



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 576 (B)/2016/Pt.-I

Petition No.: 26/2016, 27/2016,
28/2016, 29/2016, 30/2016&31/2016

ORDER SHEET

30.11.2016

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

M/s Eastern India Powertech Limited (EIPL)
Assam Power Distribution Company Ltd. (APDCL)

----- Petitioner
-----Respondent

Date of Hearing: 30.11.2016
Counsel for Petitioner:

Mr. G. Sivasankaran
Mr. Ram Kumar
Mr. V.P.Singh, Advocate, EIPL
Mr. P Lal, Advocate, EIPL
Mr. D. Senapati, Advocate, EIPL
Ms. Ankita Agarwal, Advocate, EIPL

Counsel for Respondent:

Mr. K Talukdar, GM (TRC)
Mr. HM Sharma, GM
Mr. M Bhattacharyya
Mr. B Hazarika, AM
Mr. Avijit Roy, Advocate, APDCL

In the matter of

Petition No. 26, 27, 28, 29, 30 and 31 of
2016 regarding Tariff Petition for FY 2009-
10 to FY 2014-15 for Banskandi Plant filed
by EIPL

CORAM

Shri Naba Kr. Das Chairperson
Shri Dipak Chakravarty, Member
Shri Subhash Ch. Das, Member

ORDER

1. A Hearing was held on 30.11.2016, in the matter of non compliance with regard to certain directions issued in the Order dated 24.10.2016 on the Tariff Petitions filed by M/s Eastern India Powertech Limited (EIPL) for FY 2009-10 to FY 2014-15 for its plant at Banskandi.
2. The Commission intimated both the parties on the above matter vide its notice dated 18.11.2016 and listed the following matters:-
 - a. Non Compliance to direction for submission of the abridged form of the Tariff Petitions for approval of the Commission on or before 31.10.2016, for publication in the newspaper under Section 64(2) of the Electricity Act, 2003.
 - b. Non Compliance to direction related to submission of soft copy of plant wise cost allocation statements on or before 1.11.2016 and submission of the same duly certified by the Auditor on or before 5.11.2016.

- c. Non Compliance to direction for deposit of requisite fees towards processing of the Tariff Petitions as per the Order dated 24.10.2016 on Petition No. 13/2015 on or before 15.11.2016. Thereafter, filing of Misc Petition dated 18.11.2016 for exemption from deposit of the requisite fees for processing of the Tariff Petitions for both Adimtilla and Banskandi Gas based power plants for FY 2009-10 to FY 2014-15.
3. During the hearing the Representative of the Petitioner made the following submissions:

- a. **Submission of abridged form:** The Representative submitted that abridged form has already been submitted to the Commission with a delay of 3 days and begged apology for the delay. The Representative further submitted that the non compliance of EIPL will be on the part of non-publication of the abridged form in the News-Paper. However, In this regard, considering that the Commission has already published the same in the newspaper, the Representative offered to compensate the cost incurred by the Commission in news-paper publication.
- b. **Plant wise Cost Allocation Statement:** The Representative submitted that soft copy of the plant wise cost allocation statement has been submitted to the Commission vide e-mail dated 25.11.2016 and the hard copy has been filed on 30.11.2016. In reply to the query of the Commission regarding submission of actual plant wise cost allocation statement duly reconciled with the audited accounts, the Representative replied that annual account of EIPL is prepared on consolidated basis as per Companies Act, 1956 and actual plant wise cost allocation to be used for calculation of Tariff is not maintained by the company.

The Representative further submitted that plant wise audited statement of account or actual plant wise cost- allocation statement is not required to be submitted for Tariff proceedings as per AERC Tariff Regulations'2006. Because, the plants of EIPL were not covered by the provisions of AERC Tariff Regulations'2006.

- c. **Deposition of requisite Fees for processing of the Tariff Petitions:** The representative of EIPL submitted that the applicable Fee Regulation of AERC for processing of the Tariff Petitions is AERC (Fees) Regulations, 2009 and not the AERC (Payment of Fees etc.) Regulations, 2015, because:
- AERC (Payment of Fees etc.) Regulations, 2015 was notified on 20.08.2015, hence the same is not applicable for the period of FY 2009-10 to FY 2014-15
 - The Judgment pronounced by Hon'ble APTEL in the matter of Tariff determination for FY 2009-10 to FY 2014-15 was on a date prior to the notification of the AERC (Payment of Fees etc.) Regulations, 2015. Hence, the earlier AERC (Fees) Regulations, 2009 is only applicable.

The Petitioner expressed its concern regarding payment of the fees for processing of the Tariff Petitions as same will be treated as a pass through to the consumer i.e. APDCL. The Representative of the Petitioner further submitted that it has already deposited Rs. 20.00 lakhs towards fees for processing of the Tariff Petitions for both the plants for FY 2009-10 to FY 2014-15. The Representative of the Petitioner further expressed its inability to deposit the balance amount of applicable fees in view of the distressed financial condition and closure of the plants of EIPL and proposed that the Commission may perhaps consider the deposited fee as fee for processing of the Petition for FY 2009-10 tariff period and reject the Tariff Petitions from FY 2010-11 onwards, due to lack of submission of requisite fees.

4. In the hearing the representative of the Respondent made the following submissions before the Commission on the above matter:

- 4.1. **Submission of abridged form:** The representative of the Respondent submitted that the Petitioner has not complied with the direction of the Commission as abridged form was not submitted by the Petitioner on or before 31.10.2016. Further the Petitioner failed to comply with its own commitment made before the Hon'ble APTEL during hearing dated 20.10.2016, regarding submission of required information on or before 01.11.2016. In view of the above the Respondent submitted that the Petitioner is liable to face the proceedings for non compliance to the directions of the Commission.
- 4.2. **Plant wise Cost Allocation Statement:** The Respondent submitted that EIPL failed to submit the actual cost allocation statement as directed by the Commission in its Order dated 24.10.2016, even after making commitment for submission of the same. Further, the Respondent submitted that, submission of the Petitioner that plant wise actual cost allocation

is not available with the Petitioner is a gross violation of Clause 4.4 and 4.8 of the AERC (Terms and Conditions for determination of Tariff) Regulations, 2006 which mandates that such accounting records is required to be kept in respect of each such business so that the revenues, costs, assets, liabilities, reserves and provisions of, or reasonably attributable to the Business are separately identifiable in the books, from those of Other Business in which the Company may be engaged in. Further, in case the Licensee or the generating Company fails to submit the above information, the Commission may initiate suo moto proceedings under the Conduct of Business Regulations. Moreover, in such a situation this failure will be treated as a breach of these Regulations. The Respondent also submitted that in absence of such crucial information the whole purpose of determination of tariff will be defeated.

- 4.3. **Deposition of requisite Fees for processing of the Tariff Petitions:** The representative of respondent submitted that entire processing fee towards determination of Tariff for FY 2009-15 has to be paid as per the AERC (Payment of Fees etc.) Regulations, 2015 as the application for tariff petition has been filed after notification of the said Regulations. They also stated that the AERC (Fees) Regulations, 2009 is not applicable in the present case of the filing of Tariff Petition by EIPL.
5. During the Hearing, the Petitioner further submitted that, the comments and views of APDCL on the Tariff Petitions of EIPL has been received only on 30.11.2016 and therefore, additional 2 days time may perhaps be granted for submission of EIPL's comments on the APDCL's submission.
6. After hearing both the parties the Commission decided the following:
- 6.1. **Submission of abridged form:** The submission of the Petitioner that abridged form of the Tariff Petitions was submitted to the Commission is factually incorrect. As such, the Petitioner has not complied with Section 64 (2) of the Electricity Act'2003 regarding submission of abridged form of Tariff Petition on or before 31.10.2016 for approval of the Commission and thereafter, publication of abridged form in the News-paper.

During the Hearing the Petitioner has offered to compensate the cost for publication of the Abridged form of the Petition in the News-paper. In this regard, it may be noted that the Commission has already ordered that the Petitioner will have to bear the expenses for Publication of Abridged form in the News-paper.

- 6.2. **Plant wise Cost Allocation Statement:** EIPL submitted soft copy of cost allocation statement certified by an Auditor vide e-mail on 25.11.2016 without accompanied by affidavit and further submitted the same in hard copy with affidavit on 30.11.2016. It has been observed that the document submitted in the name of Cost allocation does not contain any such allocation of actual costs & revenue and is also not reconciled with Annual Audited Accounts of EIPL, rather it is a certified copy of the calculation of normative AFC and normative Variable Charge by giving reference of Regulations, Order etc.

During the Hearing, the Petitioner has deviated from its own commitment, made during Hearing dated 24.10.2016, of submission of plant wise Audited Allocation statement in place of plant wise Audited Statement of Accounts. In turn, now the Petitioner has submitted that the Petitioner is not required to submit plant wise Audited Statement of Account/Audited Allocation statement, as the plants of EIPL were not covered by the provisions of AERC Tariff Regulations'2006. It is an well established fact that, after inception of the Electricity Act'2003 and framing of Regulations by the Commission, functioning of all Licensed business (Distribution and Transmission) and Generating Company falls under the jurisdiction of the Regulations framed by the Commission, as no exemption have been provided to any plant commissioned prior to promulgation of the Electricity Act'2003. Accordingly, the plants of EIPL are covered by the provisions of AERC Tariff Regulations'2006 and the Electricity Act'2003.

The Commission does not accept the submission made by the Petitioner during the hearing and considers non submission of data sought by the Commission as non compliance of Legal obligation of the Petitioner.

6.3. Deposition of requisite Fees for processing of the Tariff Petitions: EIPL was required to pay Fee on or before 15.11.2016 and it didn't pray for any exemption prior to due date. Only on 18.11.2016, EIPL filed a Miscellaneous Petition giving two options- (1) exemption from deposit of the requisite fees (Rs. 2.4 Crore) (2) adjustment of the fees with the pending payment to be received from APDCL.

During the Hearing, the Petitioner did not reiterate the second option proposed vide earlier submissions. The Petitioner further submitted that the provisions of AERC (Payment of Fees etc.) Regulations, 2015 are not applicable for the period of FY 2009-10 to FY 2014-15 rather the AERC (Fees) Regulations, 2009 is applicable.

The argument of the Petitioner that the AERC (Fees) Regulations, 2009 should be made applicable was not agreed to by the Commission, as the AERC (Fees) Regulations, 2009 has already been repealed by the AERC (Payment of Fees etc.) Regulations, 2015 and no action can be taken based on a repealed regulation. Therefore, as per Regulation 1.3 & Regulation 11 of the AERC (Payment of Fees etc.) Regulations, 2015, after notification of the said Regulations, filing of any kind of Petition/Application before the Commission needs to be accompanied with the Fee prescribed in the AERC (Payment of Fees etc.) Regulations, 2015.

However, as because as per direction of the Hon'ble APTEL, the Commission is required to determine Tariff for the plants of EIPL from FY 2009-10 to FY 2014-15, at this point of time the Commission will go ahead with the Tariff determination proceedings. The Petitioner will have to pay the requisite Fee for the whole period and given further time upto 12.12.2016 to deposit the Fee, failing which the Commission will take necessary steps as per Law.

6.4. Further, regarding non compliance of certain directions of the Commission, separate proceedings will be initiated by the Commission under the provisions of Electricity Act'2003 and AERC Regulations.

6.5. The Petitioner is granted time upto 03-12-2016 for submission of its comment on the submissions of APDCL.

Sd/-
(Subhash Ch.Das)
Member
AERC

Sd/-
(Dipak Chakravarty)
Member
AERC

Sd/-
(Naba Kumar Das)
Chairperson
AERC