

**BEFORE THE HARYANA ELECTRICITY REGULATORY COMMISSION
BAYS No. 33-36, SECTOR-4, PANCHKULA- 134112, HARYANA**

Case No. HERC/PETITION NO. – 57 of 2022

**Date of Hearing : 27.10.2022
Date of Order : 14.11.2022**

IN THE MATTER OF:

Petition under Section 86 (1)(a) and (k) of Electricity Act, 2003 read with Regulation 8.3.8 (a) and (b) of the HERC MYT Regulations 2019 seeking appropriate approval to offset the adverse financial impact on account of blending of imported coal as per the directions dated 28.04.2022, 13.05.2022, and 18.05.2022 issued by Ministry of Power, Government of India read with Regulation 3.20 (c) and (d) of HERC MYT Regulation 2019 and as per the Approval dated 04.06.2022 accorded by the SHPPC and approval dated 19.04.2022 given by SPP and further in terms of directions dated 04.07.2022, 01.08.2022 and 01.09.2022 issued by this Hon'ble Commission.

Petitioner

Haryana Power Generation Corporation Limited (HPGCL)

Respondent

Haryana Power Purchase Centre, Panchkula (HPPC)

Present on behalf of the Petitioner

1. Shri Tabrez Malawat, Advocate
2. Shri Umesh Aggarwal, Chief Engineer, HPGCL
3. Shri Prem Kumar, Xen, HPGCL
4. Shri Ravi Juneja, AEE, HPGCL

Present on behalf of the Respondent

Smt. Sonia Madan, Advocate, HPPC

Quorum

**Shri R.K. Pachnanda
Shri Naresh Sardana**

**Chairman
Member**

ORDER

Brief Background of the case

1. The present petition has been filed by HPGCL seeking approval of the Commission to blend the imported coal pursuant to the Ministry of Power, Government of India (MoP) directions and allow pass through of its cost along with applicable interest because of the delay in recovery of the said cost as a result of the direction of the Commission dated 01.09.2022.
2. The petitioner has submitted as under: -
 - 2.1 That Ministry of Power, Government of India has issued following directions to arrange imported coal for blending purpose so as to match the supply gap of domestic coal:-

- 2.1.1 Notification dated 28.04.2022: Thermal Power Plants owned by State Gencos and IPPs were directed to import the coal for blending purpose to meet requirement at 10% of the total requirement.
- 2.1.2 Notification dated 13.05.2022: Ministry of Power, directed both State Governments and State Electricity Regulatory Commissions (SERCs) to ensure that all generating companies undertake immediate steps for import of coal for blending with domestic coal.
- 2.1.3 Directions under Section 107 to Hon'ble CERC dated 18.05.2022: A direction was issued under Section 107 of Electricity Act to Hon'ble CERC, to allow generating company to use higher proportion of imported coal.
- 2.1.4 Directions to all the Gencos dated 18.05.2022: The Ministry of Power directed all the Gencos that in case blending of imported coal with domestic coal is not started by 15.06.2022 then the domestic allocation of the concerned defaulter thermal power plants will be further reduced by 5%.
- 2.2 That Regulation 3.20 (c) and (d) of the HERC MYT Regulations, 2019 covers aforesaid situation as "Change in Law".
- 2.3 It has been submitted that the ibid notifications were binding on the petitioner. Therefore, the petitioner took necessary steps in order to procure alternative fuel in form of imported coal, as under:-
- 2.3.1 That the SCPP in its 65th meeting dated 19.04.2022, approved that imported coal may be procured by the petitioner.
- 2.3.2 That the approval of Hon'ble Chief Minister, State of Haryana, was obtained.
- 2.3.3 High Powered Purchase Committee (SHPPC) on 04.06.2022 approved the procurement of 9.04 lacs MT Imported Coal from M/s Mohit Minerals, New Delhi.
- 2.3.4 HPGCL started raising relevant 'Fuel Price Adjustment (FPA) bills' as per consumption of the imported coal.
- 2.4 That as per the prevailing law there is no specific mandate in relation to which petitioner is required to seek prior approval from this Hon'ble Commission.
- 2.5 That there is no dispute on the issue of payments of blending of imported coal between the petitioner and the beneficiary i.e. HPPC and the payments of the bills under FPA is being made regularly. Similar treatment is being carried out by the HPPC with all other generators having tariff determined under Section 62 of the Electricity Act, 2003.
- 2.6 The Hon'ble Commission, vide its letter dated 04.07.2022, 01.08.2022 and 01.09.2022, directed that '*without specific order of the Commission no recovery through FPA or any other mechanism should be made on account of blending of imported coal*'.
- 2.7 In terms of above, the present petition has been filed by the petitioner under Section 86 (1)(a) and (k) of Electricity Act, read with Regulation 8.3.8 (a) and (b) of the HERC MYT Regulations 2019.

2.8 Following prayers have been made:

- a. Permit Petitioner to carryout suitable blending of imported coal while undertaking generation of power in terms of directions dated 07.12.2021, 28.04.2022, 13.05.2022, and 18.05.2022 issued by Ministry of Power, Government of India and in terms of approval of State Level High Power Purchase Committee dated 04.06.2022 and SCPP dated 19.04.2022;
- b. Declare and hold that directions dated 07.12.2021, 28.04.2022, 13.05.2022, and 18.05.2022 issued by Ministry of Power, Government of India are change in law events and pass consequential relief in relation to the same to the Petitioner;
- c. Allow actual financial offset and appropriate cost recovery through monthly FPA to the Petitioner on account of blending of imported coal from the date of such blending of imported coal as per the directions dated 07.12.2021, 28.04.2022, 13.05.2022, and 18.05.2022 issued by Ministry of Power, Government of India and in terms of approval of SHPPC dated 04.06.2022 and SCPP dated 19.04.2022.
- d. Allow Petitioner to raise future FPA invoices as per the blending of imported coal carried out in relation to generation of power as per the directions dated 07.12.2021, 28.04.2022, 13.05.2022, and 18.05.2022 issued by Ministry of Power, Government of India and in terms of approval of SHPPC dated 04.06.2022 and SCPP dated 19.04.2022.
- e. Allow Petitioner to recover actual holding cost/ necessary carrying cost for delay in recovery of the amount relating to blending of imported coal on account of the Direction dated 01.09.2022 issued by this Hon'ble Commission and
- f. Such other or further relief that this Hon'ble Commission deemed appropriate and proper in facts and circumstances of the case.

Proceedings in the Case

3. The case was heard on 27.10.2022, as scheduled, in the court room of the Commission.
4. Shri Tabrez Malawat, the learned advocate for HPGCL, reiterated the contents of the petition, which for the sake of brevity has not been reproduced herein. The Commission enquired about the number of days of coal availability in HPGCL's power plants. Shri Prem Kumar, Xen/Fuel, HPGCL, submitted that coal stock availability in RGTPS, Hisar, DCRTPS, Yamunagar and PTPS, Panipat, is 3 days, 1 day and 1 day, respectively. Shri Ravi Juneja, AEE, HPGCL submitted that the domestic coal is being received as per annual Contracted Quantity (ACQ), however, owing to the running of plants above 85% PLF, the shortage in coal is being witnessed. Shri Juneja further submitted that the Ministry of Power

(MoP) letter dated 11.08.2022, withdrawing the direction dated 26.05.2022 issued under Section 11 to the generating companies having domestic coal based power plants, are not applicable to HPGCL, since these are applicable only to the generating companies having domestic coal based power plants and supply electricity to the beneficiaries at the tariff determined by the SERCs/CERC under Section 63 of the Electricity Act, 2003.

Commission's Order

5. The Commission has heard the arguments of the petitioner at length as well as perused the written submissions placed on record by them.
6. The Commission now proceeds to examine the various prayers of HPGCL, as under:-
 - 6.1 **Prayer of HPGCL:** Permit the petitioner to carryout suitable blending of imported coal while undertaking generation of power in terms of directions dated 07.12.2021, 28.04.2022, 13.05.2022, and 18.05.2022 issued by Ministry of Power, Government of India and in terms of approval of State Level High Power Purchase Committee dated 04.06.2022 and SCPP dated 19.04.2022.

Commission's analysis and order: The Commission has examined the aforesaid prayer of HPGCL, in the light of the notifications of the MoP dated 28.04.2022, 13.05.2022 and 18.05.2022. The Commission is of the considered view that the said notifications are not binding on the State Gencos, since the directions under section 11 of the Electricity Act, 2003 dated 26.05.2022 was issued to the generating companies having domestic coal based plants supplying electricity under section 63 of the Electricity Act, 2003. HPGCL supplies electricity to Haryana Discoms at the tariff determined under section 62 of the Electricity Act, 2003. Therefore, the notifications of MoP dated 28.04.2022 and 13.05.2022, were in the nature of advisories and are not binding on HPGCL. The directions issued under section 11 of the Electricity Act, 2003 dated 26.05.2022 was not applicable to HPGCL, so is the directions dated 11.08.2022 regarding withdrawal of the same. Further, the directions dated 18.05.2022 under Section 107 of the Electricity Act, 2003 was issued by MoP to Hon'ble CERC, to allow generating company to use a higher proportion of imported coal. There was no such direction by the State Government under Section 108 of the Electricity Act, 2003 to this Commission.

It was in this context that the Commission has advised HPGCL, vide its letters dated 04.07.2022, 01.08.2022 and 01.09.2022, to take appropriate action, in accordance with Regulations in vogue, as in the annual generation tariff order for the FY 2022-23, HPGCL was not granted specific approval to procure imported coal and the ECR was determined

based on domestic coal only. However, HPGCL has continued to blend imported coal without seeking specific approval of the Commission for the same thereby completely ignoring the directions of this Commission. Further, HPGCL has claimed the cost of imported coal as Fuel Price Adjustment (FPA) and not as Energy Charge Rate (ECR), as being done by other similarly placed generators, thereby distorting the monthly Merit Order Dispatch (MOD) being prepared by the beneficiary i.e. HPPC. Therefore, the conduct of HPGCL was not appropriate.

As submitted by the petitioner, it has already procured some quantities of imported coal against the contracted quantity of 9.04 lacs MT. The rate of imported coal is reportedly around Rs. 20,000 per MT with Gross Calorific Value (GCV) of around 5000 kCal (average Rs. 4 per kCal), whereas the cost of domestic coal is around Rs. 5,000 per MT with GCV of around 3400 kCal (average Rs. 1.47 per kCal). Thus, the cost of imported coal is exorbitantly higher than the cost of domestic coal.

The Commission has also examined clause 27 of the purchase order dated 24.06.2022, placed by HPGCL on M/s. Mohit Minerals Ltd., for supply of imported coal of 9.04 lacs MT, which provides as under:-

“27. Termination

- a.
- b.*HPGCL also reserves the right to terminate / cancel the order by giving 15 (fifteen) days written notice without assigning any reason thereof. In case any indented / scheduled quantity of imported coal is in transit, it will be exempted from the notice of termination”*

Further clause 2 of the purchase order dated 24.06.2022, provides as under:-

“2. Period of contract and Delivery Schedule:-

- a.
- b. *Keeping in view of the coal requirement, CE/Fuel, HPGCL, Panchkula shall provide month wise delivery schedule to the supplier. The scheduled quantity of coal shall be supplied within 30 days from the date of issuance of delivery schedule.*
- c. *HPGCL reserves the right to vary monthly delivery schedule at its sole discretion. However, the supplier shall have no objection or reservations, claim of any nature whatsoever on HPGCL for such changes in schedule.*
- d.
- e. *No coal supplies shall be accepted from Supplier without written consent of CE/Fuel, HPGCL, Panchkula”*

Having observed as above, the Commission is conscious of the fact that coal supply from Coal India Limited and its subsidiaries has not returned to normal levels while sharp increase in power demand coupled with un-availability of a few generators with which HPPC has long-term power purchase agreements, required HPGCL to maximize generation from its power plants in Haryana. Hence, this would require higher levels of coal stock. This is only possible, given the constraints in domestic coal supply, by contracting coal from off-shore sources for the purposes of blending. This would entail a higher cost but is still preferable to curtailment in power supply with greater financial and economic consequences.

The Commission has taken note of the fact that the impact of coal has been deliberated and approved at the highest levels of the State Government. Therefore, the Commission grants ex-post facto approval to blend the already procured imported coal. However, HPGCL should explore the possibility of cancelling the balance quantity of purchase order. HPGCL has intimated that the domestic coal is also not available. In that case also, the equation of blending of imported coal to the extent of 10% of the domestic coal, does not hold good. HPGCL should instead explore the possibility of procuring domestic coal on “as is where is basis”/“Rail cum Road (RCR) basis” along with stringent ministerial level follow up with the Ministry of coal for procuring domestic coal to build 30 days coal stock.

- 6.2 **Prayer of HPGCL:** Declare and hold that directions dated 07.12.2021, 28.04.2022, 13.05.2022, and 18.05.2022 issued by Ministry of Power, Government of India are change in law events and pass consequential relief in relation to the same to the Petitioner.

Commission’s analysis and order:

In terms of the discussions above, the Commission is not convinced to declare the notifications/letters of MoP, cited by the petitioner, as change of law events. Additionally, there was no law existing which has been altered by the letters of MoP.

- 6.3 **Prayer of HPGCL:** Allow actual financial offset and appropriate cost recovery through monthly FPA to the Petitioner on account of blending of imported coal from the date of such blending of imported coal as per the directions dated 07.12.2021, 28.04.2022, 13.05.2022, and 18.05.2022 issued by Ministry of Power, Government of India and in terms of approval of SHPPC dated 04.06.2022 and SCPP dated 19.04.2022.

Commission's analysis and order:

The Commission has considered the prayer of HPGCL and allows the recovery of cost of imported coal incurred till the date of this order, as pass through i.e. as part of FPA bill. However, the Commission observes that claiming the cost of imported coal as Fuel Price Adjustment (FPA) and not as Energy Charge Rate (ECR), as being done by other similarly placed generators, distorts the monthly Merit Order Dispatch (MOD) being prepared and followed by HPPC. The Commission has already approved ECR in its generation tariff order dated 22.02.2022, for the financial year 2022-23, on the basis of domestic coal, as under: -

		PTPS			RG TPS		DCR TPS	
	Unit 6	Unit 7	Unit 8	Unit 1	Unit 2	Unit 1	Unit 2	
Fuel Cost Rs./Kwh	3.77	3.65	3.65	3.64	3.64	3.57	3.57	

The Commission now approves the ECR with 10% blending of the imported coal, taking weighted average cost of imported coal and GCV as appearing in the invoice of FPA for the month of July, 2022, as under: -

		PTPS			RG TPS		DCR TPS	
	Unit 6	Unit 7	Unit 8	Unit 1	Unit 2	Unit 1	Unit 2	
Fuel Cost Rs. /Kwh	4.51	4.51	4.42	4.42	4.56	4.40	4.40	

Accordingly, the bills issued after the date of this order shall be on the ECR approved with 10% blending of imported coal and going forward the recovery of cost through FPA bills should be minimized.

- 6.4 **Prayer of HPGCL:** Allow Petitioner to recover actual holding cost/ necessary carrying cost for delay in recovery of the amount relating to blending of imported coal on account of the Direction dated 01.09.2022 issued by this Hon'ble Commission.

Commission's analysis and order:

The Commission has advised HPGCL, from time to time, vide its letters dated 04.07.2022, 01.08.2022 and 01.09.2022, to take appropriate action, in accordance with Regulations in vogue. However, HPGCL has continued to blend the imported coal without seeking specific approval of the Commission for the same, completely ignoring the directions of the Commission. Furthermore, HPGCL has claimed the cost of imported coal as Fuel Price Adjustment (FPA) and not as Energy Charge Rate (ECR), as being done by other similarly placed generators, thereby distorting the monthly Merit Order Dispatch (MOD) being prepared by HPPC. HPGCL has continued to blend the imported coal even after various advisories of the Commission. In such a scenario, HPGCL should not have been allowed

the cost of imported coal fired without the specific approval of the Commission. However, given the critical availability and stock of coal, the Commission has allowed the same without recovery of holding/carrying costs.

- 6.5 The Commission has taken serious note of the fact that as against the statutory requirement of maintaining 30 days of coal stock at the power plant(s) and for which working capital and interest thereto is allowed in the ECR determined by this Commission; HPGCL is maintaining 1 to 3 days of coal stock only at its various locations. Such a situation is un-warranted and may lead to curtailment in power generation when it is required the most in Haryana. **HPGCL is directed to take all possible steps so that they are in compliance with the relevant regulations of this Commission in vogue. A compliance report be submitted within 30 days from the date of this order.**

In terms of the above order, the present petition is disposed of.

This order is signed, dated and issued by the Haryana Electricity Regulatory Commission on 14.11.2022.

Date: 14.11.2022
Place: Panchkula

(Naresh Sardana)
Member

(R.K. Pachnanda)
Chairman