

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 131/MP/2012

Subject: Petition under Section 62, 79 and 178 of the Electricity Act, 2003 read with Regulation 44 of CERC (Terms and Conditions of Tariff) Regulations, 2009 and Regulations 110/111/112 and 115 of CERC (Conduct of Business) Regulations, 1999.

Date of hearing: **21.6.2012**

Coram: Dr. Pramod Deo, Chairperson
Shri S. Jayaraman, Member
Shri M. Deena Dayalan, Member
Shri V.S. Verma, Member
Shri A.S. Bakshi, Member (Ex-officio)

Petitioners: M/s Mahaguj Power Limited (MPL)

Respondents: Maharashtra State Power Generation Company Limited and others.

Parties Present: Shri Amit Kapoor, Advocate, MPL
Shri Gautam Shahi, Advocate, MPL
Shri Malav Deliwala, MPL
Shri K.B Nagendra, MPL
Shri Rahul Sharma, MPL

RECORD OF PROCEEDINGS

This petition has been filed by the petitioner under Sections 62, 79 and 178 of the Electricity Act, 2003 (the Act) read with Regulation 44 of Central Electricity Regulatory Commission (Terms and Conditions of tariff) Regulations, 2009 and Regulation 110, 111, 112 and 115 of Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999, with the following prayers:

(i) Techno-economic guidelines for thermal power plant based on coal rejects, lending certainty of any incentives/norms applicable.

(ii) Grant of in-principle approval to MPL for the proposed project and in-principle approval for determination of tariff for the power generated from the proposed project providing power to two different states.

(iii) Grant liberty to file a separate petition for determination of tariff under section 62 read with Section 79 (1)(b) of the Act at an appropriate stage, in terms of the applicable regulations.

2. During the hearing, the learned counsel for the petitioner submitted as under:

(a) This petition has been filed by Mahaguj Power Limited (MPL), a generating company incorporated to set up a power plant in the pit-head of Mahanadi and Machhakata Coal blocks jointly allocated to Maharashtra State Power Generation Company Limited (Mahagenco), and Gujarat State Electricity Corporation Limited (GSECL). MPL is in the process of establishing a power plant based on coal rejects which is by-product of the mining/processing of coal at Mahanadi and Machhakata Coal Blocks at the pit-head of Macchhakata Coal Block, District Angul, Orissa to supply power in the ratio of 60:40 to the States of Maharashtra and Gujarat.

(b) The learned counsel for the petitioner submitted that pursuant to the process of washing of coal, coal rejects are generated as a by-product and the use of coal rejects is essential for optimal energy recovery from the washed coal system. He also stated that coal rejects cannot be stacked as it would require a substantial amount of land at the mine site and storing of rejects for prolonged period is hazardous and may lead to auto-combustion leading to environmental damage including air pollution, water pollution etc.

(c) The coal rejects are to be utilized at the pit head and the power is to be supplied to Mahagenco and GSECL. Since there appears to be no regulatory precedent or regulatory framework governing elements of tariff applicable to power projects based on coal rejects supplying power to two or more states, it has become necessary to seek regulatory guidance from the Commission to facilitate effective implementation and further the objectives under Section 61 of the Act, specifically (i) taking measures for conducive to development of electricity industry and (ii) to promote efficient and environmentally benign policies.

3. The petitioner and the beneficiaries of the power project are not in the position to enter into any conclusive Power Purchase Agreement (PPA) in the absence of clarity on how the project economics would plan out over the next 25 to 30 years of life cycle of such power plant, which is necessary for achieving financial goals and project implementation milestones. The Machhakata coal mine has around 1400 Million Tons (MT) of coal reserves and it is proposed to be mined at the rate of 30 MT of coal annually and shall generate 9 MTPA of coal rejects and disposal of coal rejects is a unique challenge.

4. The learned counsel for the petitioner submitted that the issues raised in the petition are within the jurisdiction of the Commission and the Commission has the powers to issue orders, guidelines and necessary directions in terms of the provisions under Sections 61, 62 read with Section 79(1)(b) of the Act, Section 79(1)(k) and Section 178 of the Act. He also submitted that the Commission could exercise its powers of relaxation of any of the provisions of the regulation under Regulation 44 of the 2009 Tariff Regulation and in terms of Regulation 111, 112 and 113 of the Conduct of Business Regulations, 1999 pass any such orders as may be necessary for ends of justice. Accordingly, the learned counsel prayed that the petition may be admitted and notices be issued to the respondents.

5. On an observation by the Commission that this is not a first instance where coal rejects are used as an input since plants using coal rejects are already in existence, the learned counsel clarified that there are two or three similar type plants in Chhattisgarh.

6. On a specific query by the Commission as to whether the petitioner's prayer is for a direction on the Commission to frame Regulations governing elements of tariff applicable to power projects based on coal rejects, the learned counsel clarified that the Commission in its discretion may consider framing of regulations in general or issue guidelines on specific issues

raised in the petition. He also submitted that, if directed, the petitioner would submit specific issues which require the guidance of the Commission to proceed in the matter, without delay, pending framing of generic regulations by the Commission.

7. In response to the query of the Commission pertaining to adoption of tariff based on competitive bidding in terms of Section 63 of the Act, the learned counsel for the petitioner clarified that the judgment of the Appellate Tribunal for Electricity dated 31.3.2010 in Appeal Nos.106 and 107/2010 is applicable in the present case though the Civil Appeal filed by the Ministry of Power, Govt. of India has been admitted by the Hon'ble Supreme Court without any stay and is pending.

8. The Commission directed the petitioner to file on affidavit, the norms/parameters in the instant case, which are in variance with the parameters specified under the 2009 Tariff Regulations, for consideration of the Commission. The Commission also observed that based on the information submitted by the petitioner, the need for a separate regulation would be considered by the Commission.

9. The Commission also directed the petitioner to make its submissions, on affidavit, on the issue of determination of tariff for the generating station in terms of Section 62 or adoption of tariff under Section 63 of the Act.

10. The information as required in paras 8 and 9 above shall be submitted by the petitioner, on or before 16.8.2012.

11. Matter shall be listed for hearing on 23.8.2012.

By Order of the Commission

**Sd/-
(T. Rout)
Joint Chief (Law)**