
**MADHYA PRADESH ELECTRICITY REGULATORY COMMISSION
BHOPAL**

Subject: Petition for approval of draft Supplementary PPA dated 05.01.2011 executed between MP Power Management Company Limited and M/s Jaiprakash Power Ventures Limited for procurement of 65% power generated from Bina Thermal Power Plant.

ORDER

(Date of Order: 6th November' 2023)

P. No. 43 of 2023

M.P. Power Management Company Ltd.,

Block No. 2, Shakti Bhawan, Rampur,
Jabalpur – 482008

- **Petitioner**

V/s

M/s Jaiprakash Power Ventures Ltd.

(Jaypee Bina Thermal Power Plant)
JA House, 63, Basant Lok, Vasant Vihar,
New Delhi- 110057

- **Respondent**

Shri Alok Shankar, Advocate and Shri Nitin Khatri appeared on behalf of petitioner.

Shri Vedant, Advocate and Shri Ajay Kumar Tripathi appeared on behalf of respondent.

M.P Power Management Company Ltd. (hereinafter referred as the 'Petitioner' or MPPMCL) has filed the subject petition seeking approval of draft Supplementary Power Purchase Agreement (PPA) executed between the petitioner (MPPMCL) and M/s Jaiprakash Power Ventures Ltd., (hereinafter referred as the Respondent or JPVL) for procurement of 65% power generated from 2x250 MW Bina Thermal Power Station. The aforesaid approval of draft supplementary PPA has been sought after incorporating the provisions of Madhya Pradesh Electricity Grid Code, 2019 (MPEGC, 2019) and Detailed Operating Procedure (DOP) issued on 29.01.2020 regarding Technical Minimum Scheduling and part load compensation for thermal generating units.

2. The petitioner (M.P. Power Management Company Ltd.) is a holding company for all the three Discoms of Madhya Pradesh and authorized for bulk power purchase and supply of electricity to the distribution companies in MP.
3. The Respondent (M/s Jaiprakash Power Ventures Limited) is a generating company and it has set up 2X250 MW (Phase-I) Coal Based Thermal Power Station at Bina, Madhya Pradesh. Date of Commercial Operation of Unit No. 1&2 was 31.08.2012 and 07.04.2013, respectively.
4. The petitioner (MPPMCL) executed long term Power Purchase Agreement on 05.01.2011 with Respondent (M/s JPVL) for supply of 65% power of installed capacity of the Project at regulated tariff determined by the Commission. The Respondent has executed another PPA on 20.07.2011 with the Government of Madhya Pradesh (GoMP) for supply of 5% of net power generated at variable charges only determined by the Commission.

Background:

5. A brief background of the subject petition are as follows:
 - i. The Commission while exercising its powers under section 86 (1)(h) of the Act, notified Madhya Pradesh Electricity Grid Code, 2019 (MPEGC) on 21.06.2019, wherein certain provisions regarding Technical Minimum Scheduling and compensation thereof were envisaged. Regarding part load compensation, clause 8.8 (4) of the MPEGC, 2019 provides that in case of generating stations other than SSGS, wherein the 100% installed capacity is not tied up with MPPMCL/ Discoms of MP through a long term PPA or whose tariff for only partial/contracted capacity is determined by the Commission, such generating station/ company may have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL/ Discoms for sale of power, in order to claim compensation for operating the unit at the technical minimum schedule.
 - ii. Further, vide order dated 29.01.2020, the Commission approved Detailed Operating Procedure (DOP) in terms of Clause 8.8 (6) of the MPEGC, 2019 for taking unit(s)

under Reserve Shut Down (RSD) and mechanism for compensation for degradation of operating parameters due to part load operation. The DOP also provides that in case of Generating Station, wherein 100% installed capacity is not tied up with MPPMCL through a long term PPA and whose tariff for only partial/contracted capacity is determined/adopted by this Commission, such Generating Station shall have to appropriately factor in such provisions regarding part load compensation in the PPAs, in order to claim such compensation.

- iii. Earlier, MPPMCL filed Petition No. 31 of 2020 before the Commission seeking approval of draft Supplementary Agreement to PPA dated 05.01.2011 executed between MPPMCL and M/s JPVL for Bina thermal power station. The Commission vide Order dated 07.09.2020, dismissed the aforesaid Petition with the observations that the draft supplementary power purchase agreement (SPPA) was lacking of free will and consent of Respondent as per requirement under Article 16.2.1 of the PPA dated 05.01.2011 executed between the parties.
- iv. Further, M/s JPVL as a petitioner had filed petition No. 26 of 2022 seeking directions to MPPMCL to execute a Supplementary Power Purchase Agreement to the PPA dated 05.01.2011 executed between the JPVL and MPPMCL as well as to compensate the generator for losses caused due to erratic scheduling and delay in signing the SPPA. The proposed amendments to the PPA, were sought to factor in the provisions of Madhya Pradesh Electricity Grid Code (Revision-II), 2019 and DOP approved by the Commission on 29.01.2020.
- v. Vide order dated 25.08.2022, the Commission observed that looking to the technical requirements and financial implications, provision to claim compensation for part load operation as provided under Detailed Operating Procedure and MP Electricity Grid Code, 2019 are necessary and to be incorporated in the PPA between both the parties. Therefore, MPPMCL was directed to draft an appropriate agreement in this regard thereby factoring in the provisions of MPEGC, 2019 and DOP issued by the Commission, and approach the Commission for its approval after concurrence of both the parties.

- vi. Despite several reminders by the JPVL, MPPMCL failed to comply with the said directions. Then, the JPVL had filed Petition No. 9 of 2023 under Section 142 and Section 146 of the Electricity Act, 2003, seeking necessary directions to M.P Power Management Company Limited to comply with the directions passed by the Commission vide Order dated 25.08.2022 in Petition No. 26 of 2022.
 - vii. Vide Order dated 08.06.2023 in Petition No. 09 of 2023, the Commission directed that this particular provision of Supplementary Agreement to PPA deserves to be implemented in a time bound manner. The Commission was of the view that a definite time limit be given in this matter. Therefore, a time of 30 days from the date of issue of order was given to MPPMCL to implement the directives given by the Commission vide order dated 25.08.2022 in Petition No. 26 of 2022. Secretary of the Commission was also directed to get the compliance report from MPPMCL and in case of non-compliance of this order, initiate the proceedings of issue of show cause notice under Section 142 of the Electricity Act, 2003.
 - viii. In pursuance to the above direction, M.P. Power Management Company Ltd. filed compliance affidavit by putting on record the compliance to the directives of the Commission seeking approval of Supplementary Power Purchase Agreement (SPPA) initialed by MPPMCL and M/s JPVL to the Power Purchase Agreement dated 05.01.2011 executed between MPPMCL and JPVL. The draft SPPA has been entered between the parties seeking to factor in the provisions of Madhya Pradesh Electricity GRID Code (Revision-II), 2019 notified by the Commission on 12.06.2019 and the Detailed Operating Procedure approved by the Commission on 29.01.2020.
6. With the above background, the abovementioned compliance affidavit filed by MPPMCL has been treated as a fresh petition as Petition No. 43 of 2023 after the appropriate fees was deposited by the petitioner.
7. Petitioner has broadly submitted the following:
- i. The present petition has been filed on behalf of Madhya Pradesh Power Management Company Limited in light of the directions to MPPMCL by the Commission in its order*

dated 08.06.2023 in Petition No. 09 of 2023. The said direction was passed in light of order of the Commission passed vide order dated 25.08.2022 in Petition No. 26 of 2022

- ii. In pursuance to the above directions, the present affidavit has been filed on behalf of MPPMCL inter alia putting on record the compliance to the above direction of this Commission and seeking approval of the Supplementary Power Purchase Agreement initialled by MPPMCL and M/s JPVL to the Power Purchase Agreement dated 05.01.2011 executed between MPPMCL and JPVL.*
- iii. The said SPPA has been entered into between the parties seeking to factor in the provisions of Madhya Pradesh Electricity Grid Code (Revision-II), 2019 notified by the Commission on 12.06.2019 and the Detailed Operating Procedure approved by the Commission on 29.01.2020.*
- iv. The facts leading to the agreement of the SPPA between the parties and the present compliance affidavit are mentioned hereunder for the kind consideration of the Commission:*
 - a. On 05.01.2011, the PPA was executed between BPSCL and M.P. Power Trading Company Limited for procurement of 65% of power of the installed capacity of the Project on regulated tariff basis.*
 - b. On 20.07.2011, the GoMP and JPVL entered into another power purchase agreement for procurement of power on Variable Charges basis. GoMP has nominated the Respondent No. 1 herein to receive 5% of net power injected at variable charge/ cost to be determined by the Commission.*
 - c. Thereafter on 12.06.2019, the Commission while exercising its powers under section 86 (l)(h) of the Act, notified MPEGC 2019, wherein certain provisions regarding Technical Minimum Scheduling and compensation thereof were envisaged.*
 - d. Thereafter on 29.01.2020, the Commission vide its Order approved the DOP and the compensation mechanism in terms of Clause 8.8(6) of the MPEGC, 2019. The said provision for taking unit(s) under Reserved Shut Down and Mechanism for Compensation for Degradation of Heat Rate, Aux. Energy*

Consumption and Secondary Fuel Oil Consumption, due to part load operation and Multiple Start/Stop of generating units.

e. Vide the Subject Order, this Commission directed the parties to implement the SPPA in a time bound manner.

f. Pursuant to the MPEGC, 2019 and the DOP issued thereunder, the Respondent No. 1 herein and JPVL have initialled the SPPA and the draft shall be executed after approval of the Commission. Same is submitted alongwith petition.

v. The said SPPA is to be entered into between the parties seeking to factor in the provisions of Madhya Pradesh Electricity Grid Code (Revision-II), 2019 notified by this Commission on 12.06.2019 and the Detailed Operating Procedure approved by this Commission on 29.01.2020.

vi. It is submitted that the initialing of the draft Supplementary Power Purchase Agreement between MPPMCL and JPVL as well as submitting the same for approval is without prejudice to the rights of MPPMCL to challenge the provisions of the MPEGC, 2019 relating to RSD and the DOP issued thereunder and MPPMCL reserves all rights qua the same.

vii. Further, it is submitted that JPVL must undertake to refund compensation received in terms of the applicable provisions of the MPEGC, 2019 in the event the provisions are set aside by appropriate forum upon challenge by MPPMCL.

8. With the above submissions, the petitioner prayed the following:

i. Accord approval to the draft Supplementary Power Purchase Agreement;

ii. Pass any such further order as the Commission may deem necessary in the interest of justice.

9. The subject petition was admitted at the motion hearing held on 12.09.2023. The petitioner (MPPMCL) was directed to serve copy of petition to respondent within a week. The respondent was also directed to file his response on the petition within two weeks, thereafter.

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

10. At the next hearing held on 18.10.2023, both the parties were heard and the case was reserved for order.
11. Vide affidavit dated 07.10.2023 Respondent (JPVL) has broadly submitted the following:
 - a. ***JPVL is agreeable to the terms of the draft SPPA annexed to the Compliance Affidavit of MPPMCL.***
 - b. *JPVL is also agreeable to the contents of the Compliance Affidavit to the extent that the same are a matter of record. The contents of paragraphs 8 and 9 of the Compliance Affidavit are premature as MPPMCL as on date has not challenged the MPEGC, 2019. Therefore, to give any undertaking to refund compensation received in terms of the applicable provisions of the MPEGC, 2019 and DOP issued there under also is premature. Needless to state that the draft SPPA shall be subject to the orders passed by the appropriate courts, as and when MPPMCL challenges the MPEGC, 2019 and suitable orders are passed in this regard.*
 - c. *In view of the above and subject thereof, JPVL accords its consent to the draft SPPA annexed to the Compliance Affidavit of MPPMCL. Accordingly, JPVL prays that the Commission may approve the execution of the draft SPPA.*

Commission's Observations

12. The subject petition has been filed by the petitioner MP Power Management Company Limited for approval of draft Supplementary Power Purchase Agreement (SPPA) to be entered into between the petitioner and respondent seeking to factor in the provisions of Madhya Pradesh Electricity Grid Code (Revision-II), 2019, which were notified by the Commission on 12.06.2019 and the Detailed Operating Procedure approved by the Commission on 29.01.2020.
13. On going through the draft Supplementary Agreement, the Commission has observed that the draft Supplementary Agreement has covered following provisions:

- i. Reference of MPERC (Madhya Pradesh Electricity Grid Code), 2019 and Detailed Operating Procedure issued by the Commission on 29.01.2020 and Amendment Order dated 12.10.2022 are proposed in Recitals of draft Supplementary Agreement.
 - ii. Addition of Article 6.1(A) is proposed for compensation for operation above Technical Minimum but below Normative Plant Availability Factor on account of lesser schedules given by Procurer/Beneficiaries.
 - iii. Addition of Articles 6.1(B), 6.1(C) and 6.1(D) to the PPA are proposed in relation to the Technical Minimum Schedule.
 - iv. Draft Supplementary Power Purchase Agreement has been initialized by both the parties, i.e. petitioner and respondent.
14. Based on the contents of subject petition and submission of the respondent on record, the Commission has observed the following:
- a. The subject petition has been filed for appropriate amendment/ addendum to the Power Purchase Agreement executed between the Petitioner and Respondent on 5th January' 2011. The amendment/addendum through supplementary agreement are being sought pursuant to Madhya Pradesh Electricity Grid Code, 2019, wherein the provisions related to Technical Minimum Schedule for operation of State Sector Generating Stations and IPPs have been provided. The amendment/addendum through the supplementary agreement in PPA dated 05.01.2011 are also proposed in line with MPERC order dated 29.01.2020 approving Detailed Operating Procedure for taking unit(s) under Reserve Shut Down and mechanism for compensation in relation to Technical Minimum Schedule.
 - b. With regard to Technical Minimum Schedule and part load compensation in respect of thermal generating stations other than State Sector Generating Stations (SSGS), whose 100% installed capacity is not tied up with MPPMCL/Discoms, Regulation 8.8(4) of the MPEGC, 2019 provides as under:

“In case of generating stations other than SSGS, wherein the 100% installed capacity is not tied up with MPPMCL/ Discoms of MP through a long term power purchase agreement or whose tariff for only partial/contracted capacity is

determined by the Commission, such generating station/ company may have to appropriately factor in the above provisions in the PPAs entered into by it with M.P. Power Management Company/ Discoms for sale of power, in order to claim compensations for operating at the technical minimum schedule.”

- c. In terms of Clause 8.8(6) of the MPEGC, 2019, the Commission vide order dated 29.01.2020 approved the DOP for taking unit(s) under Reserve Shut Down and Mechanism for Compensation for Degradation of Heat Rate, Aux Energy Consumption and Secondary Fuel Oil Consumption, due to Part Load Operation and Multiple Start/Stop of Units under Reserved Shut Down (RSD). Regarding applicability for aforesaid compensation, clause 2 of the Appendix II of DOP mentioned as under:

“This Compensation Mechanism is applicable to Coal based State Generating Stations, having 100% installed capacity tied up with MP Power Management Co. Ltd. whose tariff is determined or adopted by the MPERC. In case of generating stations other than SSGS, wherein 100% installed capacity is not tied up with MPPMCL through a long term power purchase agreement or whose tariff for only partial/contracted capacity is determined/adopted by the Commission, such generating station/ company shall have to appropriately factor in the provisions in the PPAs entered into by it with MPPMCL for sale of power, in order to claim compensations for part load operation and multiple start/stop under RSD.”

- d. Article 16.2.1 of the Power Purchase Agreement dated 5th January, 2011 executed between the same 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.”

15. In view of the above, it is observed that in order to claim compensation towards Degradation of operating parameters (Heat Rate, Aux Energy Consumption and Secondary Fuel Oil Consumption) due to Part Load Operation and Multiple Start/Stop of Units, the generators

whose 100% installed capacity is not tied up with MPPMCL through a long term power purchase agreement or whose tariff for only partial/contracted capacity is determined/adopted by the Commission, have to incorporate such provisions in the PPAs through amendment and same have to be approved by the Commission.

16. The respondent JPVL by affidavit dated 7th October, 2023 has submitted its concurrence with the draft Supplementary Power Purchase Agreement to be executed between petitioner and respondent. The Commission has considered draft Supplementary Agreement filed with the subject petition, which has been concurred by the Respondent through a written agreement in terms of Article 16.2.1 of the PPA dated 05.01.2011.
17. In view of the observations made in the foregoing paragraphs and considering the submissions of petitioner and Respondent and also the written agreement/consent of the Respondent in terms of 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 in respect of M/s Jaiprakash Power Ventures Ltd., Bina thermal power station. A copy of the aforesaid draft of approved Supplementary Agreement is annexed as Annexure I with this Order. The aforesaid Supplementary Agreement shall come into effect from the date, it is executed by all the parties in PPA dated 05.01.2011. The parties are also directed to file a copy of the aforesaid approved Supplementary Agreement with the Commission on execution of the same by all the parties in the PPA.

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

(Prashant Chaturvedi)
Member

(Gopal Srivastava)
Member (Law)

(S. P. S. Parihar)
Chairman