

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Subject: Petition for approval of Power Purchase Agreement to be signed by MPPMCL for procurement of power from thermal generating stations selected through competitive bidding process conducted by PFC Consulting Ltd. under guidelines issued by MoP on 20.10.2022.

Petition No. 09 of 2024

ORDER

(Date of Order: 5th April, 2024)

M.P. Power Management Company Ltd.,
Shakti Bhawan, Rampur
Jabalpur – 482008

- **Petitioner**

V/s

- 1. M/s Jindal India Thermal Power Ltd.**
Habitat India, C-3, Qutub Institutional Area,
Katwaria Sarai, New Delhi, - 110016
- 2. M/s Jindal Power Ltd.**
1st Floor, Tower-A, Jindal Centre,
Plot No. -2, Sector-32, Gurgaon, 122001
- 3. M/s SKS Power Generation Chhattisgarh Ltd.**
Unit 201 & 207, Centre Point Premises Co. op Society
JB Nagar, Andheri-Kurla Road,
Andheri-East, Mumbai- 400059
- 4. M/s RKM Powergen Pvt. Ltd.**
14, Dr. Giriappa road, T Nagar,
Chennai - 600017
- 5. M/s TRN Energy Pvt. Ltd.**
7th Floor, Office Tower, Ambience Mall,
NH-8, Gurugram - 122002
- 6. PFC Consulting Ltd,**
1st Floor, Urganidhi 1, Barakhamba Lane,
Connaught Place, New Delhi – 110001

Respondents

Shri Ravi Sharma, Advocate and Shri Anindya Kumar Khare appeared on behalf of Petitioner.

Respondents:

- i. Shri Piyush Rai appeared on behalf of Respondent No. 1, M/s Jindal India Thermal Power Ltd.
- ii. Shri Gagan Verma appeared on behalf of Respondent No. 2, M/s Jindal Power Ltd.
- iii. Shri Ajay Kachwaha appeared on behalf of Respondent No. 3, M/s SKS Power Generation Chhattisgarh Ltd.
- iv. Shri J. Mohan appeared on behalf of Respondent No. 4, M/s RKM Powergen Pvt. Ltd.
- v. Shri Gyan Prakash Gupta appeared on behalf of Respondent No. 5, M/s TRN Energy Pvt. Ltd.
- vi. Shri Anubhav Kansal appeared on behalf of Respondent No. 6, PFC Consulting Ltd.

M.P. Power Management Company Limited (hereinafter called 'the Petitioner or 'MPPMCL') has filed this petition under Section 86(1) (b) of the Electricity Act, 2003 reads with Regulation 4.24 of MPERC (Power Purchase and Procurement Process) Regulations, 2023 seeking Approval of draft PPAs to be executed with Respondents 1 to 5 (Thermal Generating Companies) selected through Competitive Bidding Process conducted by PFC Consulting Ltd. ("PFCCL") in terms of the Request for Selection ("RfS") dated 15.05.2023 issued by PFCCL under Ministry of Power's ("MoP") Guidelines dated 20.10.2022 for procurement of power on Finance, Own and Operate (FOO) basis under Para B(v) of SHAKTI Policy, 2017.

2. The Petitioner MPPMCL is a holding company for all the three DISCOMs of MP and is 100% owned by Government of Madhya Pradesh. The Petitioner is authorized for bulk power purchase from generating companies / traders, and supply electricity in bulk to the Distribution Companies in the State.
3. Respondent No. 1 to 5 are coal-based Generating Companies within the Section 2(28) of the Electricity Act 2003, and selected through competitive bidding process conducted by PFC Consulting Ltd., under the Ministry of Power Guidelines for procurement of power on Finance, Own and Operate basis under SHAKTI Policy, 2017.
4. Respondent No. 6 (PFC Consulting Ltd.) is a nodal agency appointed by Ministry of Power (MoP) for conducting the bidding process for procurement of power under the guidelines.
5. In the subject petition, the Petitioner broadly submitted the following:

- i. *Ministry of Power has issued the Guidelines dated 20.10.2022 under Section 63 of the Electricity Act to facilitate procurement of power on long-term and medium-term basis by a Nodal Agency through transparent bidding process to meet power requirement of group of states with coal linkage as per Para B(v) of the SHAKTI Policy 2017. Accordingly, in terms of Clause 5.1 and Clause 5.2 of the Guidelines, MoP has appointed PFCCCL as the Nodal Agency for conducting the bidding process for procurement of power under the Guidelines.*
- ii. *On 15.05.2023, PFCCCL had issued a Notice along with the RfS and the draft PPA ("Bidding Documents") inviting bids from thermal generating stations for procurement of aggregated power of 4500 MW on medium term basis (5 years) for group of States through e-tender on DEEP Portal in terms of Guidelines dated 20.10.2022 with the following conditions:*
 - a. *PFCCCL had floated the RfS on behalf of Utilities /Distribution Licensees.*
 - b. *Last date of bid submission (Bid Due Date) was 30.06.2023 and the bids were scheduled to be opened on 07.07.2023.*
 - c. *Successful Bidders were to be allocated coal linkage from Mahanadi Coalfield Limited ("MCL") in terms of the methodology prescribed under Clause 1.2.15.*
 - d. *Total 24 Million Tonnes per Annum ("MTPA") of coal of G-13 grade will be provided for 4500 MW capacity from Talcher and IB – Field of MCL.*
- iii. *In response to the RfS, the Respondents submitted their bids as under:*
 - a. *On 21.06.2023, JITPL/Respondent No.1 submitted bid from Talcher field as fuel source for supply of 200 MW power from its 1200 MW (2 x 600 MW) Thermal Power Plant (TPP) at Odisha.*
 - b. *On 22.06.2023, JPL/Respondent No.2 submitted bid from IB – field as fuel source for supply of 300 MW power from its 3400 MW TPP at Chhattisgarh.*
 - c. *On 19.06.2023, SKS / Respondent No.3 submitted bid from IB – field as fuel source for supply of 100 MW power from its 1200 MW TPP at Chhattisgarh.*
 - d. *On 15.06.2023, RKM/Respondent No.4 submitted two bids from IB – field and Talcher field as fuel source for supply of 300 MW (each) from its 1440 (4 x 360) MW TPP at Chhattisgarh.*
 - e. *On 30.06.2023, TRN/Respondent No. 5 submitted bid (vide cover letter dated 21.06.2023) from Talcher field as fuel source for supply of 100 MW power from its 600 (2 x 300) MW TPP at Chhattisgarh.*
- iv. *Pursuant to competitive bidding conducted by PFCCCL, the aforesaid Respondents were declared as Successful Bidders. Accordingly, PFCCCL issued Letter of Award ("LoA") to the Respondents for execution of Power Purchase Agreements with their*

respective Distribution Licensees for supply of power for a period of 5 years without any bifurcation of Fixed Charge rate and Variable Charge Rate. The Respondents have accepted the LoA and have sent written request to the Petitioner respectively for executing the Power Purchase Agreements in terms of the RfS and LoA.

- v. Further, the Petitioner had filed the Petition no. 51 of 2023 before this Commission for approval of capacity addition of 378.24 MW on medium term basis for a period of 5 years from financial year 2023-24 onwards for procurement of power from the Respondents/selected generators in terms of the bidding conducted by Respondent No.6 PFCCCL under para-B (v) of SHAKTI Policy, 2017.
- vi. This Commission vide its order dated 10.11.2023 passed in Petition No. 51 of 2023 accorded in-principle approval for capacity addition of 378.24 MW to petitioner on medium term basis for a period of 5 years from financial year 2023-24 onwards for procurement of power from the selected generators in the bidding conducted by PFCCCL under para-B (v) of SHAKTI Policy, 2017 with some observation and directions. In the aforesaid order dated 10.11.2023, this Commission while according in-principle approval for capacity addition of 378.24 MW, had directed the Petitioner that the Petitioner will Approach this Commission for approval of PPAs with Respondents only after the Central Electricity Regulatory Commission adopts the discovered tariff.
- vii. Respondents in terms of the directions given by this Commission approached the Central Electricity Regulatory Commission through Petition no. 338/AT/2023 which was filed by Respondent Nos 1 to 5 under Section 63 read with Section 79 of the Electricity Act 2003 for adoption of discovered tariff of thermal generating stations of Respondents selected through competitive bidding process conducted by PFCCCL under the ministry of power guidelines for procurement of power on finance, own and operate basis issued under para b(v) of the SHAKTI Policy.
- viii. Petitioner has filed its reply before the CERC and also specifically raised its objections that LOA issued by PFCCCL had no mention of fixed and variable charges separately. Therefore, it has become impossible for MPPMCL, in the course of signing PPA to adhere to the terms of Clauses 11.2 and 12.2 of draft PPA that mandatorily required to fill the fixed charge rate, which shall be revised annually to reflect 20% of the variation in WPI and variable charges separately and distinctly by parties at the time of the signing of the PPA.
- ix. Respondent No.6 PFCCCL has submitted and admitted before the Central Electricity Regulatory Commission that though they have not issued LOA with clear and distinctive bifurcation of Fixed Charge Rate and Variable Charge rate in the LOA but later on, they have rectified their mistake and vide their affidavit dated 7.12.2023, they

placed on record the details of the bifurcation of fixed and variable charges. The relevant portion of the Respondent No.6 PFCCL's affidavit dated 7.12.2023 dealing with Fixed Charge rate and Variable Charge rate is reproduced herein as under:

Sl. No	Name of Generator	MPPMCL Allocation (MW)	Base Fixed Charges	Base variable charges	Tariff (Rs/kWh)	Coal Source
			As per details mentioned in affidavit dtd 07.12.2023 of PFCCL filed before CERC		As per LoA	
1.	Jindal India Thermal Power Ltd	48.48	2.56	2.58	5.14	Talcher Field
2.	Jindal Power Limited	72.73	2.6	2.62	5.22	IB – Field
3.	SKS Power Generation	24.24	2.24	2.96	5.2	IB – Field
4.	RKM Powergen Pvt. Ltd	72.73	2.7	2.7	5.4	IB – Field
5.	RKM Powergen Pvt. Ltd	72.73	2.745	2.745	5.49	Talcher Field
6.	TRN Energy Pvt. Ltd.	24.24	2.16	3.042	5.202	IB – Field

- x. The Central Electricity Regulatory Commission vide its order dated 21.01.2024 passed in Petition No. 338/AT/2023 adopted the aforesaid discovered tariff of thermal generating stations of Respondents selected through competitive bidding process conducted by Respondent No.6 under the ministry of power guidelines for procurement of power on finance, own and operate basis issued under para b(v) of the SHAKTI Policy. In view of aforesaid Adoption Order, Petitioner is before this Commission for approval of Draft PPA.
- xi. Under Section 86(1) (b) of the Electricity Act, 2003 the State Commission has the responsibility to regulate the electricity purchase and procurement process of distribution licensees.
- xii. In terms of Clause 4.8 of the RfS, the Petitioner received the request from below Respondents for execution of Power Purchase Agreement: -
- On 04.08.2023, request received from JITPL, for executing the power purchase agreement, in terms of the LoA issued by PFCCL.
 - On 05.08.2023, request received from RKM for executing the power purchase agreement, in terms of the LoA issued by PFCCL.
 - On 06.08.2023, request received from SKS for executing the power purchase agreement, in terms of the LoA issued by PFCCL.
 - On 08.08.2023 and 24.08.2023, request received from JPL for executing the power purchase agreement, in terms of the LoA issued by PFCCL.

- e. On 17.08.2023, request received from TRN for executing the power purchase agreement, in terms of the LoA issued by PFCCL.
- xiii. Upon receipt of the aforesaid request from Respondent Nos. 1 to 5, Petitioner vide its letter dated 31.08.2023 requested the generators for waiver of certain conditions on following terms of the Draft PPA:
- Providing of Escrow guarantee and deed of Hypothecation as required in clause 13.1 of Draft PPA.
 - Providing performance Security as per clause 9.1.2 of Draft PPA;
 - Regarding payment of normative availability by utility upon termination of PPA on its default as per clauses 9.1.2 and 19.3.2 of Draft PPA.
- xiv. In response to aforesaid request, Respondent Nos. 1 to 5 have responded as under:

Sl. No.	Names of Bidders	ISSUES		
		Escrow Agreement and Deed of Hypothecation	Providing Performance Security Payment	Payment of normative availability by utility consequent to termination of contract
1	Jindal India Thermal Power Limited /Respondent No.1	Agreed for waiver	Agreed, if MPPMCL also waives this condition of taking Performance Guarantee from Bidder	Not Agreed
2	Jindal Power Limited / Respondent No.2	Agreed for waiver	Agreed, if MPPMCL also waives this condition of taking Performance Guarantee from Bidder	Not Agreed
3	SKS Power Generation Chhattisgarh Ltd. / Respondent No.3	Agreed for waiver	Agreed, if MPPMCL also waives this condition of taking Performance Guarantee from Bidder	Not Agreed
4	RKM Powergen Pvt. Ltd./Respondent No.4	Agreed for waiver	Consent for waiver of providing Performance Guarantee should be from both side, hence not acceptable	Should be from both side, hence not acceptable
5	TRN Energy Private Limited /Respondent No.5	Agreed for waiver	Not Agreed	Not Agreed

xv. *Basis the aforesaid consent letter(s), Petitioner and Respondent Nos. 1 to 5 have mutually agreed to sign Addendum to the Power Purchase Agreement for the waiver (the "Draft Addendum") of clauses 13.1.1 and 13.1.2 of the Draft PPA.'*

6. With the above submissions, the Petitioner has prayed the following:

"To approve the Draft PPA and Draft Addendum yet to be signed between Petitioner and Respondent nos. 1 to 5, for Procurement of Power by Petitioner from Respondents from their thermal generating power stations selected through Competitive Bidding Process conducted by Respondent No.6, PFC Consulting Ltd ("PFCCL") in terms of the Request for Selection dated 15.05.2023 ("RfS") issued by PFCCL under Ministry of Power's ("MoP") Guidelines dated 20.10.2022 for procurement of power on FOO basis under Para B(v) of SHAKTI Policy, 2017;"

7. The Petitioner also filed an Interlocutory Application (IA No. 02/2024) on dated 12.02.2024 requesting early hearing of the Petition. Considering the request of the petitioner, the petition was listed for motion hearing on 27.02.2024 and IA No. 02/2024 in petition No. 09/2024 was disposed of.

8. Vide daily order dated 27.02.2024, the petition was admitted and the petitioner was directed to serve copy of petition to Respondents within three days. The Respondents in the subject matter were also directed to file their responses to the petition within a week, thereafter. The petitioner was asked to file rejoinder within a week, thereafter.

9. At the next hearing held on 19.03.2024, the parties have completed their arguments and the case was reserved for Order.

Respondents submissions:

10. In compliance to the Commission's directions, Respondents have submitted the following responses on the subject petition:

- i. By affidavit dated 14.03.2024, Respondent No. 1, M/s Jindal India Thermal Power Ltd. filed its response on the subject petition and submitted that the present petition may be allowed and the parties may be directed to execute the PPAs after mutual agreement/ agreement on the issues, if any.
- ii. By affidavit dated 13.03.2024, Respondent No. 2, M/s Jindal Power Ltd. has mentioned that it does not have any comments on the subject petition.
- iii. By affidavit dated 04.03.2024, Respondent No. 3 M/s SKS Power Generation

(Chhattisgarh) Ltd. has submitted that it has no objection to the approval of the Draft PPA and the draft Addendum attached to the Petition.

- iv. By affidavit dated 13.03.2024, Respondent No. 4 M/s RKM Powergen Pvt. Ltd. has submitted that it has no objection to the approval of the Draft PPA and Draft Addendum attached to the subject Petition.
- v. By affidavit dated 14.03.2024, Respondent No. 5 M/s TRN Energy Pvt. Ltd. has submitted its response to the subject petition and mentioned that it had agreed for relaxation / omitting the provisions of Escrow Agreement and Deed of Hypothecation subject to availability of LC in place of Escrow, wherever applicable.
- vi. Vide letter dated 14.03.2024, Respondent No. 6 PFC Consulting Ltd. has submitted that PFCCCL conducted the bidding as per the Guidelines issued by MoP and no deviation has been taken from the Guidelines and draft Power Purchase Agreement notified by Ministry of Power. The LoAs has been issued to the Respondents for execution of Power Purchase Agreements with their respective Distribution Licensees for supply of power for a period of 5-years. Along with RfS, PFCCCL also issued the draft Power Purchase Agreement for procurement of aggregated power for group of States on FOO basis.

Petitioner's Rejoinder:

11. By affidavits dated 15.03.2024, the Petitioner filed rejoinder on the responses submitted by Respondent No. 1 and 5. The Petitioner broadly submitted the following:
 - i. *Respondent No. 1 mainly raised following issues:*
 - a. *That Respondent No.1 vide its letter dated 15.09.2023 had denied the request of Petitioner herein for waiver on Payment of normative availability consequent upon termination as per clause 9.1.2 and 19.3.2 while stating that termination payment is commitment from both the parties.*
 - b. *Subsequently, Petitioner herein has sent a letter dated 16.10.2023 requesting Respondent no.1 to share draft PPA after waiving off conditions of Deed of Hypothecation and Default Escrow account as mentioned in clauses 13.1.1 and 13.1.2 of the draft PPA.*
 - ii. *Respondent No.5 mainly raised following issues:*
 - a. *Deletion of clauses 13.1.1 and 13.1.2 of the draft PPA shall be subject to availability of LC in place Escrow, wherever applicable/provided.*

- b. *Petitioner shall cause the Letter of Credit to be replenished till the “Termination Payment” and “Delayed Payment” are fully discharged in accordance with the provisions of the Power Purchase Agreement.*
- c. *Monthly Invoice in respect of preceding month & Termination Payment and Delayed Payments obligations shall be paid through Letter of Credit only.*
- iii. *Therefore, Respondent No.5 wanted to amend draft PPA as they have apprehension of default by Petitioner in payment obligations towards Monthly Invoice in respect of preceding month and Termination payment and payment of Delayed payments. However, such apprehensions are legally misconceived and addition of any such clause in PPA will unnecessary delay approval and signing & execution of PPA.*

Regarding commitment towards termination payment liability:

- iv. *It is humbly submitted that Petitioner is duty bound to adhere all its payment obligation arise out of or in connection to PPA. Addendum to waive off the clauses 13.1.1 and 13.1.2 of the draft PPA in any manner or in any impression be construed as running away by Petitioner from its payment obligations. It is pertinent to mention here that other provisions of draft PPA are very much sufficient to cover any such risks related to payment obligations on part of the Petitioner. Petitioner would like to reproduce few clauses of PPA which covers all/any such eventualities related to Termination payment obligation or any other payment obligations as under:*
- v. **9.2 Appropriation of Performance Security**
“Upon occurrence of a Utility Default or failure to meet any Condition Precedent, the Supplier shall without prejudice to its other rights and remedies hereunder or in law, be entitled to encash and appropriate from the Performance Security-Utility. Upon such encashment and appropriation from the Performance Security-Utility, the Utility shall, within 15 (fifteen) days thereof, replenish, in case of partial appropriation, to the original level of the Performance Security-Utility, and in case of appropriation of the entire Performance Security-Utility provide a fresh Performance Security-Utility, as the case may be, failing which the Supplier shall be entitled to terminate this Agreement in accordance with Article 19. Upon such replenishment or furnishing of a fresh Performance Security-Utility, as the case may be, the Utility shall be entitled to an additional Cure Period of 120 (one hundred and twenty) days for remedying the default and in the event of the Utility not curing its default within such Cure Period, the Supplier shall be entitled to encash and appropriate the Performance Security- Utility as Damages, and to terminate this Agreement in accordance with Article 19.”

- vi. *Clause 9.2 of the Draft PPA is very clear that if Petitioner fails in its payment obligation including but not limited to its Termination Payment obligations, Respondents/ Suppliers are free to invoke Performance Security- Utility as Damages. Further, in terms of clause 13.2 of Draft PPA, Petitioner is also obligated to open non-revocable letter of credit which will be having funds to fulfill payment obligations related Invoices raised by Respondents / Suppliers against the energy supplied. Relevant portion of the Letter of Credit clause in Draft PPA is reproduced herein as under:*

13.2 Letter of Credit

13.2.1 "The Utility shall, no later than 30 (thirty) days prior to the likely date of the Appointed Date, provide to the Supplier, an unconditional, revolving and irrevocable letter of credit for an amount equivalent to the Monthly Payment (the "Letter of Credit"), which may be drawn upon by the Supplier for recovery of payment due against the Monthly Invoice in accordance with the provisions of this Agreement. The Letter of Credit shall be substantially in the form specified in Schedule-E and shall come into effect on the Appointed Date, and shall be modified once every year to reflect the revision in Monthly Payment in accordance with the provisions of this Agreement.

13.2.2 The Letter of Credit shall be procured by the Utility from a bank where at least twice the value of Monthly Payment are normally deposited, and which shall have been appointed as the Default Escrow Bank. All costs and expenses relating to opening and maintenance of the Letter of Credit shall be borne by the Utility."

- vii. *Therefore, all the risk associated with the payment liability or obligations on part of Petitioner is covered and very well mitigated by the aforesaid 2 clauses of Draft PPA. Further, recovery procedure and trigger date have also been covered under letter of credit and Annexure E of Draft PPA. Relevant portion of the Clause 13.3.1 is reproduced herein as under:*

13.3.1 "In the event the Utility fails to pay the Monthly Invoice on or before the relevant Payment Due Date(s) or the amount covered by the Letter of Credit is at any time less than the Monthly Payment or is insufficient for recovery of payment due against the Monthly Invoice or the Supplier is unable to recover its Tariff through the Default Escrow Account and the Letter of Credit, as the case may be, and if the Tariff or part thereof remains unpaid for a period of 1 (one) month from the Payment Due Date, then the recovery shall be made in accordance

with the procedure provided in the applicable rules issued by the Ministry of Power, as amended from time to time.”

Annexure E; Clause 5 (Letter of Credit):

“The Supplier may draw upon this Letter of Credit by presenting a written demand for payment (by way of mail, courier or by hand) to the Bank along with the following documents:

- (i) a copy of the Monthly Invoice (as defined in Power Purchase Agreement) issued by the Supplier to the Utility, any amounts whereof have remained unpaid; and*
- (ii) a certificate from the Supplier, under the hand of an Officer not below the rank of a Director of the Supplier, to the effect that the Monthly Invoice (as defined in the Power Purchase Agreement) is in accordance with the Power Purchase Agreement and that the amount due has remained unpaid and has not been disputed by the Utility.”*

viii. Thus, as per Clause 13.3.1 it is very much crystal clear that in the event utility fails to pay the monthly invoices and in case supplier is unable to recover its tariff through the Letter of Credit then recovery shall be made in accordance with the procedure provided in the applicable rules issued by the Ministry of Power, as amended from time to time. It is pertinent to mention here that MoP, Govt has ensured multiple level of Payment Security Mechanism. Further, Electricity (Late Payment Surcharge & related matters) Rules, 2022 as amended from time to time (LPS Rules, 2022) issued by Ministry of Power, Govt of India and introduced mechanism for implementation of LPS Rules, 2022 through an automated process using PRAAPTI Portal and POSOCO Portal.

ix. Further, Electricity (Late Payment Surcharge & related matters) Rules, 2022 issued by MoP, imposes an additional liability of penal interest on Discoms followed by disconnection of supply threat . Hence, the apprehension of the Respondent No. 1 and 5 that Petitioner will not adhere to its Termination Payment obligations is misconceived and deletion of clauses 13.1.1 and 13.1.2 of Draft PPA will not be having any hindrance or legal issues with respect to payment obligations of Petitioner.

Commission’s observations and findings:

12. This petition has been filed by the Petitioner MPPMCL under Section 86(1)(b) of the Electricity Act, 2003 reads with Regulation 4.24 of the MPERC (Power Purchase and Procurement Process) Regulations, 2023, for approval of draft Power Purchase Agreement

(PPA) to be signed by MPPMCL for procurement of power from respective thermal generating stations selected through competitive bidding process conducted by PFC Consulting Limited under the Ministry of Power guidelines for procurement of power on Finance, Own and Operate (FOO) basis issued under para B(v) of the SHAKTI Policy for a period of five years on medium term basis.

13. Under Section 86(1)(b) of the Electricity Act, 2003, the State Commission has power to regulate the electricity purchase and procurement process of distribution licensees. Section 86(1) (b) of the Electricity Act, 2003 provides as under: -

(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;

14. Earlier, the Petitioner had filed the Petition no. 51 of 2023 before this Commission for approval of capacity addition of 378.24 MW on medium-term basis for a period of 5 years from financial year 2023-24 onwards for procurement of power from the Respondents/selected generators in terms of the bidding conducted by Respondent No.6, PFC Consulting Limited under para-B (v) of SHAKTI Policy, 2017. Vide order dated 10.11.2023 passed in Petition No. 51 of 2023, this Commission accorded in-principle approval for capacity addition of 378.24 MW to Petitioner on medium-term basis for a period of 5 years from financial year 2023-24 onwards for procurement of power from the selected generators in the bidding conducted by PFCCL. In the aforesaid order dated 10.11.2023, the Commission had directed the Petitioner to approach this Commission for approval of PPAs with Respondent generating companies, only after the adoption of discovered tariff by the CERC.

15. Regulation 4.24 of the MPERC (Power Purchase and Procurement Process) Regulations, 2023 provides as under:

4.24 Any new power purchase agreements for long/medium-term or amendments to existing long/medium-term Power Purchase Agreements (PPA's) / Power Sale Agreement (PSA) entered into by the distribution licensee shall be subject to the prior approval of the Commission.

16. In accordance to aforesaid Regulation 4.24, any new PPA or amendments to existing long/medium-term Power Purchase Agreements (PPA's) / Power Sale Agreement (PSA) entered into by the distribution licensee shall be subject to the prior approval of the Commission. Therefore, in compliance to the Regulation, the Petitioner has filed this petition for approval of PPAs for procurement of medium term power for the period of five years.

17. Regarding Medium-term power procurement, Regulation 2.1(d) of the MPERC (Power Purchase and Procurement Process) Regulations, 2023 provides that 'Medium-term Power Procurement' means procurement of power under any arrangement or agreement with a term or duration exceeding three months and up to five years. Therefore, the Petitioner's power procurement for a period of 5 years is covered under Medium term procurement in terms of the said Regulation.
18. Subject petition is filed for approval of draft PPA to be signed by the Petitioner for procurement of power from thermal generating stations selected through competitive bidding process conducted by PFCCL under the Ministry of Power guidelines for procurement of power on FOO basis issued under para B (v) of the SHAKTI policy. Relevant provisions of the SHAKTI policy and guidelines issued under this policy are reproduced below:
- i. In order to allocate the available coal to thermal power plants, a policy guideline was introduced by Ministry of Coal on 22nd May, 2017 namely 'Scheme for Harnessing and Allocating Koyala Transparently in India' ("SHAKTI Policy") with the objective of linking coal, based on transparent manner and for the optimal utilization of the natural resources. Para B(v) of the SHAKTI Policy provides as under:

"Power requirement of group of States can also be aggregated and procurement of such aggregated power can be made by an agency designated by Ministry of Power or authorized by such States on the basis of tariff based bidding. Coal linkages will be earmarked for such agencies by pre-declaring the availability of coal linkage with description, based on which such agency will undertake tariff based competitive bidding for long-term and medium-term procurement of power and recommend grant of these linkages to successful bidders. The methodology in this regard shall be formulated by Ministry of Power."
 - ii. As stipulated in para B(v) of the SHAKTI Policy, the Ministry of Power, vide letter dated 11th May, 2022, formulated "Methodology of allocation of coal" and conveyed to the Ministry of Coal. Para 3(h) of the aforesaid methodology stipulates that on the basis of sources of coal communicated by the coal companies, the Nodal Agency shall undertake tariff based competitive bidding for Long-term or Medium-term procurement of power on the basis of guidelines issued by the Ministry of Power under Section 63 of the Electricity Act, 2003.
 - iii. Vide notification dated 20th October, 2022, Ministry of Power issued Guidelines under Section 63 of the Electricity Act, 2003 for procurement of power on Finance, Own and

Operate (FOO) basis. The objective of the aforesaid guidelines is to facilitate procurement of power on long-term and medium-term basis by the Nodal Agency through transparent bidding to meet power requirement of group of states with coal linkage as per para B(v) of the SHAKTI Policy.

- iv. Para 5.1 of the aforesaid guidelines states that the Nodal Agency shall be responsible for conducting the bid process for procurement of power under para B(v) of the SHAKTI Policy through tariff-based competitive bidding in accordance with guidelines. Para 5.2 of the guidelines further states that PFC Consulting Limited, has been designated as the Nodal Agency by Ministry of Power for the purpose of procurement of power under para B(v) of the SHAKTI Policy.
- v. Regarding the bidding process, para 8.4 of the guidelines provides that the Nodal Agency shall call for the bids, adopting a single stage bidding process to be conducted through Electronic mode (DEEP e-bidding portal).
- vi. With regard to allocation of capacity to various states, para 10.1 of the guidelines states that the capacity of each successful bidder shall be allocated amongst various states on proportionate basis.
- vii. Regarding the deviations, para 17 of the guidelines provides as under: -

“Any deviations from the model bidding documents shall be made by the nodal agency only with the prior approval of the Ministry of Power, Government of India. Provided, however, that any project specific modifications expressly permitted in the Model Bidding Documents shall not be construed as deviations from the Model Bidding Documents.”

- viii. Para 16 of the guidelines stipulates that the tariff determined based on the guidelines and the Model Bidding Documents issued in consonance with these guidelines shall be adopted by the appropriate Commission in pursuance of the provisions of Section 63 of the Electricity Act, 2003.
- ix. For waiver/ amendment or modification of any provision or obligation of model PPA, Clauses 25.5 and 25.8 respectively provide the following:

25.5 Waiver:

25.5.1 Waiver, including partial or conditional waiver, by either party of any default by the other party in the observance and performance of any provision of or any

obligations under this agreement:

- (a) shall not operate or to be construed as a waiver of any other or subsequent default hereof or of provisions of or obligations under this Agreement;*
- (b) shall not be effective unless it is in writing and executed by a duly authorized representative of the Party; and*
- (c) shall not affect the validity or enforceability of this Agreement in any manner.*

25.8 Entire Agreement:

*This agreement and the Schedules together constitute a complete and exclusive statement of the terms of the agreement between the parties on the subject hereof, and **no amendment or modification hereto shall be valid and effective unless such modification or amendment is agreed to in writing by the parties and duly executed** by persons especially empowered in this behalf by the respective parties. All prior written or oral understandings, offers or other communications of every kind pertaining to this agreement are abrogated and withdrawn. For the avoidance of doubt, the parties hereto agree that any obligations of the Supplier arising from the Request for Selection, as the case may be, shall be deemed to form part of this agreement and treated as such.*

19. On perusal of the subject petition, the Commission noted the following:
- i. In the subject matter bidding process was undertaken by the nodal agency PFCCCL in terms of MoP's Guidelines dated 20.10.2022 issued under Section 63 of the Electricity Act to facilitate procurement of power on long-term and medium-term basis to meet power requirement of group of states.
 - ii. On 15.05.2023, PFCCCL issued Request for Selection (RfS) and draft PPA, inviting bids from thermal generating stations for procurement of 4500 MW power on medium-term basis (5-years) for group of states through e-tender on DEEP Portal in accordance to the guidelines. In response to the RfS, Respondent thermal generating companies submitted their bids.
 - iii. Pursuant to competitive bidding conducted by PFCCCL, the Respondent generating companies were declared as successful bidders. Accordingly, PFCCCL issued Letter of Award (LoA) on 29.07.2023 to the Respondent generating companies for execution of Power Purchase Agreements with their respective Distribution Licensees for supply of allocated power for a period of five years.
 - iv. CERC being appropriate Commission in this case, Respondents No. 1 to 5 filed petition before the CERC for adoption of discovered tariff of thermal generating

stations selected through competitive bidding process conducted by PFCCL under the Ministry of Power guidelines. Vide Order dated 21.01.2024, the CERC adopted the tariff discovered through competitive bidding process conducted by PFCCL. Details of the generating company-wise quantum of power allocated to MPPMCL and corresponding tariff adopted by CERC are as follows:

S. No.	Petitioner	Coal Source	Quantum (MW)	Tariff (Rs/kWh) at Delivery Point
1.	JITPL/Respondent No.1	Talcher Field	48.48	5.14
2.	JPL/Respondent No. 2	IB-Field	72.73	5.22
3.	SKS/ Respondent No.3	IB-Field	24.24	5.2
4.	RKM/Respondent No.4	IB-Field	72.73	5.4
5.	RKM/Respondent No.4	Talcher Field	72.73	5.49
6	TRN/Respondent No.5	IB-Field	24.24	5.202

- v. The aforesaid generating companies requested MPPMCL for executing the PPA in terms of the LoA issued by PFCCL. The Petitioner MPPMCL, vide letter dated 31.08.2023, requested the generating companies for their consent on relaxation/ omission of following provisions of the draft PPA:
- a. Providing of “Escrow Agreement” and “Deed of Hypothecation” as per clauses 13.1.1 and 13.1.2 of draft PPA, respectively;
 - b. Providing Performance Security as per clause 9.1.2 of draft PPA;
 - c. Regarding payment of normative availability by utility upon termination of PPA on its default as per clause 19.3.2 of draft PPA.
- vi. Petitioner in its petition submitted that in response to aforesaid, the Respondent No. 1 to 5 have given their written consent for relaxation/ omission of clause 13.1.1 “Escrow Agreement” and 13.1.2 “Deed of Hypothecation” only. However, for the waiver of other clauses (Clause 9.1.2. and 19.3.2) the Respondent Generating Companies have not agreed.
- vii. Accordingly, the Petitioner has sought waiver/ omission of only two clauses viz. 13.1.1 and 13.1.2 of the draft PPA regarding “Default Escrow Account” and “Deed of Hypothecation” respectively, as follows:

Clause No. of instant Agreement	Clause Description	Mutually agreed to stand modified as
13.1.1	<p>Default Escrow Account: <i>The Utility and the Supplier shall, prior to the Appointed Date, execute a default escrow agreement with the Utility’s bank substantially in the form specified in Schedule-C (the “Default Escrow Agreement”) for the establishment and operation of the default escrow account (the “Default Escrow Account”) in favour of the Supplier. The Parties agree and acknowledge that the Default Escrow Account shall be established and maintained at a bank where Utility’s revenue of at least twice the Monthly Payment are normally deposited (the “Default Escrow Bank”). The Utility expressly agrees and undertakes that throughout the term of the Contract Period, no less than twice the Monthly Payment shall continue to be deposited at that bank or any substitute thereof that the Parties may by mutual agreement determine and Revenues equivalent to 1.1 times the sum of 1/12th of the applicable annual Capacity Charge for the relevant year and 1/12th of the total amount paid on account of variable charge for the last year (the “Monthly Payment”) shall be routed every month through the Default Escrow Account in accordance with the provisions of this Clause 13.1 and the Default Escrow Agreement. Provided that in the first year of operation, total amount of variable charge shall be assessed by multiplying energy generation at normative availability and applicable variable charge.</i></p>	OMMITED / WAIVED OF
13.1.2	<p><i>The Utility and the Supplier shall, prior to the Appointed Date, execute a deed of hypothecation substantially in the form specified at of Schedule-D (the “Deed of Hypothecation”), whereby the Utility shall hypothecate to the Supplier an amount equal to Monthly Payment, to be deposited every month in the Default Escrow Account for discharging the liabilities arising out of and in relation to the Secured Obligations.</i></p>	OMMITED / WAIVED OF

20. Vide Commission's order dated 27.02.2024, all the Respondents were directed to file their responses in the subject petition. Accordingly, Respondent Generating Companies (Respondent No. 1 to 5) have filed their respective written submissions with the Commission. The summary of written submissions filed by the Respondents with the Commission on the issue of waiver of clauses 13.1.1 and 13.1.2 of draft PPA is tabulated as below:

Sl. No.	Name of Respondent Generating Company	Issue of Waiver of (Escrow Agreement Clause 13.1.1) and (Deed of Hypothecation Clause 13.1.2) in PPA	
		Response of the Respondent Generating Company	Outcome of Written Submission of Respondent
1	Jindal India Thermal Power Limited (JITPL) (Respondent No.1)	Present Petition may be allowed and parties may be directed to execute the PPA (s) after mutual agreement/ consent on the issue, if any	Agreed for waiver
2	Jindal Power Limited (Respondent No.2)	Does not have any comments on the filed petition	It implies that Respondent No. 2 does not have any objection on the filed petition, hence considered agreed for waiver
3	SKS Power Generation Chhattisgarh Ltd. (Respondent No.3)	No objection to the approval of the draft PPA and the draft Addendum attached to the petition	Agreed for waiver
4	RKM Powergen Pvt. Ltd. (Respondent No.4)	No objection to the approval of draft PPA and draft Addendum attached to the petition	Agreed for waiver
5	TRN Energy Private Limited (Respondent No.5)	Agreed for waiver subject to availability of LC in place of Escrow, wherever applicable.	Not Agreed

21. Subsequently, during the course of hearing held on 19.03.2024 Respondent No. 3 (SKS Power Generation Chhattisgarh Ltd.) and Respondent No. 4 (RKM Powergen Pvt. Ltd.) submitted that they are agree with the draft PPA with omission of clause 13.1.1 and 13.1.2 submitted by MPPMCL for approval of the Commission. Representative of Respondent No. 1 (Jindal India Thermal Power Ltd.) was also present in the hearing, but did not make any oral submission. However, through affidavit dated 14.03.2024, Respondent No. 1 submitted that MPPMCL vide its letter dated 16.10.2023 asked them to submit the draft PPA after deleting the condition of "Default Escrow Account" and "Deed of Hypothecation" clauses from PPA. In response, the Respondent No. 1 (JITPL) vide its letter dated 30.10.2023 had

sent the draft PPA to MPPMCL after omission of clauses 13.1.1 and 13.1.2. In view of above, Respondent No. 1 requested the Commission that the present petition may be allowed and the parties may be directed to execute the PPA(s) after mutual consent / agreement on the issues, if any.

22. Respondent No. 2 (Jindal Power Ltd.) by affidavit dated 13.03.2024, submitted that it does not have any comments on the petition filed by MPPMCL for approval of draft PPA, which also implies that it does not have any objection on the petition. However, during the course of hearing, the representative of Respondent No.2 submitted that although they were agreed for waiver of “Escrow Accounts” and “Deed of Hypothecation”, but there is no arrangement towards security of payment in case of termination. As such, Respondent No.2 wants to relate ‘payment upon termination’ clause with Letter of Credit (LC) in the draft PPA. Thus, it emerged that Respondent No. 2 has rescinded its earlier submission and was not agreeable to the draft of PPA submitted by the Petitioner.
23. Respondent No. 5 (TRN Energy Pvt. Ltd.) during the course of hearing held on 19.03.2024, reiterated the same stand during arguments as was taken by it in written submission filed before the Commission. It clearly emerged that Respondent No. 5 does not agree to the present form of draft PPA submitted by the petitioner for approval of the Commission.
24. With regard to commitment towards termination payment liability, the Petitioner in its rejoinder, responded to reply filed by Respondent No. 5. In this response, the petitioner has broadly submitted that other provisions in the draft PPA, as well as Rules and Regulations like provisions of (Late Payment Surcharge & related matters) Rules, 2022 issued by MoP, GoI and subsequent amendments are sufficient to safe-guard the interest of generators, in case of default in payment to the generators from the utility end. Hence, as per petitioner’s response the apprehension of the Respondents that Petitioner will not adhere to its Termination Payment obligations is misconceived and deletion of clauses 13.1.1 and 13.1.2 of the draft PPA will not be having any hindrance or legal issues in respect of payment obligations of the Petitioner.
25. Ld. Counsel appearing on behalf of the Petitioner submitted that it has responded to all the issues raised by the Respondent generating companies and requested the Commission that the Commission may approve the draft PPA as submitted with the subject petition and allow the Petitioner to execute the same with Respondent No. 1 to 4 only, at this stage.
26. On further perusal of the draft PPA, the Commission has observed that:
 - a) Clause 25.5 provides waiver of any obligation by either party under the PPA.

- b) Clause 25.8 provides that no amendment or modification shall be valid and effective unless such modification or amendment is agreed to in writing by the parties and duly executed.

27. After the hearing held on 19.03.2024, the situation finally emerging out is tabulated as below:

Sl. No.	Name of Respondent Generating Company	Issue of waiver of (Escrow Agreement Clause 13.1.1) and (Deed of Hypothecation Clause 13.1.2) in PPA	
		Oral Submissions made during Hearing held on 19.03.2024	Outcome of Arguments held on 19.03.2024
1	Jindal India Thermal Power Limited (Respondent No.1)	Did not make any oral submission	Agreed, as per written submission taken on record
2	Jindal Power Limited (Respondent No.2)	Although agreed for waiver of "Escrow Accounts" and "Deed of Hypothecation", but there is no arrangement towards security of payment in case of termination. As such, Respondent No. 2 wants to relate 'payment upon termination' clause with Letter of Credit (LC) in the draft PPA	Not Agreed
3	SKS Power Generation Chhattisgarh Ltd. (Respondent No.3)	Agreed with the draft PPA and Addendum submitted by MPPMCL	Agreed
4	RKM Powergen Pvt. Ltd. (Respondent No.4)	Agreed with the petition. No comments to offer. Written submission may be accepted.	Agreed
5	TRN Energy Private Limited (Respondent No.5)	Reiterated the same arguments as submitted in writing, i.e., Agreed for waiver subject to availability of LC in place of Escrow, wherever applicable.	Not Agreed

28. As described in paragraph 27 above, it finally emerged that Jindal India Thermal Power Limited (Respondent No.1), SKS Power Generation Chhattisgarh Ltd. (Respondent No.3) and RKM Powergen Pvt. Ltd. (Respondent No.4) have agreed to execute the PPA along with Addendum as filed by the Petitioner, whereas other two Respondents namely Jindal Power Limited (Respondent No.2) and TRN Energy Private Limited (Respondent No.5) are not willing to execute draft PPA along with Addendum as filed by the petitioner.
29. In view of the above, the Commission is of the considered view that Respondent No. 1, 3 & 4 are in mutual agreement with the petitioner for the waiver/omission in clause no. 13.1.1 and 13.1.2 of the draft PPA as per provisions under clause no. 25.5 and 25.8 of Model PPA issued by MoP, GoI. Hence, the Commission hereby accords approval to the draft PPA (along with Addendum) filed by the Petitioner and allows the petitioner to execute PPA, so approved with Respondent no. 1, 3 and 4 namely Jindal India Thermal Power Limited, SKS Power Generation Chhattisgarh Ltd. and RKM Powergen Pvt. Ltd., separately.
30. A copy of the aforesaid draft of approved PPA along with Addendum is annexed as Annexure-I with this Order. The aforesaid PPA shall come into effect from the date, it is executed by the parties. The Petitioner is directed to file copy of the aforesaid approved PPA with the Commission on execution of the same with respective generators.

With the above observations and directions, the subject petition No. 09 of 2024 is disposed of accordingly.

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S.P.S. Parihar)
Chairman