

**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Sub: In the matter of filing of petition under Section 86(1)(b) of the Electricity Act, 2003 read with Regulation 32 of MPERC (Power Purchase and Procurement Process) Regulations, 2006, (Revision 1) (RG-19(I) of 2006) for approval of draft Supplementary Agreement to Power Purchase Agreement dated 05.01.2011.

ORDER

**Date of hearing: 27th September' 2022
(Date of Order: 11th October' 2022)**

Petition No. 46 of 2022

**M P Power Management Company Limited,
Shakti Bhawan, Rampur, -
Jabalpur (M. P.) 482 008**

Petitioner

Versus

**M/s. Jhabua Power Limited,
Unit No. 303 & 307, 3rd Floor,
ABW Tower, M.G. Road,
Gurugram, 122002**

Respondent

Shri Manoj Dubey Advocate and Shri Nitin Khatri appeared on behalf of the petitioner.
Ms. Roopam Bansal appeared on behalf of the Respondent.

MP Power Management Company Limited has filed the subject petition under Section 86(1)(b) of the Electricity Act, 2003 read with Regulation 32 of MPERC (Power Purchase and Procurement Process) Regulations, 2006 (Revision-I), for approval of draft Supplementary Agreement to the Power Purchase Agreement (PPA) dated 05.01.2011 in respect of coal linkage rationalization in Jhabua Thermal Power Station.

2. Jhabua Power Limited has set up a 600 MW (1 x 600 MW) Coal Based Thermal Power Station at Barela, Tahsil-Ghansore, District Seoni, Madhya Pradesh. Date of commercial operation of the unit is 3rd May' 2016. The Petitioner (MPPMCL) has executed a Power Purchase Agreement on dated 5th January, 2011 with M/s. Jhabua Power Ltd. (Respondent) for procurement of electricity equivalent to 30% of the installed capacity of 600 MW on the tariff determined by the Commission.

3. In the subject petition, petitioner broadly submitted the following:-

- i. *“That, the petitioner has executed a Power Purchase Agreement (PPA) dated 5th January, 2011, with M/s. Jhabua Power Ltd. for procurement energy equivalent to 30% of the Power Station’s installed capacity of the Respondent on the tariff determined by the Commission from time-to-time.*
- ii. *That, vide its letter dated 12-03-2020, the Ministry of Coal issued the **Methodology of Linkage Rationalization of Independent Power Producers (IPPS)** like the Respondent herein. In terms of the said notification, Coal India Limited (CIL), vide its letter dated 21-07-2021 has transferred ACQ (0.578 MMTPA) relating to the Respondent from Mahanadi Coal Fields Ltd and in its place allocated 0.402 MMTPA coal from Northern Coal Fields Ltd. (NCL) to the Respondent.*
- iii. *That, as per the Amendment / Addendum to the FSA dated 02-11-2020, between MCL and the Respondent, out of revised ACQ effective from 15-03-2022 for quantity of 0.500225 MMTPA, only 0.247170 MMTPA has been fixed as Annual Contracted Capacity in proportion to the Generation Capacity as covered under the PPA dated 5th January, 2011.*
- iv. *That, as per the methodology prescribed under aforesaid coal rationalization scheme, a cost saving of Rs. 0.60/kWh has been envisaged by CIL in its order for Rail mode supply on the basis of applicable quantity / parameters in July, 2021. The cost savings will vary from time-to-time due to change in quantity / parameters. Such cost savings, on actual basis, will automatically get passed on to the petitioner through the built-in mechanism in terms of the tariff Regulations governing the parties hereto.*
- v. *That, the Methodology, inter-alia, provides Coal linkage rationalization as an exercise in which the coal linkage of a Thermal Power Plant (TPP) of an IPP, having linkages through allotment route only, may be transferred from one Coal Company to another based on coal availability and future coal production plan of the coal company. The underlying objective behind the exercise shall be to reduce the landed cost of coal due to reduction in transportation cost and cost of coal. The reduced landed price of coal shall lead to savings, to be reflected in the*

cost of power generated, and these savings shall be passed on to the buyers of power through a transparent and objective mechanism. The one-time process of calling for requests from the IPP for linkage rationalization shall be undertaken jointly by CIL, SECL and CEA in a transparent manner. Swapping of linkages with coal sourced through auction or imports shall not be permissible. The Methodology further, vide its paragraph 8, provides that the Fuel Supply Agreement of the rationalized source from any coal company would be signed / implemented only after the appropriate Electricity Regulatory Commission approves the supplementary agreement. The Methodology also provides that any IPP drawing coal from WCL under Cost Plus Agreements from cost plus mines shall be excluded from the purview of rationalization under the scheme. It may happen so that after rationalization, the power plants which were earlier moving coal through rail may move coal through road, then in such a situation, coal transportation charges by rail from the new source shall be considered for the purpose of calculation of savings.

- vi. That, in the above-mentioned factual matrix, the parties have mutually discussed the issues and have agreed to execute the required supplementary agreements to the respective PPA. The Respondent would concede that the draft supplementary agreement to this effect enjoys its concurrence as the parties have appended their respective signatures thereto. A copy of such concurred Draft Supplementary Agreement proposed to be executed by the parties, subject to approval of Commission, is filed.*
- vii. That, the proposed draft supplementary agreement, enjoys deliberated mutual discussions and concurrence of the parties.*
- viii. That, the draft supplementary agreement is in the true spirit and objectives of the Methodology of Linkage Rationalization for IPPs. The reduction of transport cost, on account of rationalization of linkage, to the extent of rationalization permitted by Coal India Limited, will reduce the landed cost of coal, which in turn would automatically reduce the ECR as per extant formula for calculating the ECR. The mechanism to transfer any benefit through linkage rationalization is already built-in in the respective Regulation / PPA and would automatically get passed on to the petitioner (procurer) so far as the passing of benefit due to linkage is concerned.*

- ix. *That, perusal of Coal India Limited's letter dated 21st July, 2021 amply clarifies that resorting to Linkage Rationalization ensures passing of cost savings in favour of the petitioner and to ultimate financial advantage of the end consumers at large in the State.*
- x. *That, it has become necessary for the parties to execute the proposed draft supplementary agreement in view of the necessity as set out hereinbefore and for achieving reasonableness of cost of power purchase and promotion of working in an efficient, economical and equitable manner. In the true spirit of the Methodology for Linkage Rationalization, the proposed Draft Supplementary Agreements, if approved and executed, tend reduction in the distance of transportation of coal for the same amount of electricity generated; reduction in turn-around time of the coal rakes thus optimizing the usage of the rakes as well as the railway network; reduction in the transportation cost and thus the landed cost of coal and reduction in the generation cost of electricity, thus benefitting the users of electricity.*
- xi. *That, furthermore, Regulation 32 of the MPERC (Power Purchase and Procurement Process) Regulations, 2004, Revision 1, 2006 (RG-19(I) of 2006) strictly provide that amendments to existing Power Purchase Agreements shall be subject to the prior approval of the Commission in view of necessity, reasonableness of cost of power purchase and promotion of working in an efficient, economical and equitable manner.*
- xii. *That, even otherwise in totality of the facts and circumstances, the present is a fit case for obtaining prior approval of Commission in respect of draft supplementary agreement."*
4. In the subject petition, petitioner has prayed the following-
- "In the facts and circumstances of the case, it is prayed that the Commission may be pleased to accord prior approval in respect of Draft Supplementary Agreement to meet the ends of justice."*
5. The subject petition was admitted on 16.08.2022. Vide Order dated 18.08.2022, the petitioner was directed to serve copy of the petition to Respondent within seven days. The Respondent was directed to file response on the subject petition within two

weeks, thereafter. The petitioner was asked to file a rejoinder within a week, thereafter.

6. At the next hearing in this matter held on 27.9.2022, the Commission noted the following:
 - i. By affidavit dated 23rd September' 2022, Respondent (JPL) filed reply to the petition. In the aforesaid reply, it was submitted that the Respondent is supporting the prayer made in the petition filed by MP Power Management Company Ltd.
 - ii. After hearing both the parties, case was reserved for order.
7. M/s Jhabua Power Limited (Respondent) vide affidavit dated 23.09.2022 broadly submitted the following:
 - i. *The petition primarily seeks approval of the Commission to the Draft Supplementary Agreement to be executed between the MPPMCL & Jhabua which passes on the benefit of coal rationalization to MPPMCL under the "Methodology for linkage rationalization of Independent Power Producers (IPP's)" issued by the Ministry of Coal on 13.3.2020.*
 - ii. *It is stated that Jhabua has also filed Petition No 261/MP/2021 before the Central Electricity Regulatory Commission for approval of the supplementary agreement/amendments to the PPAs on account of such coal rationalization since Jhabua is also supplying electricity to Other States and has a composite scheme for generation and sale of electricity in more than one state in terms of Section 79(1) (b) of the Electricity Act, 2003.*
 - iii. *Vide RoP dated 11.3.2022, the CERC has admitted the petition and directed the petitioner to furnish the signed copy of the supplementary agreements/addendum to the PPAs with respect to coal rationalization on or before 23.3.2022.*
 - iv. *Even though the draft supplementary agreement and in principle approval of MPPMCL has been filed by Jhabua in the above proceedings, the signed supplementary agreements needs to be filed by Jhabua.*

- v. *Since the ultimate benefit of coal rationalization would be flowing to MPPMCL and through MPPMCL to consumers in the State of MP, it is submitted that the approval being sought ought to be accorded by this Commission.*

Commission's Observations and Findings:

8. Ongoing through the subject petition and the draft supplementary agreement filed with this petition, the Commission has observed the following:
- i. Vide Notification dated 15th May, 2018, Ministry of Coal, Government of India issued Methodology for coal Linkage Rationalization for IPPs. The Methodology for Coal linkage rationalization in which the coal linkage of Thermal Power Plant of an IPP, having linkages through allotment route only, may be transferred from one Coal Company to another based on coal availability and future coal production plan.
 - ii. The main objective of coal rationalization is reduction in distance of transportation of coal to reduce overall landed cost of coal. The cost saving due to aforesaid reduced landed price of coal shall be passed on to the beneficiaries. The methodology further provides that the Fuel Supply Agreement of the rationalized source from any coal company would be signed / implemented only after the approval of appropriate Electricity Regulatory Commission to the supplementary agreement.
 - iii. The subject petition has been filed by MP Power Management Company Limited under Section 86(1) (b) of the Electricity Act, 2003 read with Regulation 32 of MPERC (Power Purchase and Procurement Process) Regulations, (Revision-I), 2006 for approval of draft Supplementary Power Purchase Agreement to the PPA to be executed between the petitioner and Respondent in respect of passing the saving towards coal linkage rationalization in Jhabua Thermal Power Station.
 - iv. Regarding approval of amendment to existing Power Purchase Agreement, Regulation 32 of the MPERC (Power Purchase and Procurement Process) Regulations, 2004, Revision 1, 2006 provides as under:

*“Any new power purchase arrangements and agreements or amendments to existing Power Purchase Agreements (PPA's) entered into by the Distribution Licensee shall be subject to the **prior approval of the***

Commission in view of necessity, reasonableness of cost of power purchase and promotion of working in an efficient, economical and equitable manner.”

- v. Vide letter dated 12.03.2020, Ministry of Coal issued Methodology of Linkage Rationalization of Independent Power Producers (IPP's). According to the aforementioned methodology, vide letter dated 21st July' 2021, Coal India Limited (CIL) transferred ACQ (0.578 MMTPA of coal) pertaining to the Respondent from Mahanadi Coal Fields Ltd. (MCL) and in its place assigned 0.402 MMTPA coal from Northern Coal Fields Ltd. (NCL) to the Respondent, M/s Jhabua Power Ltd.
- vi. The petitioner submitted that as per the 7th amendment/addendum to FSA executed between Mahanadi Coal Fields Ltd. (MCL) and Respondent (M/s Jhabua Power Ltd.) on 02.11.2020, out of the revised ACQ of 0.500525 MMTPA effective from 15.03.2022, quantity of 0.247170 MMTPA has been worked out as Annual Contracted Capacity in proportion to the generation capacity as covered under the PPA dated 05.01.2011 on long term basis executed with MPPMCL.
- vii. The petitioner further submitted that for supply of coal from NCL under the coal rationalization scheme, **the cost savings of Rs. 0.60/kWh** was envisaged in July' 2021 on the basis of applicable quantity/parameters and will have to be passed on by the Respondent to DISCOMs/buyers, through a supplementary agreement which shall be approved by the Commission.
- viii. The parties have mutually discussed the issues and have agreed to execute the required supplementary agreement to the PPA. The petitioner mentioned that the Respondent had already submitted its consent to the draft supplementary agreement to the PPA.
- ix. In response to the subject petition, by affidavit dated 22.09.2022, the respondent submitted that both the parties have mutually agreed with draft supplementary agreement and after that it is filed for approval of the Commission. In draft supplementary agreement, Article 16.23 is added regarding passing on the cost savings on account of reduction in coal transportation cost due to coal linkage rationalization on actual basis to the procurer.
- x. On perusal of draft supplementary agreement, the Commission observed that rationalization of some part of the coal linkage from MCL to NCL has resulted in

reduction in the distance of transportation of coal and reduction in turn-around time of coal rack which shall reduce the landed cost of coal and ultimately resulted in reduction in cost of generation. Further, this reduction in cost shall be passed on to the end consumers through the procurer.

- xi. In view of the above, the Commission has considered aforesaid draft supplementary agreement filed by the petitioner which has been concurred by the Respondent by its affidavit dated 22.09.2022. The Article 16.2.1 of the Power Purchase Agreement (PPA) dated 5th January' 2011 executed between both the parties provides as under:

“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.”

9. In view of the above facts and considering Article 16.2.1 of PPA dated 05.01.2011, the Commission hereby accords approval to the draft Supplementary Agreement (to PPA dated 05.01.2011) filed by the petitioner with the subject petition. A copy of the aforesaid approved draft Supplementary Agreement is annexed as Annexure I with this order. The aforesaid Supplementary Agreement shall come into effect from the date of execution by all the parties who signed PPA on 05.01.2011. The parties are directed to file a copy of duly approved Supplementary Agreement to the Commission on execution of the same by all parties in PPA.

10. With the aforesaid observations and directions, the subject petition is disposed of.

(Gopal Srivastava)
Member (Law)

(Mukul Dhariwal)
Member

(S. P. S. Parihar)
Chairman