

IN THE JHARKHAND STATE ELECTRICITY REGULATORY COMMISSION AT RANCHI

Case No. 11 of 2019

Jharkhand Bijli Vitran Nigam Limited (JBVNL)Petitioner

Versus

Damodar Valley Corporation (DVC)..Respondent

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

For the Petitioner :Mr. Manoj Kumar, Advocate and Mr. Kaushkia Jetta-Consultant

For the Respondent :Mr. Srijit Choudhury and Srista Choudhury, Advocates and Mr. Rajib Goswami-Representative

ORDER

Date -9th January, 2021

1. The Petitioner-Jharkhand Bijli Vitran Nigam Limited (herein after referred as JBVNL) has filed this petition for approval of Power Purchase Agreement (PPA) of Jharkhand Bijli Vitran Nigam Limited with Damodar Valley Corporation (DVC) for procurement of 600MW power from Koderma Thermal Power Station (2x500) under Section 86(1)(b) of the Electricity Act, 2003 and directives issued by JSERC in its Tariff order dated 21st June, 2017 as well as letter No. JSERC/Case (T) No. 08 & 10 of 2016/466 dated 6th October, 2017 to submit all the PPAs for approval which have not been approved by the Commission.

2. The petitioner in its petition has prayed for the following relief:-

(i) To admit the petition for approval of PPA between JBVNL and DVC for 600 MW from Koderma Thermal Power Station (2x500MW), in accordance with under Section 86(b) of the Electricity Act, 2003 and directives issued by JSERC in its Tariff order dated 28th February, 2019.

(ii) To accord the approval of above stated Power Purchase Agreement only with special Clauses in PPA, keeping in view of unique situation as discussed in Clause 2.2 and 2.3

(iii) To pass any other order as the Hon'ble Commission may deem fit and appropriate under the circumstances of the case and in the interest of the Justice.

(iv) To condone any error/omission and to give opportunity to rectify the same.

Submission of the Petitioner

3. Learned Counsel for the Petitioner submitted that in order to optimize the Power Purchase from DVC, JBVNL has signed a PPA with DVC for procurement of

600 MW power from DVC, Koderma Thermal Power Station on 23rd August, 2017 at the Tariff determined by Hon'ble Central Electricity Regulatory Commission (CERC) in scheduled mode.

4. Learned Counsel for the petitioner further submitted that the power from Koderma Thermal Power Station is for exclusive usage in DVC command area comprising of seven districts in Jharkhand State.

5. Learned Counsel submitted that the power drawl by JBVNL for the purpose of this PPA is measured at 36Nos of off-take points and JBVNL HT consumers are directly connected downstream to DVC network through such off-take points. Learned Counsel pointed out that the composite loss of power between injection point (Ex bus Koderma Thermal Power Stations Unit # 1& 2) and off-take point is determined by JSERC.

6. It was submitted in response to queries raised during the Course of hearing that JBVNL was taking power from DVC in consumer mode till December, 2018 and at the time of signing PPA i.e. August, 2017, JBVNL was paying tariff as specified by JSERC for distribution Licensee in its order dated September, 2014. Applicable tariff in August, 2017, when the decision to enter into PPA was made was Rs. 4.05/Kwh (Energy Charge) and Rs. 410/KVA/Month (Demand Charge), Equivalent per unit charge at average load factor and average tariff was coming to Rs.4.81/Kwh.

7. It was pointed out that in order to reduce the power purchase cost; JBVNL has switched to taking power in consumer mode for taking power (600MW) directly from 2x500MW DVC Koderma Thermal Power Station (KTPS) in schedule mode. As per CERC Tariff order dated 28.02.2017, energy charge for KTPS was determined at Rs. 2.35/Kwh and annual fixed charge KTPS was Rs. 1198.12 Crore for FY 2017-18. Based on projected power generation and availability of KTPS , equivalent power purchase Cost for FY 2017-18 comes at Rs. 3.68/Kwh.

8. It was submitted by the petitioner in response to queries raised related to cost effectiveness of the PPA signed with KTPS (DVC) that due to grid constraint, if JBVNL intends to draw power from national Grid to supply power to DVC command area, it would have to pay PoC charges and losses as well as charges and losses for using DVC transmission lines. This has made option of drawing power from Inter-State grid for supplying into DVC command area as economically unfeasible.

9. It was submitted by the petitioner in respect to cost effectiveness with PUVNL that the transmission infrastructure related to evacuation of power from PUVNL and subsequent transfer of power to DVC supplied districts such as Bokaro, Dhanbad, Hazaribagh, Koderma and Giridih is under construction by JUSNL and JUSNL has failed to provide any firm date or time line for completion of these infrastructures. In absence of the complete STU network for transfer of power from PUVNL to DVC supplied districts, JBVNL will have to resort to injection

of power in DVC network through open access. It is further submitted that in such above said case JBVNL will have to pay PGCIL charges and losses, JUSNL wheeling charges and losses and DVC wheeling charges and losses for the power that is to be injected in DVC network from PUVNL. The landed cost of any power will have an additional burden of Rs.0.51 per unit of PGCIL transmission charges, Rs. 0.25 per unit of JUSNL charges and Rs. 0.16 per unit for DVC i.e. losses would be in the range of 2% for PGCIL PoC losses, 3.6% for JUSNL losses and 2.6% for DVC T&D losses.

10. It was submitted that PPA with DVC Koderma Plant and PUVNL are required to meet expected peak demand of JBVNL, even if one of the PPA is not there, JBVNL would have to depend on short term power for meeting demand of its consumers. It was further submitted that both quantum and price of short term power could not be predicted and depending on them may affect supply of reliable power to consumers as well as may increase power procurement cost.

Submission of the Respondent

11. Learned Counsel for the Respondent submitted that power supply from DVC, KTPS to JBVNL as per the PPA started from 01.01.2019, prior to that JBVNL used to receive power from DVC in consumer mode at 36 No off-take points located within the operational area of DVC in the State of Jharkhand having an aggregate contract demand of around 877MVA.

12. It was further submitted that the Tariff applicable for supply of power from DVC, KTPS in scheduled mode is determined and approved by the CERC.

13. It was prayed that the petition submitted by JBVNL for purchase of 600MW power from DVC's Koderma Thermal Power Station may be approved since the tariff of DVC; KTPS has been determined and approved by the CERC under Section 62 of the Electricity Act, 2003 like all other power stations of DVC.

Commission's observation and findings:-

14. We considered the submission made by the parties and perused the materials available on records of the case.

15. Under Section 86 (1) (b) of the Electricity Act, 2003, the State Commission has the responsibility to regulate the electricity purchase and procurement process of distribution licensees. Section 86 (1)(b) of the Electricity Act, 2003 reads as under:-

"Section 86 Function of State Commission: - (1) The state Commission shall discharge the following functions, namely:-

(a).....

(b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the state;

16. Hence, under section 86(1)(b) of the Electricity Act, 2003, the distribution licensee is obligated to get the PPA signed by it, approved by the Commission.

17. The Commission observed that the PPA filed for approval of this Commission is a long term PPA i.e. for 25 years from the date of commencement of power supply from the station under the schedule mode.

18. The Commission in its order dated 04.12.2019 in this case has observed :-

“The PPA for approval in this case is for supplying power in the same seven districts which also falls under the command area of DVC, as such it would be in the interest of consumers that the JBVNL may transfer all its consumers (Including LT connection) to the Respondent Distribution company-DVC rather than purchasing power from DVC and then again selling the same power to the consumers in the areas in which DVC is also a licensee.

Both parties are directed to consider this and file their response.”

19. It was submitted by the petitioner-JBVNL in response to the above said observations in order dated 04.12.2019 that JBVNL is a Distribution Licensee in Jharkhand State including seven districts of DVC command area even prior to enactment of the Electricity Act, 2003. JBVNL was supplying to both consumers below 33KV as well as at and above 33KV level. However, DVC as per DVC Act, of 1948 was only supplying power to consumers above 33KV. It was further submitted that Electricity Act, 2003 has superseded DVC Act, 1948 and as of now DVC like other Distribution licensees has also Universal Supply Obligations (USO) and is obliged to supply power to any consumer requiring supply from it. However, despite the same, DVC-distribution is only primarily serving consumers at & above 33KV level and therefore is not complying with its USO, on contrary JBVNL is supplying power predominantly to consumers at LT level.

20. It was submitted by the Respondent – DVC in response to observations made in order dated 04.12.2019 that if JBVNL agrees to transfer the entire consumer base including the existing network in the said seven districts falling within the DVC command area, DVC will take up all necessary measures for implementation of the proposal of JBVNL.

21. The Commission also observed that the Petitioner-JBVNL has also executed long term PPA with PUVNL which is likely to be available within a period of two to three years at a rate much cheaper than the effective price of this PPA with KTPS (DVC).

22. The Commission further observed that Adani Power Jharkhand Limited (APJL) in its proposal vide letter No. APJL/GoJ-E/211120 dated 21st November, 2020 has offered 25% of the installed capacity at Godda, Jharkhand (under right to purchase up to 25% of the installed capacity) i.e. 400 MW power from alternate generation for the benefit of the State in pursuance to the MoUs. APJL is offering 400 MW ex-bus power from Raipur Energen Ltd. at the Tariff around Rs. 3.12/kwh and Inter-state Transmission and losses are around Rs.0.45-0.50/Kwh which shall be paid by JBVNL in addition to CTU/Power Grid, as applicable from time to time.

23. The Commission, in view of the above discussions observes that the petitioner – JBVNL has not acted upon the PPA with DVC (KTPS) in overall interest of the consumers of the State, wherein PUVNL is likely to be available within a period of two to three years as well as Adani Power Jharkhand Limited is offering 400 MW power at much cheaper rate than the DVC (KTPS).

24. The Commission also observed that there are several ambiguities in the PPA filed in this case for approval. Few of them are detailed below:

- Under clause 12.2 of the PPA, DVC has only been given right to terminate the agreement and also it is mentioned that in the event of the termination of the agreement, JBVNL shall be liable and continue to pay the capacity charges each month till firm arrangement for sale of JBVNL's share with alternate consumers, substituting the JBVNL is tied up. We are of opinion that this clause cannot pass the test of reasonableness and any unilateral liberty cannot be given.
- Under Clause 6.1.8 of the said PPA, in case JBVNL disputes any amount, even then, it shall pay 95% of the disputed amount.
- Under Clause 5.1.3 of PPA DVC will get Stand-by charge for supplying power in case of outage of any unit of KTPS which has been agreed as 1.5 times of HT Tariff determined by JSERC. As per this clause DVC would get penal charge from JBVNL in case of outage of its own plant which seems to be arbitrary in nature.
- Under Clause 5.1.4 of the said PPA, DVC would get tariff (Fixed and Energy Charge combined) of generating unit for period of outage of any unit of KTPS for beyond 6 hours. This would effectively result in JBVNL paying fixed charge of DVC even for period when KTPS is not available and may also lead to over-recovery of fixed charge of KTPS by DVC with no mechanism of True-up.

Hence, it is observed that whenever either units of DVC, KTPS suffers planned/emergency outage and DVC supplies power for such a period not from any particular power plant but power available to it from any of its generating plant (cost of which are being approved by JSERC in

its Tariff Order for DVC-distribution licensee business) thereby de-facto acting as a distribution licensee. Further according to clause 5.1.2 and 5.1.3 of the PPA, tariff determined by JSERC is applicable when either unit of KTPS suffers planned/emergency outage. Hence tariff of the power supplied during any period when any unit of KTPS is out and not supplying power and DVC is sourcing power from its other plants for supplying to JBVNL should be determined by JSERC as it is not a case of supply power from an inter-state generating station but that of pooling power from various power plants and supplying power to consumer as a distribution licensee.

25. The Commission further observed that if Plant Availability of KTPS is above its normative level (i.e if Plant Availability Factor of KTPS is above 85% or its Normative Plant Availability Factor) for any particular Financial year, then it already has recovered its full fixed cost. Hence any component of fixed charged paid by JBVNL as per clause 5.1.4 of impugned PPA (for period beyond the applicability of standby charge due to outage of plant) would lead to overcompensation of fixed charge to KTPS. Currently there is no mechanism by which such over-recovery by KTPS is to be Trued-up by CERC or even JSERC. Hence it is pertinent to remove this deficiency in execution of PPA by the parties as this may be deemed as a case of recovery of charge by a distribution licensee from its consumer.

26. This Commission in Tariff Order for DVC (as a Distribution Licensee) has already been approving total power procurement cost of DVC including fixed charge and variable charge of various power plants pertaining to power supplied in Jharkhand State. When-ever either unit of KTPS is down then in that period JBVNL effectively drawing power from other generating units of DVC, fixed cost of which has already been factored by JSERC while approving power purchase cost of DVC as a distribution licensee. Hence it is important to decide tariff of the power being supplied by DVC for such period in order to ensure that DVC is not doing double charging of fixed charge of its power plants. Moreover, since JBVNL is already paying fixed charge of KTPS as per its availability it should not pay extra fixed charge for same capacity to any other plant of DVC.

27. The Commission has observed that the Petitioner-JBVNL has not acted upon the PPA in the interest of the consumers as the Tariff for the power procured in scheduled mode (post PPA) should not be in any way more than that of power procured in consumer mode (before the PPA). It is hereby also clarified that the power should always be procured through the competitive bidding process only as specified under Section 63 of the Electricity Act, 2003. However, if required as per necessity and urgency, power may be procured

under Section 62 of the said act after making cost benefit analysis among the powers available for procurement.

In the result, it is ordered as;

ORDER

28. The petitioner is directed to revisit the ambiguities as pointed out and file a fresh revised PPA for approval removing the ambiguities and reconsider the long term PPA in view of the PPA executed with PUVNL/proposal of Adani Power Jharkhand Limited for 400MW to keep the power purchase cost optimum.

30. The petition of the petitioner-JBVNL is disposed of, accordingly.

(P.K.Singh)
Member (Legal)

(R.N. Singh)
Member (Engg)