



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC.492/205

PETITION NO.: 2/2016 in 10/2015 & IA No 1/2016

ORDER SHEET

09.05.2016

Assam Power Distribution Company Ltd. (APDCL) (Petitioner-1) and GMR Chhattisgarh Energy Ltd. (GCEL) (Petitioner-2) filed a Petition (Petition No. 10/2015) before the Commission on 19.02.2015 for Approval of Power Purchase Arrangement and Tariff under Section 86 (1) (b) and Section 62 of the Electricity Act'2003 between APDCL and GCEL. The Petitioners made the following prayers:

- *Admit the Petition*
- *Approve the Power Purchase Arrangement between APDCL and GCEL for procurement of 100 MW power for 3 years and approve Tariffs agreed in Memorandum of Agreement*
- *Grant Interim approval for purchase of power at 95% of tariff agreed in MoA till the petition is disposed off.*
- *Condone any inadvertent omissions/errors/rounding off differences/shortcomings in the Petition.*
- *Allow additions/alterations/changes/modifications/amendments to the Petition at a future date.*
- *Dispose off the Petition expeditiously.*
- *Pass any such Orders as deemed fit.*

Procedural History of the case:

1. The salient points of the Petition No 10/2015:
 - a. The GMR Chhattisgarh Energy Limited (GCEL) is a special purpose vehicle established by GMR Group for development of 1370MW (2X685 MW) super critical coal based thermal power project at Raikhala village of Raipur, Chhattisgarh. The plant is yet to achieve COD for the units. The 1st unit was synchronized in October 2014.
 - b. APDCL and GCEL has signed a Memorandum of Agreement, whereby APDCL will procure 100 MW of power from the plant for 3 years at a rate of Rs. 4.01/unit, Rs. 4.06/unit and Rs.4.11/unit respectively for 1st, 2nd and 3rd year at the generator Ex-Bus. That means, over and above the per unit rate of power, APDCL has to bear the inter-state transmission cost and losses from the generator Ex-Bus i.e. PGCIL's Raipur 400/765 KV pooling station to APDCL periphery.
 - c. The Petition was silent about the power sale arrangements for the balance 1270 MW capacity (1370 MW less 100 MW).
 - d. The Petitioners referred to Hon'ble DERC Order dated 30.04.2009 for approval of PPA between TPDCL and MPL, Hon'ble APTEL Order dated 31.03.2010 in Appeal No 107 & 109 etc.
2. After preliminary scrutiny of the Petition, the following queries were raised by the Commission:
 - a. Submission of Draft Power Purchase Agreement (PPA) between APDCL and GCEL
 - b. Justification of the agreed price for three years and the basis on which it was arrived at
 - c. Details of landed cost calculation at APDCL Periphery
 - d. Details of power sale arrangement of the balance capacity of GCEL thermal power plant at Raikhala village of Raipur, Chhattisgarh

3. APDCL replied to Commission's queries, with the following primary submissions:
 - a. APDCL submitted a draft PPA between APDCL and GCEL.
 - b. APDCL submitted that the price for power purchase was mutually agreed after consideration of recent results of Case-I bids invited by other Distribution utilities. APDCL also submitted examples of certain bids conducted by other utilities and some orders passed by Hon'ble APTEL and other State Commissions.
 - c. APDCL submitted that the landed cost of power at APDCL periphery is expected to be Rs 4.57/unit.
 - d. APDCL submitted that, as per the provisions of Memorandum of Understandings and Implementation Agreement executed with Govt. of Chhattisgarh, GCEL has to supply 5% of Net Power (68.5MW) & 30% of Aggregate Capacity (411MW) to Govt. of Chhattisgarh. APDCL further submitted that, as authorized by Govt. of Chhattisgarh, Chhattisgarh State Power Trading Company Ltd. (CSPT radeco) has entered into a Power Purchase Agreement with GCEL for sale of 479.5 MW (68.5MW and 411MW) of power for 20 years at a tariff determined by Appropriate Commission.
4. The Commission, vide its notice dated January 27, 2016, scheduled a Hearing prior to the admission of the petition at 11:00 A.M. on February 5, 2016. However, on declaration of February 5, 2016, as holiday by the Govt. of Assam, the hearing was postponed to February 10, 2016.
5. The Commission conducted the admissibility Hearing on the scheduled date at the Office of the Commission.

The hearing was attended by:

- a. Mr. M. K. Adhikary, GM (TRC) & Mr. A. N. Dev Choudhury, AGM (TRC), from APDCL (Petitioner-1)
- b. Mr. N. Srivastava, Head-Power Sale Management, & Mr. P. Mayyappan, Representative from GCEL (Petitioner-2)

The representative of the Petitioner-1 (APDCL) submitted an estimated Power Supply position data for the next 3 Financial Years and mentioned that considering the 24X7 power for all, it is expected that there will be a deficit in the range of 350 MW to 600 MW for the next 3 Financial Years. Therefore, they need to procure the 100 MW of RTC power, as offered by the Petitioner-2 i.e. GCEL, from the 1370 MW plant being set up at Chhattisgarh to meet the shortfall of power.

The representative of the Petitioner-2 (GCEL) submitted the following in the hearing:

- GCEL is setting up a 1370 MW (2X685 MW) super critical coal based thermal power plant at village Raikheda, Tilda Block, Raipur, Chhattisgarh.
- Already financial closure has been achieved for the plant
- The 1st unit of the plant has been commissioned in January 2016 and presently GCEL is selling power from the 1st unit on short term basis.
- GCEL has recently submitted a revised offer of rate of power to APDCL. Accordingly, GCEL will sale 100 MW power @ Rs 3.50/unit during 1st year, @ Rs. 3.60/unit during 2nd year and @ Rs. 3.70/unit during 3rd year as per revised offer.
- At present GCEL is not having any operative PPA. Even though they had signed a PPA with Chhattisgarh, the same is not operative.
- GCEL had approached CERC for approval of Tariff, however, CERC has mentioned that, it will determine Tariff only if CGEL has entered into PPA for at least 2 states.
- State Commission has got the discretionary power to choose either of Section 62 or Section 63. Moreover, Under Section 64 (5) of the Electricity Act'2003, the State Commission has power to determine Tariff for any inter-state

generating station for the quantum of power sold to state Distribution Company.

- In the present offer, GCEL is committed to provide uninterrupted supply of 100MW power. In case the GCEL could not supply contracted quantum of power to APDCL, it will arrange the same quantum of power from other sources at the same rate.
- In reply to a query on probability of approval of lower Tariff by CERC or other SERCs, GCEL representative mentioned that, in such cases, the rate of power sold to APDCL will automatically stand revised to the CERC approved Tariff or SERC approved Tariff or the revised offer, whichever is lower. Accordingly, GCEL will insert suitable clause in the offer document, as well as the MoU and PPA.

The Commission heard the submissions made by the Petitioner(s) and directed the Petitioner(s) to make the above submissions in written affidavit form along with revised documents if any.

6. Thereafter, on March 16, 2016 an Interlocutory Petition (registered as IA No 1/2016) filed by the Petitioners in reference to the Record of Proceedings of Hearing dated 10/02/2016 (Petition no 10/2015) making certain additional submissions. Along with the IA No 1/2016, the petitioners submitted addendum to MoU and amendment to PPA.
7. However, on April 12, 2016, APDCL (Petitioner-1 of the Petition No 10/2015 & IA No 1/2016) submitted a Petition (registered as Petition No 2/2016), praying for allowing withdrawal of the Petition No 10/2015 along with the IA No 1/2016 and to pass any such order as deemed fit and proper.

In the Petition No 2/2016, APDCL submitted that though APDCL had submitted a joint petition with GCEL on February 19, 2015 for procurement of 100 MW RTC power for three years from GCEL, APDCL is not interested at this point of time to purchase the 100 MW power from M/S GMR Ltd. for 3 years and have decided to withdraw the Petition No 10/2015 along with IA No 1/2016, in view of the following:

- The power situation has improved considerably after commissioning of 1st unit of NTPC BTPP.
- Govt. of India has notified the new National Tariff Policy 2016, wherein it is made mandatory on the part of the DISCOM to go for competitive bidding for purchase of power under Section 63 of the Electricity Act'2003.

Commission's Analysis and Decision:

1. On February 19, 2015, Petition No 10/2015 was filed jointly by APDCL (Petitioner-1) and GCEL (Petitioner-2) for Approval of Power Purchase Arrangement and Tariff under Section 86 (1) (b) and Section 62 of the Electricity Act'2003 between APDCL and GCEL.
2. On March 16, 2016, IA No 1/2016 was filed jointly by APDCL (Petitioner-1) and GCEL (Petitioner-2) for additional submission with reference to the Petition no 10/2015 and Record of Proceedings of Hearing dated 10/02/2016.
3. While the Commission had undertaken some exercise in the matter as stated hereinbefore, in the meantime, on April 12, 2016, APDCL (Petitioner-1 of the Petition No 10/2015 & IA No 1/2016) submitted a Petition praying for permitting withdrawal of the Joint Petition(s) (Petition No 10/2015 along with IA No 1/2016).

As one of the parties of the Memorandum of Agreement reached between the parties and Petitioner-1 of the Joint Petition(s) (Petition No 10/2015 along with IA No 1/2016), namely APDCL desires voluntarily to withdraw the said petitions submitted to

the Commission, in consequence, all the above petitions have become infructuous and as such, Petition No 10/2015 & IA No 1/2016 are dismissed on withdrawal vide Petition No 2/2016.

In above view of the matter, question of passing a separate order permitting withdrawal (as prayed in Petition No 2/2016) is not necessary.

(Subhash C. Das)
Member, AERC

(Dipak Chakravarty)
Member, AERC