

BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION AT PANCHKULA

Case No. HERC/Petition No. 75 of 2023

And

IA No. 2 of 2024

Date of Hearing : 07.05.2024
Date of Order : 07.05.2024

In the Matter of

Petition under Section 86(1)(b) of the Electricity Act, 2003 read with the Haryana Electricity Regulatory Commission (Conduct of Business) Regulations, 2019 seeking approval of the modifications made in the draft PPA dated 17.03.2005 which was approved and extended vide the Order of the Hon'ble Commission dated 15.12.2020 in Petition no. 57 of 2020. (Petition No. 75 of 2023)

AND

Application to place on record amended petition after correction of certain inadvertent typographical/clerical. (IA No. 2 of 2024)

Petitioner

Haryana Power Purchase Centre, Panchkula (HPPC)

Respondent

Nuclear Power Corporation of India Ltd. (NPCIL)

Present on behalf of the Petitioner

1. Ms. Sonia Madan, Advocate
2. Sh. Gaurav Gupta, Xen, HPPC

Present on behalf of the Respondent

1. Shri Varmit, Advocate

Quorum

Shri Nand Lal Sharma
Shri Naresh Sardana
Shri Mukesh Garg

Chairman
Member
Member

ORDER

Brief Background of the case

1. The present petition has been filed by HPPC, seeking approval of the modifications made in the PPA dated 17.03.2005 for procurement of power from Narora Atomic Power Station (NAPS) and Rajasthan Atomic Power Station (RAPS) which was earlier approved and extended by the Hon'ble Commission vide order of dated 15.12.2020 in petition no. 57 of 2020.
2. The Petitioner's submissions are as under:-
 - 2.1 That a Power Purchase Agreement ('PPA') dated 17.03.2005 was executed between HVPNL (the predecessor of the petitioner herein) and Nuclear Power Corporation India Limited ('NPCIL') for procurement of power from the following power stations :-

- a) Unit nos. 1 & 2 of the Narora Atomic Power Station (NAPS) set up at Narora, Bulandhshar, Uttar Pradesh.
 - b) Unit nos. 3 & 4 of the Rajasthan Atomic Power Station (RAPS) set up at Rawatbhata, Chittorgarh, Rajasthan.
- 2.2 That the aforesaid PPA expired after completing 15 years of useful life on 16.03.2020. Further, on the request of NPCIL, to renew the PPA for another 15 years, the Petitioner filed a Petition before this Hon'ble Commission bearing Petition no. 57 of 2020 seeking approval for extension of aforesaid PPA dated 17.03.2005 for procurement of power from RAPS (Unit 3 & 4) and NAPS (Unit 1 & 2).
- 2.3 That this Hon'ble Commission, vide Order dated 15.12.2020, granted approval for extension of the PPA dated 17.03.2005 as per the allocation by MoP for a further period of 15 years, with the condition that the PPA shall be executed between the Petitioner and NPCIL, on the existing terms and conditions.
- 2.4 That vide notification dated 03.06.2022, the Ministry of Power (GoI), in exercise of its power conferred by Section 176(1) of the Electricity Act, issued Electricity (Late Payment Surcharge and Related Matters) Rules, 2022 (hereinafter referred to as 'LPS Rules, 2022'). The LPS Rules, 2022 have been made applicable to outstanding dues of generating companies, inter-state transmission licensees and electricity trading licensees.
- 2.5 That HPPC has submitted that in line with the discussions held with NPCIL, following provisions of the draft PPA, have been modified uniformly for all the state beneficiaries:-
- a) Clause 1.24: Base rate of Late Payment Surcharge
Marginal cost of funds based lending rate (MCLR) for one year tenor of the State Bank of India (SBI), as applicable on the 1st April of the financial year in which the period lies, plus a margin of 5% (500 basis points) and in absence of MCLR, any other arrangement that substitutes it, which the Central Government may, by notification, in the Official Gazette, specify.
Provided that if the period of default lies in two or more financial years, the base rate of late payment surcharge shall be calculated separately for the periods falling in different years.
 - b) Clause 1.25: Default trigger date
Shall mean (i) In case of non-payment of dues, one month after the due date of payment or two and half months after the presentation of bill by generating company (NAPS), whichever is later, and;

- (ii) In case of non-maintenance of the payment security mechanism, shall be from the next bank working day after the payment security mechanism due to be replenished but is not done.
- c) Clause 1.26.: Due date
Shall mean the date by which the bill for the charges for power supplied by the generating company are to be paid, in accordance with the agreement. Provided that if due date for payment of any bill falls on a bank non-working day, the next bank working day shall be considered as due date for payment.
- d) Clause 1.27: Late Payment Surcharge
Shall mean the charges payable by a distribution licensee to generating company (NAPS) on account of delay in payment of monthly charges beyond the due date.
- e) Clause 1.28: Outstanding Dues
Shall mean the dues of a generating company, not stayed by a competent court or Tribunal or dispute resolution agency as designated in the Power Purchase Agreement, which remains unpaid by the beneficiary beyond the due date and includes the amount of instalment not paid after the re- determined due date under Rule 5 of MoP notification dated 3/6/2022.
- f) Clause 9.9
HPPC shall pay the entire bill in respect of which an error is noticed in accordance with Clauses 7.0 and 8.0 in full. The Power Plant will modify the bill, if found necessary, in consultation with NRPC and shall refund any amount overcharged with an interest calculated as per MoP notification dated 3/6/2022 for late payment surcharge specified in Clause 12 from the date of receipt of amount to the date of refund to HPPC.
- g) Clause 9.11
If the parties fail to resolve the settlement of the dispute by mutual discussions among the parties concerned as per Clause 17.1, the same shall be dealt as per the Clause 17.2 or 17.3 herein below. If it is decided by the arbitrator, that the amount paid by HPPC is in excess, NPCIL shall refund the excess amounts to HPPC and in case if there is shortfall, HPPC shall pay the balance to NPCIL. In both cases the amount together with such interest as may be determined by the Arbitrator which in any case not exceeding as specified in as per MoP notification dated 3/6/2022 for late payment surcharge specified in Clause 12.
- h) Clause 9.12

All payments by HPPC to NPCIL for power procured from it shall be first adjusted towards Late Payment Surcharge and thereafter, towards monthly charges, starting from the longest overdue bill.

i) Clause 9.13

All the bills payable by HPPC to NPCIL for power procured from it, shall be time tagged with respect to the date and time of submission of the bill and the payment made by HPPC shall be adjusted first against the oldest bill and then to the second oldest bill and so on so as to ensure that payment against a bill is not adjusted unless and until all bills older than it have been paid for:

Provided that any adjustment towards late payment surcharge shall be done in the manner as specified in 9.12.

j) Clause 10: ESTABLISHMENT OF TRADE FINANCE INSTRUMENTS AND PAYMENT OF BILLS.

The payment of all bills shall be made by HPPC preferably through Trade Finance Instrument [Letter of Credit (LC), Standby Letter of Credit (SBLC), Direct Pay Letter of Credit (DPLC), Bank Guarantee (BG), Standby Bank Guarantee (SBG)] / electronic mode or any payment security mechanism as notified by MoP/GOI time to time including advance cash payment in case no Trade Finance instrument is established. The aforesaid instrument to be opened in favour of NPCIL and maintained by HPPC at a branch of the State Bank of India or any Nationalized /Scheduled Bank, as may be mutually agreed. The Trade Finance instrument shall be established prior to the commencement of power supply from the Power Station. The Trade Finance instrument shall be established for an amount equal to 105% of the average of monthly energy bills of the immediately preceding twelve months excluding the periods of planned shutdown, to be reviewed every six months in January & July. The Power Plant will inform to HPPC the amount of Trade Finance Instrument required to be opened as per above guidelines. The same will be opened by HPPC within 15 days of receipt of intimation

k) Clause 11.1: REBATE ON PAYMENT THROUGH APPROVED TRADE FINANCE INSTRUMENTS

NPCIL shall allow a rebate as per Table -1 below, on the amount of the bill negotiated through the approved Trade Finance Instrument on presentation of the bills by the NPCIL to Bank or paid through other means by HPPC and realised within the last day of the calendar month in which date of issue of the bill is recorded as per Clause 9.2 above or adjustment against advance deposited with NPCIL through electronic mode before supply of energy to the Beneficiaries.

NPCIL shall not allow any rebate, where the bill amounts are realized in the NPCIL account subsequently, in the following month to the month in which the date of issue of the bills is recorded, as mentioned under Clause 9.2 or in absence of approved instrument of requisite value if paid through any other mean except adjustment against advance deposited by beneficiary before purchase of electricity.

Period of payment through Trade Finance Instrument (Days of Calendar month in which date of Bill is recorded)	Rebate (as % on the amount of Bill negotiated through trade finance instrument or paid directly)
1st – 10th day of the Calendar month	2.50 %
11th – 20th day of the Calendar month	2.00 %
21st – Last day of the Calendar month	1.50%

l) Clause 11.3

The rebate shall be limited to the amount of NPCIL bills after excluding wheeling charges (if any), taxes, levies such as decommissioning levy, self-insurance and nuclear liability fund, duties, cess etc. billed therein

m) Clause 12: SURCHARGE DUE ON LATE PAYMENT

If Trade finance instruments is opened for any amount lower than calculated as per Clause 10.1 above or through the Trade finance instrument is opened and bill amounts are not realised in the NPCIL account, the bill amount not received would be payable with late payment surcharge from the last day of the month following the month in which bill is raised by NPCIL. The late payment surcharge shall be payable as per MoP notification dated 3/6/2022 which is as under:

12.1 Late Payment Surcharge shall be payable on the payment outstanding after the due date, at the Base Rate of Late Payment Surcharge applicable for the period for the first month of default.

12.2 The rate of Late Payment Surcharge for the successive months of default shall increase by 0.5 percent for every month of delay provided that the Late Payment Surcharge shall not be more than three percent higher than the base rate at any time.

The same shall be applicable in case of advance deposit. Also, no rebate will be admissible on such amount.

2.6 The following prayers have been made: -

- a. Admit the instant Petition
- b. Grant approval for the revisions made in the draft PPA as stated in the instant petition;

- c. Permit the Petitioner to execute the revised PPA with the Respondent;
- d. Pass any such further order(s) that this Hon'ble Commission as may deem fit and necessary in the facts and circumstances of the case.

Proceedings in the Case

3. During the hearing held on 09.04.2024, Smt. Sonia Madan, the learned counsel appearing for the petitioner, submitted that some inadvertent clerical errors have crept in the petition which needs modification. Accordingly, an amendment application (IA no. 2 of 2024) was filed on 12.04.2024, to place on record an amended petition including complete set of two numbers draft PPA to be executed with Narora Atomic Power Station (NAPS) and Rajasthan Atomic Power Station (RAPS). Both the Draft PPA's contains identical terms and conditions, which were wrongly spelled as Annexure P-9, instead of Annexure P-10. The case was finally heard on 07.05.2024, in the courtroom of the Commission, wherein the parties mainly reiterated the contents of their written submissions, which for the sake of brevity has not been reproduced here.

Commission's Order

4. The Commission heard the arguments of the parties at length as well as perused the written submissions placed on record by the parties including the reasons for modifications in the PPA. The petitioner has sought the approval of the proposed modifications in the PPA, on the insistence of the respondent herein (M/s. NPCIL).
5. The Commission has considered the submissions of M/s. NPCIL filed in the matter. M/s. NPCIL, at para 11 of its reply filed in the matter, on behalf of the Narora Atomic Power Station (NAPS) and the Rajasthan Atomic Power Station (RAPS), has submitted as under:-

"It is respectfully submitted that the Respondent NPCIL after the necessary directions of the Hon'ble Commission is willing to execute the Revised Draft Power Purchase Agreement as enclosed in Annexure P-10 (page 70 to 99) of the petition 75/2023."

6. The Commission observes that all the beneficiary states have already signed the revised draft PPA along with the revised clauses as proposed in the instant petition. The Commission observes that the necessity of modification in the PPA has arisen mainly on account of Electricity (Late Payment Surcharge and Related Matters) Rules, 2022, notified by the Ministry of Power vide its notification dated 03.06.2022. The LPS Rules, 2022 have been made applicable to outstanding dues of generating companies, inter-state transmission licensees and electricity trading licensees. The Commission further observes that share of Haryana out of 440 MW NAPS 1 & 2 Power plant & 440 MW

RAPS 3 & 4 is 28 MW & 48 MW, respectively (Total 76 MW) and the remaining power is being sold by NPCIL to Discoms of other States.

7. In addition to the above observations, it is also noted that the petitioner herein i.e. HPPC has already given its consent to the proposed modifications in the terms of the PPA.
8. In view of the above, the Commission approves the PPA to be executed between the parties herein on the modified terms and conditions, as proposed in the present petition. The petitioner is directed to file the copy of the signed PPA in the Commission, within two weeks from the date of signing of the PPA.
9. In terms of the above order, the present petition along with the IA filed in the matter is allowed.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 07.05.2024.

Date: 07.05.2024
Place: Panchkula

(Mukesh Garg)
Member

(Naresh Sardana)
Member

(Nand Lal Sharma)
Chairman