

**IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT
RANCHI**

Case No. 03 of 2018

Jharkhand Bijli Vitran Nigam Limited Petitioner

Versus

Adhunik Power & Natural Resources Ltd. and Ors. Respondents

**CORAM: HON'BLE MR. R.N. SINGH, MEMBER (ENGINEERING)
HON'BLE MR. P.K. SINGH, MEMBER (LEGAL)**

For the Petitioner : Mr. Mrinal Kanti Roy, Advocate

For the Respondent : Mr. M.G Ramchandran, Deepak Khurana-APNRL and
Mr. Manoj Kumar-JUSNL Advocates

This order is in continuance of the order dated 28th May, 2019

ORDER

Date -9th January, 2021

1. The petitioner, Jharkhand Bijli Vitran Nigam Limited (herein after referred to as JBVNL) filed a petition under Section 86 (1) (b) of the Electricity Act, 2003 and in compliance of directives issued by JSERC in its tariff Order dated 21st June 2017 and vide letter no JSERC/Case (T) no. 08 & 10 of 2016/466 dated 06th Oct .2017 praying with a prayer to accord approval of Power Purchase Agreement (**PPA**) dated 28.09.2012 (principal PPA) for procurement of 122.85 MW of power and another PPA dated 06.11.2017 (supplementary PPA) for procurement of 66 MW of power, signed between JBVNL and M/s Adhunik Power and Natural Resources Limited (**APNRL**).

2. This Commission by its order dated 28th May, 2019 has approved the procurement of 188.85 MW of power from APNRL vide PPA dated 28.09.2012 and PPA dated 06.11.2017 and observed in Para 24 as follow:-

“There is ambiguity in the above definition of the Dedicated Transmission System defined in the Principal PPA dated 28.09.2012 as to whether APNRL or JBVNL/JUSNL will bear the cost of power transformer . The issue will be dealt separately by this Commission after submission of the cost benefit analysis report by the petitioner as mentioned above.”

3. The Commission was to take a final view on the Dedicated Transmission System (DTS) based on the submission of cost benefit analysis and feasibility report by JBVNL as such, to bring the issue of DTS to a logical end with regard to

the necessity of the DTS and sharing cost for power transmission between APNRL and JBVNL, the Commission fixed a date on 31.03.2020 at 2.30 PM for hearing and submitting report by the parties.

4. The Commission by order dated 16.09.2020 constituted a Committee comprising of :

- (i) General Manager, Electric Supply Area, Jamshedpur, JBVNL
- (ii) DGM (Commercial) JBVNL
- (iii) Shri Rakesh Gupta (Coo-Power Operation), APNRL and
- (iv) Shri Ajit Kumar Bhagat, Sr. Manager, C&M (NWBP), JUSNL to sit together for mediation process and to submit a draft proposal of amicable settlement to bring the issue(s) to a logical end with reference to MOU, PPA entered into with regard to DTS for power evacuation, respective expenditure for the work envisaged leading to apportionment of POC charges till the construction of DTS, if feasible.

5. The parties filed a copy of notes and discussion of the committee held on 20.10.2020 and stated that any consensus could not be reached with regard to apportionment of POC Charges.

6. The petitioner-JBVNL in the notes of discussion as held on 20.10.2020 expressed that JBVNL would communicate/propose the calculation and methodology for apportionment of POC charges to APNRL/JUSNL by 27.10.2020. However, the petitioner-JBVNL has not submitted yet, the above said proposal with regard to calculations and methodology for apportionment of POC charges.

7. For construction of DTS, this Commission by order dated 21.12.2016 in Case No. 13 of 2014 directed the JBVNL and APNRL to submit a report on cost benefit analysis to the Commission regarding construction of DTS. The relevant extract of the order is reproduced below: -

“28. Since the PPA clearly provided for construction of Dedicated Transmission system within two years of COD, and the same has not been fulfilled by the petitioner-APNRL till date, one more opportunity is being given to the parties to fulfill the obligations/directions of the Commission dated 26.05.2014. The JUVNL and JBVNL are allowed further time till 31.01.2017 for submitting a report on cost benefit analysis to the Commission.”

8. The Commission in Para 20 in order dated 21.12.2016 in Case No. 13 of 2014 has observed as follow:-

“20. Both the parties are engaged in playing blame game finding fault in one another, but neither of them has performed their respective part. The arrangement which was envisaged only for two years in the PPA is still continuing. The parties

are thereby mutually carrying on the same arrangement which was meant for a maximum period of two years.

.....

29. The respondents who are paying Transmission losses from the Delivery point which is 400 KV PGCIL Sub-Station at Ramchandrapur, Jharkhand in Eastern Region, under short term arrangement, shall go on paying the same including the Transmission losses i.e. Drawal losses and the Injection losses till any order is passed by the Commission, after submission of report of the respondents on cost benefit analysis.”

9. The Commission has observed that the Petitioner-JBVNL is paying the POC charges and the consumers of the DISCOM-JBVNL have been put on loss burdening consumers.

10. The Respondent-APNRL are not performing their respective obligation on the basis of ambiguity pointed out in the PPA and not moving for correcting the terms and conditions of PPA. As such, in the interest of consumers of the Petitioner-JBVNL, this Commission is required to take a view on the sharing cost of POC charges between the Petitioner-JBVNL and Respondent-APNRL.

11. Article -1 of the Power Purchase Agreement dated 28.09.2012 is devoted to the definitions and interpretations of the terms used in agreement. It defines “Delivery Point” as:-

“Delivery Point” shall mean the interconnection point of the power station which is at 400 KV “PGCIL substation at Ramchandrapur, Jharkhand “in Eastern Region from the COD for supply of power from seller to procurer for the interim period of 2 years or till the dedicated Transmission System for supply of power to JSEB is developed whichever is earlier and thereafter the delivery point shall mean the interconnection point of the power station of JSEB Ramchandrapur 220 KV sub-station”

12. Further, “Dedicated Transmission System” is defined to mean “the Transmission system to be developed by seller within two years from COD including 400 KV transmission line from Power station Bus Bar up to the JSEB’ Ramchandrapur 220 KV sub-station. For Development of Dedicated Transmission, the capital cost to be incurred at seller’s sub-station (including cost of additional bay, transformer, etc) and 400 KV transmission line till the JSEB’s Ramchandrapur 220 KV sub-station shall be borne by the seller and the capital cost to be incurred at procurer’s sub-station (including cost of additional bay transformer etc) shall be borne by the procurer”.

13. From the above definition it is observed that cost of transformer at seller's end is to be incurred by the seller and cost of transformer at buyer's end is to be incurred by the procurer, as such, the liability regarding cost of transformer is not clear in the PPA.

14. The Respondent-APNRL in its written submission relied upon the Central Electricity Regulatory Commission (Sharing of Inter State Transmission Charges and losses) Regulations, 2020 and submitted that no transmission charges and losses shall be applicable (POC charges i.e. Injection and Withdrawal) on Short Term Open Access Transactions (STOA). The relevant excerpts of the said Regulations has been extracted as below:

“11. Transmission charges for Short Term open Access

.....
(5) *No transmission charges for Short Term Open Access for inter-State transmission system, shall be payable by a distribution licensee which has Long Term Access or Medium Term Open Access or both, or by a trading Licensee acting on behalf of such distribution licensee:
Provided that other charges or fees as per open access Regulations, 2008 and the Transmission Deviation charges, if any, as per these Regulations shall be payable.”*

15. It is further submitted that in view of the said Regulations of CERC, no transmission charges are payable to ERLDC for scheduling of power from APNRL to JBVNL under STOA. Neither the petitioner nor arrayed respondent JUSNL has disputed the submission.

Considering the submission made by the parties and after perusal of the materials available on records, it is ordered as;

ORDER

16. The commission is of the view that since no transmission charges and losses are payable for scheduling of power from APNRL to JBVNL, no orders for the POC charges at this point of time is required.

17. It is hereby clarified that henceforth if any amount is levied as POC charges (i.e. Injection and Withdrawal) at any point of time due to non construction of DTS which was to be constructed within two years shall be shared among the Respondent- APNRL and the Petitioner-JBVNL in the ratio of 60:40 respectively. The Respondent-APNRL will pay the share of 60% as it was required to construct the DTS within two years and was to install a Transformer at its end (seller end) and it was to be a part of Fixed cost, recovered through the Tariff of Net generated power of a APNRL and as per the First Refusal Right in terms of MOU with

JBVNL, 12% of power is to be procured at energy charges only and remaining 13% is to be procured at the tariff determined by the Commission. The petitioner has also been made liable for paying a share of 40%, as it is been mentioned in the PPA that procurer too will install equipments at its end.

18. Accordingly, the petition is disposed of in terms of the above orders.

(P.K. Singh)
Member (Legal)

(R.N. Singh)
Member (Engineering)