Delhi Electricity Regulatory Commission

Viniyamak Bhawan, 'C' Block, Shivalik, Malviya Nagar, New Delhi – 17.

No. F.11(1967)/DERC/2022-23/7344

Petition No. 20/2022

In the matter of : **Petition under Section 86(1)(a) and section 86(1)(b) of the Electricity Act, 2003 read with Article 12 of the Power Sale Agreement executed between the Petitioner and Tata Power Trading Company Ltd. on 20.01.2019 *inter-alia* seeking approval of the Commission to execute Supplementary Agreement with TPTC Ltd. for pass through of the cost saving due to shifting of coal linkage in furtherance to the methodology for linkage rationalisation dated 15.05.2018 issued by the Ministry of Coal.**

Tata Power Delhi Distribution Ltd. **…. Petitioner**

Versus

Tata Power Trading Co. Ltd. & Anr. **..Respondents**

Coram:

Hon'ble Shri Justice Shabihul Hasnain 'Shastri', Chairperson
Hon'ble Dr. A. K. Ambasht, Member

Appearance:

1. Mr. Nitish Gupta, Advocate, TPDDL
2. Mr. Aniket Prasoon, Advocate, Jhajjar Power Ltd.

ORDER

(Date of Order: 05.01.2023)

1. The Instant Petition has been filed by M/ TPDDL under Section 86(1)(a) and Section 86(1)(b) of the Electricity Act, 2003 read with the Power Sale Agreement dated 20.01.2009 executed between the Petitioner and the Tata Power Trading Company Ltd. (TPTCL) seeking approval to execute Supplementary Agreement with Tata Power Trading Company Ltd. towards revised coal linkage between CLP India Pvt. Ltd. (hereinafter referred to as CLP) and Coal India Limited (CIL). The Petitioner has made the following prayers in its Petition:

   a) Allow the Petitioner to execute/sign Supplementary Agreement with Tata Power Trading Company Ltd.

2. The brief facts of the case are as follows:

   i. As per the Guidelines for Determination of Tariff by Bidding Process for Procurement of Power by Distribution Licensee's dated 19.01.2005 issued by the Ministry of Power, Government of India, Haryana Power Generation Corporation Ltd. (HPGCL) on behalf of Haryana Bijli Vitran Nigam Ltd. (UHBVNL) and Dakshin Haryana Bijli Vitran Nigam Limited (DHBVNL) (hereinafter referred to as Haryana DISCOMs) conducted the international competitive bidding. CLP participated in the bidding and were declared as a successful bidder. In the meanwhile, HPGCL incorporated Jhajjar Power Ltd. (JPL) as special purpose vehicle for setting up the Plant and after CLP being declared as successful bidder 100% equity shares of the JPL were transferred to CLP India. Thereafter, JPL entered into Power Purchase Agreement dated 07.08.2008 with Haryana DISCOMs for a total supply of 90% of the power generated from the Plant i.e. 556.75MW from each unit to UHBVNL & DHBVNL (hereinafter referred to as Haryana PPA).

   ii. In order to comply with the qualification requirement of Mega Power Project, 10% of the capacity was to be supplied outside the State of Haryana. Thus, JPL entered into Power Purchase Agreement dated 20.01.2009 with TPTCL for supply of 10% capacity i.e. 123. 72MW (hereinafter referred to as Tata PPA) from its project, and TPTCL entered into Power Sale Agreement dated 20.01.2009 with the Petitioner for supply of 123.72 MW power (hereinafter referred to as Tata PSA) on back to back basis.

   iii. Ministry of Coal vide its letter bearing No. 23011/79/2014 dated 15.05.2018 issued methodology for linkage rationalization for Independent Power Producer (IPPs) wherein the coal linkage of a Thermal Power Plant an IPPs may be transferred from one Coal Company to another based on the coal availability and the future coal production of that particular coal company ((hereinafter referred to as "Linkage Rationalisation Methodology"). Further, as per the Clause 7 of the Linkage Rationalisation Methodology the variation in coal costs (costs savings) including the costs due to shifting of linkages of coal is automatically and completely pass through to the DISCOMs/procurer/buyer through a Supplementary Agreement. As per the Clause 8 of the Linkage Rationalisation Methodology, the generator i.e. Jhajjar Power Ltd. in the present matter, is required to enter into Fuel Supply Agreement (FSA) with the coal company and the FSA can be entered into between the generator and coal company only when the Supplementary

Agreement to be executed between generator and procurer is approved by the Commission.

iv. On 23.07.2021, JPL issued a letter to TPTCL and requested to provide consent for signing FSA with NCL and further, to issue a letter to ECL/NCL that Tata's PPA has enabling provisions for 100% pass through of any reduction in coal cost to procurers. Further, it stated that in case NCL/ECL insisted for supplementary agreement then it may have to be done on immediate basis.

v. The Petitioner has executed PSA with TPTCL which on back-to-back basis is supplying electricity procured from JPL under the Tata PPA. The Commission vide its earlier order dated 13.05.2010 in Petition No. 05/2009 has already approved the Tata PSA executed within the parties. The Petitioner has now approached the Commission seeking approval to execute Supplementary Agreement with TPTCL as per the terms and conditions of Linkage Rationalisation Methodology, for transfer of existing coal linkage of JPL's Plant from Eastern Coalfields Limited to Northern Coalfields Limited (as originally sought by JPL through its EOI dated 08.09.2020), being in consumer interest. As CIL vide its letter dated 21.07.2021 has intimated the saving and rationalized quantity (calculated by CEA) as Rs. 0.47/kWh and 0.620 MT, respectively, the said benefit will be passed to the Petitioner (being a DISCOM) under the Tata PSA. On account of this coal linkage, benefit to TPDDL based on its allocation from JPL is estimated to be 4.80 paisa per unit. The saving may increase to 6 paise per unit considering that the consumption of coal in JPL is less that its ACQ which would result in increase in usage of linked coal thereby reduce the Energy Charge Rate (hereinafter referred to as ECR) and consequently push it up in merit order. The Commission vide the aforementioned order has approved/allowed the power procurement from JPL's Plant vide its Tariff Order dated 30.09.2021 in Petition No. 03/2021.

vi. The Linkage Coal Rationalisation Methodology mandates that cost saving for the transferred quantity shall be passed on to the DISCOMs/buyers through a Supplementary Agreement which shall be approved by the appropriate Electricity Regulatory Commission, and the FSA of the rationalized source would be signed/implemented only after the appropriate Commission approves the Supplementary Agreement. As per Article 18.1 of the Tata PSA, the terms of the agreement may be amended or supplemented by written agreement between the Parties, after duty obtaining the approval of the Appropriate Commission.

3. The Commission observed that the Petitioner has filed the instant Petition u/S 86(1)(a) as well as 86(1)(b) of the Electricity Act, 2003. The relevant part of Section 86 of the Electricity Act, 2003 is given as under:

> *"86(1)(a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:*
>
> *Providing that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;*
>
> *86(1)(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;"*

4. *Section 79 of the Electricity Act 2003, provides function of Central Commission. Sub section 79 (b) of the Act state as follows;*

> *"to regulate the tariff of generating companies other than those owned or controlled by the Central Government specified in clause (a), if such generating companies enter into or otherwise have composite scheme for generation and sale of electricity in more than one State,"*

Further, the Hon'ble Supreme Court of India in the matter of Energy Watchdog Vs. Central Electricity Regulatory Central Electricity Regulatory Commission and Ors. Etc. dated 11.04.2017 at para 22 has held the following:

> *"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 sub- sections (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."*

5. The Commission had raised a query on 23.06.2022 whether CERC in terms of Section 79(1)(b) has approved the tariff of generating company or not? The Petitioner had

filed the Additional Affidavit on 04.10.2022 before the Commission wherein it is submitted by the Petitioner that CERC vide its Order dated 07.09.2022 in Petition No. 186/MP/2022 has approved the Supplementary Agreement already executed between JPL and Haryana DISCOMs, subject to the signing/ execution of the Supplementary Agreement to TPTCL PSA between TPTCL and TPDDL. The CERC has further directed to place on record the Supplementary Agreement to TPTCL PPA after its execution for the Commission`s record. The relevant part of CERC's order dated 07.09.2022 is given below.

> *"20. Insofar as the relief sought by the Petitioner by way of seeking deemed approval of the Supplementary Agreement between JPL and TPTCL to the TPTCL PPA, to the extent it is signed in the format already shared with TPTCL and is similar to the Supplementary Agreement executed between JPL and Haryana Discoms, it is observed that the said relief is being sought to expedite the process of passing on the benefit of reduction of energy charges to the consumers in the State of Haryana and Delhi.*
>
> *21. In light of the above discussions, it is apparent that the execution and the approval of the Supplementary Agreement(s) to the respective PPA and PSA in the present case have been necessitated for JPL to enter into the FSA with NCL to effectuate the coal linkage rationalisation scheme. As already noted above, the Supplementary Agreement have already been executed between JPL and Haryana Discoms. Moreover, the parties, namely, JPL, TPTCL and TPDDL, as clearly indicted by them, are already at ad-idem with regard to the execution of Supplementary Agreement(s) to TPTCL PPA and TPTCL PSA and such execution is currently pending for want of the prior approval of DERC to TPDDL for entering into Supplementary Agreement between TPTCL and TPDDL. In view of the above circumstances, this Commission keeping in view the consumer interest involved in the present case, which would get served by way of expeditiously passing on the benefit in the reduction in energy charges specifically to the consumers in the State of Delhi, finds it apposite to allow and approve the execution of the Supplementary Agreement to TPTCL PPA between JPL and TPTCL, which is going to be similar to the Supplementary Agreement already executed between JPL and Haryana Discoms, subject to the signing/ execution of the Supplementary Agreement to TPTCL PSA between TPTCL and TPDDL. The Petitioner is directed to place on record the Supplementary Agreement to TPTCL PPA after its execution for the Commission`s record."*

6. In view of above and keeping in view the requirement issued by Ministry of Coal vide its letter bearing No. 23011/79/2014 dated 15.05.2018, the Commission accords approval to the prayer of the Petitioner to execute/sign Supplementary Agreement between Tata Power Delhi Distribution Limited and Tata Power Trading Company Ltd. The Petitioner is directed to place on record the Supplementary Agreement after its execution before this Commission within a reasonable time.

7. Ordered Accordingly.

Sd/-	**Sd/-**
(Dr. A.K. Ambasht)	**(Justice Shabihul Hasnain 'Shastri')**
Member	**Chairperson**