

**CENTRALELECTRICITYREGULATORYCOMMISSION
NEWDELHI**

Petition No. 48/MP/2021

Subject : Petition under Section 79 (1) (b) and (k) of the Electricity Act, 2003 read with Regulation 49 (C) (a) and (b) of Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 for approval of Station Heat Rate, on actual basis, of Thermal Power Plant (270 MW) located at Village Kasaipali, District Korba, Chhattisgarh.

Petitioner : ACB (India) Limited

Respondents : GUVNL and anr

Date of Hearing : **4.6.2021**

Coram : Shri P.K.Pujari, Chairperson
Shri I.S.Jha, Member
Shri Pravas Kumar Singh, Member

Parties present : Shri Matrugupta Mishra, Advocate, ACB
Ms. Ritika Singhal, Advocate, ACB
Shri Vignesh Srinivasan, Advocate, ACB
Shri M.G.Ramachandran, Senior Advocate, GUVNL
Ms. Anushree Bardhan, Advocate, GUVNL
Ms. Ranjitha Ramachandran, Advocate, GUVNL
Shri S K Nair, GUVNL
Shri Kripal Chudasema, GUVNL

Record of Proceedings

Case was called out for virtual hearing.

2. This petition has been filed by the Petitioner, ACB (I) Ltd, for approval of the Station Heat Rate (SHR), on actual basis, in respect of its 270 MW coal reject based Thermal Power Plant (in short 'the generating station') in terms of the 2019 Tariff Regulations. During the hearing, the learned counsel for the Petitioner made the following submissions:

- (a) The Petitioner had successfully participated in e-auction of coal under the 'Shakti Scheme' and was allocated coal linkage at a discount of 7.02 paise/ kWh in the levellised tariff.
- (b) The Gujarat Electricity Regulatory Commission (in short 'GERC') vide its order dated 12.10.2020 had approved the draft Supplementary PPA to be incorporated in Schedule 10 of the GUVNL PPA. Pursuant to this, the Petitioner and the Respondent GUVNL executed a Supplemental Power Purchase Agreement (SPPA) on 26.10.2020 wherein, the Respondent GUVNL had agreed that the yearly discount, to be given by the Petitioner, was to be on actual energy



generated by the Petitioner's project.

- (c) However, while computing the energy charges on the actual energy generated, the Respondent GUVNL has considered the 'design SHR' rather than the 'actual SHR', which has resulted in giving discount on more units of energy than what is actually being generated.
- (d) The design SHR, at the time of commissioning of the project was 2411 kCal/kWh, which has increased to around 2600 kCal/kWh for both the units. Hence, the consideration of 'design SHR', after 9 years of commissioning of the project, while computing energy generated from the project, will be detrimental to the Petitioner.
- (e) Proviso 8 of Regulation 49(C)(b)(i) of the 2019 Tariff Regulations notified by this Commission specifically provides that SHR for coal rejects based generating stations, shall be approved by this Commission, on a case to case basis. Accordingly, the Commission may direct the Respondent GUVNL to consider the 'actual SHR' while computing the energy generated by the Petitioner's project.

3. The learned Senior Counsel for the Respondent, GUVNL raised preliminary objection with regard to the 'jurisdiction' of this Commission. . He pointed out that in terms of Section 64(5) of the Electricity Act, 2003 read with the observations in judgment of the Hon'ble Supreme Court in the Energy Watchdog Case, the parties had approached GERC, which had approved the SPPA and therefore, all issues arising out of the said SPPA, will have to be decided only by GERC. The learned Senior Counsel, however, submitted that the Respondent, GUVNL may be granted time to file its 'preliminary objection' as to the 'maintainability' of the petition.

4. On a specific query by the Commission as to why the Petitioner has approached this Commission, when the SPPA had been approved by GERC, the learned counsel for the Petitioner submitted that since the Petitioner has a composite scheme for generation and sale of electricity in more than one State i.e. State of Gujarat and State of Chhattisgarh, this Commission has the jurisdiction under Section 79(1)(b) of the Electricity Act, 2003. He also submitted that though the Petitioner was a party to the proceedings before GERC for the approval of SPPA sought by the Respondent GUVNL, in terms of Section 64(5) of the 2003 Act, the same does not prevent the Petitioner from approaching this Commission under Section 79(1)(b) of the 2003 Act and a dispute under provision of Section 79(1)(f).

5. The Commission admitted the petition and directed the Respondent, GUVNL to file its 'preliminary objections' on or before by 28.6.2021, with advance copy to the Petitioner, who shall file its rejoinder, if any, by 8.7.2021. The parties shall ensure the completion of pleadings within the dates above mentioned and no extension of time shall be granted.

6. Subject to above, order in the petition was reserved on 'maintainability' of the petition on the issue of 'jurisdiction'.

By order of the Commission

Sd/-
(B.Sreekumar)
Joint Chief (Law)

