

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Coram**

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

**Petition No.18/2007**

**In the matter of**

Adoption of tariff for the supply of electricity from the Mundra Ultra Mega Power Project of Coastal Gujarat Power Limited.

**And in the matter of**

Coastal Gujarat Power Limited

.....**Applicant**

**ORDER**

The application has been made under Section 63 of Electricity Act, 2003 (the Act) for adoption of tariff for supply of electricity by the applicant, arrived at through international competitive bidding process and stated to be in accordance with the guidelines notified by the Central Government on 19.1.2005 and as amended from time to time.

2. The application was scrutinized in the Commission and certain clarifications were sought from the applicant by letter dated 15.6.2007. The clarifications have been furnished under affidavit dated 12.7.2007, supplemented by another affidavit dated 23.7.2007. The matter has been further examined in the light of clarifications received from the applicant and these are discussed in the succeeding paragraphs.

### **Participation of Chairman PNB as Chairman of the Apex Evaluation Committee**

3. The applicant has placed on record a copy of the resolution of Board of Directors, according to which it was resolved on 5.12.2006 by circulation to nominate Chairman PNB as Chairman of the Apex Evaluation Committee in place of Chairman SBI/Chairman LIC/CMD IDBI, originally nominated

### **Compliance with Section 108A and 108B of the Companies Act**

4. In the light of clarifications furnished by the applicant and the relevant provisions of the Companies Act read with provisions of the Monopolies and Restrictive Trade Practices Act, it has been noticed that approvals envisaged under Sections 108A and 108B of the Companies Act were not required for transfer of shares to Tata Power Company Limited. The applicant has also furnished the details of the assets transferred to Tata Power Company Limited.

5. In the light of clarifications furnished and further examination, the issues raised in the letter dated 15.6.2007 and discussed at paras 3 and 4 above stand settled.

6. The issues raised in the letter dated 15.6.2007 which are still outstanding and on which clarifications will be required from the applicant are discussed in the paragraphs below.

### **Participation of Chairperson GUVNL and Member PSEB in Apex Evaluation Committee**

7. It was noticed that Chief Secretary/Principal Secretary (Power) of the respective States were nominated as members of the Apex Evaluation Committee. However, in their place, Chairperson, GUVNL and Member, PSEB participated in the

deliberations. The applicant has placed on record a letter dated 15.12.2006 from the State Government of Gujarat intimating that Chairperson, GUVNL was nominated by the then Principal Secretary (Power) for participation in the deliberations of the Committee. As regards participation of Member, PSEB, the applicant has informed that the matter has been taken up with the Government of Punjab for necessary authorization and subject to submission thereof, the applicant has requested the Commission to accept the composition of the Apex Evaluation Committee as conforming to the resolution of the Board of Directors.

8. We have considered the matter. We do not find that the concerned Chief Secretary/Principal Secretary (Power) were authorized by the resolution of the Board of Directors of the applicant to nominate persons on their behalf to attend the meetings of the Apex Evaluation Committee. In case for any reason whatsoever it became necessary to substitute one nominee for another, the necessary resolution in this regard ought to have been issued by the authority constituting the Apex Evaluation Committee. However, as a special case, considering the fact that they are State entities, we may accept the submission made on behalf of the applicant on production of appropriate authorization from the State Government of Punjab as regards participation of Member PSEB. This may be got expedited and appropriate authorization placed on record.

#### **Past association of procurers with external members**

9. The guidelines of Ministry of Power require the procurers to reveal their past association with external members either directly or through its affiliates that could create potential conflict of interest. However, no such certificate was placed on

record by the applicant, but it has since been clarified that the external members of the Apex Evaluation Committee, namely, Chairman PNB, Chairman CEA and Chairman PFC have no association with the procurers or affiliates which may have the potential of conflict of interest of any kind.

10. As noted above, the guidelines of the Ministry require the procurers to reveal their past association with the external members. In the present case neither the procurers nor the members concerned have given any declaration to that effect. The declaration made by the applicant cannot be accepted for the reason that the association, etc, of the procurers and the external members can be revealed or denied by the persons concerned. A declaration in this regard by the applicant, who has been incorporated only recently and is a third person, may not be valid. Therefore, the applicant is advised to file necessary declaration in accordance with the guidelines.

#### **Certification by Apex Evaluation Committee**

11. Para 6.2 of the guidelines provide that consequent to signing of PPA between the parties, the Evaluation Committee shall provide appropriate certification on adherence to the guidelines and to the bid process established by the procurers. As the necessary certificate was not furnished, the applicant was asked to do so. It has been informed by the applicant that the certificate cannot be obtained at this stage because the Committee was no longer in existence. The applicant has requested that the certificate already given by the Chief Executive of the applicant company based on the minutes of the meetings of the Apex Evaluation Committee and Expert Committee may be considered by the Commission. The requirement under para 6.12 of the

guidelines of Ministry of Power is clear and the certificate to be furnished has to cover both on adherence to the guidelines and also to the bid process established by the procurer. Hence the certificate of Chief Executive has no relevance and the Apex Committee had also recorded a partial recommendation stating that there was no deviation in the financial bids which does not fulfil the requirement of para 6.12. The guidelines are issued by Ministry of Power and the Commission has no power to deviate.

12. The guidelines envisage that the certificate is to be given consequent to signing of PPA. The guidelines thus imply that the Committee continues to exist till the signing of PPA, though the process of selection of the successful bidder was completed prior thereto. The applicant is advised to comply with the requirement in line with the provisions of the guidelines.

#### **Making the evaluation bid public**

13. Para 6.13 of the guidelines mandates the procurer to make the evaluation of bids public. It has been clarified by the applicant that evaluation of bids will be made public after adoption of tariff by the Commission. We are of the opinion that the evaluation of bids needs to be made public before adoption of tariff by the Commission. This will give the Commission benefit of views of public. The applicant is advised to make the bids public and observations, if any, made by any person be sent to the Commission.

#### **Parties to PPA**

14. The guidelines require that PPA is required to be signed between the procurers and the successful bidder. In the present case, PPA has been signed by the

procurers and the applicant, represented by Shri Anil Sardana, Director. The applicant has clarified that PPA has been signed in accordance with bid documents, namely RfQ and RfP.

15. The guidelines in this respect are explicit that PPA is to be signed with the successful bidder, Tata Power Company Limited in this case. However, this provision of the guidelines has been deviated by the applicant while finalizing bid documents, and for deviation from the guidelines, the applicant was required to obtain approval of the Commission in accordance with paras 3.1 and 5.16 of the guidelines. The applicant is advised to take necessary action in this regard.

#### **Transfer of Shares**

16. The applicant is advised to place on record extracts of register of members and copies of the share certificates consequent to transfer of shares to Tata Power Company Limited and others.

17. The applicant shall take necessary steps for removal of defects pointed out in the preceding paragraphs and approach the Commission thereafter.

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

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

**New Delhi dated the 7<sup>th</sup> August, 2007**