.2024, 02.02.2024, and 01.02.2024 issued under the SHAKTI Policy;

(b) Approve incorporation of the aforementioned discount vide Addendum-4 executed between the parties, so as to enable supply of coal under SHAKTI Scheme; and

(b) Pass such other and further order or orders as this Commission deems appropriate under the facts and circumstances of the present case.”

Background

2. The Petitioner, Adhunik Power & Natural Resources Limited, a company incorporated under the Companies Act, 1956, has set up a Thermal Power Project with an installed capacity of 540 MW (2 x 270 MW) ('the Project') at Saraikela-Kharsawn District in the State of Jharkhand. The Petitioner is a generating company within the meaning of Section 2(28) of the Electricity Act, 2003 (hereinafter referred to as 'the Act').

3. In accordance with the Competitive Bidding Guidelines of the Central Government dated 19.1.2005 under Section 63 of the Act, Respondent No.1, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) had initiated a competitive bidding process through issue of Request for Proposal' (RfP) for procurement of power on long term basis under Case-I bidding process to meet the base load power requirements. Pursuant to the said bidding process, PTC (Respondent No.2) participated and was selected as a 'Seller' for the sale and supply of 100 MW power to TANGEDCO through the Petitioner. Consequently, a Power Purchase Agreement was executed between PTC and TANGEDCO ("Procurer PPA") on 18.12.2013 for the supply of 100 MW power and a back-to-back Power Purchase Agreement was executed between the Petitioner and PTC ("PTC-APNRL PPA") on 19.12.2013. The tariff quoted in respect of the same was adopted

by the Tamil Nadu Electricity Regulatory Commission (TNERC) by its order dated 29.7.2016. Similarly, the Petitioner had PPA and back-to-back PPA with PTC and WBSEDCL for 100 MW. In addition, the Petitioner also had PPA with JBVNL for 122.85 MW and 66 MW separately.

4. The Ministry of Coal, Government of India vide Circular No. 23011/15/2016-CPD/CLD dated 22.5.2017 had introduced a New More Transparent Coal Allocation Policy for Power Sector, 2017, namely, Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (hereinafter called the 'SHAKTI Scheme') for the purpose of providing the linkage coal to the IPPs having already concluded long term PPA with distribution companies. Pursuant to this Scheme, the Petitioner submitted an expression of interest and participated in the 100 MW PPA with TANGEDCO and 122.85 MW PPA with JBVNL and was declared a successful bidder in securing coal linkages and allocation of coal from the Central Coalfields Limited (hereinafter referred to as "CCL").

5. Accordingly, Central Coalfields Limited (CCL) issued the Letter of Intent (LOI) dated 21.12.2017, declaring the Petitioner as the Provisional successful bidder and allocating 900,000 tonnes of coal (G 11 grade) per annum against the above-mentioned PPAs as well as 122.85 MW PPA with Jharkhand Bijli Vitran Nigam Limited (JBVNL), with whom the Petitioner also has executed a long-term PPA.

6. The Petitioner has submitted that pursuant to the issuance of the LOI dated 21.12.2017, the Petitioner executed a supplementary/amended PPA dated 10.5.2018 & 8.5.2018 in order to incorporate the necessary changes in the aforesaid PPAs executed between the Petitioner and Respondent 2 and Respondent 1 and

Respondent 2 herein, after approval of this Commission for the discount in tariff offered by the Petitioner, vide Order dated 18.5.2018 read with corrigendum dated 17.7.2018 passed in Petition No. 84/MP/2018.

7. The Petitioner has submitted that on 8.1.2020, Power Finance Corporation Limited, a Govt. of India Undertaking ("PFC"), issued a request for submission of the expression of interest for the third round of auction of coal linkages under paragraph b(ii) of the SHAKTI Scheme for the IPPs having already concluded long term PPAs ("Third Round Auction"). The Petitioner participated in the Third Round Auction, further to the Procurer PPA/APNRL-PTC PPA as well as 122.85 MW JBVNL PPA and offered 8 paise/kWh as discount and was declared as a provisional successful bidder vide LOI dated 14.7.2020, issued by the Central Coalfields Limited for the award of the 99,000 tonne quantity of coal on an annual basis in relation to the Procurer PPA/APNRL-PTC PPA as well as 122.85 MW JBVNL PPA.

8. Similarly, on 1.9.2021, PFC issued another request for submission of the expression of interest for the fourth round of auction of coal linkages under paragraph b(ii) of the SHAKTI Scheme for IPPs having already concluded long term PPAs ("Fourth Round Auction"). The Petitioner participated in the Fourth Round Auction further to the Procurer PPA/APNRL-PTC PPA as well as the 122.85 MW JBVNL PPA and offered 10 paise discount and was declared as a provisional successful bidder vide LOI dated 25.11.2021 and 26.11.2021, were issued by the CCL and Eastern Coalfields Limited (a subsidiary of Coal India Ltd.), for award of the following quantity of coal:

S. No.	Subsidiary Name	Source Grade	Quantity Provisionally allocated (Tonne) per annum	Levelling Discount (paise/kWh)
1.	ECL	G4	200	10
2	CCL	G11	93000	10

9. Further, the Petitioner has submitted that pursuant to issuance of the LOI dated 26.11.2021 and 25.11.2021, the Petitioner executed a supplementary/amended PPA dated 9.3.2022 in order to incorporate the necessary changes in the aforesaid PPAs executed between the Petitioner and Respondent 2 and Respondent 1 and Respondent 2 herein, after approval of this Commission for the discount in tariff offered by the Petitioner, vide Order dated 3.6.2022 passed in Petition No. 129/MP/2022.

10. On 14.8.2023, PFC issued a request for submission of the expression of interest for the Sixth round of auction of coal linkages under paragraph b(ii) of the SHAKTI Scheme for IPPs having already concluded long term PPAs ("Sixth Round Auction"). The Petitioner participated in the Sixth Round Auction considering PTC-TANGEDCO-100 MW, PTC-WBSEDCL-100 MW, and JBVNL-122.85 MW PPAs and offered 13 paise and was declared as a provisional successful bidder vide LOI dated 1.2.2024, 2.2.2024 and 5.2.2024, were issued by MCL, SECL, and CCL, for the award of the following quantity of coal:

S. No.	Subsidiary Name	Source Grade	Quantity Provisionally allocated (Tonne) per annum	Levelling Discount (paise/kWh)
1.	CCL	G11	460000	13
2	SECL	G11	29600	13
3	MCL (IB)	G13	116000	13
4	MCL (Talcher)	G12	22100	13

11. In light of the aforesaid, the Petitioner has prayed for approval of the aforementioned addendums to the Power Purchase Agreements incorporating the aforementioned discounts in tariff.

12. The Petitioner has stated that it is supplying power to the distribution licensees situated in more than one State by execution of (a) the PPA dated 28.9.2012 with JBVNL for supply of the 122.85 MW (b) PPA dated 25.3.2011 for supply of the 100 MW to WBSEDCL through PTC on back to back basis and (c) PPA dated 19.12.2013 for supply of the 100 MW to TANGEDCO through PTC on back to back basis. Accordingly, the Petitioner has submitted that it has a composite scheme for the supply of power in more than one State in terms of Section 79(1)(b) of the Electricity Act, 2003. Hence, the Petitioner has submitted that in terms of the decision of the Hon'ble Supreme Court in the Energy Watchdog case, the Commission has the jurisdiction to regulate the tariff of the Petitioner.

Hearing dated 16.4.2024

13. During the course of the hearing, the learned counsel for the Petitioner prayed for approval of a discount tariff of Rs. 0.13/kWh incorporated vide Addendum-4 executed between the Petitioner and TANGEDCO to enable the supply of coal under Shakti Scheme, 2017. The learned counsel further submitted that the terms of the LOIs dated 1.2.2024, dated 2.2.2024, and dated 5.2.2024, the levelled discount being provided by the Petitioner, have already been incorporated under the APNRL-PTC PPA and subsequently, in the Procurer PPA vide separate addendums dated 15.3.2024.

14. The learned counsel for the Respondent, TANGEDCO, submitted that

TANGEDCO has no objection to the grant of the Petitioner's prayer , and the same may be allowed.

15. The Petitioner was directed to submit the following information:

“(a) As on date, the source and quantity of coal got allocated under Shakti scheme, the energy envisaged from the coal received under shakti scheme and discount offered in the following format:

<i>S. No</i>	<i>Source of coal allocated under Shakti Scheme</i>	<i>Quantity / Annum</i>	<i>Date of allocation</i>	<i>Energy envisaged from the coal source (Gross MW)</i>	<i>Discount offered (paisa per unit)</i>

(b) The parameters considered and methodology followed in apportionment of the coal allocated under Shakti scheme to various beneficiaries and the correlation with contracted capacity, if any”.

16. The Petitioner, vide its affidavit dated 1.5.2024, has submitted the informed called for. Respondent 1, vide its affidavit dated 14.5.2024, has submitted that the Respondent, TAGNEDCO, has agreed to the relief prayed for by the Petitioner and has no objections to the contents of the detail submitted by the Petitioner on 1.5.2024.

Analysis and decision

(A) Jurisdiction of the Commission

17. As stated in paragraph 12 above, the Petitioner has entered into PPAs with the distribution licensees, namely, TANGEDCO, WBSEDCL, and JBVNL, i.e., the discoms of the three States, for the supply of power at different points in time and for different quantum. Sub-section (b) of Section 79(1) of the Act provides that the Central Commission shall regulate the tariff of the generating company if such

generating company enters into or otherwise has a composite scheme for the generation and sale of electricity in more than one State. The Hon'ble Supreme Court vide its judgment dated 11.4.2017 in Civil Appeals titled Energy Watchdog v CERC & ors [(2017 (4) SCALE 580)] has explained the composite scheme and decided the jurisdiction of this Commission for regulating the tariff of projects meeting the composite scheme as under:

“22. The scheme that emerges from these Sections is that whenever there is inter-State generation or supply of electricity, it is the Central Government that is involved, and whenever there is intra-State generation or supply of electricity, the State Government or the State Commission is involved. This is the precise scheme of the entire Act, including Sections 79 and 86. It will be seen that Section 79(1) itself in subsections (c), (d) and (e) speaks of inter-State transmission and inter- State operations. This is to be contrasted with Section 86 which deals with functions of the State Commission which uses the expression “within the State” in sub-clauses (a), (b), and (d), and “intra-state” in sub- clause(c). This being the case, it is clear that the PPA, which deals with generation and supply of electricity, will either have to be governed by the State Commission or the Central Commission. The State Commission’s jurisdiction is only where generation and supply takes place within the State. On the other hand, the moment generation and sale takes place in more than one State, the Central Commission becomes the appropriate Commission under the Act. What is important to remember is that if we were to accept the argument on behalf of the appellant, and we were to hold in the Adani case that there is no composite scheme for generation and sale, as argued by the appellant, it would be clear that neither Commission would have jurisdiction, something which would lead to absurdity. Since generation and sale of electricity is in more than one State obviously Section 86 does not get attracted. This being the case, we are constrained to observe that the expression “composite scheme” does not mean anything more than a scheme for generation and sale of electricity in more than one State.”

In light of the decision of the Hon'ble Supreme Court, this Commission has the jurisdiction to regulate the tariff of the Petitioner's Project under Section 79(1)(b) of the Act since, in terms of the PPAs entered into, the Project of the Petitioner has a composite scheme for generation and sale of electricity in more than one state.

(B) Reliefs

18. The Petitioner has sought approval of a discount of Rs. 0.13/ kWh in tariff as

offered by the Petitioner in terms of clause (B)(ii)(b) of the 'SHAKTI scheme and the Letter of Intent dated 1.2.2024, 2.2.2024 and 5.2.2024 issued under the SHAKTI Policy. The Petitioner also sought approval of incorporation of the aforementioned discounts vide the addendums executed between the parties so as to enable the supply of coal under the SHAKTI Scheme. The relevant portions of Clause (B) of the Policy guidelines for allocation of Coal linkages to the Power Sector under the 'SHAKTI scheme' are extracted under:

“(B) The following shall be considered under a New More Transparent Coal Allocation Policy for Power Sector, 2017-SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India):

a. CIL/SCCL may grant Coal linkages for Central Government and State Government Gencos at the notified price of CIL/SCCL. Similarly, coal linkages may be granted for JVs formed between or within CPSUs and State Govt/PSUs. The recommendations shall be made by Ministry of Power.

b. CIL/SCCL may grant coal linkages on notified price on auction basis for power producers/ IPPs having already concluded long term PPAs (both under section 62 and section 63 of The Electricity Act, 2003) based on domestic coal. Power producers/ IPPs, participating in auction will bid for discount on the tariff (in paise/unit). Bid Evaluation Criteria shall be the non-zero Levellised Value of the discount (applying a pre-notified discount rate) quoted by the bidders on the existing tariff for each year of the balance period of the PPA. Ministry of Coal may, in consultation with Ministry of Power, work out a methodology on normative basis to be used in the bidding process for allocation of coal linkages to IPPs with PPAs.

i. The discount by generating companies would be adjusted from the gross amount of bill at the time of billing, i.e., the original bill shall be raised as per the terms and conditions of the PPA and the discount would be reduced from the gross amount of the bill. The discount shall be computed with reference to scheduled generation from linkage coal supplied under this auction. This would be applicable to both the PPAs contracted under Section 62 as well as Section 63 of the Electricity Act, 2003.

ii. Accordingly, PPA may be amended or supplemented mutually between the developer and the procurer to pass on the discount to the procurer and the approval of the Appropriate Commission obtained, as per the provisions of the PPA or Regulations.

iii. FSA shall be signed with the successful bidders after the terms and conditions for signing of FSA are met and the Appropriate Commission has approved the amendment or supplement to the PPA.

c. CIL/SCCL may grant future coal linkages on auction basis for power producers/ IPPs without PPAs that are either commissioned or to be commissioned. All such power producers/IPP's may participate in this auction and bid for premium above the notified price of the coal company. The methodology for bidding of linkages shall be similar to the bidding methodology in the policy on auction of linkages of Non-Regulated Sector dated 15.02.2016. Coal drawal will be permitted only against valid long term and medium term PPA with Discoms/State Designated Agencies (SDAs), which the successful bidder shall be required to procure and submit within two years of completion of auction process..."

19. In accordance with the above scheme, the Petitioner, who had already concluded long term PPAs based on domestic coal, was eligible to participate in the bidding process. The grant of coal linkage on notified price from each source will be based on the discount offered by the power producer on the existing tariff for the balance period of the PPA. The discount would be computed with reference to linkage coal supplied and received under the 'SHAKTI scheme.' Moreover, the discount offered by the generating companies would be adjusted from the gross amount of the monthly bill raised in terms of the PPA.

21. The quantum of coal allocation by MCL, SECL, and CCL in the LOI dated 1.2.2024, 2.2.2024, and 5.2.2024, respectively, against the above-mentioned PPAs with TANGEDCO, WBSEDCL, and JBVNL is extracted under:

S. No.	Subsidiary Name	Source Grade	Quantity Provisionally allocated (Tonne)	Levelling Discount (paise/kWh)
1.	CCL	G-11	4,60,000	13
2.	SECL	G-11	29,600	13

3.	MCL (IB)	G-13	1,16,000	13
4.	MCL (Tacher)	G-12	22,100	13

22. The details of the original /supplementary PPAs between the Petitioner and PTC and between PTC and TANGEDCO are as under:

Procurer	Date of Original PPA	Date of Supplementary PPAs
TANGEDCO (Respondent 1)	18.12.2013 (PTC & TANGEDCO) And 19.12.2013 (PTC & APNRL)	Addendum No. 1 dated 10.5.2018 & 8.5.2018 Addendum No. 2 dated 9.3.2022 and 10.3.2022 Addendum No. 3 dated 9.3.2022 and 10.3.2022 Addendum No.4 dated 15.03.2024

23. Relevant provisions of the addendum to the PPA are extracted as under:

“Schedule 4D – Tariff Discount

.....

II. The gross amount of Monthly Bill shall be as per the terms and conditions of the concluded PPA and the discount applicable for the respective year shall be reduced from the gross amount of each such Monthly Bill.

III. For the actual application of the year on year discount, the first year or Year-1 will be said to have commenced from the date of commencement of coal supply under the Fuel Supply Agreement entered into by APNRL and the relevant fuel supplier (under Round-1 coal auction) as provided under the Shakti Policy. Any period remaining in the last year of the concluded PPA shall be considered to be one year for the purpose of calculating the levellized discount.

IV. The amount to be passed on as discount to the Procurer shall be computed with reference to the power generation from the corresponding linkage coal supplied and received under SHAKTI B (ii) Round (VI) policy. The total Monthly energy Bill raised- by the Seller on the Procurer will be as per the formula mentioned below:

The Total Monthly Energy Bill = Monthly Energy Bill calculated as per Schedule 4A – DASource

The discount amount for source for the month shall be calculated as per formula mentioned below:

DA Source = {SE x (Generation Source /Total Scheduled Energy)} x TDS Source

SE = Scheduled Energy for the month for TANGEDCO from the Power Station TDS Source is the discount offered by the Seller for Source n on year on year basis as per the “Tariff Discount Stream” applicable for the month.

Generation Source is the ex-bus generation corresponding to the quantity of coal received at power station from Source n and will be calculated as:

$$\text{Generation Source} = \frac{\text{QACT} \times \text{GCVACT}}{\text{SHR Gross}} \times (1 - \text{Aux}\%)$$

Where:

QACT Quantity of coal received from Source n under the Shakti Policy FSA for the month in MT.

GCVACT GCV of coal as per invoice of the Coal India Ltd. from Source for the month in Kcal / Kg on as received basis.

*Aux% As specified in the Central Electricity Regulatory Commission Terms and Conditions of Tariff Regulations as modified and amended from time to time).
SHRGross As specified in the Central Electricity Regulatory Commission Terms and Conditions of Tariff Regulations as modified and amended from time to time.*

Total Scheduled Energy =Sum of Scheduled Energy from the Power Station to all DISCOMs eligible under Shakti Policy for the month

There will be quarterly and annual reconciliation of discounts passed on TANGEDCO under SHAKTI B(ii) Policy.”

24. Accordingly, the discount provided by the Petitioner under the SHAKTI Policy as per Letter of Intent dated 1.2.2024, 2.2.2024, and 5.2.2024 (13 paise/ kWh) for the Respondent, TANGEDCO, is adopted in terms of Section 63 of Act.

25. Petition No. 145/MP/2024 is disposed of in terms of the above.

Sd/-
(P.K. Singh)
Member

sd/-
(Arun Goyal)
Member

sd/-
(Jishnu Barua)
Chairperson