BEFORE THE CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI

Petition No.11/2000

Present
1. Shri S.L. Rao, Chairman
2. Shri D.P. Sinha, Member
3. Shri G.S. Rajamani, Member
4. Shri A.R., Ramanathan, Member

In the matter of

Petition filed by Power Trading Corporation Ltd., for applicability of ABT to the Pipavav Mega Power Project

In the matter of

Power Trading Corporation of India Limited (PTC)
1115-16, Hemkunt Chambers,
89, Nehru Place,
New Delhi-110019. **-- Petitioner**

And

Gujarat Electricity Board and another **– Respondents**

Following were present:

1. Shri R.K. Madan, CMD, PTC --Petitioner
2. Shri Bahadur Chand, Adviser, PTC -do-
3. Shri L.N. Nimawat, XEN(PSS), RSEB --Respondents
4. Shri P. Mehta, Coml Officer, GEB -do-
5 Shri H.B. Parikh, GM Coml., GEB -do-

ORDER

(Date of hearing 06.03.2000)

Heard the representatives of the petitioners and respondents.

This is a petition seeking the confirmation of the Commission interalia on the applicability of the Availability Based Tariff (ABT) order issued on January 4, 2000 in petition no.2 of 1999 to the Pipavav Mega Power Project (PMPP). The PMPP is being developed under the revised Mega Power Policy of the Govt. of India as defined in November 1998.

(2) The PMPP is proposed in District Amreli in the State of Gujarat. The developer of the generation facilities is proposed to be selected following an International Competitive Bidding route to finance, develop, build, operate and maintain 2000 MW of net thermal capacity, based on either imported coal or LNG. Power Trading Corporation of India Ltd. (PTC) is stated to be mandated by the Ministry of Power, GOI to pre qualify and select the developers of the generation facility. The items on which a bid is to be sought are still not decided and are being developed. The Commission was informed that the bidding methodology, evaluation criteria and procedures have been developed with the

approval of the SIG; a high level group appointed by the Govt. of India for the purpose. The draft Request for Proposal (RFP) document is under finalisation. The Commission was informed that the generator would sell the power to PTC at the generation bus bar. PTC in turn will sell the power at the generation busbar itself to Rajasthan and Gujarat, which have indicated a demand for 500 MW and 1000 MW respectively. Development of the transmission facilities for evacuating the energy to be generated in the project are stated to be the responsibility of POWERGRID, which will directly contract with the buyers (Rajasthan and Gujarat) for the installation of transmission facilities. It is proposed that the buyers will offer a guarantee to off-take energy at least equivalent to a PLF of 75% of the capacity of the generator. Failure to off-take energy in this volume will make the buyers liable to pay the fixed charges including those associated with fuel supply except the fuel cost. PTC has also proposed that if the generator is unable to maintain an availability level of 85%, the reduction in fixed capacity charge payable by the buyers would be in the same ratio as in the ABT order. If the generator can achieve a PLF higher than 85%, then the generator will be eligible for an incentive which would be calculated at the same rate as specified in the ABT order of CERC of 1 paise per kWh per 1% point of PLF above 85%.

(3) The jurisdiction of the Commission to regulate tariffs has been invoked under section 13 (a) of the ERC Act on the ground that PTC is a government controlled company with generation as one of the objects of business in its Memorandum of Association. Jurisdiction is also invoked under section 13 (b) of the ERC Act on the grounds that a composite scheme exists for the generation and sale of energy in more than one state.

(4) The Commission has carefully considered the written submissions of the petitioner, the arguments put forward by Shri Bahadur Chand who appeared for the petitioner, and the oral submissions of Shri L.N. Nimawat, Executive Engineer, who appeared for RSEB and Shri P. Mehta, Commercial Officer, who appeared for GEB, the two respondents. Though the hearing was scheduled for admission, since certain limited questions in the nature of confirmation by the Commission were only involved, the matter was fully heard and disposed off.

(5) The Commission is convinced that PTC can be classified as a company controlled by the government. GOI has no direct equity stake in PTC. However the fact that a significant portion of the equity of PTC is held by companies which are wholly owned by GOI is sufficient to show that PTC is controlled, albeit indirectly, by the GOI and hence its tariff can be regulated by the Commission under Section 13 (a) of the ERC Act. The Commission has not been provided with the draft agreements to be entered into by the various parties. However, from the written submission of the petitioner and the oral submissions of the respondents it appears that the project has been conceived under a composite scheme for the generation of electricity in Gujarat and its sale to Gujarat and Rajasthan. Hence the tariff of this project will be regulated by the Commission under the provisions of Section 13 (b) of the ERC Act as well. Consequently the Commission is convinced that the petition is within the jurisdiction of the Commission and that the tariff of this project will also be regulated by the Commission.

(6) The petitioner has sought that the tariff be covered under the ambit of the ABT order of the Commission. The core of the ABT order lies in the price-based incentives and disincentives for ensuring discipline in the regional grids in the interstate transmission of energy. These provisions are the following;

a) A separate fixed capacity charge payable in lump sum by each beneficiary in proportion to the capacity allocated to that beneficiary so as to ensure that the financial liability of over contracting capacity is borne by the beneficiary responsible for entering into such agreements.

b) A separate energy charge payable per unit of energy actually drawn by the beneficiary. and

c) A UI charge linked to the frequency for all deviations from the schedule. This is payable by generators as well as beneficiaries for deviating from the schedule. The rate of the UI is inversely linked to the frequency prevailing at the time that a deviation is made from the schedule.

The Commission has no hesitation in confirming that if the core of the ABT framework, described above, continues to exist for regulating the flow of energy in regional grids at the time when the Pipavav plant commences operation, PMPP will be required to submit to the ABT discipline as regards declaring the availability of capacity in advance. Further, failure to keep to the schedule will invite the UI charge as specified in the ABT, in addition to the under recovery of fixed charge as may be decided between the parties and approved by the Commission. The project already envisages a two-part tariff and hence to this extent it already conforms to the requirement under the ABT that the charge payable by the beneficiary should be unbundled into two parts:- one part relating to the payment of a capacity charge against which the generator makes available a specified capacity for use by the beneficiary, and a separate energy charge per unit of energy drawn.

(7) PTC has requested the Commission to confirm that the norm of 85% availability for the recovery of 100% of the capacity charge to the project as prescribed for NTPC in the ABT order shall apply to PMPP. It is important to clarify that the specification by the Commission of a figure of target availability for recovery of capacity charge, the specification of a schedule for recovery of capacity charge in case availability falls below the target level and the incentive structure and numbers specified linked to PLF in the ABT order do not relate to the core features of the framework of the ABT. The core framework of the ABT order can be applied to any level of target availability. The plea of PTC to the Commission for specifying a percentage number for the target availability is not acceptable to the Commission for another reason as well. NTPC projects are not competitively bid. They function under the cost plus regime. That is why it becomes necessary to prescribe norms for cost drivers like capacity made available and capacity utilisation. The Pipavav project is being formulated on a completely different basis. The bidder is to be selected on the basis of competitive bidding. Why then is there any need to specify by the Regulator a level of installed capacity for recovery of the fixed charge? PTC is aware that Rajasthan and Gujarat want this project to meet a combined power demand of 1500 MW and a energy demand equivalent to energy demand in million units of 75% Plant load factor (Plf). It can bid out for the supply of 1500 MW of capacity or more and weigh the pros & cons from availability and other angles to meet the capacity and energy demands. Why then is there a need to specify the capacity to be installed by the successful bidder? That is a project risk which the bidder has to assume. It is for the bidder to estimate the capacity he would need to install for meeting a power demand of 1500 MW along with a committed energy demand. Assuming that all bidders face the same capital cost per MW of installed capacity, the one who estimates the lowest capacity addition to meet the target capacity and energy demands will be the best placed to win the bid. In fact one of the main advantages of the bidding process is that it reveals the view of the market on what is the best achievable availability level. By prescribing a minimum availability target as a percentage instead of an absolute level, PTC would be taking away one of the main advantages of the market approach which gives the generator the option to decide the size, overall capacity etc., since bidders will no longer compete to decide capacity for installation to the minimum and availability to the maximum or a combination thereof. Under competitive bidding, maximum achievable availability will be estimated by the bidder. On this basis the bidder will estimate the size of the generation capacity to be installed. This estimate will in turn decide the capital cost of the project which will determine the capacity charge to be quoted by the bidder to meet the peak demand projected in MW and energy requirement in MWH by the buyers. Consequently the Commission does not feel that there is any need to prescribe a percentage availability target.

Similarly, there is no need for PTC to specify an incentive for generation beyond a certain target PLF. Instead, energy supplied beyond the agreed level of off take assured by the buyers could be charged a separate rate which would be bid by the bidders. In any case, PTC has stated that there will be a differential charge for energy supplied beyond the minimum offtake level. The extra cost and effort required, if any, to generate beyond the level of assured off take could also be factored by bidders into the rate for incremental energy supply. In any case, since the tariff is the result of a competitive bid, as will be generation above the target availability, the question of any additional payment as incentive, is not appropriate. Hence the Commission does not feel compelled to specify an incentive rate for the purpose. Indeed, to do so would detract from the advantage of the market based exercise of competitive bidding.

In a more general way the Commission would like to advise PTC to approach the Commission for approval of all the bidding parameters before it enters into the process of competitive bidding. It would not like to be presented with a fait accompli. PTC must ensure that all stages of the bidding process have the prior approval of the Commission, and that the Commission is not approached for approvals for each stage. Under the competitive bidding route, the Commission perceives its function of regulating tariffs to primarily be the scrutiny and approval of the process adopted for competitive bidding, with a view to ensure that competitive conditions do prevail. Under this route, the actual price to be paid by buyers should be the result of market determination and not of regulation. The task of the regulator is primarily to ensure that the bidding documents are prepared in a manner which minimise information asymmetries, that the process adopted is transparent and fair, and that sufficient competitive pressure exists at the time of bidding so as to protect the interests of the consumer.

(8) The representative of GEB sought more time to study the impact of the ABT on the project before filing their response. More than two months have passed since the ABT order was issued on January 4, 2000. The Commission considers this sufficient time for GEB to have formulated its views on the subject. In any case since there is no disagreement between the petitioner and the two respondents on the prayer of the petitioner and no useful purpose will be served by delaying disposal of this petition.

(9) **In the ultimate analysis:**

(a) The petition is partially allowed. The Commission confirms that, if the existing ABT frame work which requires generators to have a separate fixed charge for capacity made available, energy charge per unit of energy supplied and a frequency linked UI charge for variations from the schedule, continues to be in force at the time when the project commences commercial generation, then it will apply to PMPP also.

(b) The Commission sees no need to specify target availability as percentage of capacity since it sees no need for PTC to specify the installed capacity of the project. Instead, bidders should make available the required power to meet the demand of the buyers in MW & MWH.

(c) The Commission also sees no need to specify an incentive rate for generation above a target PLF, since the price at which the successful bidder will supply energy beyond the level of off-take assured by the buyer, will be decided through the bidding process itself as has been mentioned by the PTC in the context of the additional cost of fuel supply for energy generation beyond the assured level of off-take.

(10) The Commission directs PTC to submit the detailed procedure laying down the bidding process at different stages, RFP, tender evaluation, etc., for prior approval of the Commission. This may be done urgently to enable speedy implementation of this important project.

(A.R. Ramanathan)	(G.S. Rajamani)	(D.P. Sinha)	(S.L. Rao)
Member	Member	Member	Chairman

New Delhi

Dated 9th March, 2000

[Home] [About Us] [Extracts of Acts]
[Regulations][Orders] [Publications] [Power Data] [Annual Report]
[Schedule of Hearings][Bulletin Board] [Jobs] [Contact Us] [Search] [Links]