

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 166/MP/2012

Subject: Petition under section 79 of the Electricity Act, 2003 for appropriate directions for resolving fuel related aspects relating to gas power project of Ratnagiri Gas & Power Pvt. Ltd (1967.08 MW)

Date of Hearing: 22.1.2013

Coram: Shri S. Jayaraman, Member
Shri V. S Verma, Member
Shri M. Deena Dayalan, Member

Petitioner: Ratnagiri Gas and Power Pvt. Ltd. (RGPPL)

Respondents: Maharashtra State Electricity Distribution Co. Ltd. (MSEDCL) & others

Parties present: Shri M. G. Ramachandran, Advocate, RGPPL
Shri Praveen Saxena, RGPPL
Shri A.S. Pandey, RGPPL
Shri Atul Nanda, Senior Advocate, MSEDCL
Shri Abhishek Mitra, Advocate, MSEDCL

RECORD OF PROCEEDINGS

During the hearing, the learned Senior counsel for the respondent, MSEDCL referring to the prayer in the petition raised preliminary objections as under:

- (a) Reduction of NAPAF in respect of this generating station was considered in the Commission's tariff order dated 18.8.2010. The petitioner through this petition is seeking a review of the said order without invoking the process under Regulation 44 of the 2009 Tariff Regulations.
- (b) Only the respondent, MSEDCL has been made a party to the instant proceedings and other beneficiaries have not been impleaded by the petitioner. Since necessary parties have not been impleaded and notices have not been issued, the petition is not maintainable.
- (c) Since the Commission in its order dated 18.8.2010 had clearly clarified that the reduction of NAPAF was a 'one time dispensation' as a special case, the question of considering the prayers in this petition does not arise. Moreover, the prayer of the petitioner seeking alteration of NAPAF is in the nature of review of order which is not permissible in law.

- (d) Since the consideration of the prayers of the petitioner in this petition will impact the tariff of the generating station, the Commission in public interest may consider public hearing of the matter.
- (e) The concurrent prayers of the petitioner in the petition cannot be permitted and the petition is thus bad for misjoinder of causes of action.

2. In response to the above, the learned counsel for the petitioner clarified as under:

- (a) As per PPA, 95% of the power from the generating station is supplied to the respondent, MSEDCL and the balance 5% power is supplied to the Union territory of Goa, Daman & Diu and Dadra Nager & Haveli. Copy of the petition has been served on these respondents, however the memo of parties along with proof of service was inadvertently not filed by the petitioner before the Commission. Being a procedural mistake, the petitioner may be permitted to rectify the same. Even otherwise, only the respondent MSEDCL has raised issues in the proceedings and not the other respondents.
- (b) The relaxation of NAPAF by the Commission in the tariff order dated 18.8.2010 as a one-time dispensation as a special case relates to the failure of the Gas Turbines and the non-performance of machines. The present case pertains to the circumstances under which fuel from designated source is not available for reasons not attributable to the petitioner and the refusal of the respondent to allow generation by alternate sources of fuel. It does not pertain to relaxation due to failure of GTs and non-availability of machines and hence the submission of the respondent, MSEDCL that review of order dated 18.8.2010 has been sought for by the petitioner is not acceptable.
- (c) There is no inconsistency in the prayers of the petitioner and only consequential reliefs which are related to each other have been prayed for in the petition for the consideration of the Commission.
- (d) On facts, Clause 4.3 of the PPA with the respondent, MSEDCL provides for primary fuel for the generating station as R-LNG/LNG/Natural Gas and the provision mandates the capacity of the generating station to be declared on R-LNG/LNG for all three blocks. Domestic gas has been allocated by the Government of India. In case, the said respondent requires the running of the generating station on liquid fuel, then the same is arranged by the petitioner as per requirement of the respondent. Clause 5.9 of the said PPA also provides obtaining the approval of the respondent, MSEDCL on the contracting terms and price before entering into Gas Supply Agreement/Gas Transportation Agreement. The respondent, MSEDCL is under obligation to pay the full fixed charges in the background of the fact that the petitioner is ready to fulfill the obligation of generating electricity with RLNG or enter into agreement with GAIL for RLNG and the said respondent is unable to take electricity generated by use of RLNG as primary fuel for generation.

(e) Referring to various correspondences between the parties, it was submitted that the on account of non-availability of domestic gas from KG-6 basin which is beyond the control of the petitioner and on account of the wrongful refusal on the part of the respondent, MSEDCL, to permit the use alternate source of fuel for generation of electricity, despite machines being fully available, the petitioner has no other alternative except to seek the relaxation of NAPAF in this petition.

3. On a specific query by the Commission as to whether the terms of the PPA is identical to all beneficiaries, the learned counsel for the petitioner clarified that except for the Clause 5.9, which require the permission /approval of the respondent, MSEDCL for the quantum/price of gas supply to the generating station, the PPAs in respect of the beneficiaries are identical.

4. In response to the submissions of the learned counsel for the petitioner, the learned counsel for the respondent, MSEDCL reiterated that the principles of natural justice require the presence of necessary parties being present and heard during the proceedings. He further submitted as under:

(a) The submission of the petitioner that non availability of domestic gas and declaration of DC on RLNG by the petitioner was discussed and later ratified in the Technical Co-ordination Committee on 19th meeting of WRPC on 10.2.2012 is incorrect. It is evident from record (Annexure-F of the petition) that only the views of the petitioner and the respondent, MSEDCL were noted.

(b) Clause 10.4 of the PPA relating to Force Majeure provides that 'Fuel' is an exception and hence the claim of the petitioner that non availability of gas is Force Majeure is not acceptable. The petitioner cannot be permitted to burden the respondent, MSEDCL with the huge cost of fuel.

(c) On the observations of the Commission as to whether the terms of the PPA which are in derogation to the Regulations specified by the Commission can be considered sacrosanct, the learned counsel for the respondent, MSEDCL clarified that the Commission cannot rewrite the provisions of the PPA in public interest.

(d) The petitioner has not adopted the process involved in the invocation of the plea of Force Majeure at the first instance. The impact in tariff and the cascading effect in consideration of the prayer of the petitioner have been worked out by this respondent in paragraph 54 of the reply, which may be considered. In view of this, necessary parties should be heard while deciding the matter.

(e) The respondent, MSEDCL may be granted liberty to file its written submissions within a period of four weeks.

5. On a query by the Commission as to what would the generating station do in case permission is not granted for use of RLNG/fuel and who would bear the fixed charge, the learned counsel for respondent, MSEDCL reiterated that it should not be

burdened based on the prayer made in a collateral proceedings by the petitioner without invoking Regulation 44 and without hearing the parties in public interest.

6. The learned counsel for the petitioner clarified that the procedural mistake of non-filing the memo of parties would be rectified. He also submitted as under:

(a) The non-availability of KG basin gas for reasons not attributable to the petitioner and denial of consent by the respondent, MSEDCL for generation on RLNG are factors which are not be attributable to the petitioner.

(b) Considering the fact that the petitioner is willing to perform its obligations under the PPA and being prevented by the respondent, MSEDCL, for reasons not attributable to the petitioner, the petition has been filed with the said prayers for consideration of the Commission.

(c) The Commission has been providing opportunity of hearing to necessary parties to the case, including any person who is willing to be heard. In the instant case, M/s Prayas, an NGO was also heard during the proceedings for determination of tariff of the generating station. Thus, there is no violation of natural justice as alleged by the respondent, MSEDCL.

(d) The petitioner may also be granted liberty to file written submissions in the matter within two weeks.

7. The Commission accepted the prayer of the learned counsel for the petitioner and the respondent, MSEDCL to file written submissions. Accordingly, the petitioner is directed to file its written submissions, by 20.2.2013, with advance copy to the respondent, MSEDCL who may file its written submissions by 6.3.2013.

8. Subject to the above, order in the petition was reserved.

By order of the Commission

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