

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

- 1. Shri Bhanu Bhushan, Member**
- 2. Shri R. Krishnamoorthy, Member**

**Review Petition No. 67/2007  
in  
Petition No. 113/2006**

**In the matter of**

Review of the order dated 23.3.2007 in Petition No. 113/2006 -Adoption of tariff in respect of 2000 MW Thermal Power Station proposed to be established by ISN International Pvt. Limited in District Sidhi, Madhya Pradesh.

**And in the matter of**

ISN International Company Pvt. Limited (ISNI)

**...Petitioner**

**Vs**

1. Ajmer Vidyut Vitran Nigam Limited (AVVNL), Ajmer
2. Jaipur Vidyut Vitran Nigam Limited (JVVNL), Jaipur
3. Jodhpur Vidyut Vitran Nigam Limited (Jodhpur VVNL), Jodhpur
4. M.P. Power Trading Company Limited (MPPTCL), Jabalpur ...**Respondents**

**The following were present:**

1. Shri R.K. Mehta, Advocate, ISNI
2. Ms. Suman Kukrety, Advocate, ISNI

**ORDER  
(DATE OF HEARING: 21.8.2007)**

The petitioner seeks review/modification/re-consideration/clarification of the order dated 23.3.2007 in Petition No. 113/2006 (hereinafter referred to as “the original application”).

2. Heard Shri R.K. Mehta, Advocate for the petitioner on admission.

3. In the original application, the petitioner had prayed for adoption of tariff in respect of 2000 MW thermal power station proposed to be set up in Sidhi District of State of Madhya Pradesh (hereinafter referred to as “the generating station”) in terms of Power Purchase Agreements (PPAs) dated 14.9.2006 and 28.9.2006 with the respondents, under Section 63 of the Electricity Act, 2003 (the Act). Earlier, the petitioner had made an application, taken on the file of the Commission as Petition No.95/2003, also under Section 63 of the Act, for adoption of tariff, which it had proposed to set up in Sonbhadra District, Uttar Pradesh (UP) based on the bids called by the State Government in February 1995. The application was disposed of by order dated 30.7.2004 wherein it was held by the Commission that the application under Section 63 of the Act was not maintainable. The grounds for rejection of the application are summarized hereunder:

(a) PPA was not signed with the State Government of UP, who had invited the bids, as envisaged under the guidelines issued by the Central Government in Ministry of Power under its letter dated 18.1.1995 (hereinafter referred to as “the 1995 guidelines”).

(b) Ministry of Power under its letter dated 12.8.1996 had advised the State Government to develop the project in accordance with the 1995 guidelines, which implied that these guidelines were not followed by the State Government while inviting bids in February 1995.

(c) The tariff proposed in the application could not be said to have been the result of competitive bidding process.

(d) When the proposal was initiated, the State Government of UP was the only beneficiary, but subsequently the other States were also added as the beneficiaries of the generating station.

(e) There was change in the location of the generating station from Pratabpur (Uttar Pradesh), for which bids were invited to a place near Singrauli in Sonbhadra District of Uttar Pradesh.

(f) There was change in certain terms and conditions, including the tariff proposed.

4. Ministry of Power on 19.1.2005 issued fresh guidelines (hereinafter referred to as "the 2005 guidelines") for inviting competitive bids for procurement of power by the distribution licensees, as contemplated under Section 63 of the Act. The original application was filed for adoption of tariff consequent to the 2005 guidelines. In the original application, the petitioner had proposed to establish the generating station in Sidhi District of Madhya Pradesh meaning thereby that the location was further changed. The petitioner signed PPAs with the MP Power Trading Company Limited and the distribution companies in the State of Rajasthan. After perusal of the documents placed on record by the petitioner, the Commission, by its order dated 23.3.2007 decided that the petitioner's prayer for adoption of tariff under Section 63 of the Act was not maintainable. The Commission found it difficult to accept the petitioner's contention that the tariff sought to be adopted by the petitioner was or could be derived from that arrived at through the process of bidding undertaken by the State Government of UP in 1995. However, in said order dated 23.3.2007, certain observations were made by the Commission as regards the tariff sought to be adopted by the petitioner. It was noted by the Commission that fixed charge rate projected by the petitioner was much higher than that for the thermal power generating stations being set up by NTPC and others, and that the projected variable charge rate was lower than that being charged for the nearby pit-head generating

stations of NTPC and was, therefore, attractive. The Commission further noted that it was necessary to ensure that basic figures and assumptions for the tariff projected by the petitioner were in order.

5. In the present petition, the petitioner has raised three issues.

6. The petitioner has submitted that the observations made in the order that neither the 1995 guidelines nor the 2005 guidelines have been followed constitutes an error of record. The petitioner has submitted that when bids were invited by the State Government of UP, the 1995 guidelines were in force and the generating station was proposed to be developed under these guidelines. It has been submitted that in the proceedings in the original application, the petitioner had simply stated that the 2005 guidelines, as practicable, had been incorporated in the petitioner's project documents since it was selected as L1 bidder. The petitioner has argued that it could not have claimed that the 2005 guidelines were followed while inviting bids in February 1995 by the State Government of UP. It is further submitted that Section 63 of the Act does not require that only the 2005 guidelines have to be followed. It is contended that the requirement of law is that the guidelines in force at the relevant time needs to be followed.

7. It has been further contended that the conclusion arrived at by the Commission in the order dated 23.3.2007 that no specific tariff was arrived at in the PPAs also constituted an error of record. The petitioner has pointed out that the PPA signed with MP Power Trading Company Limited clearly provides the fixed charge rate for each year to which the parties have agreed. The petitioner has argued that the provision

made in the PPA that tariff would be determined or adopted as per the Commission guidelines cannot be interpreted to mean that there was no agreement on the tariff provided in the PPA even though the condition was put in the PPA that the agreement was subject to approval of the Commission. As regards, the PPAs with the distribution companies in the State of Rajasthan it has been pointed out that the PPA in para 6.1 specifically provides that the levelised indicative tariff of Rs.2.50/kWh, which was subject to approval of the Commission, was agreed to.

8. Lastly, it has been urged that para 35 of the order wherein the Commission has observed that “we have already given our observations regarding the high FCRs in para 33 above” need a clarification because, according to the petitioner, the finding recorded in para 34 of the order in regard to the low variable charge rate has not been taken note of in para 35.

9. Shri R.K. Mehta, Advocate argued at length before us on the lines as projected in the present petition.

10. We have already noted that the petitioner had earlier made an application (Petition No.95/2003) for adoption of tariff under Section 63 when it had proposed to establish the generating station in the State of UP. The petitioner’s claim was not accepted for the reasons summarized at para 3 above, holding that the 1995 guidelines were not followed. These findings of the Commission have become final since no further proceedings were taken by the petitioner. Under these circumstances, the decision in Petition No.95/2003 would have barred any further proceedings by application of principle of *res judicata*. To avoid such a situation the

petitioner sought to invoke the 2005 guidelines in the original application. The petitioner submitted the tabulated statement to establish that the steps envisaged under the 2005 guidelines were in fact complied with. The Commission in its order dated 23.3.2007 had considered both these aspects and had come to the conclusion that neither the 1995 guidelines nor the 2005 guidelines were followed. In order to make out a case for review, the petitioner has sought to dilute its submissions made in the original application by stating that it had simply stated that the 2005 guidelines, as practicable, had been incorporated in the petitioner's project documents leading to its selection as L1 bidder by the State Government of UP based on the 1995 guidelines. We do not find any merit in the petitioner's contention in this regard for the reason that in case the petitioner had relied upon the 1995 guidelines, its case was liable to summary rejection on the ground of *res judicata* and the fact that the grounds for rejection of earlier petition (except the signing of PPA) were still valid. In any case, this issue is only of an academic interest now, since it is very difficult/subjective to derive the tariff sought to be adopted from that arrived at through the process of competitive bidding in 1995, as already stated in para 4.

11. The petitioner's second contention urged in support of review/modification/re-consideration of the order dated 23.3.2007 is also without merit. The Commission in its said order dated 23.3.2007 after taking note of the provisions made in the PPA signed with the respondents, also took note of the oral submissions made by the representatives of the parties at the hearing. It has been specifically noted by the Commission that Shri P.K. Gupta, SE who appeared on behalf of the Discoms in the State of Rajasthan disputed the petitioner's claim on agreement of tariff. A similar submission made on behalf of the representative of MP Power Trading Company

Limited on the provision made in the PPA for determination of the adoption of tariff were also taken note of by the Commission. The Commission in its order dated 23.3.2007 has considered all the relevant aspects emerging out of the proceedings before the Commission and has concluded that no specific tariff was arrived at. We have nothing on record to-date, except the petitioner's statements, to change that conclusion.

12. The petitioner has sought a clarification on the observations made in the para 35 of the order so that these observations would not come in the way of Appropriate Commission while granting approval to the PPAs under Section 63 of the Act. In our view, no clarification is necessary. The petitioner's original application was for adoption of tariff under Section 63 of the Act. The Commission in para 30 of the order categorically found that Section 63 was not attracted in the facts and circumstances of the case. However, the Commission, at the instance of the petitioner that the tariff offered was competitive, incidentally looked into the question of tariff, for which sufficient data was not placed on record by the petitioner. The Commission's observations in this regard are recorded in paras 31 to 35 of the order dated 23.3.2007. The observations in one particular para 35 cannot be read in isolation of the observation in the preceding paras. All the relevant paras have to be read together to infer the intention of the observations. When so read, there does not appear to be any necessity for giving any further clarification.

13. It appears to us that total silence of the respondents since the making of the order is indicative of either their agreement with our conclusion that no specific tariff was agreed to in the PPAs, or of a lack of willingness to pursue the PPAs signed by

them with the petitioner. We are clear that the remedy for these does not lie before the Commission, who has already gone out of way and beyond the scope of the original application to assist the parties by suggesting in para 35 of the order dated 23.3.2007 that if the beneficiaries are agreeable to the terms offered by the petitioner, they may go ahead subject to approval of tariff by the Appropriate Commission. The parties can still proceed on these lines, in which case the Commission would not be a hindrance, as already stated in para 35 of our order dated 23.3.2007.

14. With the above, the present review petition is dismissed at admission stage.

Sd/-  
**(R. KRISHNAMOORTHY)**  
**MEMBER**

Sd/-  
**(BHANU BHUSHAN)**  
**MEMBER**

**New Delhi dated the 27<sup>th</sup> August 2007**