



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 354/2010

PETITION NO. 08/2012

ORDER SHEET

18.02.2013

Before the Assam Electricity Regulatory Commission

ASEB Campus, Dwarandhar,
G. S. Road, Sixth Mile, Guwahati – 781 022

Petition No. 8 /2012

M/s Assam Power Distribution Company Limited (APDCL)

— Petitioner

In the matter of

Petition filed by the Petitioner for approval of Power Purchase Agreement (PPA) in respect of supply of 5 MW of surplus power from the Captive Power Plant (CPP) of IOCL(AOD), Digboi to APDCL network.

ORDER

1. Background

IOCL (AOD) vide letter dated 13.02.2009 approached APDCL with a proposal to sell surplus power from their C.P.P. at a tariff of Rs. 3.00/kwh. In view of Natural gas price hike, the proposed tariff was reviewed and finalised at Rs. 3.49/ Kwh by both the parties as mutually agreed upon in a meeting dated 10.08.2010. APDCL board accorded approval on 10.12.2010 to purchase the captive power of 5 MW from IOCL(AOD) through 11 KV lines in isolation mode with some renovation works of the existing Distribution network. Accordingly, PPA was signed with IOCL (AOD), Digboi by APDCL on 13.02.2011.

The Chief General Manager (Commercial), APDCL forwarded a copy of his letter dated 18.02.2011 addressed to the Chief General Manager (UAZ), APDCL with a signed copy of the PPA to AERC for approval of the PPA.

The salient points of the PPA signed between IOCL (AOD) and APDCL are stated as under:

- i) A Power Purchase Agreement of three years duration was signed on 13.02.2011 between IOCL (AOD) and APDCL for supply of 5MW surplus power from CPP of AOD, Digboi to APDCL.
- ii) The surplus power shall be supplied from seller's captive power plant (1x8.5 MW +1x20 MW) at Digboi to buyer's Digboi 11 KV sub-station in isolated condition only when the 20 MW GT will be in operation.

- iii) Tariff was mutually agreed at Rs. 3.49 per KWh (single part) exclusive of any applicable statutory taxes and duties other than income tax. The natural gas to the CPP is supplied by OIL as per Non-APM rate decided by the Ministry of Petroleum and Natural Gas (MOPNG), GOI.
- iv) Details regarding general conditions for Off-Take / In-take of power, quantum of surplus power available to buyer and system of connection between CPP and APDCL system are included in the PPA.

AERC vide letter dated 19.11.2011 directed APDCL to file a formal petition along with details of cost data for approval of the rate of power purchase cost. APDCL was also requested to furnish the status regarding implementation of the PPA.

APDCL submitted a reply vide letter dated 08.02.2012 stating that IOCL (AOD), Digboi started supplying surplus power to APDCL through its 11 KV network w.e.f. 15.07.2011. A formal petition was filed before the Commission by APDCL on 27.03.2012 in this regard.

AERC vide letter dated 24.04.2012 directed APDCL to submit all details justifying power purchase from IOCL (Digboi) at the rate of Rs 3.49/KWh given the fact that according to the Commission's MYT order for FY 2010-13 dated 16.05.2011, the approved average power purchase cost was Rs 2.12/ KWh, whereas the admitted power purchase costs with FPPPA surcharges for April, May, June 2011 were Rs 3.12/KWh, Rs 2.58/KWh and Rs 2.50/KWh respectively.

APDCL vide letter dated 07.07.2012 submitted that the purchase of surplus power from IOCL (Digboi) @ Rs. 3.49/ KWh at 11 KV level is not on the higher side but reasonable and justified based on the following facts:

- a) It stated that on consideration of standard transmission losses at various levels, the applicable tariff for purchase of same power at 132/220 KV level would be Rs. 3.04/ KWh and at 11 KV with cumulative transmission loss of 14.87% is Rs 3.49/KWh. Further, considering deduction in point of connection charges of 0.15 P/KWh at 132 KV/220 KV level, the effective tariff would be Rs. 2.89/KWh which is lower than the admitted power purchase cost of Rs. 3.12/ KWh for first quarter of 2011-12 approved by the Commission.
- b) It was informed that IOCL(AOD) is not covered under Administered Price Mechanism (APM) on Natural gas and as such no subsidy is applicable in its natural gas price at present. However, it was mentioned that if any subsidy/ tax benefit is received by the Seller, the same will be passed on to APDCL proportionately for the actual quantum of power supplied. APDCL has approached Department of Power, Government of Assam requesting them to take up the matter with concerned gas authority/department in this regard.
- c) APDCL has also mentioned that utilization of the surplus power from IOCL(AOD) has become very effective and useful in view of the heavy shortfall of power in the state.

2. Legal and Regulatory frameworks:

- 2.1** Section 9 of the Electricity Act, 2003 has made provision for supply of electricity from CPP through the grid as per the same Regulations as applicable to the generation companies.
- 2.2** As per 86(1)(b) of the Act, the State Commission is required to regulate electricity purchase and procurement process of Distribution Licensees including the price at which electricity shall be procured from the Generating Companies or Licensees or from other sources through agreements for distribution and supply within the State.
- 2.3** Provision **5.2.26 of the National Electricity Policy (NEP), 2005** emphasized the need for harnessing of spare capacity energy from CPP through appropriate commercial arrangement between licensee and the captive generator. It also stated that **“the appropriate Regulatory Commission shall exercise regulatory oversight on such commercial arrangement between captive generators and licensees and determine tariffs when a licensee is the off taker of power from captive plant”**.
- 2.4** Under section 6.3 of the National Tariff Policy (NTP), 2006, the appropriate Commission is entrusted with the responsibility of creating enabling environment that encourages CPP to be connected to the grid. Such CPP could inject surplus power into the grid subject to the same regulation as applicable to generating companies. The tariff should include **variable cost of generation at actual levels and reasonable compensation for capacity charges**.
- 2.5** In addition to the above notifications of the Government of India, the Commission also vide its directive No. 9.3.16 in Tariff Order 2008-09 and 2009-10 underlined the requirement of seeking prior approval of the Commission before entering into bilateral contracts by the ASEB/ Discom in all future purchase transactions from the sources other than that approved by the Commission through agreements.

3. Hearing of the petition:

The Commission examined the petition and comments of APDCL carefully and admitted the petition on 11.07.2012 numbered as Petition No. 8/2012. A hearing was fixed on 20.07.2012 after due notices to the parties concerned.

Shri P.K. Dutta, CGM (Commercial), Shri M.K. Adhikary, DGM (Commercial), Shri J.P. Choudhury, AGM (Commercial) of APDCL appeared for the petitioner in the hearing.

Shri Ran Moni Mahanta, Sr. Power & Utilities Manager, IOCL(AOD) attended on behalf of IOCL (AOD), Digboi.

The Chairperson AERC initiated the hearing with a brief background of the petition and directed both the parties to provide additional views on the issue, if any.

The representative from IOCL (AOD) clarified that since the decision to sale surplus power from its Captive Power Plant (CPP) to APDCL was a novel initiative by the Company, therefore, he requested that the kind of documents required to be submitted to the Commission may kindly be specified. The Chairperson, AERC explained about the documents that would be required from IOCL (AOD) by the Commission for approval of the rate of power purchase cost.

APDCL reiterated the reasons for agreeing to buy 5 MW power from IOCL(AOD) at the rate of Rs 3.49/ KWh.

The Commission heard both the parties. The Chairperson AERC stated the relevant provisions under the National Electricity Policy, 2005, the National Tariff Policy, 2006 and the Electricity Act, 2003 for purchase of power from CPP by licensee which are elaborated in clause (2) under the legal and regulatory frameworks of this order.

From the above provisions of the Electricity Act, 2003 and other relevant Rules, Regulations and Government of India Guidelines it is clear that the Commission has the power to determine the generation tariff from CPP within the state and also regulate the electricity purchased and the procurement process of distribution licensee including the price at which it shall be procured from the generating stations including CPP.

However, APDCL signed a PPA with IOCL (Digboi) for purchase of 5 MW surplus power @ Rs. 3.49/KWh deviating from the existing provisions of relevant Electricity and tariff Policies, the Electricity Act 2003 and the directives of the Commission.

Nevertheless, since it is also the duty of the Commission to encourage CPP to be connected to grid to supply surplus power to licensees under the relevant provisions of NTP, 2006, NEP, 2005, etc., and considering availability of additional 5 MW power under the prevailing critical power shortage situation in Assam, the Commission decided to review the matter and thereafter directed APDCL to submit petition along with all required data and documents for approval of the rate of power purchase cost.

The Commission observed that APDCL is yet to submit details of tariff data and information for scrutiny and determination of tariff as directed. However, they have submitted details of justification for purchasing captive power from IOCL (AOD), Digboi @ Rs. 3.49/Kwh as mentioned above.

The Commission therefore, directed APDCL and IOCL(AOD), Digboi to submit all relevant documents including fixed, variable and operating cost data etc.

Meanwhile, IOCL (Digboi) e-mailed their reply on 12.12.2012 wherein they stated the following:

- (i) As the power from the State Electricity Board to Digboi township in general was erratic; IOCL (AOD) received requests for supply of reliable power to the Private areas of the township as well. The matter was also pursued by the Govt. of Assam for the greater benefit of the locality. Accordingly, IOCL (AOD) initiated actions for supply of its surplus power to APDCL, Digboi for providing uninterrupted, quality power to the private township of Digboi and thereby resolving the hardship associated with unreliable power supply.

- (ii) Power Purchase Agreement for supply of 5 MW surplus power from IOCL (AOD) to APDCL, Digboi in islanding mode was signed by IOCL(AOD) and APDCL on 13th February, 2011 at Digboi. After installation of necessary infrastructures by both IOCL (AOD) and APDCL, export of power to APDCL started from 15th July '2011.
- (iii) That being a Process Industry wherein the basis for calculation of cost of captive power generation may not be the same as adopted for other Power Plants. It may be difficult to segregate/derive the actual cost of power that we generate to export only. The cost sheets of IOCL (AOD) are audited by Govt. Auditors and other Statutory Auditors. As per audited cost sheet of 2010-11, the cost of captive generation works out to be 4.26 per KWHR. The agreed rate for supply of Power to APDCL is 3.49 per KWHR. This is a negotiated rate based on mutual interest of both the parties considering welfare and greater benefit of the local population and civil society in and around Digboi.
- (iv) That the Power export is never been the core business of the IOCL and it is only the first instance that IOCL has come into such activity with a basic purpose of improvement of the living standards of people residing around the Digboi Refinery with active support and guidance from the Government of Assam.

With this in view, IOCL, Digboi prayed before Commission for approval of power PPA signed with APDCL that being a unique, mutually beneficial effort for greater interest of the society and Public in general. They assured that all norms, guidelines and relevant procedures in this respect shall be complied with in consultation and association with APDCL.

Commission's view:

From the existing provisions under Electricity Act, 2003, NEP 2005, NTP, 2006 and relevant Regulations and orders of AERC as outlined in clause 2 of this order, the Commission is mandated to discharge the function of regulating the electricity purchased and the procurement process of distribution licensees including the price at which it shall be procured from the generating stations including CPP.

The Commission has noted the submission of the IOCL, Digboi that the agreed rate of Rs. 3.49/Kwh for supply of power to APDCL is less than the audited cost of power for FY 2010-11 which was Rs. 4.26/KWh.

The Commission further noted that the commercial arrangement for supply of surplus power from CPP at IOCL, Digboi to APDCL w.e.f. July, 2011 being first of its kind in Assam, has mitigated the power demand in and around Digboi to a large extent with active support and initiative from the Govt. of Assam.

The Commission is aware that APDCL had to resort to buy power from CPSU's like NTPC etc. from outside Assam during FY 2011-12 at an average cost of Rs. 3.77/Kwh at 220 KV / 400 KV level at the drawal point to mitigate ever growing demand of power in the state due to fall in hydro generation during lean hydro season which is higher than the agreed tariff of Rs. 3.49/Kwh as mentioned above.

Keeping in view of the facts mentioned above and considering availability of 5 MW of power under the critical power shortage situation in Assam, the Commission hereby approves the rate of Rs. 3.49/Kwh for procurement of 5 MW of surplus power from the CPP at IOCL, Digboi.

The above rate of power purchase is based on prevailing input cost of natural gas price. Any revision of rate of power purchase cost due to change in natural gas price shall be submitted to the Commission for approval.

With the above discussion, observation and decision, the petition stand disposed of.

Sd/-
(T. Chatterjee)
Member, AERC

Sd/-
(Dr. R. K. Gogoi)
Member, AERC

Sd/-
(J. Barkakati)
Chairperson, AERC