

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 331/MP/2022

Coram:

Shri Jishnu Barua, Chairperson

Shri I. S. Jha, Member

Shri A. K. Goyal, Member

Shri P.K. Singh, Member

Date of Order: 21st December, 2023

Petition under Section 79 (1) (b) of the Electricity Act, 2003 seeking approval of the Secondary Supplementary Power Purchase Agreement dated 10.02.2022 executed between Maithon Power Limited and Damodar Valley Corporation as well as seeking approval to sign and execute Supplementary/Amendment Power Purchase Agreements with Kerala State Electricity Board, Tata Power Delhi Distribution Limited and Tata Power Trading Company Limited for supply to West Bengal State Electricity Distribution Company Limited to pass on the benefits of rationalized coal linkage to the distribution companies.

And in the matter of:

Maithon Power Limited (MPL),
Corporate Center, 34 Sant Tukaram Road,
Carnac Bunder, Mumbai, Maharashtra- 400009

..... Petitioner

Vs

1. Damodar Valley Corporation (DVC),
DVC Towers, VIP Road, Kolkata-700054.
2. Kerala State Electricity Board Limited (KSEBL),
Vydyuthi Bhavanam, Pattom, Thiruvananthapuram, Kerala - 695004.
3. Tata Power Delhi Distribution Limited (TPDDL),
Sub-Station Building, NDPL House, Hudson Lines,
Kingsway Camp, New Delhi-110009.
4. Tata Power Trading Company Limited (TPTCL),
Shatabdi Bhawan, B-12 & 13, Sector 4, Noida, UP-201301.
5. West Bengal State Electricity Distribution Company Ltd. (WBSEDCL),
Vidyut Bhavan, Block-DJ, Sector-II,
Salt Lake City, Kolkata-700091.

..... Respondents



Parties present :

Shri Venkatesh, Advocate, MPL
Shri Ashutosh Srivastava, Advocate, MPL
Shri Jatin Ghuliani, Advocate, MPL
Shri Shivam Kumar, Advocate, MPL
Shri Anand Kumar Srivastava, Advocate, TPDDL
Ms. Ishita Jain, Advocate, TPDDL
Shri Sam C. Mathew, Advocate, TPDDL

ORDER

The Petitioner has filed the instant petition under Section 79(1)(b) of the Electricity Act, 2003 seeking approval of the Secondary Supplementary Power Purchase Agreement dated 10.02.2022 executed between Maithon Power Limited and Damodar Valley Corporation as well as seeking approval to sign and execute Supplementary / Amendment Power Purchase Agreements with Kerala State Electricity Board, Tata Power Delhi Distribution Limited and Tata Power Trading Company Limited for supply to West Bengal State Electricity Distribution Company Limited to pass on the benefits of rationalized coal linkage to the distribution companies.

2. The Petitioner has made the following prayers in the instant petition:

- (a) *Approve and take on record the Second Supplementary Power Purchase Agreement executed between DVC and Petitioner - MPL dated 10.02.2022 amending the Power Purchase Agreement dated 28.09.2006 for passing on the benefits of the Linkage Rationalisation as granted to MPL by CIL vide its letter dated 21.07.2021;*
- (b) *grant approval to sign and execute similar Supplementary Agreements to the PPAs executed by Petitioner - MPL with KSEB, TPDDL & TPTCL for passing on the benefits of the Linkage Rationalisation as granted to MPL by CIL vide its letter dated 21.07.2021;*
- (c) *pass any such order, or grant such further relief (s) as this Hon'ble Commission may deem just and equitable in favour of the Petitioner in the facts and circumstances of the case.*

Background:

3. The Petitioner, Maithon Power Ltd., is a Joint Venture between the Tata Power Company Ltd. (TPCL) and Damodar Valley Corporation (DVC), holding 74 % and 26



% equity, respectively. The Petitioner owns and operates the Maithon Right Bank Thermal Power Project having a capacity of 1050 MW (2 x 525 MW) (in short, 'the generating station'), located in the Dhanbad District of the State of Jharkhand. Thus, the Petitioner is a 'generating company' as defined under Section 2(28) of the Electricity Act, 2003 (herein referred to as 'the Act, 2003'). The date of commercial operation (COD) of Unit-I and Unit-II are 1.9.2011 and 24.7.2012, respectively.

4. Respondent no. 1, Damodar Valley Corporation (DVC) and Respondent no. 2, Kerala State Electricity Board Ltd. (KSEBL), have executed long-term Power Purchase Agreements (PPAs) with the Petitioner for the supply of 150 MW and 300 MW, respectively. Respondent no. 3, Tata Power Delhi Distribution Company Ltd. (TPDDL), the petitioner and Respondent no. 4, Tata Power Trading Company Ltd. (TPTCL) have entered into a tripartite PPA for 300 MW. Respondent no. 5, West Bengal State Electricity Distribution Company (WBSEDCL), had executed PPA with Respondent no. 4, and Petitioner and Respondent no. 4 have executed Power Supply Agreement (PSA) on a back-to-back basis. Thus, the petitioner had contracted the entire installed capacity of the project (1050 MW) with beneficiaries through long-term PPAs. Further, as on date, the petitioner has signed PPA dated 28.09.2006 and supplementary PPA dated 24.01.2017 with DVC; PPA dated 30.12.2013 and amendment to PPA dated 29.06.2015 with KSEBL; tri-partite PPA dated 10.09.2009 with TPPDL and TPTCL; and PPA dated 23.04.2008 and amendment to PPA dated 12.02.2013 with TPTCL for onward sale to WBSEDCL.

Submissions of the Petitioner

5. Ministry of Coal, Govt. of India, with a primary objective to reduce the landed cost of coal through net reduction in transportation charges and passing the savings thereof to beneficiaries, vide letter dated 15.05.2018, has notified methodology for linkage rationalization for independent power producers (IPPs), wherein, coal linkage of IPP can be transferred from one coal company to another coal company based on coal availability and future coal production plan of the coal company. The subject notification stipulates that the Fuel Supply Agreement (FSA) of the rationalized source from any coal company would be signed/implemented only after the approval of a supplementary agreement by the appropriate Electricity Regulatory Commission.



6. In line with the above, Coal India Ltd (CIL) vide notice dated 25.08.2020 invited Expression of Interest (EoI) from IPPs for rationalizing their existing linkages, wherein, the Petitioner vide letter dated 15.09.2020 submitted its EoI for transfer of 5 – 7 lakh tons per annum from Bharat Coking Coal Ltd. (BCCL) to Eastern Coal Fields (ECL), out of 16.59 lakh ton per annum tied with BCCL, as per original FSA.

7. In response, CIL vide letter dated 21.07.2021 has approved rationalized linkage of 0.54 Million Tonnes of ECL (in place of 0.603 MT of coal of BCCL) and considering the SHR of 2375 kCal / kWh, Central Electricity Authority (CEA), indicated saving in the cost is Rs. 0.18 / kWh. Further, CIL advised the petitioner to pass on the cost of savings in coal rationalization to DISCOMs through supplementary PPAs duly approved by the appropriate Commission, and it was made clear that the FSA of the rationalized source from any coal company would be signed/implemented only after approval of supplementary PPA by the appropriate Commission.

8. Accordingly, the petitioner had already sent letters to the beneficiaries on 03.08.2021 and requested them to execute the supplementary PPAs and express their willingness, at the earliest.

9. In terms of the above, the petitioner and DVC have executed a second supplementary agreement dated 10.02.2022. Whereas, the TPPDL vide communication dated 06.08.2021 conveyed its in-principle agreement and consent to execute the supplementary PPA. Further, TPDDL, a State DISCOM, has filed a Petition before DERC seeking approval of the Tri-partite Supplementary Power Purchase Agreement to be executed between TPDDL, MPL & TPTCL in terms of Section 86(1)(b) of the Act read with Rule 8 of the Electricity Rules and the same is pending consideration. The KSEBL vide letter dated 18.08.2021 communicated that considering the expected timelines for approval of signing of PPA, the 15 days period provided by CIL for execution of FSA would not be sufficient. The WBSEDCL vide letter dated 24.08.2021 sought certain information regarding the computation of ECR, basis in arriving at saving of 18 paise / kWh, suitable provisions in PPA, how the



benefit will be passed on to the beneficiaries etc. The petitioner vide letter dated 31.12.2021 communicated that the saving was worked out by CEA as per the CIL's letter, the supplementary PPA with relevant provisions shared with TPTCL, the change in ECR will be pass through as the PPA is under section 62 etc,

10. The petitioner has prepared draft supplementary / amendment agreements for other beneficiaries i.e. KSEBL, TPDDL (through TPTCL) and TPTCL (for onward sale to WBSEDCL) similar to the second amendment signed with DVC and shared the same with the concerned beneficiaries and is required to be executed. Thus, the petitioner has filed an instant petition before the Hon'ble Commission seeking approval of the Second Supplementary PPA dated 10.02.2022 executed between DVC and MPL and expedite other similar amendment / supplementary agreements to be executed with the rest of the power purchasers i.e. KSEBL, TPDDL and TPTCL. As the subject coal linkage rationalization reduces the transportation cost of coal and the landed cost thereof, the same would lead to savings in the cost of power generation and passed to the beneficiaries. Hence, the approval of the Supplementary Agreements would be in consumer interest, a mandate statutorily recognized under Section 61(c) & (d) of the Act.

11. As the Commission has the jurisdiction to decide the instant Petition in terms of Section 79(1)(b) of the Act, the Petitioner has not filed any other application/petition before any other court, tribunal or commission in relation to the issues raised herein.

12. The petitioner submitted that the actual savings may be lower than the savings indicated by CEA on account of variation in actual quantity and transportation cost of coal w.r.t. projected. The expected saving is only for the generation associated with the rationalized quantity of coal but not for the total generation, i.e. reduction in Energy Charge Rate (ECR) per unit of total generation will be lower.

13. In view of the above, the Petitioner in the present petition is merely seeking to ensure expeditious pass on of the benefit of the Government of India's coal rationalization policy/scheme based on which the landed cost of coal is rationalised for thermal power projects based on shifting of quantum of coal from their existing



linkage to other subsidiaries of CIL. Hence, the present Petition is not within the realm of any dispute amongst the parties but rather based on mutual agreement, which is reflected in terms of the supplementary agreement executed and/or to be executed between the parties.

Hearing dated 14.03.2023

14. The Commission heard the petitioner on 14.03.2023 and vide RoP in hearing dated 14.03.2023 admitted the Petition and directed the Petitioner to submit information regarding the correspondence made with beneficiaries regarding the signing of PPA, tariff computation details before and after coal rationalization, change in tariff etc,

15. In response, the Petitioner vide additional submissions dated 06.04.2023 has submitted details of tariff computation made on its own along with assumptions considered thereof (complete utilization of rationalized coal, all beneficiaries sign the agreement etc,) and the correspondence exchanged with various beneficiaries. Further, submitted that the computation was tentative and actual tariff can be computed based on actual landed cost and GCV of coal received

Hearing dated 08.06.2023

16. The commission heard the parties on 08.06.2023 and vide RoP in hearing dated 08.06.2023, sought validity of the period of coal rationalization, communication made with respondents after August 2021, reasons for the discrepancy in saving claimed in the original petition and additional affidavit dated 06.04.2023 etc, from the petitioner and the view of the Respondent, KSEBL and WBSEDCL on the petitioner's proposal to execute the supplementary PPA.

17. In response, the Petitioner vide affidavit dated 01.07.2023 has submitted that :

(a) The Petitioner vide its letter dated 15.06.2023 to CIL, sought the validity period of subject coal rationalization and in response, CIL vide its letter dated 22.06.2023, has informed that next round of rationalization shall be conducted as per 'Standard Operating Procedure (SOP) for Linkage Rationalization' and the rationalization carried out under the previous round(s) but pending as on the date of notification of EOI for execution of FSA / non-submission of amended PPA, will be deemed as cancelled. However, in the instance case,



CIL is yet to notify the EOI as per the SOP and the coal rationalization for the generating station, which is currently a subject matter, is alive.

- (b) No communication has been exchanged with the respondents after August 2021 in regard to coal rationalization and signing of Supplementary PPA.
- (c) The saving of 18 paise / kWh submitted in the main Petition was based on the cost indicated by MoC / CEA, and the Petitioner does not have the basis for such calculations. Accordingly, based on certain assumptions, the Petitioner has estimated the tentative savings of Rs. 12.9 paise / kWh, and if this saving is spread to the entire generation, the saving would be 1.8 paise / kWh.

Hearing dated 31.07.2023

18. The case was heard again on 31.07.2023, and the matter in the subject Petition was reserved.

19. None of the Respondents have submitted any reply or written submissions in the instant petition. However, the Respondent, TPDDL, in a hearing dated 31.07.2023, submitted that, in principle, agreed to the execution of supplementary PPA, subject to the approval of the same by the Commission.

Analysis and Decision

20. Considering the above, submissions made by the petitioner (no written submissions made by the respondents) and documents available on record, it is noted that :

- i. The petitioner had tied up with various coal companies for a supply of around 43 lakh tons/annum, including 16.59 lakh tons/annum from BCCL.
- ii. In terms of MoC's letter dated 15.05.2018, on receipt of expression of interest by Petitioner for coal linkage rationalization to transfer 5 – 7 lakh ton/annum from BCCL (70 km away from plant) to ECL (Mugma mine 20 km away from plant and Salanpur mine 50 km away from plant), CIL vide letter dated 21.07.2021 has approved 5.4 lakh ton/annum from ECL against 6.03 lakh ton/annum of BCCL and also conveyed that as per CEA, considering SHR of 2375 kCal / kWh, the saving will be 18 paise / kWh.
- iii. In August 2021, the petitioner communicated to the beneficiaries regarding the above coal rationalization, and the same will reduce the ECR in future, however, in order to sign the fuel supply agreement with Coal India for the



- above coal rationalization, the petitioner has to produce a supplementary agreement with all its beneficiaries duly approved by the appropriate commission mentioning the fact that this reduction in energy charge will be passed on to beneficiaries.
- iv. In response, the respondent, TPDDL, has given its in principle approval subject to the approval of the appropriate Commission, and DVC vide dated 10.02.2022 has signed supplementary PPA with the petitioner. The Respondent, WBSEDCL, sought the computation details of ECR, the basis of arriving at a saving of 18 paise / kWh, how the petitioner would ensure that benefit is passed on DISCOMs etc, The Respondent, KSEB, has raised the following issues:
- a. As per CIL's methodology, the passing on the benefit to DISCOMs by IPPs has to be calculated on actual data: a clarification is required regarding the passing of additional cost on account of an increase in the cost of rationalized coal instead of savings.
 - b. As per CIL's methodology, after coal rationalization, if the power plants which were availing transportation of coal through rail required to avail coal transportation through road, the savings in coal rationalization shall be computed considering the railway transportation for rationalized coal. The same shall be incorporated in supplementary PPA.
 - c. As approval of SERC needs to be obtained for the signing of supplementary PPA, the time provided by CIL is insufficient.
- v. The Petitioner through, TPTCL. communicated to the Respondent, WBSEDCL, that:
- o The saving of 18 paise / kWh was provided by CIL, and it does not have computation details. However, upon deliberation, it was understood from CIL that it is an indicative number.
 - o The necessary provisions are incorporated in the supplementary PPA, and the PPA is under section 62 of the Electricity Act, 2003; any change in ECR is automatically passed on to the beneficiary.
- vi. Accordingly, the petitioner had sought approval of the Secondary Supplementary PPA dated 10.02.2022 signed with Respondent, DVC and had



sought approval to sign and execute Supplementary / Amendment PPA with Respondents KSEBL, TPDDL and TPTCL to supply electricity to WBSEDCL.

21. As per the information submitted, it is noted that due to the present design constraint of the station, the coal received is stored in a common stockyard, and it would not be possible for the petitioner to compute separate landed cost and GCV of coal for each PPA, in case any of the beneficiaries does not agree for taking the benefit of coal rationalization scheme. The saving of 18 paise / kWh is made by MoC / CEA for the purpose of selection of IPP, and the actual saving needs to be computed by the petitioner as per the formula provided in the coal rationalization methodology. As per petitioner, considering quantity, GCV, cost and transportation cost of BCCL coal as 6.03 lakh tons, 4132 kCal / kg, Rs. 3526 / MT and Rs. 701 / MT, respectively, and those of ECL coal as 5.4 lakh tons, 4614 kCal / kg, Rs. 3990 / MT and Rs. 531 / MT, respectively, the saving would be 12.9 paise / kWh for energy generated from rationalized coal and 1.8 paise / kWh for total energy generated from the plant. Further, the coal rationalization offered to the petitioner will be valid till CIL notifies EoI in terms of Standard Operating Procedure dated 14.06.2023, and as on 01.07.2023, CIL has not yet notified its EoI.

22. In this regard, it is noted that certain observations/clarifications made by KSEBL, i.e. details of the passing of additional cost on account of an increase in rationalized coal instead of savings and saving to be computed considering rail mode for rationalized coal instead of road are yet to be addressed by the petitioner. Further, the petitioner also submitted that the PPAs are under section 62, and any change in ECR will be passed through.

23. The petitioner has considered the transportation cost of coal as Rs. 531 / MT in arriving at a saving of 12.9 paise / kWh of energy generated from rationalized coal, and further, it had mentioned that the mines being closer, the mode of expected transportation would be by road and the expected transportation cost, in that case, would be Rs. 666 / MT. In such a case, the envisaged saving would be 5.6 paise / kWh for energy generated from rationalized coal and 0.8 paise / kWh for total energy generated from the plant. In the event that the transportation cost for rationalized coal



increases, the saving would be further reduced. However, it is noted that coal rationalization methodology provides that the savings shall be computed as per the formula provided, the savings computed in terms of the subject formula shall be passed on to beneficiaries / DISCOMs, and the savings shall be computed based on transportation of coal through rail, even though it is transported through road. Thus, it is noted that the submissions and computation of savings made by the petitioner are at variance with the coal rationalization methodology.

24. Further, it is noted that participation in coal rationalization is voluntary, and the petitioner on its own had participated in this coal rationalization auction of CIL and did not have any prior consultation/consensus with the beneficiaries. As on date, the Respondent, DVC, has signed supplementary PPA and the Respondent, TPDDL, has given, in principle, approval, subject to the approval of the Commission for the above rationalization. However, the Respondents, KSEBL and WBSEDCL (through TPTCL), have certain apprehensions and have not given any consent for the same.

25. Accordingly, we are not inclined to allow the prayers of the Petitioner at this stage.

26. The Petition no. 331/MP/2022 is disposed of in terms of the above.

**Sd/
(P. K. Singh)
Member**

**Sd/
(Arun Goyal)
Member**

**Sd/
(I. S. Jha)
Member**

**Sd/
(Jishnu Barua)
Chairperson**

