

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

Petition No. 64 of 2021
Date of Order: 27.12.2021

Petition seeking direction to approve and take on record the Supplementary Agreement executed between PSPCL and NPL on 22.10.2021 amending the Power Purchase Agreement dated 18.01.2010 (PPA) signed between erstwhile Punjab State Electricity Board (now PSPCL) and NPL in terms of Article 18.1 thereof.

AND

In the matter of: Nabha Power Limited (NPL), Aspire Tower, 4th Floor,
Plot No.55, Industrial and Business Park, Phase-I,
Chandigarh-160 002

... Petitioner

Versus

Punjab State Power Corporation Limited (PSPCL),
The Mall, Patiala, 147001 (Punjab)

....Respondent

Present: Sh. Viswajeet Khanna, Chairperson
Ms. Anjuli Chandra, Member
Sh. Paramjeet Singh, Member

ORDER

1. The Petitioner NPL has filed the present petition seeking to approve the Supplementary Agreement dated 22.10.2021 allowing the amendment in the PPA in accordance with Article 18.1 of the PPA. It has been submitted that:

- a) The Petitioner is a generating company that owns and operates 1400 MW (2x700 MW) thermal power plant in the state of Punjab under Case II Scenario IV route and has entered into the Power Purchase Agreement dated 18.01.2010 (**PPA**) with the erstwhile Punjab State Electricity Board (now PSPCL).
- b) That on 15th May 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 and cost of coal.
- c) That Coal India Limited (**CIL**) on 25.08.2020 issued a notice inviting the Expression of Interest (**Eoi**) from IPPs for rationalizing their existing linkage. Accordingly, with a view to reduce the landed cost, the Petitioner submitted its Eoi requesting for rationalization of linkage of 2.775 MMT from South Eastern Coalfield Limited (**SECL**) to Northern Coalfields Limited (**NCL**).
- d) That CIL vide its letter no. CIL/M&S/Linkage Rationalization/313 dated 21.07.2021 communicated to the Petitioner about the rationalized quantity of IPPs, as under:

PLANT	SHR (kCal/kWh)	Sources (From)	Rationalized Sources (To)	
		SECL	NCL	
		Qty (MT)	Qty (MT)	Savings (Rs/kWh)
Nabha Power Ltd	2268	2.775	2.464	0.22

- e) That in terms of the Central Electricity Authority (CEA) methodology for linkage rationalization for IPPs, the cost saving as calculated by CEA is indicative and is for consideration as a criterion only for selection of IPPs. However, actual saving realized due to linkage rationalization is required to be passed on to the Procurer/Discom through a Supplementary Agreement, which in turn is required to be approved by the appropriate Electricity Regulatory Commission. Accordingly, the Parties on 22.10.2021 executed the Supplementary Agreement.
- f) That the intent and purpose of the present petition is primarily to seek formal approval of the Supplementary Agreement dated 22.10.2021 to PPA dated 18.01.2010, in terms of the specific provision of the PPA (i.e., Article 18.1) that the amendment in the PPA can only be pursuant to mutual agreement between the parties, which thereafter, if necessary, needs to be approved by the Commission.
- g) That there is consensus ad-idem between the parties which is apparent from the review of the executed Supplementary Agreement and therefore, the essence of requirement of a written agreement to amend the PPA in terms Article 18.1 of the PPA is satisfied and accordingly, the Commission may approve

the arrangement of linkage rationalization envisaged by way of the Supplementary Agreement.

2. After considering the averments made in the petition, the petition was admitted vide Order dated 29.11.2021 with directions that PSPCL shall file its reply to the petition within ten days with a copy to the petitioner and the petitioner may file rejoinder to the reply, if any, with a copy to PSPCL before the next date of hearing i.e.15.12.2021.
3. In compliance thereof, PSPCL filed its reply vide memo no. 7805 dated 09.12.2021, submitting that:
 - a) The Supplementary Agreement has been entered into in public interest and be approved by the Commission as prayed for in the petition.
 - b) The full extent of savings that will accrue by prudent actions of the petitioner (NPL) would have to be necessarily passed on to the respondent i.e. PSPCL. And, the petitioner shall be liable to provide details of any such coal procurement under the Coal Linkage Rationalization policy and related information (s) as and when sought by the PSPCL.
 - c) At Para 4 of the petition, the date of submission of EOI by M/s NPL to CIL has been written wrongly as 07.09.2009, whereas it should be 07.09.2020 as per page no.183 of the petition filed by the petitioner.
4. In the hearing held on 15.12.2021, the counsel for the petitioner submitted that the specific information as and when asked for shall be provided to PSPCL as per the provisions of the PPA. The counsel while agreeing to the inadvertent error in date its EOI indicated in the petition informed that, it is depicted correctly in the

Supplementary Agreement. After hearing the parties, the Commission reserved the Order vide Order dated 20.12.2021.

5. Findings and Decision of the Commission:

The Commission has examined the averments made in the Petition as well as the documents adduced on the record. The findings and the decision of the Commission is as under;

- 5.1 The Commission notes the correct date of submission of EOI by M/s NPL to CIL as 07.09.2020.
- 5.2 It has been submitted that, in reference to the NPL's Expression of Interest (EOI), submitted for rationalization of its coal linkage from South Eastern Coalfield Limited (SECL) to Northern Coalfields Limited (NCL) as per the methodology issued by the Ministry of Coal, CIL vide its letter dated 21.07.2021 has intimated the saving and rationalized quantity (calculated by CEA) as Rs. 0.22/kWh and 2.464 MT respectively. The said saving is indicative and the passing on benefits to Discom by the IPPs is to be calculated on actual data. Further, the 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 Fuel Supply Agreement (FSA) of the rationalized source would be signed/implemented only after the appropriate Commission approves the Supplementary Agreement. Accordingly, the instant petition has been filed for approval of Supplementary Agreement dated 22.10.2021 (to PPA dated 18.01.2010) executed between the petitioner Generator and the distribution licensee PSPCL, in terms of Article 18.1 of the PPA.
- 5.3 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 PPA can be amended or supplemented by a written agreement between the Parties, with the approval of the Commission. Further, as the parties to the PPA have executed the Supplementary Agreement with mutual consent, with the underlying objective to reduce the landed cost of coal; 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.

The petition is disposed of accordingly.

Sd/-
(Paramjeet Singh)
Member

Sd/-
(Anjuli Chandra)
Member

Sd/-
(Viswajeet Khanna)
Chairperson

Chandigarh
Dated: 27.12.2021