

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 559/MP/2020

Coram:

Shri P. K. Pujari, Chairperson

Shri I. S. Jha, Member

Shri P. K. Singh, Member

Date of order: 9th June, 2021

In the matter of

Petition under Section 79(1)(b) and 79(1)(k) of the Electricity Act, 2003 read with Regulations 63 and 64 of Power Market Regulations 2010 seeking intervention of this Commission for devising suitable mechanism/guidelines for participation of Thermal Power Plants without long-term Power Purchase Agreement which have implemented FGD in accordance in compliance of existing law i.e. Ministry of Environment, Forest and Climate Change Notification dated 7.12.2015 in power markets and uniformity in price discovery and level playing for sale of power on Power Exchange and Deep E-Bidding Portal during the implementation period of FGD i.e. till 2022.

And

In the matter of

Sembcorp Energy India Limited
5th Floor, Tower C, Building No.8
DLF Cybercity, Gurgaon – 122 002

....Petitioner

Vs

1. Power System Operation Corporation Limited
B-9 (1st Floor), Qutab Institutional Area,
Katwaria Sarai, New Delhi – 110 016

2. Central Electricity Authority
Sewa Bhawan, R. K. Puram,
Sector – 1, New Delhi – 110 066

....Respondents

The following were present:

Shri Sanjay Sen, Sr. Advocate for the Petitioner
Shri Vishrov Mukerjee, Advocate for the Petitioner
Ms. Mandakini Ghosh, Advocate for the Petitioner
Shri Rohit Venkat, Advocate for the Petitioner
Shri Gautam Chakraborty, POSOCO

Shri Ashok Rajan, POSOCO
Shri Gajendra Sinha, POSOCO

ORDER

The Petitioner, Sembcorp Energy India Limited, has filed the present Petition under Section 79(1)(b) and 79(1)(k) of the Electricity Act, 2003 (hereinafter referred to as 'the Act') read with Regulation 63 and Regulation 64 of the Central Electricity Regulatory Commission (Power Market) Regulations, 2010 (hereinafter referred to as 'the 2010 Power Market Regulations') seeking intervention of this Commission for devising suitable mechanism/ guidelines for participation of thermal power plants without long-term Power Purchase Agreements which have implemented Flue Gas Desulphurisation (FGD) system in compliance of existing law, i.e., Ministry of Environment Forest and Climate Change Notification dated 7.12.2015, in power markets and uniformity in price discovery and level playing field for sale of power on the Power Exchanges and Deep E-Bidding Portal during the implementation period of FGD system, i.e. till 2022. The Petitioner has prayed for as under:

“(a) Devise a suitable mechanism/guideline for ensuring Level playing field for sale of power on Power Exchange and Deep E-Bidding Portal during the implementation period of FGD; and

(b) Direct that cost associated with FGD installation shall be kept outside the purview of bidding on Power Exchange and Deep E-Bidding Portal.”

Background

2. The Petitioner is a generating company as defined in Section 2(28) of the Act and has set up two costal Thermal Power Plants (TPP) of 2x660 MW each at Krishnapatnam, Nellore district in the State of Andhra Pradesh (collectively referred to as “the Power Plants”), which were commissioned during the financial year 2015-16. One power plant is supplying power to the distribution licensees of Andhra Pradesh and Telangana under long-term Power Purchase Agreements (PPAs) dated

15.3.2013 and 18.2.2016 respectively. However, for another power plant, the Petitioner has not executed any long-term PPA with distribution licensees and supplies power to various distribution licensees through (a) short-term transaction on Discovery of Efficient Electricity Price through E-bidding Portal (in short, “Deep E-bidding Portal”); and (b) sale on Power Exchanges.

3. Brief details of the Power Plants are tabulated as under:

Plant	Commercial Operation Date	Type of Contract	Name of Procurer	Capacity (MW)	Period tenure
Power Plant-I (2x660 MW)	Unit-I 2.3.2015	Case-1 Long Term Bid	AP Discoms	230.55	25 years
		Case-1 Long Term Bid	Telangana Discoms	269.45	25 years
	Unit-2 15.9.2015	Case-1 DBFOO Bid	Telangana Discoms	570	8 years
	Short Term sale/Power Exchange	Various Discoms, Traders and Power Exchange	184	N/A	
Power Plant-II (2x660 MW)	Unit-1 17.11.2016	Long Term	Bangladesh Power Development Board	250	13 years
	Unit-2 21.2.2017	Medium Term sale/ Short Term sale/Power Exchange	Various Discoms, Traders and Power Exchange	1004	N/A

4. On 7.12.2015, Ministry of Environment Forest and Climate Change (in short, “MoEFCC”) notified the Environment (Protection) Amendment Rules, 2015 (in short, “the MoEFCC Notification”). As per the MoEFCC Notification, all TPPs commissioned till December 2016, such as the Power Plants, are required to comply with the revised emission norms and other terms and conditions stipulated therein. In terms of the MoEFCC Notification, revised emission norms applicable for units

having capacity above 500 MW and commissioned between 1.1.2003 and 31.12.2016, as applicable to the Power Plants, are as under:

- (a) All existing cooling tower based thermal power plants to ensure that specific water consumption is limited to 3.5 m³/MWh;
- (b) Emission limit for Particulate Matter (PM) limited to 50 mg/Nm³ for the thermal power plant units commissioned after 1.1.2003 and up to 31.12.2016;
- (c) Oxides of Nitrogen emission limited to 300 mg/Nm³;
- (d) Sulphur Dioxide emission limited to 600 mg/Nm³; and
- (e) Mercury emission limited to 0.03 mg/Nm³.

5. Further, the Central Pollution Control Board vide its letter dated 11.12.2017 communicated the timeline for implementation of the revised emission norms. As per the said letter, unit-I and unit-II of the Power Plant-II are required to comply with the revised emission norms by 31.12.2021 and 30.9.2021 respectively.

6. In order to comply with the revised emission norms, all TPPs including the Power Plants have to mandatorily install various Emission Control Systems like FGD System and Combustion Modification System, etc. in their Projects, which will entail substantial capital and operational expenditure. However, as decided by Ministry of Power and Central Electricity Authority (CEA), FGD system is required to be implemented in a phase-wise accelerated manner and is required to be completed by end of year 2022. In this regard, different timelines have been accorded to TPPs for installation of FGD system. Accordingly, all TPPs will not incur the cost of FGD system installation at the same time.

Submissions of the Petitioner

7. The Petitioner has submitted that the installation of FGD system and other emission control systems will have substantial impact on the cost of power

generation. As a result, TPPs which would have implemented FGD system would have a higher capital and operating cost in comparison to TPPs which are yet to install FGD system. It has been submitted that tariff (price/bids) of TPPs (commissioned between the period from 2003 to 2016) with FGD system will be approximately Rs. 0.45-0.50/unit more than TPPs that are yet to implement FGD system which is estimated based on PLF (plant load factor) of 55% as these plants are without any long term PPAs and sell power only on Power Exchanges/ bilateral transactions and Deep E-bidding Portal resulting in lower than average PLF. In such situation, there would be disparity between the price quoted by power plants that have installed FGD system as against those who have not installed FGD system on that given date and would lead to a situation where:

- (a) The price discovery mechanism for unconstrained market will get skewed. TPPs which have already installed FGD systems will not be able to compete with TPPs which have not yet installed FGD systems.
- (b) Distort the level playing field with respect to power price/ bids submitted by TPPs for sale of power on Power Exchanges and Deep E-bidding Portal.

8. It has been submitted by the Petitioner that in the above circumstances, price discovery mechanism on Power Exchange as well as on Deep E-bidding Portal will neither be fair nor neutral, which will be contrary to

- (a) Objective of Deep E-bidding Portal;
- (b) Regulation 11 and Regulation 14 of the 2010 Power Market Regulations;
- (c) Section 61 of the Act which mandates promoting competition, efficiency, and economical use of resources and generation to be conducted on commercial principles;

(d) Section 66 of the Act which empowers this Commission to provide for suitable framework promoting development of a power market; and

(e) Principle of level playing field, as sellers and buyers will not be able to compete on equal footing, due to higher price/bids offered by TPPs with FGD.

9. Against the above backdrop, the Petitioner has filed the present Petition seeking intervention of this Commission for devising suitable mechanism/guidelines for ensuring, during the implementation period of FGD system i.e. till 2022, a level playing field for sale of power on Power Exchanges and Deep E-bidding portal by TPPs without long-term PPA, which have implemented FGD system in compliance of the MoEFCC Notification.

Hearing dated 1.6.2021

10. Case was called out for virtual hearing on 1.6.2021 through video conferencing. Learned senior counsel for the Petitioner mainly reiterated the submissions made in the Petition. He submitted that disparity in price between TPPs which have installed the FGD system as against those which have not would result in a situation where the price discovery mechanism on Power Exchange and Deep E-bidding Portal will neither be fair nor neutral. This would be against the objectives of the 2010 Power Market Regulations, in particular, Regulation 10 which provides that the Power Exchanges must function with the objective to ensure a fair, neutral, efficient and robust price discovery and Regulation 11 which provides that the price discovered for the unconstrained market must be uniform for all buyers and sellers. It was further submitted that the Petitioner has also proposed a detailed mechanism that will ensure level playing field for all sellers and uniformity in participation of all

TPPs on Power Exchange and Deep E-bidding Portal for consideration of the Commission.

11. We have perused the Petition and heard the learned senior counsel for the Petitioner. During the hearing, the learned senior counsel for the Petitioner conceded that the instant petition did not involve any adjudication and that prayers of the Petitioner are not covered under any regulation of the Commission. He requested to consider the Petition as a representation before the Commission to devise a suitable mechanism/ guidelines for ensuring level playing field for sale of power on Power Exchange and Deep E-bidding Portal during the implementation period of FGD system. Thus, we note that the Petitioner is seeking amendment to the existing Regulations or to devise new regulations to take care of concerns of the Petitioner.

12. The requirement of installation of FGD system and other emission control systems in order to meet the revised emissions norms as specified in the MoEFCC Notification has already been recognized by this Commission. Accordingly, for the generating stations whose tariff is determined by the Commission under Section 62 of the Act and covered under the scope of the Tariff Regulations specified by the Commission, an appropriate regulatory framework to determine the supplementary tariff on account of the additional expenditure incurred to meet the revised emission norms has been provided in the Central Electricity Regulatory Commission (Terms and Conditions of Tariff) Regulations, 2019 read with Central Electricity Regulatory Commission (Terms and Conditions of Tariff) (First Amendment) Regulations, 2020. Similarly, for the generating stations, whose tariff is determined through a competitive bid process under Section 63 of the Act wherein the MoEFCC Notification qualifies as a Change in Law event in terms of the PPA entered into with

the distribution licensee(s), a staff paper providing for a mechanism for compensation was floated in September, 2020 for consultation with the stakeholders. Pursuant thereto, the Commission issued a Draft Suo Motu Order No. 6/SM/2021 dated 12.04.2021 on the subject matter inviting the views, comments and suggestions of the stakeholders. The proceedings in Draft Suo-Motu order in Petition No. 6/SM/2021 relates to mechanism to determine compensation on account of installation of Emission Control System by the generating companies, in compliance with the MoEFCC Notification, whose tariff is determined through competitive bidding process under Section 63 of the Act. The Draft Order will be finalized in due course.

13. We note that the certain representations touching upon the similar subject matter as sought to be raised by the Petitioner through the present Petition have already been received by the Commission in response to the Draft Suo Motu Order No. 6/SM/2021.

14. As suggested by the learned senior counsel for the Petitioner, we will treat this petition also as the representation of the Petitioner. We will take this representation into account when the Commission intends to prepare a regulation or amend any existing regulation to address the issues raised by the Petitioner.

15. In view of the aforesaid observation, we dispose of the Petition No. 559/MP/2020 at the admission stage, without going into the merits.

Sd/-
(P.K.Singh)
Member

sd/-
(I.S Jha)
Member

sd/-
(P.K.Pujari)
Chairperson