



## ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 408/2013

PETITION NO. 9/2013

### ORDER SHEET

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| 26.12.2013 | <p>Before the Assam Electricity Regulatory Commission<br/>ASEB Campus, Dwarandhar,<br/>G. S. Road, Sixth Mile, Guwahati – 781 022<br/><u>Petition No. 09 /2013</u><br/>M/s NewGen Power Company Private Limited (NPCPL)<br/>—— Petitioner<br/>Represented by (1) Shri Assiem Mittal, Director<br/>(2) Shri P. K. Hazarika, Advisor<br/>-Vs-<br/>M/s. Assam Power Distribution Company Limited. (APDCL)<br/>—— Respondent<br/>Represented by (1) Shri M. K. Adhikary, DGM (Com)<br/>(2) Shri K. Goswami, AGM (Com)</p> |
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#### In the matter of

Tariff Petition of 1.2MW (3x400KW) M/s NPCPL Biomass Gasifier based Renewable Energy Power Plant.

#### Order

M/s NewGen Power Company Private Limited (hereinafter referred to as NPCPL/ the Petitioner) submitted a petition on 13.02.2013 for determination of tariff of 1.2MW (3x400KW) Biomass Gasifier Based Renewable Energy Power Plant at Bicrampur Tea Estate in Chandranathpur, Cachar District of Assam. The averments made in the petition are briefly stated hereunder:

M/s NPCPL had signed a Power Purchase Agreement (PPA) with Assam Power Distribution Company Limited (hereinafter referred to as APDCL/ the Respondent) on 15.11.2012 where the tariff for purchase of electricity was mutually agreed upon both the parties to be at the “*Pooled Cost of Purchase*” of APDCL. The petitioner stated that the rationale for selling power to APDCL at the “*Pooled Cost of Purchase*” tariff was to benefit from the revenue availed from selling Renewable Energy Certificates (REC) consistent with the relevant REC Regulations, 2010 of CERC.

The petitioner requested the Commission for the approval of “preferential tariff” (generic tariff) for sale of power to APDCL from its

project at Bicrampur Tea Estate as per the AERC (T&C for Tariff Determination from Renewable Energy Sources) Regulations, 2012 stating that the REC market is not viable. The generic tariff calculation sheets for the project were also provided with the petition.

The petitioner stated that they will supply power to Bicrampur Tea Estate on priority basis and the excess power available will be sold to APDCL. The share of power from the project besides considering auxiliary consumption of 10% is given hereunder:

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|----------------------|-----|
| Bicrampur Tea Estate | 12% |
| APDCL                | 78% |

The petition was forwarded to the Respondent, APDCL for their comments vide letter No. AERC. 408/2013/2 dated 16.03.2013. Since, no communication was received from APDCL, the respondent was once again asked to submit comments on the petition vide reminder No. AERC 408/2013/3 dated 02.04.2013.

Meanwhile, the petitioner vide their letter dated 24.04.2013 stated that they proposed to commission the project by May 2013 and, therefore, requested the Commission for early determination of tariff. M/s NPCPL also substantiated the progress of the project by submitting some photographs.

The respondent submitted their comments on the tariff petition to the Commission on 25.04.2013. APDCL stated that the Power Purchase Agreement (PPA) between the petitioner and Bicrampur Tea Estate (captive customer) was not made available to APDCL and requested the Commission to ascertain that the applicable tariff for APDCL is in no case higher than Bicrampur Tea Estate. The respondent stated that since the petitioner had already signed a PPA with APDCL and as such, the tariff matter is already settled. They further submitted that the tariff on the basis of Pooled Cost of Purchase was proposed by the petitioner itself and financial closure of the project was firmed up on that basis. APDCL also questioned the delay in commissioning of the project from the scheduled date as per PPA.

APDCL further requested that objection hearing may be arranged before finalizing the tariff of the project within the limit prescribed as per provision of AERC (Co-generation and Generation of Electricity from Renewable Energy Sources) Regulations, 2009. The respondent further submitted that all kinds of benefit like earning from sale of manure, if any, CDM benefit, industrial subsidy etc may be considered as per prevailing policies of the Government while determining tariff.

Thereafter, the petition was admitted by the Commission on 02.05.2013 and registered as petition No. 9/2013.

The reply of APDCL was forwarded to the petitioner on 03.05.2013 and the comments of M/s NPCPL were received by the Commission on 29.05.2013. M/s NPCPL stated that they did not agree with the observation of APDCL that the tariff matter is settled as PPA has been signed between the parties and the Commission is merely to ratify the same. The petitioner stated that they had approached APDCL vide their letter dated 21.01.2013 apprising the status of the REC market and their desire to shift towards preferential tariff. It was stated that APDCL advised the petitioner to approach the Commission with a petition highlighting the problem faced by them. They further stated that even though APDCL submitted a prayer for ratifying the tariff as agreed in the PPA, however, in the later part of their submission, they prayed for finalization of tariff as per prevailing AERC RE Regulations of 2009. M/s NPCPL requested that the AERC RE Regulations of 2012 may be considered while determining tariff for the project.

In their comments on the quantum of power supply to APDCL and Bicrampur Tea Estate, It was stated that Bicrampur Tea Estate would require a peak load of 400 KW based on current forecasted demand and M/s NPCPL is contractually committed to supply the maximum quantum of power to the Tea Estate on first priority basis. However, it was informed that the requirement of the Tea Estate is seasonal with peak consumption only during two to three month period and therefore, full capacity would be available to APDCL for major part of the year. It was informed that with the planned increase of capacity to 1.6 MW, the incremental production of electricity would be made available to APDCL. Regarding the PPA with Bicrampur, M/s NPCPL stated that it was a bilateral agreement between the Tea Estate and M/s NPCPL which is an intellectual property of the Company and contains certain confidential elements that they seek to keep out of the hands of potential competitors. M/s NPCPL further stated that they were willing to show a copy of this PPA to the Advisory Committee of the Commission for their review, if necessary. Commenting on the delay in commissioning of the project, the petitioner stated that the slippage was due to factors beyond the control of the petitioner. The petitioner also submitted an estimate of the desired tariff. The petitioner requested that the Commission may pass any order as deemed fit and appropriate under the circumstances of the case and in the interest of justice.

The above comments of M/s NPCPL were forwarded to APDCL on 29.05.2013. Meanwhile, the Commission vide its letter dated 10.06.2013 informed the petitioner that the address stated in their petition dated 29.05.2013 was different from the first petition and any change in this respect could be made only through proper application to the Commission indicating the change in registered office of the Company and duly authenticated by the Registrar of Companies.

Besides, the name of the Director was also different in the above petition and the Commission informed the petitioner that all communications with the Commission shall be made by the petitioner only with the person named as Director and supported by affidavit.

M/s NPCPL on 25.09.2013 again submitted a prayer to the Commission to determine the tariff.

The Commission on 29.10.2013 served notice to both the petitioner and respondent to appear for a hearing on 22.11.2013.

On 15.11.2013, the respondent submitted their views on the reply submission of the petitioner dated 29.05.2013. In their submissions, APDCL reiterated that as the tariff has been bilaterally agreed and an Agreement has already been signed, therefore, the tariff has been legally finalized. APDCL stated that the average pooled purchase cost in FY 2012-13 have increased by 60.5% since FY 2009-10 and with the commissioning of high cost generating stations like gas based Palatana TPS, coal based NTPC Bongaigaon TPS, etc, the pooled cost is likely to be increased further to a much higher level.

Hearing was held as scheduled on 22.11.2013. Representatives from both the petitioner and respondent attended the hearing. The Commission briefed the participants on the background of the petition and asked the respondent and petitioner to make oral submissions on the same, if any, in addition to their submissions in the pleadings.

A PowerPoint presentation was made before the Commission by the petitioner regarding the proposed project. The petitioner stated that one of their machines also suffered damage during transit which has added to the capital cost of the project. Under such circumstances, the petitioner stated that the average pooled purchase cost in FY 2012-13 was Rs 3.21/ KWh only which is inadequate considering the poor condition of REC market at present. The petitioner stated that given the past trends, REC market is unlikely to improve in near future and any additional revenue from this market seems remote. It would not be viable to run the project at the tariff based on the average pooled cost.

The respondent reiterated their views that average pooled purchase cost of power is expected to increase in the next couple of years with the commissioning of new projects in the state and M/s NPCPL should adhere to the tariff as per the PPA. APDCL also opined that REC market is presently subdued but is likely to improve. The respondent requested the petitioner to furnish the selling price of energy to Bicrampur Tea Estate.

The petitioner informed during the course of hearing that the proposal to sale power to Bicrampur Tea Estate has been dropped and the Company now proposes to sale all its power to APDCL only.

The Commission heard both the parties. The Commission observes that the respondent on one hand submitted that the tariff for power to be generated from the project has already been settled through PPA as the average pooled purchase cost of power and the PPA be disturbed neither by the petitioner nor by the Commission. On the other hand the respondent prayed the Commission that tariff may be determined after prudent check of all claims of the petitioner including capital cost. Hence, it is observed from the submission of APDCL that they are not averse to shifting to preferential tariff to be determined by the Commission. Therefore, in the interest of the State to encourage promotion of renewable energy and to remove such difficulties, the petitioner and respondent are directed to resolve the matter mutually.

Before parting, it is also made clear that the petition is disposed of without prejudice to the parties to the rights to invoke jurisdiction of the Commission, if so necessary.

Inform all concerned.

Sd/-  
(T. Chatterjee)  
Member, AERC

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

Sd/-  
(N. K. Das)  
Chairperson, AERC