

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 154/MP/2015

Subject : Petition seeking adjudication of disputes between Adani Power Limited and Gujarat Urja Vikas Nigam Limited regarding the payment for electricity supplied by Adani Power Limited prior to Scheduled Commercial Operation Date.

Date of hearing : 27.9.2016

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

Petitioner : Adani Power Ltd.

Respondent : Gujarat Urja Vikas Nigam Limited

Parties present : Shri Amit Kapur, Advocate, APL
Ms. Poonam Verma, Advocate, APL
Ms. Gaurav Dudija, Advocate, APL
Shri M.G. Ramachandran, Advocate, GUVNL
Ms. Anushree Bardhan, Advocate, GUVNL
Ms. Poorva Saigal, Advocate, GUVNL
Shri S.K. Nair, Advocate, GUVNL

Record of Proceedings

At the outset, learned counsel for the petitioner submitted that Gujarat Electricity Regulatory Commission (GERC) has already held that the petitioner was not obligated to supply power prior to SCOD to GUVNL. The Appellate Tribunal vide its judgment dated 4.10.2012 has also upheld the decision of GERC. Learned counsel further submitted that GUVNL has challenged the judgment of Appellate Tribunal in the Hon'ble Supreme Court where the stay application filed by GUVNL against the operation of the order has been rejected. In the present petition, the dispute between the petitioner and GUVNL pertains to quantification of the payment to be made by GUVNL for power supplied by the petitioner prior to SCOD.

2. Learned counsel for the petitioner referred to the Minutes of the Meeting held on 31.12.2010 in regard to dispute between the parties regarding petitioner's obligation to supply electricity before SCOD.

3. Learned counsel for the petitioner referred to page 3 of the Note of submission filed by the petitioner and submitted that the respondent compelled the petitioner by various measures to supply electricity directly to the respondent.

4. Learned counsel for the petitioner submitted that the petitioner's claim for payment for power supplied before SCOD is for (i) Infirm Power (156.85 MUs) - Rs 20.59 crore (ii) Sale to GUVNL (1250.86 MUs) – Rs 206.42 crore.

5. Learned counsel submitted that the petitioner has received Rs 135.20 crore from GUVNL for 759.38 MUs supplied to UPPCL. Accordingly, the total outstanding is Rs 362.21 crore. Learned counsel submitted that the petitioner was entitled to sell infirm power at UI rates whereas GUVNL made payment of only the Energy Charges for infirm power. Therefore, the petitioner has claimed difference between average UI rates and Energy Charges. As regards 1250.86 MUs of firm power supplied to GUVNL, learned counsel submitted that the petitioner was deprived of its right of selling the electricity in the open market where prevailing rates were around Rs. 4.28 per Unit. However, the petitioner has considered rate of Rs. 3.93 per Unit only (i.e. weighted average rate of sale of surplus electricity of GUVNL) while calculating its claim for excess compensation.

6. The Commission enquired that as to whether the petitioner approached CERC when GUVNL did not allow the petitioner to supply electricity in open market. Learned counsel for the petitioner submitted that proceedings before GERC were pending when GUVNL did not allow the petitioner to supply electricity in open market.

7. Learned counsel for GUVNL submitted as under:

a) In terms of the Minutes of the Meeting dated 31.12.2010, the excess realisation by GUVNL is to be paid back to the petitioner only after the final judgement by Hon'ble Supreme Court in the civil appeal filed by GUVNL.

b) As regards sale of power to UPPCL, GUVNL has already paid the compensation of Rs 135.20 crore. There cannot be any further claim by the Petitioner.

c) As regards sale of power to third party, learned counsel referred to petitioner's request to supply power to JSEB through M/s PTC India Ltd. concurrence for which was granted by GUVNL. However, the petitioner did not make availability declaration and lost the opportunity to sell power in the open market. The petitioner entered into a contract to supply 600 MW to UPPCL. However, the petitioner did not supply the contracted capacity and is now seeking compensation from respondent for the remaining capacity.

d) As regards sale of power on power exchange, learned counsel submitted that in case of multiple sales by a generator partly on behalf of the other party and partly for sale by generator itself, such multiple sale transactions cannot be identified separately in Power Exchange in the name of both the entities and is identified as composite sale by generator. Any sale of power through Power Exchange would not have made it possible to identify GUVNL's sale transaction. Therefore, GUVNL insisted the petitioner for identified sale through bilateral transactions.

e) The issue of infirm power has been raised for the first time. Infirm power is the facility given by the Discom to the generator. PPA dated 2.2.2007 clearly provides for payment for infirm power at variable charges. Learned counsel relied upon Articles 4.2 (c), 6.3 and 11 of the PPA to claim that the procurer's liability cannot exceed the amount of energy charges payable for such output.

8. Learned counsel for the petitioner in his rebuttal submitted as under:

a) Hon'ble Supreme Court has not granted stay on GUVNL's Civil Appeal against the operation of the order.

- b) In terms of the minutes of the meeting dated 31.12.2010, the petitioner was allowed to sell power in the open market. Power Exchanges are not part of open market. The minutes do not specify only bilateral transactions in the open market. Still the petitioner was not allowed to sell power in the Power Exchange and was forced to sell electricity to GUVNL.
- c) GUVNL's submission that sale through Power Exchange was not envisaged in Minutes of Meeting is erroneous and contrary to the record. The MOM does not refer to the buyers to whom electricity is to be sold but talks about the sale of power from unit 5 before SCOD in open market to third party to ensure fair price discovery.
- d) As regards infirm power, the provisions of PPA come into picture only when the generating company achieves SCoD. Further, as per the order of GERC and judgment of the Appellate Tribunal, Adani Power was not obligated to supply power to GUVNL prior to SCoD. The said order/judgement does not differentiate between firm and infirm power. Learned counsel referred to Article 11.1.1 of the PPA and submitted that said clause applies when the Unit is made available.

9. After hearing the parties, the Commission directed the petitioner to submit on or before 18.10.2016 as to whether during the period under consideration, the petitioner supplied power to UPPCL from other units and whether the letter dated 9.2.2011 issued by GUVNL debaring the petitioner to sell power through Power Exchange was challenged before GERC failing which the matter would be decided on the basis of the information already available on record.

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

By order of the Commission

Sd/-

**(T. Rout)
Chief (Legal)**