

**CENTRAL ELECTRICITY REGULATORY COMMISSION  
NEW DELHI**

**Petition No. 77/GT/2013**

Sub : Petition under Section 62 and Section 79(1) (b) of the Electricity Act, 2003 read with CERC (Terms and Conditions of Tariff) Regulation, 2009 seeking determination of tariff of 262.5 MW (Gross) capacity sale from GMR-Kamalanga Energy Limited (GKEL) to GRIDCO acting as nominee of Govt. of Odisha for procuring power for the Odisha Discoms for the period from 1.4.2013 up to 31.3.2014.

Date of hearing : 3.6.2014

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

Petitioner : GMR-Kamalanga Energy Limited

Respondents : GRIDCO Limited and others.

Parties present : Shri Amit Kapur, Advocate, GKEL  
Shri Vishrov Mukerjee, Advocate, GKEL  
Shri Rohit Venkat V., Advocate, GKEL  
Shri V. Akshaya Bahu, GKEL  
Shri Rohan Jadhav, GMR  
Shri Tarun Mahajan, GMR  
Shri Jatinder Kumar, GMR  
Shri R.B. Sharma, Advocate, GRIDCO

**Record of Proceedings**

At the outset, learned counsel for the petitioner submitted as under:

(a) The petitioner GMR-Kamalanga Energy Limited (GEL) is commissioning 1400 MW Power plant in village Kamalanga, district Dhenkanal in the State of Odisha in two phases. First phase of 3x350 MW has been commissioned. Out of 1050 MW capacity in the Phase-I, 900 MW capacity has been tied up. Out of same 262.50 MW has been tied up through MOU with GRIDCO and the remaining capacity has been tied up with distribution companies of Haryana and Bihar based on competitive bidding. The balance capacity of 150 MW is yet to be tied up.

(b) As per MOU dated 9.6.2006 tariff for 262.50 MW for GRIDCO is to be determined by the Appropriate Commission. Since the Commission has admitted the maintainability of the petition being a composite scheme, the petitioner has prayed for determination of tariff by the Central Commission. In view of the fact that power is being supplied to GRIDCO as per MOU dated 9.6.2006 and supplemental MOU dated 28.10.2010, determination of tariff is required for billing of Capacity and Energy Charges.

2. In response to the Commission's query as to whether there can be different tariffs for supply of power from the same generating station on account of the different PPA's entered into between the petitioner and distribution licensees i.e Haryana, Bihar and Orissa, learned counsel for the petitioner submitted that under the Electricity Act, 2003, there are two routes whereby tariff is determined under Sections 62 and 63 of the Act. He further submitted that as long as there are two routes for the determination of tariff, there will always be a difference in the tariff for supply of electricity from the same generating station, since the Act places no such restriction. Learned counsel submitted that CERC has the power to determine the tariff of the petitioner-company as it has a composite scheme for generation and supply of electricity in more than one State. He further submitted that even in terms of the PPA, CERC would have the jurisdiction to determine the tariff since the PPA clearly stated that tariff would be determined by CERC which is the Appropriate Commission as opposed to OERC.

3. Learned counsel for GRIDCO submitted as under:

(a) The Commission cannot determine different tariffs for different PPAs under a composite scheme of generation.

(b) If a particular generator has a composite scheme for generation then the tariff for different PPAs/distribution licensees should be the same. In this regard, learned counsel for GRIDCO relied upon the Commission's order dated 29.3.2006 in Petition No. 103/2005.

(c) The Appropriate Commission for determination of tariff for 262.50 MW of GRIDCO portion is OERC and dispute resolution clause of MOU also provides for the same.

(d) The PPA was revised on 4.1.2011 and jurisdiction of OERC was agreed by both the parties. The petitioner should approach OERC for approval of amended PPA. However, the petitioner so far has not approached OERC.

(e) If provisional tariff should be granted, it should be similar to the tariff adopted for Bihar and Haryana.

(f) The capital cost of the project is very high and the petitioner has not justified for such high cost of the project when the Main Plant Equipments (MPE) were supplied by Chinese Manufacturer. Therefore, the entire capital cost of project needs to be checked in detail for a fair value of the project.

(g) Variable Charge claimed under cost plus tariff is ₹ 2.04/kWh, while in competitive bidding the claim is ₹ 0.91/kWh. The petitioner may be directed to clarify as to how it can manage with lesser variable charge in case of competitive bidding price.

(h) The petitioner should justify the cost and time overrun properly as the reason for delay has been cited as Visa policy when such Visa policy is applicable only for Public Sector Projects and not for Private Projects. The circular is merely a clarification that the foreign nationals coming for execution of the project will have to come under the Employment Visa and not under Business Visa. Further, the reason for delay for MGR system due to land acquisition problem is also without any substance as only a small portion of land was required to be vacated.

(i) The capital expenditure incurred should be duly audited by the statutory auditor. The operational norms as per Regulation 37 of the Tariff Regulations is ceiling norms and improved norms may be accepted if the same is agreed in the PPA.

4. In response, learned counsel for the petitioner submitted that for approval of PPA, procurer should go to the State Commission under Section 86(1) (b). The Commission may consider capital cost and time and cost overrun after proper validation of the claim of the petitioner.

5. After hearing learned counsel for the petitioner and GRIDCO, the Commission directed the petitioner to file, on affidavit by 31.7.2014, the following information:

- (i) Copy of original investment approval and subsequent revised approval, if any, from the Board of Directors along with the scheduled COD of different units/station.
- (ii) Details of estimated project cost of ₹. 6207 crore and ₹ 6520.27 crore according to submission dated 11.4.2014 along with complete scope of work. Confirm as to whether the project cost includes evacuation system cost from station switchyard to nearest pooling station of GRIDCO. The reasons for change in cost estimate may also be explained.

- (iii) Copy of NIT and the details of bid evaluation report along with detailed note on bidding process.
- (iv) Copy of the detailed EPC Agreement, if any and subsequent amendment executed with SEPCO Electric Power Construction Corporation of China.
- (v) Actual capital expenditure incurred up to COD of different units / station duly audited and certified by the auditors.
- (vi) There appears to be time overrun in Commissioning of units/station. Reasons may be furnished with documentary evidence, in justification of time and cost over-run. Delay (quantifying the number of days/months/year) in the execution of various activities on the critical path in completion of the project through the CPM/PERT chart may also be explained with documentary evidence.
- (vii) Details of increase in IDC, IEDC and price escalation in EPC and non-EPC contracts/packages from scheduled COD to actual COD of units/station. If delay is attributable to EPC contractor and non-EPC contractor, the amount of liquidated damages (LD) recovered / to be recovered may be furnished.
- (viii) Amount of initial spares included in the capital cost and amount capitalized up to COD of different units / station.
- (ix) The revenue earned from injection of infirm power from the date of synchronization to actual COD of units/station excluding the cost of fuel.
- (x) The tariff filing forms as per Appendix-I (Thermal) of the Tariff Regulations, 2009 shall be filled completely in all respects and duly certified by auditor as on actual COD of station.
- (xi) Form 5-E duly filled in all respects (copy of Form-5E enclosed).
- (xii) Heat Balance Diagram of the OEM.
- (xiii) Form 15 giving details of coal received, prices, GCV etc. from various sources viz. domestic (MGR/Railway) and imported /e-auction for the preceding three months from the actual/expected COD of first unit duly certified by the auditor.
- (xiv) Reason for using LDO as main secondary fuel oil.
- (xv) Copy of the LOA obtained from MCL for firm linkage of 2.14 MTPA coal for 500 MW capacity and a tapering linkage of 2.384 MTPA for 550 MW capacity.

- (xvi) Copy of complete Fuel Supply Agreement (FSA) with Coal India for the annual contracted quantity.
- (xvii) List of deferred works along with actual/estimated cost after COD with justification.
- (xviii) Detailed calculation of IDC as well as interest on loan including date of drawl, amount of drawl, amount of repayment, date of repayment and rates of interest with documentary proof in respect of drawl and interest rate in respect of each loan.
- (xix) Details of discharge and un-discharged liabilities during each year.
- (xx) A copy of last audited balance sheet;
- (xxi) Unit wise break-up of capital cost along with capital cost of the common facilities separately incurred as on COD of each of the Units; and
- (xxii) Soft copy of all the calculations/information submitted as above.

6. If the information as sought above is not filed by due date, the Commission will be at liberty to pass the order without considering the information filed after due date.

**By order of the Commission**

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