

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

I.A. No. 48/2014
with
Petition No. 252/GT/2013

Coram:
Shri Gireesh B. Pradhan, Chairperson
Shri M. Deena Dayalan, Member
Shri A.K. Singhal, Member
Shri A.S. Bakshi, Member

Date of Hearing: 30.9.2014
Date of Order: 9.10.2014

In the matter of

Interlocutory Application for withdrawal of I.A.No.2/2014 for fixation of provisional tariff of Karcham Wangtoo HEP (4 X 250 MW) for the period from 26.5.2011 to 31.3.2014.

And In the matter of

Determination of generation tariff of Karcham Wangtoo HEP (4 X 250 MW) for the period from 26.5.2011 to 31.3.2014.

And in the matter of

Jaiprakash Power Ventures Ltd.,
Regd. Office: Juit Complex
P.O. Dumehar Bani
Kanda Ghat – 173215
Solan District
Himachal Pradesh

...Petitioner

Vs

1. PTC India Limited,
NBCC Tower,
15, Bhikaji Cama Place,
New Delhi – 110066

2. Haryana Power Generation Corporation Limited,
Plot No. C-7, Sector – 6, Panchkula, Haryana – 134109



3. Uttar Pradesh Power Corporation Limited,
Shakti Bhawan, 14, Ashok Marg,
Lucknow - 226001

4. Jaipur Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Janpath
Jaipur-302005

5. Ajmer Vidyut Vitran Nigam Limited,
Vidyut Bhawan, Panchsheel Nagar,
Makarwali Road, Ajmer - 305004

6. Jodhpur Vidyut Vitran Nigam Limited,
Near Power House, Industrial Area,
Jodhpur - 342003

7. Punjab State Power Corporation Limited,
The Mall, Old PSEB Building,
Patiala - 147001

...Respondents

Parties present:

Shri Vishal Gupta, Advocate, JPVL
Shri, Kumar Mihir, Advocate, JPVL
Shri Raheel Kohli, Advocate, PTC India Limited
Shri, K.C. Agrawal, PTC India Ltd.
Shri Ravi Shanker, PTC India Ltd.
Ms. Swapna Seshadri, HPPC
Shri B.L. Sharma, RDPPC

ORDER

The petitioner is the successor of Jaypee Karcham Hydro Corporation Ltd (JKHCL) which was implementing the 1000 MW Karcham Wangtoo HEP comprising of 4 units of 250 MW each. JKHCL got amalgamated with the petitioner (JPVL) vide scheme of amalgamation approved by the High Court of HP on 25.7.2011. JKHCL entered into a Power Purchase Agreement (PPA) with the Respondent No.1 PTC on 21.3.2006 for purchase of 704 MW capacity of power for a period of 35

years from COD for onward sale on long term basis. Based on this, PTC entered into Power Sale Agreements (PSA) with PSEB on 1.9.2006 for 200 MW, with HPGCL on 21.9.2006 for 200 MW, with UPPCL on 13.5.2006 for 200 MW and with the three discoms of Rajasthan (AVVNL, JVVNL and JoVVNL) on 23.5.2006 for the remaining 104 MW power. The PSA with HPGCL and UPPCL were approved by the respective State Electricity Regulatory Commissions of Haryana and Uttar Pradesh on 21.6.2007 and 12.5.2009 respectively. However, the PSAs with Punjab and Rajasthan are pending for approval before the concerned State Electricity Regulatory Commissions. A second supplementary agreement was executed on 20.12.2007 to amend the definition of the COD date of the project as 18.11.2011.

2. Petition No. 153/2009 was filed by the *erstwhile* JKHCL (now JPVL) before the Commission praying for in-principle approval of the capital cost of the generating station and the Commission by its order dated 26.10.2009 dismissed the same at the 'admission stage' holding that the same was not maintainable on the ground that the scheme of the 2009 Tariff Regulations did not provide for in-principle approval of capital cost. Unit-I of the generating station achieved commercial operation on 26.5.2011. Subsequent to the above, the petitioner declared the PPA void as the provision regarding determination of tariff could not be enforced.

3. Due to termination of the PPA by the petitioner, PTC invoked arbitration provision in the PPA. The Arbitration Tribunal by a majority award declared the PPA as void. The arbitration award was challenged by PTC before the High Court of Delhi under Section 34 of the Arbitration & Conciliation Act, 1996 by an order dated 15.5.2012, the Single Bench of the High Court of Delhi set aside the majority award of the Tribunal and directed the petitioner to approach this Commission for fixation of

tariff. The relevant portion of the judgment of the Hon'ble High Court dated 15.5.2012 is extracted as under:

"67. As a consequence, the majority Award dated 28th April 2011 is hereby set aside. The view of the dissenting member of the Tribunal on the above aspect is, therefore, held to be correct and is approved. The parties are now to work out the respective rights and obligations under the PPA in accordance with law. JPVL will approach the CERC for fixation of the tariff for supply of electricity to the Petitioner within a period of four weeks from today."

4. JPVL filed FAO (OS) No. 244/2012 in the High Court of Delhi. Subsequently, JPVL entered into a Settlement Agreement dated 5.8.2013 and JPVL withdrew the said FAO which was allowed by the High Court of Delhi by order dated 8.8.2013. The petitioner, JPVL has filed Petition No. 252/GT/2013 on 3.9.2013 for determination of tariff of Karcham Wangtoo HEP (the generating station) for the period from 26.5.2011 to 31.3.2014 in terms of the provisions of the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2009 Tariff Regulations.

5. PTC filed an Interlocutory Application (I.A.No.32/2013) for impleadment of the distribution companies namely, HPGCL, UPPCL, PSPCL and the three discoms of Rajasthan, on the ground that they are the ultimate purchasers of electricity from the generating station as per the PSAs entered into with PTC for inter-State supply of 704 MW of power and therefore are necessary parties to the petition. The Commission, pursuant to the hearing of the petition on 15.10.2013, allowed the said I.A and directed the petitioner to file amended memo of parties after serving copies on the respondents. In compliance with the said directions, the petitioner amended the petition and the respondents 2 to 6 have accordingly been impleaded as parties in the petition.

6. Subsequently, Interlocutory Application (I.A.No.2/2014) was filed by the petitioner on 26.2.2014 with a prayer for fixation of provisional tariff in terms of Regulation 5(4) of the 2009 Tariff Regulations

to enable the petitioner to supply the power from the generating station to the respondent No.1 in terms of the PPA, with effect from 1.4.2014. The I.A was heard on 6.3.2014 and 13.3.2014. During the hearing on 13.3.2014, the petitioner made submissions and prayed that pending determination of final tariff, provisional tariff be granted which would be applicable from 1.4.2014 i.e. the date of supply of power to the respondent utilities based on back to back long term arrangements made by the petitioner with the respondent, PTC. The respondents, HPGCL and PSPCL made preliminary objections to the determination of provisional tariff of the generating station in accordance with the process of Regulation 5 (4) of 2009 Tariff Regulations and submitted that since the supply of power to the respondent was to commence from 1.4.2014, the tariff should be determined in term of 2014 Tariff Regulations.

8. The Commission decided to grant an interim tariff to the petitioner for supply of power to the respondent with effect from 1.4.2014, pending determination of final tariff and directed the petitioner to file certain additional information. In compliance with the above directions, the petitioner by affidavit dated 26.3.2014 had submitted the additional information. Subsequently, the petitioner vide affidavit dated 20.6.2014 filed the estimated tariff computation for the year 2014-15 based on the 2014 Tariff Regulations along with audit forms in Annexure-I of the affidavit.

Interlocutory Application No. 48/2014

9. The petitioner has filed this Interlocutory Application (1.A.No.48/2014) on 16.9.2014 for withdrawal of the interlocutory application (I.A.No.2/2014) for fixation of provisional tariff of the generating station for the period from 1.4.2014. In the said I.A., the petitioner has submitted that it has been supplying power to HPPC and UPPCL through PTC with effect from 1.5.2014 and 1.6.2014

respectively. The respondent, PTC in consultation with Respondent No. 2 and 3 has worked out an interim arrangement and agreed to pay some amount against the power supply. The petitioner has submitted that in view of the interim arrangement, it is withdrawing the application for provisional tariff and has requested the Commission to determine the final tariff. After hearing the learned counsel for the petitioner, it was directed to issue notice to the respondents.

10. During the hearing, the learned counsel for the petitioner submitted that in terms of the directions of the Commission, copy of the Interlocutory Application (I.A No.48/2014) was served on the respondents and only the respondent, Haryana Power Purchase Centre (HPPC) has filed its memo to the same. The learned counsel, referring to paragraph no. 3 of the said memo dated 26.9.2014 pointed out that the respondent, HPPC has agreed to pay the tariff billed by the petitioner for supply of power from 1.5.2014, subject to a maximum cap of ₹3.40 per unit as a solely interim arrangement, subject to the final determination of tariff by this Commission in terms of the 2014 Tariff Regulations and without prejudice to contest the tariff petition to be filed by the petitioner. The learned counsel accordingly prayed that the said I.A.No.2/2014 may be permitted to be withdrawn, subject to final determination of the tariff of the generating station.

11. The learned counsel for the respondents, PSPCL and HPPC referred to the memo dated 26.9.2014 and submitted that the respondent, HPPC has no objection to the withdrawal of the said I.A filed by the petitioner, subject to the terms of the interim arrangement entered into with the petitioner. The learned counsel however submitted that the respondent, PSPCL has no objection for the withdrawal of the said I.A by the petitioner.

12. As regards the agreement of the Rajasthan Discoms to interim arrangement for payment, the learned counsel for the respondent, PTC produced a copy of the letter dated 19.9.2014 addressed by the Rajasthan Discoms Power Procurement Centre to PTC and submitted that the said discoms have agreed to release payments on provisional basis, towards monthly bills at a rate of ₹3.40/kWh, subject to adjustments as and when the final tariff is determined by this Commission. The respondent, PTC however clarified that it has no objection for withdrawal of the said I.A by the petitioner.

13. The learned counsel for the petitioner informed that the petitioner is in the process of filing the tariff petition in accordance with the provisions of the 2014 Tariff Regulations shortly, after compliance with certain procedural requirements.

14. During the hearing, the learned counsel for the petitioner pointed out that since the generating station has achieved commercial operation on 26.5.2011, the Petition No.252/GT/2013 filed on 3.9.2013 for determination of tariff of the generating station for the period from 26.5.2011 to 31.3.2014 in terms of the 2009 Tariff Regulations may be clubbed with the tariff petition to be filed for the period 2014-19 in terms of the 2014 Tariff Regulations. The learned counsel for the respondents, HPPC & PSPCL objected to the same and submitted that since the petitioner has commenced the supply of power to the respondents only after 1.4.2014, the petitioner shall be directed to file the tariff petition in terms of the 2014 Tariff Regulations. The learned counsel further submitted that the tariff petition filed by the petitioner on 3.9.2013 in terms of the 2009 Tariff Regulations should accordingly be withdrawn.

15. The learned counsel for the petitioner agreed with the above and submitted that it would file a fresh tariff petition in accordance with the provisions of the 2014 Tariff Regulations. The learned counsel however pointed out that since the tariff filing forms filed earlier are required to be revised, the petitioner may be granted additional time, preferably till 15.10.2014, to file the complete tariff petition, in terms of the provisions of the 2014 Tariff Regulations.

16. Considering the submissions of the parties, the interlocutory Application No.2/2014 is allowed to be withdrawn. Since the tariff petition in respect of the generating station is to be filed by the petitioner in terms of the 2014 Tariff Regulations, we find no reason to keep the Petition No. 252/GT/2013 pending. Accordingly, Petition No.252/GT/2013 is disposed of as withdrawn.

17. The petitioner is directed to file the tariff petition for determination of tariff in respect of this generating station for the period 2014-19, complete in all respects, in accordance with the provisions of the 2014 Tariff Regulations, on or before 27.10.2014. Accordingly, Interlocutory Application (I.A.No.48/2014) is disposed of.

Sd/-
(A.K. Singhal)
Member

Sd/-
(A.S. Bakshi)
Member

Sd/-
(M. Deena Dayalan)
Member

Sd/-
(Gireesh B. Pradhan)
Chairperson