

PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SITE NO. 3, BLOCK B, SECTOR 18-A MADHYA MARG, CHANDIGARH

Petition No. 07 of 2024
Date of hearing: 14.02.2024
Date of Order: 15.02.2024

Petition under Section 86 of the Electricity Act 2003 read with Article 18.1 of the Power Purchase Agreement dated 01.09.2008 seeking directions to approve and take on record the Supplementary Agreement dated 30.01.2024 executed between Talwandi Sabo Power Limited and Punjab State Power Corporation Limited amending the PPA dated 01.09.2008.

AND

In the Matter of: Talwandi Sabo Power Limited, Mansa-Talwandi Sabo Road, Village Banawala, District Mansa, Punjab – 151302

.....Petitioner

Versus

Punjab State Power Corporation Limited, through its Chief Engineer (NRSE & Thermal Designs), Shed No. T-2, Thermal Complex, Near 23 No. Phatak, Patiala 147001, Punjab

.....Respondent

Commission: Sh. Viswajeet Khanna, Chairperson
Sh. Paramjeet Singh, Member

TSPL: Sh. Vishrov Mukerjee, Advocate

PSPCL: Ms. Poorva Saigal, Advocate
Ms. Harmohan Kaur, CE, ARR&TR

ORDER

1. The Petitioner TSPL has filed the present petition seeking to:

- “(a) Approve the Supplementary Agreement dated 30.01.2024 allowing the amendment in the PPA dated 01.09.2008 pursuant to and in accordance with Article 18.1 of the PPA and accordingly take the said Supplementary Agreement on record;*
- (b) Hold and declare that the Supplementary Agreement dated 09.05.2022 has been rendered non-est and stands cancelled / terminated; and*
- (c) Direct PSPCL to provide Rs. 25.03 Crores to TSPL (immediately and as per the request made by TSPL) for further payment to SECL towards the Standing Advance Amount upon execution of the FSA with SECL;*
- (d) Pass such other order(s) as this Hon’ble Commission may deem just in the facts of the present case.”*

2. The submissions made in the petition are summarized as under:

2.1 The Petitioner generating company is operating a 1980 MW (3x660 MW) Thermal Power Plant for supplying its entire power for a period of 25 years to the erstwhile Punjab State Electricity Board (now PSPCL) in terms of the Power Purchase Agreement dated 01.09.2008 (PPA). The plant has been set-up under Case-2 Scenario-4 of the Competitive Bidding Guidelines and PSPCL had provided a long-term coal linkage to TSPL in the form of Letter of Assurance (LOA) dated 14.08.2008 for 7.72 MMTPA of E/F Grade Coal to be supplied from MCL. On 04.09.2013, TSPL entered into a Fuel Supply Agreement (FSA) with Mahanadi Coalfields Limited (MCL) for procurement of coal for the Project for a period of 20 years on a without prejudice basis under the aegis of Hon’ble Appellate Tribunal

for Electricity (APTEL) Order dated 18.04.2013 passed in Appeal Nos. 56 & 84 of 2013. Out of this original quantity, 1.00 MMTPA was transferred to Northern Coalfields Limited (NCL) in the 2nd round of coal linkage rationalization. Presently, only 6.72 MMTPA of Coal is available for supply by MCL to TSPL under the FSA dated 04.09.2013.

2.2 Rationalization of Coal Linkage from MCL to SECL:

- a) That on 15.05.2018, the Ministry of Coal vide its letter no. 23011/79/2014-CPD/CLD issued the methodology for linkage rationalization for IPPs, whereby the coal linkage of a Thermal Power Plant (TPP) of an Independent Power Producers (IPPs) may be transferred from one coal company to another based on the coal availability and future coal production plan of the coal company. The underlying objective behind the exercise is meant to reduce the landed cost of coal due to reduction in transportation cost of coal.
- b) On 14.06.2023, Coal India issued the Standard Operating Procedure for Linkage Rationalization (“SOP dated 14.06.2023”) to be adopted for processing further rounds of rationalization of linkages for State/Central Generating Companies and IPPs. The following provisions of the SOP are noteworthy:
 - (i) The EOIs submitted by IPPs shall be sent to Central Electricity Authority (CEA) for calculation of savings on account of linkage transfers. Based on the calculation of savings indicated by CEA, Draft Rationalized Matrix shall be prepared at Coal India level.

(ii) The amendments in the FSA due to linkage transfer, including submission of Supplementary/amended PPA duly approved by the Appropriate Regulatory Commission will be required to be completed by IPPs within 7 months of circulation of final approved rationalized matrix.

(iii) If any IPP fails to sign the FSA with the new source within 7 months, the quantity for which rationalization was done shall be deemed as lapsed and corresponding forfeiture of EMD shall be made.

c) On 17.08.2023, Coal India issued a Notice inviting Expression of Interest (Eoi) from IPPs for rationalizing their existing linkage (3rd Round of Linkage Rationalisation).

d) On 08.09.2023, PSPCL filed Petition No. 50 of 2023 before the Commission *inter alia* seeking directions to TSPL to apply for rationalization of its existing coal linkage of 6.72 MMTPA from MCL to SECL in terms of Coal India Notice dated 17.08.2023 read with SOP. Whereon, vide Order dated 11.09.2023, the Commission, while observing that rationalization of TSPL's existing coal linkage would lead to a positive impact on the tariff for the consumers in Punjab, directed as under:

(i) TSPL shall apply for rationalization of its existing coal linkage from MCL to SECL.

(ii) PSPCL shall provide the requisite funds to facilitate submission of TSPL's application for rationalization of its existing coal linkage.

- e) On 14.09.2023, based on the consent and approval of PSPCL, TSPL submitted its Application to Coal India for linkage rationalization under the 3rd Round and *inter-alia* requested for rationalization of its existing long-term coal linkage of ACQ of 6.72 million MTPA from MCL to SECL.
- f) On 28.11.2023, Coal India wrote to TSPL with respect to its application for Linkage Rationalization under the 3rd Round and *inter-alia* stated that the details of cost savings and the rationalized quantity of coal for TSPL, as received from CEA vide email dated 27.10.2023, is as under: -

Name of the Plant	SHR (kcal/kwH)	Earlier Linkage Details		After rationalization		Savings in Transportation Cost (Rs./KwH)
		Coal Company	ACQ (in Te)	Coal Company	ACQ (in Te)	
TSPL	2400	MCL	67,20,000	SECL	54,43,826	0.60

- g) On 30.11.2023, TSPL, while referring to Coal India's letter dated 28.11.2023, requested PSPCL to suggest the way ahead in relation to the coal linkage rationalization as finalized by Coal India. On 14.12.2023, PSPCL while replying to TSPL's letter dated 30.11.2023, stated that TSPL shall approach the Commission and adopt similar procedure as has been done earlier by TSPL while rationalisation of ACQ from MCL to NCL during the 2nd round of linkage rationalisation.
- h) On 20.12.2023, Coal India released the final approved rationalization matrix for TSPL for 3rd Round of Linkage Rationalization as intimated vide its letter dated 28.11.2023. It is submitted that as per the methodology for linkage rationalization for IPPs, the above cost saving

(indicated in Coal India's letters dated 28.11.2023 and 20.12.2023) as calculated by Central Electricity Authority is indicative in nature and is for consideration as a criterion only for selection of IPPs. However, the actual saving realized due to linkage rationalization is required to be passed on to the Procurer/Discom on the basis of the actual data and by way of the Supplementary Agreement, which is required to be approved by this Hon'ble Commission.

- i) On 20.12.2023, TSPL wrote to PSPCL, and *inter-alia* provided the draft of the Supplementary Agreement (to the PPA dated 01.09.2008) to be executed between the parties in terms of the requirement under the coal rationalization policy notified by the Ministry of Coal on 15.05.2018. Accordingly, TSPL sought PSPCL's approval on the draft Supplementary Agreement. Pursuant thereto, both the parties deliberated on the modalities of the Supplementary Agreement and after detailed discussion the Supplementary Agreement was finalised *inter-se* parties on 22.01.2024.
- j) On 30.01.2024, TSPL and PSPCL executed the Supplementary Agreement to PPA dated 01.09.2008 and *inter-alia* mutually agreed to the following:
- (i) Coal India has offered to rationalize the linkage from MCL to SECL as under:

Name of the Plant	SHR (kcal/kwH)	Source (From)	Rationalized Sources (To)
		MCL	SECL
		Quantity (MMT)	Quantity (MMT)
TSPL	2400	6.72	5.443826

- (ii) As per the Methodology for linkage rationalisation for IPPs, the cost savings as calculated by CEA is indicative and is a criterion for selection of IPPs for linkage rationalisation. However, actual saving realized due to linkage rationalization is required to be passed onto the Procurer/Discom through the Supplementary Agreement.
- (iii) Supplementary Agreement shall become effective only after approval of the Commission.
- (iv) The signing of the FSA for the rationalized source with the coal company, including submission of the Supplementary Agreement/Amended PPA duly approved by the Commission are required to be completed within 7 months of circulation of the final approved rationalized matrix by Coal India.
- (v) The actual impact in the cost of coal due to linkage rationalization shall be passed on to PSPCL in accordance with the Monthly Energy Charge formula as per Schedule 7 of the PPA, based on actual data.
- (vi) The Supplementary Agreement is without prejudice to the rights and contentions of both the parties available under law and shall be subject to the outcome of disputes between the parties including but not limited to existing disputes before any forum including the Commission, APTEL, High Court, Supreme Court, or any other forum. This agreement shall not constitute a waiver of rights of the parties.

- k) It is submitted that the FSA for the rationalized source with the coal company is required to be signed by PSPCL and subsequently assigned to TSPL. However, without prejudice to the respective claims and counter claims of the parties with regard to the obligation to sign the FSA with the Fuel Supplier which are the subject matter of various pending proceedings between the parties, TSPL is proceeding to sign the FSA with SECL, considering the overall interest of the Project upon approval of the Supplementary Agreement dated 30.01.2024 by the Commission.
- l) The intent and purpose of the present petition filed by TSPL is primarily to seek formal approval of the Supplementary Agreement dated 30.01.2024 to PPA dated 01.09.2008 from the Commission. In terms of Article 18.1 of the PPA, the PPA can be amended or supplemented only by a written agreement between the Parties and after duly obtaining the approval of the Commission. It is submitted that there is consensus ad-idem between the parties which is apparent from the review of the executed Supplementary Agreement. Therefore, the essence of requirement of a written agreement to amend the PPA in terms Article 18.1 of the PPA is satisfied.
- m) The Commission in the past has approved such Supplementary Agreements executed between parties (including TSPL and PSPCL) in similar petitions seeking identical prayers i.e., for approval of the supplementary

agreement pursuant to the requirement under the Linkage Rationalization Methodology dated 15.05.2018.

- n) In view of the foregoing, the Commission may also be pleased to approve TSPL's Supplementary Agreement dated 30.01.2024 with respect to Linkage Rationalization of 6.72 MMTPA of coal from MCL to 5.443826 MMTPA of coal from SECL.

2.3 Supplementary Agreement dated 09.05.2022 has been rendered infructuous

- a) It is submitted that TSPL had filed Petition No. 22 of 2022 before the Commission seeking approval of the Supplementary Agreement dated 09.05.2022 to the PPA executed between TSPL and PSPCL for giving effect to linkage rationalization of 0.864 MMT of coal from MCL to Eastern Coalfields Limited (ECL). Upon approval by the Commission vide its Order dated 19.05.2022, TSPL submitted the necessary documents (along with the copy of the approved Supplementary Agreement dated 09.05.2022 and Order dated 19.05.2022) to Coal India on 19.05.2022 itself for execution of the FSA with ECL for 0.864 MMT coal. Thereafter, both TSPL and PSPCL vide various communications dated 17.05.2022, 20.05.2022, 20.07.2022, 27.07.2022, 03.08.2022, 18.08.2022, 12.09.2022, 15.09.2022 and 10.12.2022 requested Coal India and ECL to expedite the process for signing of the FSA for 0.864 MMT coal with ECL. However, Coal India vide letter dated 12.01.2023 informed that:

- (i) In the 2nd Round of linkage rationalization for IPPs conducted in July 2021, TSPL coal linkage was also rationalised from MCL to ECL. However, due to less availability of coal, the FSA has not been executed by ECL so far.
 - (ii) It is not feasible to implement the transfer of linkage quantity from MCL to ECL at this stage.
- b) In view of the above it is submitted that due to Coal India's and ECL's inability to execute the FSA for 0.864 MMT coal, the Supplementary Agreement dated 09.05.2022 has been rendered infructuous. Accordingly, the Petitioner humbly requests the Commission to declare the Supplementary Agreement dated 09.05.2022 as *non-est* and that it stands cancelled / terminated.

2.4 Standing Advance Amount of approximately 25.03 Crore to be paid to SECL

- a) It is submitted that Clause 12.1.2 of the FSA dated 04.09.2013 (as amended) provides the mechanism for billing and payment under the FSA with MCL. In terms thereof, TSPL is required to make the payment in accordance with either of the following payment mechanisms:
 - (i) Advance payment for a month in 3 installments for availing coal supplies from MCL. The installments shall cover the As Delivered Price of coal for coal quantities and account for the weighted average base prices of grades of coal based on actual supplies from the previous month; OR

- (ii) Maintain an Irrevocable Revolving Letter of Credit (IRLC) throughout the term of the FSA, equivalent to the As Delivered Price of coal. In addition to the IRLC, TSPL shall pay an advance amount equivalent to 7 days coal value by way of demand draft/bankers' cheque/electronic fund transfer.
- b) Subsequently, Coal India vide its Methodology dated 17.04.2020 and Revised Methodology dated 22.04.2022, has also provided the option of Usance Letter of Credit (Usance LC) for making payment of coal to be procured by power sector consumers under the FSA. For utilising the facility of Usance LC, the buyer (i.e., TSPL) has to pay 'Standing Advance Amount' equivalent to 7 days of "As delivered price" of coal in case of Rail Mode. The "As Delivered Price" of the highest grade of coal available under the FSA is used to calculate the Standing Advance Amount.
- c) Currently, for procurement of coal from MCL under the FSA dated 04.09.2013, TSPL has provided the Usance LC to MCL along with the Standing Advance Amount of Rs. 30.95 Crore, which shall be refunded upon rationalisation of linkage from MCL to SECL. However, it will be released only after all the coal requisitioned by TSPL from MCL has been delivered to the Project site and all formalities in relation to the FSA have been completed. This process is expected to take at least 5 to 6 months post the last monthly allocation from MCL.
- d) It is submitted that in terms of prevailing dispensation and Coal India Methodology dated 17.04.2020 and Revised

Methodology dated 22.04.2022, TSPL will have to provide the Usance LC along with the Standing Advance Amount (equivalent to 7 days of “As Delivered Price” of coal) i.e., approximately 25.03 Crores to SECL immediately after execution of the FSA with SECL. Coal supply from SECL will not commence until TSPL provides this advance amount along with the Usance LC.

e) Presently, TSPL is in a precarious financial situation on account of severe cash flow issues and does not have the financial resources to make the advance payment of Rs. 25.03 Crores to SECL. Thus, in the interest of PSPCL, the consumers of Punjab and to ensure uninterrupted operation of the Project, the Commission may be pleased to direct PSPCL to provide the Standing Advance Amount of approximately Rs. 25.03 Crores to be paid to SECL upon execution of FSA and immediately as per the request made by TSPL. TSPL undertakes to promptly refund the amount paid by PSPCL once MCL refunds the amount of Rs. 30.95 Crores to TSPL.

3. The petition was taken up for hearing today i.e. on 14.02.2024. Wherein, the Ld. Counsel of the petitioner while reiterating the submissions made in the petition requested for admission of the petition and early consideration/approval of its prayers keeping in view the limited window available for completion of formalities required for signing of the FSA with the SECL. The Ld. Counsel appearing for PSPCL also supported the petitioner’s prayers for the approval of Supplementary Agreement dated 30.01.2024 to the PPA and declaration that the Supplementary Agreement dated

09.05.2022, which could not be fructified, has been rendered non-est. After hearing the parties the Commission approves the supplementary agreement dated 30.01.2024 allowing amendment in the PPA dated 01.09.2008 as prayed in the Petition as per the following detailed Order:

4. Findings and Decision of the Commission:

After hearing the parties and keeping in view the facts stated in the petition and the submissions/arguments made during the hearing as well as the submission made earlier in the proceedings of Petition No. 50 of 2023 filed by PSPCL, the Commission observes and decides as under:

4.1 Prayer to approve the Supplementary Agreement dated 30.01.2024 allowing the amendment in the PPA dated 01.09.2008 in accordance with Article 18.1 of the PPA:

It has been submitted that, in reference to the TSPL's Expression of Interest (EoI) submitted for rationalization of its coal linkage, CIL has intimated the rationalized quantity/indicative saving in transportation cost on account of linkage rationalization of 6.72 MMT from MCL to SECL as 5.443826MMT/ Rs. 0.60/kWh. Further, the CIL methodology mandates that, cost saving for the transferred quantity shall be passed on to the Discom through a Supplementary Agreement to be approved by the appropriate Commission. The amendment in the Fuel Supply Agreement (FSA) due to linkage rationalization and submission of Supplementary Agreement duly approved by the commission is required to be completed within 7 months of circulation of final approved rationalized matrix i.e. by 28.06.2024. Accordingly, the instant petition has been filed for approval of the Supplementary

Agreement dated 30.01.2024 executed between the parties, in terms of Article 18.1 of the PPA.

The Commission refers to the Article 18.1 of the PPA, which provides as under:

“18.1 Amendment

This Agreement may only be amended or supplemented by a written agreement between the Parties and after duly obtaining the approval of the Appropriate Commission, where necessary.”

Thus, the provision exists in the PPA to amend or supplement the same by a written agreement between the parties with the approval of the Commission. The Commission observes that, herein, the parties to the PPA have entered into a Supplementary Agreement dated 30.01.2024 with mutual consent, with the stated objective to reduce the landed cost of coal, which shall result in reduction of the variable charges to the distribution licensee and consequently to the consumers.

The Commission, vide interim Order dated 11.09.2023 in Petition 50 of 2023 filed by PSPCL seeking directions for TSPL (the petitioner herein) to apply for coal rationalization under the said policy notified by the Ministry of Coal for rationalization linkage citing potential savings during the course of the PPA, has already observed as under:

“...the proposed rationalisation scheme entailing an estimated annual saving of about Rs 367/- crore as calculated in TSPL’s communication to PSPCL is a win-win situation for all the stakeholders and will also have a positive impact on tariff for the end consumers and has an urgency due to a limited window available for the necessary application. The Commission is acutely conscious of the urgency in applying for the rationalisation since the

window closes on 15.09.2023 and strongly agrees with the view of both parties that such an opportunity should not be missed. Accordingly the Commission directs the TSPL to immediately proceed to apply under the said EoI issued by Coal India Limited for transfer of its existing linkage from MCL to the SECL. As offered and agreed by both parties, PSPCL shall provide the required funds to facilitate the submission of the application by TSPL. There shall be a moratorium on the adjustments of the said credit provided on account by PSPCL from TSPL's monthly bills for a month or till next date of hearing, whichever is later. The actual obligation to bear the charges shall be as per the final decision made in this Petition after considering the issues in the petition and as raised by Ld. Counsel during the hearing."

In view of the above, the Commission finds it prudent to approve the same with the direction that the full extent of the savings would be passed on to the Respondent PSPCL and that the Petitioner would be responsible for providing the necessary details and related information in respect of such procurement of coal and actual savings that accrue.

4.2 Prayer to hold and declare that the Supplementary Agreement dated 09.05.2022 has been rendered non-est and stands cancelled / terminated:

It has been pleaded that the Supplementary Agreement dated 09.05.2022 to the PPA executed between TSPL and PSPCL for linkage rationalization of 0.864 MMT of coal from MCL to Eastern Coalfields Limited (ECL) was approved by the Commission vide its Order dated 19.05.2022 in Petition No. 22 of 2022 filed by the petitioner. However, Coal India vide letter dated 12.01.2023 informed that due to less availability of coal,

the FSA has not been executed by ECL so far and it is not feasible to implement the transfer of linkage quantity from MCL to ECL at this stage. The respondent PSPCL has also supported the prayer of the petitioner that the said agreement which could not be fructified has been rendered non-est.

In view of the above, the Commission agrees with the parties that due to Coal India's and ECL's inability to execute the FSA for rationalization of 0.864 MMT coal, the said Supplementary Agreement dated 09.05.2022 to the PPA has been rendered infructuous and rendered non-est and thus stands cancelled/terminated.

4.3 Prayer to direct PSPCL to provide Rs. 25.03 Crores to TSPL for further payment to SECL towards the Standing Advance Amount upon execution of the FSA with SECL:

The petitioner's plea is that, in terms of the Coal India Methodology for procuring coal under the FSA, it has to pay a 'Standing Advance Amount' equivalent to 7 days of "As delivered price" of coal to the SECL, which comes to about Rs. 25.03 Crores. However, its Standing Advance Amount of Rs. 30.95 Crore maintained with the MCL under the FSA dated 04.09.2013, to be refunded upon rationalisation of linkage from MCL to SECL shall be available to it only after at least 5 to 6 months post the last monthly allocation from MCL. It has been pleaded that, presently, in view of a precarious financial situation on account of severe cash flow issues it does not have the financial resources to make the advance payment of Rs. 25.03 Crores to SECL. Therefore, in the interest of PSPCL, the consumers of Punjab and to ensure uninterrupted operation

of the Project, the Commission may be pleased to direct PSPCL to provide the Standing Advance Amount of approximately Rs. 25.03 Crores required to be paid to SECL upon execution of FSA, which shall be returned upon receipt of an advance of Rs. 30.95 Crores from MCL.

The Commission makes it clear that the indulgence or directions of the Commission are not warranted in such matters which are not in terms of the provisions of the PPA and/or Orders of the competent Courts and are best mutually agreed between the parties.

The Commission also makes it clear that it does not approve the specific provisions of the PPA or any supplementary agreements which are best settled mutually between the parties as in this case.

The petition is disposed of in terms of the above observations.

Sd/-

(Paramjeet Singh)
Member

Sd/-

(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 15.02.2024