

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. MP/463/2014

Subject : Petition under Section 79(1)(f) of the Electricity Act, 2003 for a direction to the respondents to pay additional fixed charges of ₹0.439/kWh for the balance period of PPA-Adjudication of disputes relating to forgone capacity charges.

Date of hearing : 13.1.2015

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

Petitioner : M/s GMR Vemagiri Power Generation Ltd, Bangalore

Respondents : APEPDCL & 3 others

Parties present : Shri Alok Shankar, Advocate, GVPGL
Shri Anjan Kalita, GMR

Record of Proceedings

This petition has been filed by the petitioner, GMR Vemagiri Power Generation Ltd (GVPGL) under Section 79(1)(f) of the Electricity Act, 2003 (the Act) for adjudication of disputes relating to forgone capacity charges for the period upto 10.4.2009 and for a direction to the respondents to pay additional fixed charges of ₹0.439/kWh for the balance period of PPA and effect necessary amendments in the PPA.

2. The petition was heard on 'maintainability', and the learned counsel for the petitioner submitted as under:

(a) The petitioner and the respondent discoms of the erstwhile Andhra Pradesh State Electricity Board entered into PPA on 31.3.1997. As per PPA, the project cost was to be recovered through guaranteed operation of the plant at 80% PLF and Energy Charge was linked to Specific Station Heat Rate and the same was a pass through to the respondent discoms.

(b) The operation of the plant at 80% PLF was directly linked to the availability of fuel and fuel for the generating station was Natural gas and in the event of non-availability of natural gas, Naphtha was to be used. Based on the recommendations of the Govt. of AP, the Ministry of Petroleum & Natural Gas allocated 1.64 MMSCMD of natural gas to the petitioner on firm basis on 5.6.2000.

(c) In terms of the PPA amended on 18.6.2003, natural gas is to be used as primary fuel and in case of unavailability of primary fuel, Naphtha or Low sulphur heavy stock would be alternate fuel.

(d) In consideration of the petitioner's consent for deletion of the alternate fuel clause, the respondents had agreed to certain benefits to the petitioner (including losses) which was agreed to by the Govt. of AP and the respondents and later approved by APERC in order dated 30.12.2006. Accordingly, based on the projected availability of fuel to the petitioner upto March, 2008 and assuming availability of 1.6 MMSCMD of gas during April, 2008, PPA was amended on 2.5.2007 by insertion of Clause 5.2A.

(e) Since 20% of the plant capacity was permitted to be sold by the petitioner to third parties, the petitioner requested for amendment of the PPA. This was agreed to by Govt. of AP and the APPCC was directed to enter into amendments. However, APERC by order dated 5.12.2009 in O.P. Nos. 9-12 of 2009, rejected the proposed amendments, but gave three options to be exercised with truing-up mechanism.

(f) The petitioner had exercised option (a) wherein the discoms were required to pay an additional rate per unit for the entire capacity and adjust the quantum and the period of entitlement therefor to balance the forgone fixed charge entitlement. As the discoms have failed to certify the losses and comply with the direction of APERC in order dated 5.12.2009, dispute has arisen between the parties.

(g) By virtue of the AP Re-organization Act, 2014, the generating station has evolved as an inter-state generating station and since the matter relates to tariff, the dispute can be adjudicated by this Commission in terms of Section 79(1)(f) read with Section 79(1)(b) of the Act.

3. On a specific query by the Commission as to whether the petition is maintainable, considering the fact that the reliefs prayed for by the petitioner is for implementation of the order of APERC dated 5.12.2009, the learned counsel clarified that the petitioner has only sought for the quantification of the loss of capacity charge and the tariff payable to the petitioner by the respondents. He further pointed out that in terms of Rule 8 of the Electricity Rules, 2005, the tariff determined by the Central Commission for generating companies under clause (a) or (b) of sub-section (1) of section 79 of the Act shall not be subject to re-determination by the State Commission.

4. At the request of the learned counsel for the petitioner, time to file written submissions in the matter was granted till 27.1.2015. No extension of time shall be granted for any reason whatsoever. Subject to this, order in the petition on the question of 'maintainability' was reserved.

By Order of the Commission

Sd/-
(T. Rout)
Chief (Legal)