

TAMIL NADU ELECTRICITY REGULATORY COMMISSION
(Constituted under section 82 (1) of the Electricity Act, 2003)
(Central Act 36 of 2003)

PRESENT:

Thiru S.Akshayakumar

.... Chairman

and

Dr.T.Prabhakara Rao

.... Member

M.P.No.1 of 2019

Tamil Nadu Generation and Distribution
Corporation Ltd.
(Represented by its Chairman Cum Managing Director)
No.144, Anna Salai
Chennai – 600 002.

... Petitioner
(Thiru M.Gopinathan,
Standing Counsel for TANGEDCO)

Vs.

M/s.KSK Mahanadi Power Company Ltd.
8-2-293/82/A/431/A, Road No.22
Jubilee Hills
Hyderabad- 500 033.

...Respondent
(Thiru N.Ganesan, Sr.Manager,
Party-in-Person)

Date of hearing : 31-01-2019

Date of Order : 12-02-2019

The M.P.No.1 of 2019 came up for hearing on 31-01-2019. After hearing the learned Counsel for the petitioner and Thiru N.Ganesan, Senior Manager, M/s.KSK Mahanadi Power Company Limited representing the respondent and after perusing the records, the Commission passes the following:-

ORDER

1. The prayer of the Petitioner in M.P.No.1 of 2019:-

The prayer of the petitioner in M.P.No.1 of 2019 is to approve the amendments to the PPA dated 27-11-2013 executed by KMPCL with TANGEDCO incorporating the formula for passing on discount to the Procurer in terms of SHAKTI Policy and the LOIs issued by Coal India Ltd.

2. Facts of the Case:-

The present petition is being filed seeking approval for amending the Original Power Purchase Agreement dated 27-11-2013 so as to add Schedule 4A describing the formula to arrive at the discount amount for all the coal sources under SHAKTI scheme executed by M/s.KSK Mahanadi Power Company Ltd. with TANGEDCO on 11-01-2018 and 28-06-2018.

3. Contentions of the Petitioner:-

3.1. The Miscellaneous Petition is for seeking approval of the supplementary agreements amending Schedule 4 of the Original Power Purchase Agreement dated 27.11.2013 and for addition of Schedule 4A describing the formula to arrive at the discount amount for all the coal sources under SHAKTI scheme executed by M/s.KSK Mahanadi Power Company Ltd with TANGEDCO on 11.01.2018 and 28.06.2018.

3.2. TANGEDCO executed long term Power Purchase Agreement with M/s.KSK Mahanadi Power Company Ltd (herein after referred to as KMPCL) on 27.11.2013

for supply of 500 MW RTC power for the period from 01.06.2014 to 30.09.2028 under Case-1 bidding sourced from their 6x600 MW Power Plant in Chhattisgarh using Domestic (Linkage) Coal with a levelized tariff of Rs.4.910/Kwh.

3.3. The Commission has adopted the levelized tariff of Rs.4.910/Kwh vide order dated 29.07.2016.

3.4. While submitting the bid M/s.KMPCL had furnished source of coal as domestic coal.

3.5. The Government of India on 22.05.2017 had issued the Coal Linkage Allocation Policy namely, the New More Transparent Coal Allocation Policy for Power Sector-2017 SHAKTI (Scheme for Harnessing and Allocation Koyala (Coal) Transparently in India) (hereinafter called as SHAKTI Policy).

3.6. The highlights of the SHAKTI Policy, Coal India Limited/SCCL is grant of coal linkages on notified price on auction basis for power producers/IPPs which have already concluded long term PPAs (both under section 62 and section 63 of the Electricity Act, 2003) based on domestic coal.

3.7. Power Producers/IPPs participating in auction will bid for discount on the tariff (in paise/unit). Bid Evaluation Criteria shall be the non-zero Levelised Value of the discount quoted by the bidders on the existing tariff for each year of the balance period of the PPA.

3.8. The discount quoted by generating companies would be adjusted from the gross amount of bill at the time of billing, i.e. the original shall be raised as per the terms and conditions of the PPA and the discount would be reduced from the gross amount of the bill. The discount shall be computed with reference to scheduled generation from linkage coal supplied under this auction.

3.9. Accordingly, PPA may be amended or supplemented mutually between the developer and the procurer to pass on the discount to the procurer and the approval of the Appropriate Commission obtained, as per the provisions of the PPA or Regulations. Fuel Supply Agreement (FSA) shall be signed with the successful bidders after the terms and conditions for signing of FSA are met and the Appropriate Commission has to approve the amendment or supplement to the PPA.

3.10. In accordance with the SHAKTI Policy, KMPCL participated in Coal auction and was successful in obtaining coal linkages and allocation of Coal from Mahanadi Coalfields Limited (MCL) and South Eastern Coalfields Limited (SECL).

3.11. MCL and SECL have issued Letters of Intent dated 21/12/2017, declaring KMPCL as Provisional Successful bidder and allocating coal from the following sources:

Sl. No.	Source	Grade	Quantity allocated (MT)	Offered discount (Paise/Kwh)	LOI Reference No. (Enclosed as Annexure to the amendment)
1	MCL Ib Valley and Basundhara State, Odisha	G 13	1100000	2.0	MCL/SBP/COMM/HOD (M&S)2017-18/1993 dated 21.12. 2017.

2	MCL Talcher State, Odisha	G 13	20700	1.0	MCL/SBP/COMM/HOD (M&S)2017-18/1992 dated 21.12.2017.
3	SECL Korea Rewa State, Chhattisgarh	G 6	1200000	2.0	SECL/BSP/M&S/FSA SHAKTI/LOI/8785635/KMPCL/2843,dated 21-12-2017.
4	SECL Others Korba and Mand Raigarh State Chhattisgarh	G 12	4500000	4.0	SECL/BSP/M&S/FSA SHAKTI/LOI/8/85635/KMPCL/2844,dated 21-12-2017.

3.12. KMPCL has signed Fuel Supply Agreement with South Eastern Coal Fields Ltd. on 12-03-2018 and with Mahanadi Coal Fields Ltd. on 10-03-2018.

3.13. In terms of the SHAKTI Policy and the terms of the LOIs issued, KMPCL has amended the PPA incorporating the formula for passing on discount to the procurer and executed addendum no.1 to the Original PPA dated 27.11.2013 with TANGEDCO on 11.01.2018.

3.14. KMPCL is supplying power to four DISCOMS namely UP Discom, AP Discom, TANGEDCO and CSP Tradeco from their Power plant in Chhattisgarh and had executed amended PPAs with all the procurers in terms of the SHAKTI Policy and the terms of the LOIs issued.

3.15. KMPCL filed a Miscellaneous Petition 21/MP/2018 before Hon'ble CERC seeking approval for the amended PPAs executed with four procurers stating that supplying electricity to more than one State would constitute a composite scheme

and therefore would fall under the jurisdiction of Hon'ble CERC under section 79 (l) (b).

3.16. TANGEDCO came to know that KMPCL had signed amended PPAs with TANGEDCO, Uttar Pradesh Discom, Andhra Pradesh Discom and Chattisgarh with variations in adopting the values of Gross Calorific Value (GCV) and Station Heat Rate (SHR) in the formula provided in 4A for calculating the total generation units only after receiving the copy of the Petition 21/MP/2018 from KMPCL as detailed above.

3.17. Therefore, TANGEDCO had filed a counter in Petition No.21/MP/2018 on the following lines.

- * Since the discount amount is calculated by the petitioner to all the respondents to their corresponding scheduled energy with reference to the total units generated from the linkage coal received under the Shakti Scheme, there should be uniformity in the formula for all the respondents in computing the total generation units.
- * KMPCL shall compute the total units generated from the linkage coal received under Shakti Scheme by adopting a uniform formula for all the procurers. A common formula may be adopted which gives maximum benefits to the consumers.

3.18. After arguments Hon'ble CERC pronounced its final order on 21.02.2018 approving the methodology for adjustment of the discount in the monthly bills to the

procurers in terms of the 'SHAKTI Scheme' and the amendments to the PPAs executed with the four procurers and also stated that if any issues arising out of such adjustment shall be mutually settled by the parties.

3.19. Therefore, issue raised on variations in adopting the values of Gross Calorific Value (GCV) and Station Heat Rate (SHR) in the formula provided in 4A for calculating the total generation units was mutually settled between the parties and TANGEDCO executed addendum No.2 to the PPA dated 27.11.2013 on 28.06.2018 amending the definition of GCV value.

3.20. Supply of coal under Shakti Scheme commenced from March 2018 onwards and the discount availed by TANGEDCO is detailed below:-

Month & Year	Total Scheduled Energy in Kwh	Coal Quantity Received under Sakthi Scheme MT	Scheduled Energy for TANGEDCO in kWh	Discount under this policy for TANGEDCO in Rs.
March 2018	341437166	38908	68334578	2,06,245
April 2018	619063336	246284	167895988	33,55,960
May 2018	751015750	362236	223047500	49,21,552
June 2018	412827833	342491	139611920	62,22,425
July 2018	657082500	367166	210597230	64,29,450
August 2018	700245000	336514	216417020	57,48,513
September 2018	517302501	321980	200479088	68,97,114
October 2018	747955000	365402	285077500	74,40,999

3.21. KMPCL filed a Miscellaneous Petition 273/MP/18 before the Hon'ble CERC seeking approval for the addendum No.2 to the PPA dated 27-11-2013. The Hon'ble

CERC vide its order dated 18-09-2018 approved the addendum to the original PPA in terms of Article 15.3.1. of the PPA read with clause B (ii) (b) of the Shakti Scheme.

3.22. The Hon'ble CERC in Petition 21/MP/18 order dated 21-02-2018 stated in Para 22 that after approval of the amendments to the PPAs, the concerned distribution companies may approach the respective SERCs for approval of the electricity purchase and procurement by the distribution companies under section 86 (1) (b) of the Electricity Act, 2003.

4. Hearing on 31-01-2019:-

During the hearing held on 31-01-2019, Thiru N.Ganesan, Senior Manager, M/s.KSK Mahanadi Power Company Limited representing the respondent has submitted that the respondent has no objection to the prayer of the petitioner made in this petition and filed an affidavit affirming the prayer of the petitioner.

5. Contentions of the Respondent in its affidavit dated 31-01-2019:-

5.1. The petitioner on 21-12-2012 issued RFP documents for procurement of power under Case-1 bidding guidelines issued by Ministry of Power vide Tender Ref.03/PPLT /2012 and subsequently entered into Power Purchase Agreements with various generators.

5.2. The Respondent has entered into a Power Purchase Agreement dated 27/11/2013 (hereinafter called the PPA) with the Petitioner for supply of a total contracted capacity of 500 MW from the generating station of the Respondent in

Chhattisgarh to the Petitioner. The PPA was entered into pursuant to the Respondent being selected as a successful bidder in a competitive bidding process initiated by the Petitioner for procurement of electricity under section 63 of the Electricity Act, 2003. The tariff under the PPA has also been adopted by the Tamil Nadu Electricity Regulatory Commission (hereinafter called the TNERC) vide order dated 29/07/2016.

5.3. The Government of India had on 22/05/2017 issued the Coal Linkage Allocation Policy, namely, the New More Transparent Coal Allocation Policy for Power Sector-2017 SHAKTI (Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India) (hereinafter called SHAKTI Policy).

5.4. In accordance with the SHAKTI Policy, the Respondent was eligible to apply for coal linkage to be granted for generation and supply of electricity to the Petitioner and other Distribution companies of other States under the respective PPAs. The Respondent participated under the SHAKTI Policy and was successful in obtaining coal linkages and allocation of coal from Mahanadi Coalfields Limited (MCL) and South Eastern Coalfields Limited (SECL). MCL and SECL have issued Letters of Intent dated 21/12/2017, declaring the Respondent as Provisional Successful Bidder. Thereafter, this respondent has signed Fuel Supply Agreements with South Eastern Coal Fields Ltd. on 12-03-2018 and with Mahanadi Coal Fields Ltd. on 10-03-2018.

5.5. In terms of the above, the PPA between the Petitioner and the Respondent has been amended vide Addendum No.1 dated 11/01/2018. Schedule 4A has been

inserted after Schedule 4 to provide for the methodology for adjustment of the discount in the monthly bills to the Procurers.

5.6. In terms of the SHAKTI Policy and the terms of the Lol issued to the Respondent, the approval of the Appropriate Commission is required to be obtained for the amended PPA incorporating the discount offered by the generators.

5.7. The Respondent has filed a petition before the Hon'ble Central Electricity Regulatory Commission under section 79(1) (b) in regard to the approval amendment of the PPA to incorporate the discount for the coal linkage granted under SHAKTI Scheme. The Hon'ble CERC passed the orders on the said petition dated 21/02/2018 filed by the Respondent herein, wherein the amendment to the PPA has been approved by the Hon'ble CERC.

5.8. The Hon'ble CERC in the above said order has also stated that the concerned distribution companies may approach the respective State Electricity Regulatory Commissions for approval of the electricity purchase and procurement by the distribution companies under section 86(1)(b) of the Act.

5.9. As per the said directions of the Hon'ble Central Electricity Regulatory Commission the aforesaid State Distribution Companies of Andhra Pradesh and Uttar Pradesh have approached their respective State Commissions for approval of the amendments to be made to the PPA's and the Hon'ble Andhra Pradesh Electricity Regulatory Commission and Uttar Pradesh State Electricity Regulatory

Commission have passed order dated 17-03-2018 and 25-06-2018 respectively approving the same.

5.10. Subsequently the respondent in this petition has submitted that the petitioner TANGEDCO has requested for amending the Addendum No.1 dated 11-01-2018 in Schedule 4A of the TANGEDCO PPA dated 27.11.2013 with regard to definition of GCV and to bring it in line with the definition of GCV used in the PPAs between the Respondent and other discoms, namely, the UP discoms and the AP discoms, on the ground that the same is beneficial to the Petitioner. The Respondent has agreed to the same. In terms of the above, the Respondent has submitted that the PPA between the Petitioner and Respondent TANGEDCO has been amended on 28.06.2018 vide Addendum No.2.

5.11. The Respondent has filed the same in the Hon'ble Central Electricity Regulatory Commission Vide Petition No.273/MP/2018. The Hon'ble CERC Vide order dated 18/09/2018 has approved the Addendum No.2 dated 28.06.2018 to the TANGEDCO PPA dated 27.11.2013.

5.12. It is submitted that the South Eastern Coalfields Limited Vide Letter dated 04.12.2018 has requested the Respondent to submit the approval of the Tamil Nadu Electricity Regulatory Commission for the Amendment to the PPA on or before 10.12.2018 and they also stated that any failure to comply the with extended timeline will make coal supplies to the Respondent units under FSA liable for suspension.

Therefore, the Respondent hereby affirms the prayer of the Petitioner and humbly prays to the Commission to approve the amendments to the PPA dated 27.11.2013 executed between KMPCL and TANGEDCO.

6. Findings of the Commission:-

We have considered the prayer of the petitioner, TANGEDCO. The brief facts leading to the filing of this Miscellaneous Petition can be stated as follows:-

6.1 M/s.KSK Mahanadi Power Company Ltd., the respondent herein is one of the successful bidders for procurement of 3330 MW under Case-1 bidding for a period of 15 years by the petitioner under LTOA and the respondent was selected as a seller for supply of 500 MW power to the petitioner (TANGEDCO) for a period of 15 years from 2013. The PPA was executed between the parties on 27-11-2013 and the tariff was adopted by this Commission in its order dated 29-07-2016 in P.P.A.P. No 3 of 2014. The Ministry of Coal, Government of India vide Circular No.23011/15/2016-CPD(CLD dated 22-05-2017) introduced a New More Transparent Coal Allocation Policy for Power Sector, 2017, namely SHAKTI [Scheme for Harnessing and Allocating Koyala (Coal) Transparently in India]. wherein the power producers / IPPs participants in auction will bid for discount in tariff (in paise / unit). In accordance with the said policy, the respondent was eligible to apply for coal linkage to be granted for generation and supply of electricity to the petitioner under the PPA. The respondent participated in the SHAKTI Scheme and was successful in obtaining coal linkages and allocation of coal from Mahanadi Coal Fields Ltd. and South Eastern Coal Fields Ltd. Accordingly the said coal companies issued Letter of Intent

on 21-12-2017 to the respondent declaring the respondent as provisional successful bidder for allocation of coal.

6.2 In terms of the SHAKTI Scheme and the LOI issued to the respondent, the approval of the appropriate Commission is required to be obtained for the amendment of the PPA incorporating the discount offered by the generators. Accordingly, the PPA between the petitioner and the respondent has been amended vide Addendum No.1 dated 11-01-2018 wherein Schedule 4A has been inserted in the PPA for the methodology for adjustment of discount in the monthly bills to the procurer (TANGEDCO). In the said Schedule 4A, a formula has been provided for the purpose of calculating the total discount.

6.3 As per the provisions of section 79 (1) (b) of the Electricity Act, 2003, supply to two States would constitute a composite scheme and in relation to such schemes, the appropriate Commission would be CERC for regulating the tariff. Therefore, the respondent who supply power to four Discoms namely UP Discoms, AP Discoms, TANGEDCO and CSP Tradeco filed Petition No.21/MP/18 before CERC for approval of the amendment to the PPA entered by them with TANGEDCO and others on the methodology for adjustment of the discount in the monthly bills to TANGEDCO (procurer) in terms of SHAKTI Scheme. The Hon'ble CERC in its order dated 21-02-2018 in 21/MP/2018 has approved the same and while approving the amendment to the PPA, the Hon'ble CERC has held as follows:-

“xxx xxx

22. In our view, once the composite scheme emerges after the commencement of supply from a generating station to more than one

State, this Commission will have jurisdiction to regulate the tariff which will include the amendments to the PPAs to factor the discount offered by the petitioner in the tariff for the coal linkage under SHAKTI Scheme. After approval of the amendment to the PPAs, concerned distribution companies may approach the respective SERCs for approval of the electricity purchase and procurement by the distribution companies under section 86(1) (b) of the Act.”

6.4 The Commission also observes that the Hon'ble CERC in order dated 18-09-2018 has also approved Addendum 2 dated 28-06-2018 to the TANGEDCO PPA dated 27-11-2013 with regard to definition of Gross Calorific Value (GCV) to bring it in line with the definition of GCV used in PPAs between the respondent and other Discoms on the ground that the same is beneficial to the petitioner.

6.5 The petitioner herein in the present Miscellaneous Petition seeks to approve the amendments as stated supra to PPA dated 27-11-2013 executed between KMPCL and TANGEDCO incorporating the formula for passing on discount to the petitioner in terms of SHAKTI Policy and LOI issued to Coal India Ltd.

6.6 During the hearing on 31-01-2019, the respondent has filed an affidavit affirming the prayer of the petitioner and also stated that they seek the approval of the Commission for the amendments to the PPA dated 27-11-2013 as requested by the South Eastern Coalfields Ltd. to make coal supplies to the respondent under the Fuel Supply Agreement (FSA).

6.7 The Commission perceives that the amendments have been approved by the Hon'ble CERC. However, taking into consideration, the request of both the parties, the Commission during the hearing on 31-01-2019 directed to go ahead. Accordingly, the Commission hereby allows the petition of TANGEDCO seeking amendments to the PPA dated 27-11-2013 executed between KMPCL and TANGEDCO incorporating the formula for passing on discount to the petitioner in terms of SHAKTI Policy and LOI issued to Coal India Ltd.

7. Appeal:-

An appeal against this Order shall lie before the Appellate Tribunal for Electricity under section 111 of the Electricity Act 2003, within a period of 45 days from the date of receipt of a copy of this order by the aggrieved person.

(Sd.....)
(Dr.T.Prabhakara Rao)
Member

(Sd.....)
(S.Akshayakumar)
Chairman

//True Copy//

Secretary
Tamil Nadu Electricity
Regulatory Commission