



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 576 (B)/2016

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

ORDER SHEET

05.12.2016

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 Public Hearing: 05.12.2016
Counsel for Petitioner:

Mr. D. Senapati, Advocate, EIPL
Mr. P Lal, Advocate, EIPL
Ms. Sravana Katakey, Advocate, EIPL

Counsel for Respondent:

Mr. HM Sharma, GM
Mr. B P D Goswami
Mr. I Tahbildar
Mr. M Bhattacharyya
Mr. B Hazarika, AM
Mr. Avijit Roy, Advocate, APDCL

Representative from Public:

Mr. S Sharma, Bidyut Grahak Mancha
Mr. Vijay Kr L, CFO,
Assam Gas Company Ltd. (AGCL)
Mr. Subrata Choudhury, Advocate, AGCL
Mr. Angshuman Sarma, Advocate, AGCL

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. As scheduled a Public Hearing was held on 05.12.2016, in the matter of Tariff Petitions filed by M/s Eastern India Powertech Limited (EIPL) for FY 2009-10 to FY 2014-15 for its plant at Banskandi (Registered as Petition No. 26, 27, 28, 29, 30 and 31 of 2016).
2. During the Hearing, the Petitioner, Respondent and two participants (AGCL & Bidyut Grahak Mancha) from the Public were present.
3. The Commission initiated the proceeding by directing the Petitioner to give a brief presentation on the Tariff Petitions. The Representative of the Petitioner mainly re-iterated the submissions already made before the Commission, the salient submissions of the Petitioner are:
 - 3.1. The Tariff Petitions for FY 2009-10 to FY 2014-15 has been filed according

to the directions of the Hon'ble APTEL.

3.2. The representative submitted that principles adopted by the Commission in Tariff Order 20.10.2011 for FY 2008-09 & the Review Order dated 12.02.2013, has attained finality by virtue of ratification by the Hon'ble APTEL in its Judgment dated 12.08.2014. Therefore, while issuing Tariff Order for FY 2009-10 onwards, the principles adopted for FY 2008-09 Tariff Order should be directly applied.

3.3. The representative prayed that the Principles already adopted for FY 2008-09 should be applied for fixing Tariffs from FY 2009-10 onwards.

4. Thereafter, the representative of the Respondent (APDCL) countered the argument of the Petitioner and submitted that the Tariff Orders should be issued as per the provisions made in Electricity Act'2003 & AERC Regulations. The representative of APDCL further prayed that, the principle to be adopted for issuance of Tariff Order for FY 2009-10 onwards may perhaps be decided on case to case basis as per the provisions of law, rather than adopting FY 2008-09 Tariff Order principle.

The representative also highlighted that, it is the Petitioner who has not filed the Tariff Petition on time and as such no carrying cost should allowed to be recovered by the Petitioner. Rather, the Respondent should be paid carrying cost on additional amount already paid.

5. The representative of the Respondent further made the following submissions on the plant wise Cost-Allocation statement submitted by the Petitioner on 30.11.2016:

5.1. The cost allocation statement is as per CERC Regulations, not actual allocation of cost

5.2. In absence of Statement of Account or Actual plant wise cost break-up, the revenue surplus/gap cannot be ascertained. Therefore actual amount due cannot be established.

5.3. The representative of the respondent also highlighted that the Balance Sheet submitted by EIPL is for the company as a whole and without separate balance sheets actual position cannot be ascertained. The representative also pointed out that, as per the submitted Balance sheet the EIPL has showed very high profit and it may perhaps be possible that the Petitioner has recovered extra amount.

6. Thereafter, the representative of the Respondent presented certain ARR component wise analysis on the Tariff Petitions, such as additional capitalization & overall Capital Expenditure, Debt:Equity ratio & Return on Equity, truing of previous year, Depreciation, funding through Lease loan, deemed generation etc.

On the component wise analysis made by APDCL, the representative of the Petitioner objected stating that the APDCL written submissions are made on 28.11.2016 not within the allowed timeline of 25.11.2016, therefore, the same should not be admitted. The Representative also highlighted that if the component wise submission made by APDCL is considered, ample opportunity to reply to the submissions made by APDCL should be provided to the Petitioner.

7. The Commission then asked the participant from Public to make their submissions.

7.1. The representative of Bidyut Grahak Mancha re-iterated the submissions already made and mentioned that a rejoinder submission has been filed on 05.12.2016, in reply to comments submitted by EIPL. The salient submissions made by Bidyut Grahak Mancha are:

a) The Petitioner has never filed Tariff Petition prior to 2008, even after promulgation of Electricity Act'2003 and only on request of ASEB/APDCL Tariff Petition has been filed in 2008

b) The validity of PPA after enactment of Electricity Act'2003 need to be ascertained.

c) The Petitioner has prayed for payment towards AGCL, however, the payment to AGCL is of an internal matter between EIPL & AGCL.

d) The representative further submitted that Deemed Generation claimed by the Petitioner should not be allowed due to the following reasons:

- Maintaining gas supply from AGCL is the responsibility of EIPL and receivables on account of deemed generation due to the same should not be passed through to the consumers.

- No documentary evidence signed by both parties has been submitted by EIPL regarding failure of ASEB/APDCL to evacuate power from the plant and hence the receivables on account of Deemed Generation due to the same cannot be passed through to the consumer.

The representative of the Petitioner submitted that copy of the written submission of Bidyut Grahak Mancha may perhaps be provided to the Petitioner so that appropriate reply may be submitted.

7.2. The representative of Assam Gas Company Ltd (AGCL) mainly reiterated the submission already made. The salient submission are:

- a) Rs 25 Crore is the total outstanding gas bills receivable from EIPL for the period of 18.10.2010 to 08.01.2013 for Adamtila and Banskandi plant of EIPL together.
- b) The representative also submitted that presently an Arbitration proceeding is going on between AGCL & EIPL for recovery of outstanding dues from EIPL.
- c) The representative prayed that if any amount becomes receivable by EIPL from APDCL, then the Commission may perhaps safeguard AGCL's interest by way of allowing payment to AGCL.
- d) The representative submitted that on the merit of the Tariff Petitions, AGCL does not have any comment.

In response to submission of AGCL, the representative of the Petitioner submitted that any intervention by the Commission with regard to matters relating to dispute between AGCL & EIPL is barred by Section 5 of the Arbitration and Conciliation Act, 1996, as has already submitted by EIPL in its written response to the claim of AGCL

8. The Commission heard all the submissions made by the Petitioner, Respondent & Public and ordered the following:

- 8.1. The Respondent (APDCL) to submit in written form the oral submission on or before 08.12.2016.
- 8.2. The Petitioner will submit reply to the submissions of APDCL and Bidyut Grahak Mancha on or before 15.12.2016.
- 8.3. The Petitioner & Respondent will make submissions as per the provisions of the Regulations of the Commission and will provide copies of their submissions on all matters to the Respondent/Petitioner.

The Commission reserved its' order at this point of time and the matter will be dealt with at the time of issuance of the Tariff Order.

Sd/-
(Subhash Ch.Das)
Member
AERC

Sd/-
(Dipak Chakravarty)
Member
AERC

Sd/-
(Naba Kumar Das)
Chairperson
AERC