

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

**Petition No.188/MP/2024
(Dy. No. 203/2024)**

Coram:

**Shri Jishnu Barua, Chairperson
Shri Arun Goyal, Member**

Date of Order: 15th July, 2024

In the matter of:

Petition under Section 79(1)(b) of the Electricity Act, 2003 for approval of discount in tariff and amendment to the PPAs entered into by the Petitioner, on account of allocation of coal linkage under the Shakti Policy of the Government of India.

And

In the matter of:

KSK Mahanadi Power Company Limited.
8-2-293/82/A, Road No. 22,
Jubilee Hills, Hyderabad – 500033

.... **Petitioner**

Vs

1. Madhyanchal Vidyut Vitran Nigam Limited,
4A, Gokhale Marg, Lucknow – 226001

2. Paschimanchal Vidyut Vitran Nigam Limited,
Udyog Bhawan, Victoria Park, Meerut – 250001

3. Purvanchal Vidyut Vitran Nigam Limited,
SLW Bhikaripur, Varanasi – 221004

4. Dakshinanchal Vidyut Vitran Nigam Limited,
Urja Bhawan, NH-2, Sikandra, Agra – 282002

5. Tamil Nadu Generation and Distribution Corporation Limited,
No. 144, Anna Salai, Chennai – 600 002

6. Chhattisgarh State Power Trading Company Limited.
Vidyut Sewa Bhawan, Daganiya, Raipur – 492 013

.....**Respondents**

Parties Present:

1. Shri Anand K. Ganesan, Advocate, KSKMPCL
2. Ms. Aishwarya Subramani, Advocate, KSKMPCL
3. Shri. Abhishek Kumar, Advocate, UP Discoms
4. Shri. Nived Veerapani, Advocate, UP Discoms
5. Ms. Anusha Nagrajan, Advocate, TANGEDCO
6. Ms. Aakansha Bhalla, Advocate, TANGEDCO



ORDER

The Petitioner, KSK Mahanadi Power Company Limited (in short 'KSKMPCL'), has filed this Petition seeking the following prayers:

- a) Approve the Amendment to the PPAs between Petitioner and Respondents 1 to 6 for passing on discount to the procurers as provided for in Clause (B)(ii)(b) of the Shakti Policy dated 22.05.2017, the Scheme Document and the Lols issued by SECL and MCL;*
- b) Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case;*

2. The Petitioner, KSK Mahanadi Power Company Ltd., is a company incorporated under the Companies Act 1956 and presently existing under the provisions of the Companies Act 2013. The Petitioner is a generating company within the meaning of section 2(28) of the Electricity Act, 2003 and is in the process of establishing a 3600 MW (6x600 MW) coal-based generating station at Village Nariyara, Tehsil Akaltara, and District Janjgir-Champa, in the State of Chhattisgarh (in short "the generating station"). Presently, the Petitioner has commissioned only 1800 MW (3 x 600 MW). The present petition has been filed by the Petitioner seeking approval of the discount in tariff and the amendments to the Power Purchase Agreement (PPA) entered into by the Petitioner with the Respondents on account of the allocation of coal linkage under the Shakti Policy of the Government of India.

3. The National Company Law Tribunal, Hyderabad Bench vide Order dated 03.10.2019 in CP (IB) No. 492/07/HDB/2019, admitting a Section 7 application under the Insolvency and Bankruptcy Code, 2016 initiated the Corporate Insolvency Resolution Process (CIRP) of the Petitioner, and appointed Interim Resolution Professional and imposed moratorium under Section 14 of the IBC, 2016. Thereafter, vide Order dated 16.6.2020, Mr. Sumit Binani was appointed as the Resolution Professional and Petitioner is currently undergoing the CIRP under the IBC, 2016.



4. The Respondents are licensees operating under the provisions of the Electricity Act, 2003 ('the Act'). The Respondents No. 1 to 4 are the distribution licensee in the State of Uttar Pradesh. Respondent No. 5 is the distribution licensee in the State of Tamil Nadu, and Respondent No.6 is the distribution licensee in the State of Chhattisgarh. The Petitioner has entered into PPA with Respondent Nos. 1 to 4 on 26.2.2014 for 1000 MW and on 27.11.2013 with Respondent No. 5 for 500 MW under Case-1 bid in terms of Section 63 of the Act for supply from the generating station of the Petitioner and tariff for the same has been adopted by the respective State Electricity Regulatory Commissions. In addition to this, the Petitioner has entered into a PPA dated 18.10.2013 with Chhattisgarh State Power Trading Company (CSP Tradeco), towards host state obligatory power supply of 5%/7.5% of the net generated power at variable cost, in terms of Memorandum of Understanding dated 13.02.2008 and the Implementation Agreement dated 13.8.2009 entered into by the Petitioner with the Government of Chhattisgarh.

5. The Government of India, on 22.5.2017, issued the New More Transparent Coal Allocation Policy for Power Sector -2017, namely, the Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India (in short' the SHAKTI Policy') for the purpose of providing linkage coal to the IPPs having already concluded long term PPA with the Discoms. In accordance with para (B) (ii) of the SHAKTI Policy, the Petitioner was eligible to apply for a coal linkage for the generation and supply of electricity to the Respondents under the respective PPAs.

Submissions of the Petitioner

6. The Petitioner, in this Petition, has mainly submitted the following:

- (a) PFC Consulting Ltd., a wholly owned subsidiary of the Power Finance Corporation Ltd (and a Government of India undertaking) on 26.10.2023, issued the Scheme Document for the sixth round of auction of coal linkages under paragraph B (ii) of the SHAKTI Policy for IPPs/ CPPs having already concluded long term PPAs (hereinafter called the "Scheme Document").



- (b) In terms of the Scheme Document, the Petitioner was eligible to apply for coal linkage to be granted for the generation and supply of electricity to the Respondents under their respective long term PPAs. The Petitioner, under Round Six of the Shakti Policy, was successful in obtaining coal linkages and allocation of coal from the South Eastern Coalfields Limited (SECL) and Mahanadi Coalfields Limited (MCL) in the above auction.
- (c) SECL and MCL have issued Letters of Intent (LOI) dated 1.2.2024 and 5.2.2024, respectively, declaring the Petitioner as a provisional successful Bidder and allocating coal from the following sources:

Sl. No	Subsidiary Name	Source	Grade & Mode	Quantity Provisionally Allocated (Tonne)	Levelized Discount (paise/kWh)
1	SECL	Other (Korba & Mand-Raigarh)	G 11 Road/Rail/Captive [^]	284500	13
2	MCL	IB Coalfields	G 13 Rail/Road/RCR/Captive ^	191000	12
3	MCL	Talcher Coalfields	G12 Rail/Road/RCR/Captive ^	957300	12

[^] Captive Mode developed by the Consumer

- (d) The Scheme Document inter-alia provides as under:

“3.6.8 Submissions by Provisional Successful Bidder(s)

Each Provisional Successful Bidder will be required to submit the following documents and information, within 60 (sixty) days of issuance of LOI to such Provisional Successful Bidder or such additional time period as may be prescribed by CIL at its sole and absolute discretion:

3.6.8.1 Submission of copy of each Amended PPA, along with the approval letter from the appropriate commission; and....”

- (e) The relevant para of the Shakti Policy, is as under:

“(b) 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

- (f) In terms of the SHAKTI Policy and the LOI issued to the Petitioner, the PPA between the Petitioner and Respondents shall be amended/ supplemented to pass on the discount offered by the Petitioner to the Respondents after approval of the Appropriate Commission. The Petitioner is required to submit such approval along with copies of the amended PPAs to SECL and MCL to declare the Petitioner as the successful bidder. Thereafter, the Petitioner would be entitled to sign and execute the Fuel Supply Agreement (FSA) for coal supply.



- (g) In terms of the above, the TANGEDCO PPA has been amended vide Addendum No. 5 dated 15.3.2024, whereby Schedule 4A has been amended to provide for the methodology for adjustment of the discount in the monthly bills to the procurer. A copy of Addendum No. 5 dated 15.03.2024 to the TANGEDCO PPA has been attached and marked as Annexure -D to the petition. Also, the UP PPA has been amended vide Addendum No. 4 dated 27.3.2024, whereby Schedule 4A has been amended to provide for the methodology for adjustment of the discount in the monthly bills to the procurers. A copy of Addendum No. 4 dated 27.3.2024 to the UP PPA has been attached and marked as Annexure-E to the petition. Similarly, Addendum No. 3 dated 9.4.2024 has been executed with CSPTCL, whereby Schedule 6A of the Chhattisgarh PPA has been amended to provide for the methodology for adjustment of the discount in the monthly bills to the procurers. A copy of Addendum No. 3 dated 9.4.2024 has been attached and marked as Annexure -F to the petition. Further, Addendum No. 3/ to the Supplemental PPA dated 29.3.2024 has been executed with CSPTCL, whereby Schedule 6A has been amended to provide for methodology for adjustment of the discount in the monthly bills to the procurers.
- (h) The generation and supply of electricity by the Petitioner to the Respondents is from the generating station as a whole and not from any particular unit. Therefore, the generation of electricity using coal available under the coal linkage in terms of the Shakti Policy is to be apportioned to all the Respondents in a proportionate manner to their respective capacities. The formula inserted in the Amendment to the PPAs captures the said apportionment amongst all the procurers. The discount offered on the tariff is also uniform to all the procurers out of the electricity generated and supplied using coal under the Shakti Policy. The application of the formula for providing the discount is uniform to all the procurers.
- (i) In view of the above change in the tariff payable under the PPAs and since the approval of the Commission is required within a specified time for the execution of the FSA with SECL and MCL, considering the urgency prevailing in the matter, the Petitioner has filed the present Petition seeking the approval of the Commission for the amendments effected to the PPAs.

Hearing dated 8.5.2024

7. During the hearing of the matter on 'admission', the learned counsel for the Petitioner, KSKMPCL, submitted that the present petition had been filed seeking approval of the discount in tariff and amendment to the PPA on account of the allocation of coal linkage under the SHAKTI scheme of the Government of India. He also submitted that the Respondent TANGEDCO and the Respondent UP discoms have consented to the amendments in the PPA on this count. This was also affirmed



by the learned counsels appearing for the said Respondents. After hearing the learned counsel for the parties, the Commission 'admitted' the Petition and directed the Respondents to file a short affidavit indicating their consent to the proposal of the Petitioner. Subject to this, the order in the Petition was reserved.

Submissions of the Respondents

8. In response to the directions of the Commission, the Respondent UP Discoms (R-1 to 4) vide affidavit dated 3.6.2024 have indicated their consent to the proposal of the Petitioner in terms of SPPA4 (dated 27.3.2024) signed between the parties. Similarly, the Respondent TANGEDCO (R-5) vide affidavit dated 5.6.2024 has submitted that it agrees to the reliefs prayed for by the Petitioner and has no objection to the same. Also, the Respondent CSPTCL (R-6) vide affidavit dated 6.6.2024 has submitted that the Commission may approve the amendment in the PPA for passing the benefit of discount under the Shakti scheme, however, the tariff of 5% power being supplied to it under the home state obligation, is to be determined by the State Commission in terms of clause 5.2 of the Tariff Policy, 2016 including the disputes.

Analysis and Decision

9. In the light of the decision of the Hon'ble Supreme Court in the Energy Watchdog case (2017) 4 SCALE 580, this Commission has the jurisdiction to regulate the tariff of the Project of the Petitioner 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.

10. It is pertinent to mention that the Petitioner had earlier participated in the first round of the coal auction as per the scheme document dated 16.8.2017 issued by Coal India Limited under the Shakti Policy and got an allocation of coal. Consequent to the allocation of coal under the Shakti Policy, for effecting the discount in monthly bills, the Petitioner entered into amendment/supplementary agreements with its



beneficiaries, which was approved by the Commission vide order dated 21.2.2018 in Petition No. 21/MP/2018. Subsequently, the Petitioner participated in the fourth round of the auction of coal linkages for IPPs, having already concluded long term PPAs under the Shakti Policy and got an allocation of coal. Supplementary PPAs with the Respondent beneficiaries, for affecting the discount in monthly bills, were approved by the Commission vide order dated 11.7.2022 in Petition No. 117/MP/2022.

11. As stated, the Petitioner, in the present case, has sought the approval of the Commission to the amendments to the PPAs entered into by it with (i) TANGEDCO on 27.11.2013 (ii) UP discoms on 26.2.2014 and (iii) CSPTCL on 18.10.2013, on account of the allocation of coal linkages in the sixth round of auction of coal linkages to IPPs/ CPPs, having concluded PPAs issued by the PFC Consulting Ltd dated 26.10.2023, for passing on discount to the Procurers as provided in Clause (B)(ii)(b) of the SHAKTI Policy dated 22.5.2017 and LOIs issued by SECL and MCL. 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):

(ii) CIL/SCCL may grant coal linkages on notified price on auction basis for power producers/IPPAs having already concluded long term PPAs (both under section 62 and section 63 of The Electricity Act, 2003) based on domestic coal. Power producers/ IPPAs, 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 IPPAs with PPAs. (a) 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. (b) 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. (c) 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.

(a) 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.

(b) 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.

(c) 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

(iii) 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/IPPAs 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..."

12. In accordance with the above scheme, the Petitioner, who had already concluded the long term PPAs based on domestic coal were 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 the linkage coal supplied and received under clause (B)(ii) of 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.

13. The quantum of coal allocation in the LOIs dated 1.2.2024 and 5.2.2024 issued by SECL and MCL, respectively under the "Shakti scheme" to the Petitioner, against the above mentioned PPAs with the Respondents, is extracted under:

Sl. No	Subsidiary Name	Source	Grade & Mode	Quantity Provisionally Allocated (Tonne)	Levellised Discount (paise/kWh)
1	SECL	Other (Korba & Mand-Raigarh)	G 11 Road/Rail/Captive^	284500	13
2	MCL	IB Coalfields	G 13 Rail/Road/RCR/Captive	191000	12
3	MCL	Talcher Coalfields	G12 Rail/Road/RCR/Captive^	957300	12



14. In terms of the above, the Petitioner has entered into Addendum / Supplementary Agreements with the Respondents, thereby amending the respective PPAs by insertion of Schedule 4A and Schedule 6A (as elaborated in para 6(g) above) to provide for a methodology for adjustment of discount in the monthly bills to the Procurers. The Respondents/Procurers have all agreed to the reliefs prayed for by the Petitioner in the petition and have accordingly given their consent/no-objection to the proposal of the Petitioner vide their affidavits, as recorded in para 8 above.

15. In view of the above, the discount provided by the Petitioner under the SHAKTI policy as per the LOI dated 1.2.2024 of SECL (13 paise / kWh) and LOI dated 5.2.2024 of MCL (12 paise/kWh) for Respondents No. 1 to 6, is adopted in terms of Section 63 of the Act.

16. Petition No. 188/MP/2024 is disposed of in terms of the above.

Sd/-
(Arun Goyal)
Member

Sd/-
(Jishnu Barua)
Chairperson

