

**PUNJAB STATE ELECTRICITY REGULATORY COMMISSION
SCO NO. 220-221, SECTOR 34-A, CHANDIGARH**

**Petition No. 47 of 2013
Date of Order:08.03.2018**

In the matter of: Petition for amendment in Power Purchase Agreement dated 18.01.2010 signed between erstwhile PSEB and NPL under Article 18: "MISCELLANEOUS PROVISIONS" for change in unit configuration from 2x660 MW (1320MW) to 2x700MW (1400MW) for Rajpura Thermal Power Project.

AND

In the matter of: Punjab State Power Corporation Limited, The Mall, Patiala.
.....Petitioner

Versus

Nabha Power Limited (NPL) wholly owned subsidiary of M/s L & T Power Development Limited.

.....Respondent/Non-Applicant

Present: Ms. Kusumjit Sidhu, Chairperson
Shri S.S. Sarna, Member
Smt. Anjuli Chandra, Member

ORDER

Punjab State Power Corporation Limited (PSPCL) has filed the present petition for amendment in Power Purchase Agreement (PPA) dated 18.01.2010 signed between erstwhile Punjab State Electricity Board (PSEB) and Nabha Power Limited (NPL) under Article 18 of the PPA i.e. 'Miscellaneous Provisions'

for change in unit configuration from 2x660 MW (1320MW) to 2x700MW (1400MW) for Rajpura Thermal Power Project.

The petition was admitted vide Order dated 26.08.2013 directing the respondent to file reply by 06.09.2013 with a copy to the petitioner and each other. It was also ordered that Government of Punjab, Department of Power be impleaded as a respondent in the petition. The next date of hearing was fixed as 10.09.2013.

OSD/Power Reforms, Govt. of Punjab, Department of Power (Power Reforms Wing) submitted vide letter dated 03.09.2013 that the State Govt. concurs with the petition filed by PSPCL and if any specific information is required that may be intimated.

NPL vide letter dated 05.09.2013 requested the Commission to grant extension of time for filing reply. During hearing on 10.09.2013, NPL was directed to file reply by 13.09.2013 and the same was filed on 13.09.2013. The next date of hearing was fixed as 24.09.2013.

The matter was heard on 24.09.2013 and the Commission in its Order dated 25.09.2013 observed that the issue as to “whether the Procurer/PSPCL or Seller/NPL is under an obligation to arrange coal for the project with enhanced capacity of 1400 MW” is currently pending adjudication before Hon’ble APTEL in Appeal No. 68 of 2013 which has been filed by NPL and L&T power development limited against the Order dated 13.12.2012 of the Commission in petition no. 56 of 2012 and it would be inappropriate at this stage to entertain such a prayer as has been made in para (iii) of the prayer in the petition and note under para 1 (vi) in the format of amendment annexed to the petition as

Annexure 'G'. The Commission decided to take up the petition for further hearing on 29.10.2013.

During hearing on 29.10.2013, both parties submitted that the issue regarding obligation to arrange coal for the enhanced capacity of 1400 MW from 1320 MW is sub-judice before the Hon'ble Appellate Tribunal for Electricity in Appeal No. 68 of 2013 filed by the respondent impugning Order of the Commission in petition no. 56 of 2012 and, therefore, it shall be more appropriate to take the decision in this petition after the decision of the said Appeal. Accordingly, the Commission vide its Order dated 31.10.2013 adjourned this petition sine-die.

The Registrar of the Commission issued notice dated 20.04.2016 in the petition to PSPCL, NPL and Govt. of Punjab, Department of Power wherein it was recorded that Hon'ble APTEL has disposed of Appeal No. 68 of 2013 vide judgment dated 16.03.2016 and the concluding para of the ibid judgment is reproduced hereunder:

“6. Hence, with the consent and agreement of learned counsel for the parties, we hereby dispose of this appeal with the aforesaid directions given in our Interim Order dated 21.08.2013 and State Commission's order dated 19.02.2014 with one clarification, though, the State Commission is of the view that there is no shortage of coal at present, if there is any shortage of coal in future, at any point of time, for the reasons like shortage of any kind of coal namely, domestic coal or shortage of railway rakes or shortage of any other kind of transport not attributable to the appellant(s) then the State Commission is directed to consider the reasons and pass appropriate order at appropriate stage without any procrastination or undue delay. With these terms, the instant appeal is hereby disposed of.”

Vide aforesaid notice, PSPCL, NPL and Govt. of Punjab, Department of Power were intimated to take notice that the Commission has decided to hold the hearing of the petition no. 47 of 2013 on 17.05.2016 and PSPCL & NPL may file additional submissions, if any, in the petition keeping in view the judgment dated 16.03.2016 of Hon'ble APTEL in Appeal No. 68 of 2013 in so far as the same is relevant to the issues/prayers made in this petition.

NPL vide letter dated 13.05.2016 requested the Commission to grant extension of four weeks for filing the additional submissions in the matter. During hearing on 17.05.2016, the Commission directed the parties to file the additional submissions by 04.07.2016 with copy to each other. The next date of hearing was fixed as 12.07.2016 vide Order dated 18.05.2016.

NPL vide letter dated 04.07.2016 filed the submissions in compliance of the Commission's Order dated 18.05.2016. PSPCL vide email dated 09.07.2016 requested for fixing another date for hearing on the ground that their advocate would not be available on 12.07.2016. The next date of hearing was fixed as 06.09.2016. PSPCL vide letter dated 10.08.2016 sought the adjournment in the matter and requested that the next date of hearing may be fixed after 23.09.2016. Thereafter the date of hearing was fixed as 06.12.2016. PSPCL vide email dated 05.12.2016 again sought the adjournment due to personal difficulty of their advocate on 06.12.2016. Thereafter, the next date of hearing was fixed as 27.04.2017 which was again adjourned on the request of the advocate of PSPCL and the next date of hearing was fixed as 30.05.2017. The Commission in its Order dated 01.06.2017

observed that an email message dated 29.05.2017 along with a letter addressed to the Secretary, PSERC has been received, requesting to hear the matter on a later date as the Learned Counsel for both the parties are in some personal difficulty and will not be able to come to the Commission on 30.05.2017. The representatives of the parties have requested for an adjournment of the case and after consulting their respective Advocates, submitted that the matter may be fixed for 11.07.2017 as last opportunity. PSPCL was directed to file the additional submissions, if any, with a copy to NPL by 13.06.2017. The next date of hearing was fixed as 11.07.2017.

During hearing on 11.07.2017, counsels for both the parties addressed their arguments at length. The counsel for NPL submitted that the petition has been filed under Article 18 of the PPA and not under any provision of the Electricity Act, 2003. It was further submitted that as per Article 18 of the PPA dated 18.01.2010, the agreement may only be amended or supplemented by a written agreement between the parties and after duly obtaining the approval of the Commission, where necessary. It was contended that the petition filed by the petitioner is not maintainable under Article 18 of the PPA.

The Commission vide Order dated 14.07.2017 reserved the Order on the issue of maintainability of the petition. It was further held in the aforesaid Order that counsels for both the parties have expressed their intention to sort out the issues involved amicably. The Commission directed that endeavour for the same may be made and the outcome be informed to the Commission by the end of August, 2017. PSPCL vide letter dated 11.09.2017 filed an

affidavit to place on record the developments in the matter. PSPCL submitted that pursuant to the directions issued by the Commission in Order dated 14.07.2017, a meeting was held with the representatives of NPL on 10.08.2017 wherein NPL reiterated its stand already taken in various submissions, which is not acceptable to PSPCL. PSPCL further submitted that NPL is not entitled to claim any other change in the PPA or in the rights or obligations of PSPCL or NPL on account of the change in the unit configuration and contracted capacity including with regard to the arrangement of coal or additional cost or with regard to financing, funding, commissioning, generation and supplying power etc. to PSPCL and all such things shall be in accordance with the provisions of the PPA read with the Orders passed by this Commission and Hon'ble APTEL from time to time.

2. PSPCL's submissions, in brief, are as hereunder:

- i) PSPCL is a successor entity of the erstwhile PSEB. The erstwhile PSEB invited competitive bids on 10.06.2009 under section 63 of the Act through NPL, the then SPV for the selection of developer of 2 x 600 MW \pm 10% capacity RTPP. L&T Power Development Limited was the successful bidder and was awarded the RTPP project pursuant to the competitive bidding conducted under case-2 and as per the standard bidding documents notified by GoI under section 63 of the Act.
- ii) In terms of bidding documents, L&T Power Development Limited decided to develop the RTPP with gross capacity of 2 x 600 MW + 10% capacity i.e. 2 x 660 MW = 1320 MW. Subsequently, PPA between erstwhile PSEB and NPL (which

was earlier SPV of erstwhile PSEB) after its transfer to L&T Power Development Limited was signed on 18.01.2010 with gross capacity of 1320 MW (2 x 660 MW) and contracted capacity of 1234.20 MW (2 x 617.10 MW) as per provisions under the terms of the bid documents. Pursuant to the purchase of entire shares of NPL, L&T Power Development Limited became the owner of NPL.

iii) NPL under Article 3.1.1 A and sub-clause 3.1.2 (ix) of Article 3 and schedule-16 of the PPA, exercised its option to change the Unit configuration of the project from the gross capacity of 1320 MW (2 x 660 MW) to 1400 MW (2 x 700 MW) and contracted capacity of 1234.20 MW (2 x 617.10 MW) to 1320 MW (2 x 660 MW). While exercising option for change in the Unit configuration, all the timelines were met with by NPL as per provisions in the PPA. NPL vide letter dated 23.03.2010 requested erstwhile PSEB to acknowledge the changes in the Unit configuration, gross capacity and the contracted capacity for the project. NPL had undertaken to meet all the 'Functional Specification' as per schedule-4 of the PPA such as grid conditions at inter-connection point, faults levels and ramp rates.

iv) Erstwhile PSEB vide letter dated 13.04.2010 intimated NPL that its notification vide letter dated 23.03.2010 regarding change in Unit configuration, gross capacity and contracted capacity for the project has been accepted.

v) The change in capacity of the project was also informed to Ministry of Coal & Ministry of Power and it was requested to enhance the coal linkage already granted to the project in

proportion to the enhanced capacity. The enhanced capacity of the project was approved by Ministry of Power and Standing Linkage Committee (Long Term) [SLC (LT)] of Ministry of Coal. However, SLC (LT) decided that no additional coal would be considered on account of such enhancement.

- vi) The Commission was informed vide letter dated 10.06.2010 that NPL vide letter dated 23.03.2010 exercised its option to change the Unit configuration of the project in terms of Article 3.1.1 A of the PPA and the revised Unit configuration was accepted by PSPCL vide letter dated 13.04.2010.
- vii) The approval of the Commission is required under article 18 for amendment in the PPA regarding change in Unit configuration, which provides that the PPA may only be amended or supplemented by a written agreement between the parties after duly obtaining the approval of the Commission, where necessary.
- viii) PSPCL prayed the Commission to:
 - a) accord formal approval and allow the petitioner i.e. PSPCL for change in unit configuration from contracted capacity of 2 x 617.10 MW (1234.20 MW) to 2 x 660 MW (1320 MW) and gross capacity of 2 x 660 MW (1320 MW) to 2 x 700 MW (1400 MW) for Rajpura Thermal Power Project as already approved by the project co-ordination committee on 08.04.2010;
 - b) approve amendment attached as Annexure-G to the petition, to be issued in the PPA signed on 18.01.2010;
 - c) approve that the petitioner i.e. PSPCL shall have no obligations for arrangement of additional coal due to change in unit configuration & contracted capacity.

3. NPL's submissions in its reply dated 13.09.2013 and additional submissions dated 04.07.2016, in brief, are as hereunder:

i) NPL agrees with the submissions of PSPCL with respect to seeking formal approval of the Commission for change in Unit configuration carried out by NPL in exercise of its option under Article 3.1.1 A of the PPA and approval to amend the PPA accordingly.

ii) The prayer of PSPCL seeking approval that PSPCL shall have no obligation for arrangement of additional coal due to change in Unit configuration and contracted capacity is not maintainable and the same needs to be dropped. Further, PSPCL has also inserted a note in respect of it having no obligations for arrangement of coal or additional coal due to change in Unit configuration under para 1 (vi) in the format of amendment of the PPA attached as Annexure-G with the petition. The aforesaid note also needs to be deleted from the format of amendment in the PPA. The aforesaid prayer is not maintainable and the note under para 1 (vi) needs to be deleted due to following reasons:

a) The changes required in the existing PPA relates to changes in the Contracted Capacity and Gross Capacity of the project. Therefore, any amendment vis-à-vis obligation with respect to arrangement of coal is not required to be made part of the amended PPA.

b) All the terms and conditions of the PPA as these applied to the existing Gross Capacity and Contracted Capacity prior to the change in Unit configuration should squarely be applied to the enhanced gross capacity and contracted

capacity in the same way. No new term other than the terms which are applicable as part of the existing PPA can be inserted by way of an amendment in the PPA at this stage. Therefore, any specific provision with respect to obligation of the parties vis-à-vis coal arrangement etc. which do not form part of the existing PPA cannot find way to the amended PPA.

- c) The issue as to whether the procurer i.e. PSPCL or the seller i.e NPL is under an obligation to arrange coal for the project with the enhanced capacity of 1400 MW is pending adjudication before Hon'ble APTEL in Appeal No. 68 of 2013 filed by NPL & L&T Power Development Limited against the Order dated 31.12.2012 of the Commission in petition no. 56 of 2012. The issue regarding obligation to arrange coal for the project with its enhanced capacity is sub-judice and it would be inappropriate at this stage to entertain such a prayer.
- iii) Since, the Article 3.1.1 A of the PPA allows NPL to change the Unit configuration and that the definition of term 'Contracted Capacity' covers the rated net capacity that would become available pursuant to exercise of the option by NPL under Article 3.1.1 A of the PPA, a formal amendment in the PPA may not be required. The present amendment is being proposed only by way of abundant caution to merely formalize the amendment in the PPA by way of recording the enhanced capacities.
- iv) The specific provision of the PPA i.e. Article 18.1, in terms of which the present amendment is being sought, clearly

presumes 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. Therefore, amendment in the PPA can be made only on those aspects on which both the parties are in agreement and not otherwise.

- v) The changes required in the existing PPA should be limited to only those changes which are necessitated on account of change in the Units configuration and on mutually agreed terms.
- vi) The scope, intent and object of this petition is limited to the extent of formalizing the amendments in the PPA to capture the incidence of increased Contracted Capacity and Gross Capacity along with certain minor changes i.e., change of address and change in name of procurer from PSEB to PSPCL. Therefore, there is no reason to link the same with the issue of ascertainment of fuel obligation.
- vii) NPL prayed as under:
 - a) accord formal approval and allow for change in Unit configuration from Contracted Capacity of 2x617.10MW (1234.20MW) to 2x660 (1320MW) and Gross capacity of 2x660MW (1320MW) to 2x700MW (1400MW) for the Project as already approved by the Project Co-ordination Committee on 08.04.2010; and
 - b) Direct deletion of the Note to para 1(vi) of Annexure G; allow inclusion of correct contact nos. (TEL: 01762-227252; FAX: 01762-227251) at Clause 1(v) of Annexure – G and thereafter, approve amendment to be issued in the PPA by way of Annexure G.

4. PSPCL in its additional submissions dated 12.06.2017 reiterated its earlier submissions and further submitted, in brief, as below:

i) There is no merit in the claim of NPL that PSPCL's Prayer (iii) should not be allowed. The prayers sought including (iii) are consistent with Article 3.3.1A of the PPA quoted as under:

*"The Seller shall have the option to change the Unit configuration after the Effective Date till NTP provided that Seller submits the undertaking that the changed Unit configuration meets all the conditions specified in Format 3 of Annexure 6 of RfP and the changed Unit configuration meets all Functional Specifications. **Any additional cost arising out of the changed Unit configuration shall be to the account of the Seller and no adjustment in the Tariff will be permitted.**"*

ii) Before the bid submissions, M/s.South Eastern Coalfields Limited (SECL) issued a letter of Assurance (LoA) dated 11.12.2008 in the name of Nabha Power Limited for 5.55 MTPA of F Grade coal for the 1200 MW Project. The said Letter of Assurance was provided to all the bidders before submission of RfP bid. The RfP issued by PSEB on 10.06.2009 also referred to a contracted capacity of 1080 MW to 1320 MW.

iii)The Commission in its Order dated 14.07.2010 in petition no. 08 of 2010, adopted the tariff for the Rajpura Thermal Power Project and also recognized the change in the contracted capacity of the Project. The relevant extract of the Order dated 14.07.2010 reads as under:

“3....The petitioner has finally prayed that the tariff quoted by M/s L&T Power Development Limited in respect of RTPP be adopted by the Commission under section 63 of the Act. The contracted capacity of the project with a Unit configuration of 2x660 MW has subsequently been revised from 1234.2 MW to 1320 MW by way of a revised configuration of 2x700 MW under clause 3.1.1 A of the PPA.”

As per the above order, the Commission has already recognized the revised configuration of 2X 700 MW with reference to Article 3.3.1A of the PPA.

- iv) The present petition is for the formal approval sought for the decision already made and that too, at the instance of NPL. The present petition cannot be used by NPL for raising issues which cannot be a subject matter of the approval sought by PSPCL.
- v) The issue sought to be raised by NPL has already been dealt in other proceedings as detailed below:
 - a) PSPCL filed petition no. 08 of 2012 before the Commission praying that Nabha Power Limited be directed to enter into a Fuel Supply Agreement with SECL in terms of the Bid documents and the PPA. The Commission, in its Order dated 03.10.2012, after a detailed discussion, including on the aspect of the change in Unit configuration, directed Nabha Power Limited to enter into FSA with SECL.
 - b) Subsequently, the Commission in its Order dated 31.12.2012 in petition no. 56 of 2012 filed by Nabha Power Limited held that after L&T had submitted the bid

for 1320 MW and then enhanced it to 1400 MW of its own volition, after entering into the PPA and acquiring the shares of Nabha Power Limited, it would be unfair to presume that PSPCL would provide allocation beyond the prescribed quantum in the Bid Documents. The Order dated 31.12.2012 was challenged by Nabha Power Limited before the Appellate Tribunal of Electricity vide Appeal No. 68 of 2013 including on the responsibility for procuring the additional fuel required for the increase in project capacity from 1320 MW to 1400 MW. The Hon'ble APTEL vide Order dated 16.03.2016, disposed of the Appeal No. 68 of 2013 in terms of the mutually agreed terms.

vi) The obligation of PSEB/PSPCL was restricted to providing the Fuel Linkage to the extent of 5.55 MTPA initially, as was represented during the bidding process and that it cannot be extended to include the additional fuel required for a capacity of 1400 MW, particularly when the increase in Unit configuration was at the behest of NPL.

vii) The contention raised by NPL that (a) PSEB/PSPCL will continue to be responsible for the availability of coal from SECL on a continuous basis for the entire period of the PPA either to the extent of 5.5 MTPA or to any additional quantum of coal; and (b) PSPCL will have to take the responsibility for the non-availability of coal from SECL to the extent of 5.5 MTPA or SECL proposing a Fuel Supply Agreement in modification of the coal linkage of 5.5 MTPA, is totally misconceived and contrary to records. Although

the bidding documents enabled the bidder to bid for 10% more capacity of the power plant, there was no corresponding assurance of coal linkage being made available, even for such increased bid capacity. Therefore, PSPCL has no obligation in respect of coal arrangement for 2X700 MW capacity.

viii) In view of the above, the objection raised by NPL in regard to Prayer (iii) is liable to be rejected.

Commission's observation, findings and decision

The Commission has carefully gone through the petition, reply thereto by NPL, additional submissions of NPL and written submissions of PSPCL. The Commission notes that PSPCL submitted that NPL had exercised its option to change the Unit configuration of the project from the gross capacity of 1320 MW (2 x 660 MW) to 1400 MW (2 x 700 MW) and contracted capacity of 1234.20 MW (2 x 617.10 MW) to 1320 MW (2 x 660 MW), under Article 3.1.1 A and sub-clause 3.1.2 (ix) of Article 3 and Schedule-16 of the PPA. The Commission notes that PSPCL has further submitted that while exercising option for change in the Unit configuration, all the timelines were met with by NPL as per provisions in the PPA. PSPCL submitted that NPL vide letter dated 23.03.2010 requested erstwhile PSEB (now PSPCL) to acknowledge the changes in the Unit configuration, gross capacity & the contracted capacity for the project and NPL had undertaken to meet all the 'Functional Specification' as per Schedule-4 of the PPA such as grid conditions at inter-

connection point, faults levels and ramp rates. PSPCL further submitted that erstwhile PSEB vide letter dated 13.04.2010 intimated NPL that its notification vide letter dated 23.03.2010 regarding change in Unit configuration, gross capacity and contracted capacity for the project has been accepted.

The Commission observes that Article 3.1.1A of the PPA provides that the Seller shall have the option to change the Unit configuration after the Effective Date till NTP provided that Seller submits the undertaking that the changed Unit configuration meets all the conditions specified in Format 3 of Annexure 6 of RfP and the changed Unit configuration meets all Functional Specifications. It has been further provided in the Article 3.1.1A of the PPA that any additional cost arising out of the changed Unit configuration shall be to the account of the Seller and no adjustment in the Tariff will be permitted. As per the order of the Commission dated 31.12.2012 in Petition no. 56 of 2012, the Commission has already decided on the issue of arrangement of coal for the enhanced capacity arising out of changed Unit configuration.

The Commission in its Order dated 14.07.2010 in petition no. 08 of 2010, adopted the tariff for the project and also recognized the change in the contracted capacity of the Project. Considering the above, the Commission approves and allows the change in Unit configuration from Contracted capacity of 2x617.10MW (1234.20MW) to 2x660 (1320MW) and Gross capacity of 2x660MW (1320MW) to 2x700MW (1400MW)

for the Project in terms of Article 3.1.1A of the PPA and allows consequential changes in the PPA.

The petition is disposed of in terms of above.

Sd/-

(Anjuli Chandra)
Member

Sd/-

(S.S. Sarna)
Member

Sd/-

(Kusumjit Sidhu)
Chairperson

Chandigarh

Dated: 08.03.2018

