



**Petition No. 1685 of 2021**  
**BEFORE**  
**THE UTTAR PRADESH ELECTRICITY REGULATORY COMMISSION**  
**LUCKNOW**

**Date of Order (03.12.2021)**

**PRESENT:**

1. Hon'ble Sh. Raj Pratap Singh, Chairman
2. Hon'ble Sh. Kaushal Kishore Sharma, Member
3. Hon'ble Sh. Vinod Kumar Srivastava, Member (Law)

**IN THE MATTER OF:** Petition under Section 86(1)(b) of the Electricity Act, 2003 for seeking approval of the Supplementary Power Purchase Agreement on account of addition of Clause 4.10 under Article 4 of the Principal PPA dated 21.11.2008 with regard to Alternative Source of Power supply by the Seller.

1. Madhyanchal Vidyut Vitran Nigam Ltd. (MVVNL)  
4A, Gokhale Marg, Lucknow 226001
2. Paschimanchal Vidyut Vitran Nigam Ltd. (PVVNL)  
Urja Bhawan, Victoria Park, Meerut - 250001
3. Purvanchal Vidyut Vitran Nigam Limited (PuVVNL)  
Purvanchal Vidyut Bhawan Vidyut Nagar, PO -BLW  
Bhikharipur, Varanasi - 221 004
4. Dakshinanchal Vidyut Vitran Nigam Ltd. (DVVNL)  
Urja Bhawan, NH-2, (Agra-Delhi Bypass Road)  
Sikandra, Agra-282002
5. Kanpur Electric Supply Co. (KESCO)  
KESCO 14/71, Civil Lines, KESA House, Kanpur - 208001
6. U.P. Power Corporation Ltd. (UPPCL)  
Shakti Bhawan, 14-Ashok Marg, Lucknow-226001 ----- **Petitioners**

**Versus**

1. Prayagraj Power Generation Co. Ltd.  
Shatabdi Bhavan, B-12 & 13,  
Sector-4, Noida (U.P.), 201301 ----- **Respondent**



Following were present:

1. Sh. Venkatesh, Counsel, PPGCL
2. Md. Altaf Mansoor, Counsel, UPPCL
3. Sh. Pankaj Prakash, PPGCL
4. Sh. Suhael Buttan, Counsel, PPGCL
5. Chief Engineer, Planning, UPPCL
6. M.D., PuVVNL

### ORDER

**(Date of Hearing 29.07.2021)**

1. The Petitioners and the Respondent had entered "PPA" / "Principal Agreement" dated 21.11.2008 which is valid for a period of 25 years to supply of power up to contracted capacity from Respondent's Thermal Power Station situated at Tehsil Bara, District Prayagraj, Uttar Pradesh. The said PPA is under Case-2 bid as per Guidelines for Determination of Tariff by Bidding Process issued by the Ministry of Power, Government of India (GoI). The Petitioners and the Respondent has entered the 1<sup>st</sup> Supplementary PPA dated 23.12.2020 for amending the PPA dated 21.11.2008. By means of the said Supplementary PPA, a new clause numbered as "Clause 4.10" under the Article 4: "Development of the Project" has been added to the "Principal Agreement" dated 21.11.2008. The said newly added Clause 4.10 is with respect to Alternative Source of Power supply by the Seller i.e., PPGCL.
2. The Prayers of the Petitioner is as below: -
  - a. Approve the Supplementary PPA dated 23.12.2020 to the PPA dated 21.11.2008 (as contained in Annexure No.5) between the Petitioners and the Respondent for providing the Alternative Source of Power Supply by the Seller.
  - b. Pass such other further order(s) as the Hon'ble Commission may deem just in the facts of the present case.

### Brief facts

3. That the PPA dated 21.11.2008 between Petitioners and Respondent is under Case-2 bid i.e., Tariff Based Bidding Process for Procurement of Power on Long Term Basis by Setting up of Power Stations at Specified Location and/or Fuel as per Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensee issued by the Ministry of Power, Government of India.



4. The aforesaid Guidelines and in the Draft/Model PPAs issued by the Ministry of Power, Government of India under Case-2 doesn't contain any provision which provides for supply of power through alternate source by a power generator as compared to that in Standard Power Purchase Agreement for Procurement of Power under Case-1 bidding, provided under Clause 4.6. The said Clause 4.6 of the Standard PPA for Case-1 is being reproduced herein below:

**"Alternative Source of Power Supply"**

*During the Operating Period, if the Seller is unable to provide supply of power to the Procurer(s) up to the Aggregate Contracted Capacity from the Power Station except due to a Force Majeure Event or due to a Procurer Event of Default, the Seller is free to supply power up to the Aggregate Contracted Capacity from an alternative generation source to meet its obligations under this Agreement. Such power shall be supplied to the Procurer(s) at the same Tariff as per the terms of this Agreement and subject to provisions of Article **Error! Reference source not found.** In case the transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges, etc., applicable from the alternative source of power supply are higher than the applicable Transmission Charges from the Injection Point to the Delivery Point, the Seller would be liable to bear such additional charges."*

5. The Ministry of Power, Government of India, has also issued Guidelines and Model Bidding Documents for Long Term Procurement of Electricity from Thermal Power Stations set up on Design, Build, Finance, Own and Operate (DBFOO) basis wherein Model Power Supply Agreement (MPSA-DBFOO) has also provided. Clause 18.6 of the said MPSA-DBFOO is similar to the aforesaid Clause 4.6 of the Standard PPA for Case-1 and provides for alternative source of power supply by the Seller. The said Clause 18.6 of the MPSA-DBFOO is being reproduced herein below:

**"18.6 Substitute Supply"**

*In the event the Availability of the Power Station is reduced on account of Scheduled Maintenance, Unscheduled Maintenance or Force Majeure, the Supplier may, with prior consent of the Utility, which consent the Utility may deny in its sole discretion or convey acceptance with such conditions as it may deem fit, supply electricity from any alternative source, including Merchant Capacity, if any, and such supply shall, for payment of Fixed Charge and Fuel Charge, be deemed to be supply under and in accordance with the provisions of this Agreement."*



6. The petitioners and the respondent, for disposal of the pending matters, before the Commission have entered an amicable settlement by way of Memorandum of Understanding (MoU) dated 29.05.2020 wherein the petitioners (DISCOMs) and the respondent (PPGCL) have also mutually agreed to explore the possibility of supplying power to UPPCLs Discoms, from alternate sources on the same tariff as that agreed and contracted under PPA dated 21.11.2008 for PPGCL. Accordingly, both the parties explored the possibility of supplying power to the Discoms from alternate sources and based on Clause 4.6 of the Standard PPA for Case-1 & Clause 18.6 of the MPSA-DBFOO, the Petitioners drafted the clause enabling the Seller to supply power from alternative source in the present PPA under Case-2.
7. The following clause is proposed to be added for enabling the Seller to supply from alternative source: -

*"In the event the Availability of the Power Station is reduced on account of Scheduled Outage or unscheduled maintenance the Supplier may, with prior consent of the Procurers, supply electricity from any alternative source and such supply shall, be deemed to be supplied under and in accordance with provisions of PPA signed on 21st November 2008. The decision on providing / not-providing consent to proposal from the Supplier shall be conveyed by the Procurer(s) within 3 days of receipt of request for supply of power from alternative source, failing which the consent shall be deemed to have been granted. Such Power shall be supplied to the Procurer (s) at the same Tariff as per the terms of the PPA signed on 21st November 2008. Additional financial burden if any, on account of transmission and other incidental charges, including but not limited to application fees for open access, RLDC/SLDC charges over and above being payable under the said PPA in respect of the alternative source of power supply shall be borne by the Seller.*

*Such capacity declared from alternative sources for which the consent has been provided by the Procurer(s) would also be considered for computation of availability (%) under the PPA.*

*The Seller shall be permitted to supply power to the Procurer(s) from any alternative source for a maximum continuous duration of six (6) months or a maximum non continuous period of twelve (12) months during the Operating Period. This period can be further extended on mutual agreement.*

*Provided that, in the event alternative power supply is due to shutdown of any one unit of the power station, the energy charge (MEPn) billed for the alternative source of power supply shall not exceed the energy charge (MEPn) billed for the other two functioning units of the power station.*