



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 664/2017

Petition No.: 30/2017

ORDER SHEET

28.02.2018

Before the Assam Electricity Regulatory Commission
ASEB Campus, Dwarandhar,
G. S. Road, Sixth Mile, Guwahati – 781 022

CORAM

Shri Subhash Chandra Das, Chairperson
Shri Dipak Chakravarty, Member

Assam Power Distribution Company Ltd. (APDCL) ----- Petitioner

Date of Public Hearing: 28.02.2018

Representative for Petitioner:

Mr Binoy M Saikia, GM (TRC)
Mr Pankaj Kumar Bhuyan, CGM (Com.)
Mr. Ramendra Choudhury, DGM (TRC)
Mr. P K Baishya, AGM-I (TRC)
Mr Atul Boro, AGM-II(TRC)
Ms. Bonita Das, AM(TRC)

In the matter of

Misc. petition No. 30 of 2017 filed by Assam Power Distribution Company Ltd. (APDCL) for liquidated damage for substantial delay in commissioning of project as envisaged as per the terms of the PPA.

ORDER

1. APDCL filed a misc. petition before the Commission (Registered as petition no. 30/2017) for invoking the provision of Para 17 of the PPA entered between APDCL and M/S Pahumara Hydel power co ltd. (renamed as M/S Agnipa Energo Pvt Ltd.)
2. APDCL filed an interlocutory petition on 27.02.2018 in compliance of Commissions Hearing dated 19.01.2018.
3. The reasons submitted by APDCL for filing this petition inter alia are as follows:
 - a) As per Para 17 of the PPA the Generating Company shall commission the project by May, 2013. In case the plant is not commissioned for the reasons attributable to generating Company, the Generating Company shall pay liquidated damages for the delay decided by the competent Regulatory Authority. However, in case of delay in commissioning of the plant for reasons beyond the reasonable control of the generating company, the provisions of Para 26 (force majeure) of the PPA shall apply.
 - b) M/S Agnipa Energo Pvt Ltd. failed to commission the project within the stipulated date as per the PPA.
 - c) Delay in commissioning of the project has put additional burden on APDCL on the following counts:
 - Procurement of additional power from other sources with

added cost.

- Shortfall in targeted RPO compliance to the extent of proposed generation from the Project.
4. The Petitioner has estimated the loss at Rs 10.47Cr and prayed before the Commission to approve recovery of the liquidated damage.
 5. In the Interlocutory Petition as well as Oral submission during Hearing, the petitioner submitted that though the GoA has extended the COD date upto June, 2018, but there is no mention that the Respondent is relieved of any obligation under PPA of paying liquidated damages.
 6. On query from the Commission, the petitioner submitted that approval of the PPA was not obtained from the Commission.
 7. That being in position, the Commission is not inclined to decide the Compensation as prayed for.
 8. The petitioner is at liberty to claim the compensation from the respondent as per Para 17 of the bilateral PPA entered between the parties. However, in case of disputes the parties may approach the Commission for adjudicating on the matters as per provision of law.

With the above observations and decisions, the tariff petition (No. 30/2017) stands disposed of.

Sd/-
(Dipak Chakravarty)
Member
AERC

Sd/-
(Subhash Chandra Das)
Chairperson
AERC