JOINT ELECTRICITY REGULATORY COMMISSION FOR THE STATE OF GOA AND UNION TERRITORIES GURGAON

Coram
Dr. V.K. Garg, Chairperson
Shri S.K. Chaturvedi, Member

Petition No. 18/2010

In the matter of

1. Petition for determination of tariff for Puducherry Power Corporation Limited (PPCL) Gas Power Station (32.5 MW) for the FY 2011-12.

Petition No. 45/2011

2. Petition for review of order dated 06.08.2011 passed by the Commission in the matter of determination of tariff for Puducherry Power Corporation Limited (PPCL) Gas Power Station (32.5 MW) for FY 2011-12.

And in the matter of

Puducherry Power Corporation Limited (PPCL) .... Petitioner

And

Electricity Department, Puducherry .... Respondent

Order

29.04.2013

1. In exercise of the powers conferred by Section 83 of the Electricity Act, 2003 the Central Government constituted a two member (including Chairperson) Joint Electricity Regulatory Commission for all Union Territories except Delhi to be known as "Joint Electricity Regulatory Commission for Union Territories" with Headquarters at Delhi as notified vide notification no. 23/52/2003- R&R dated 2nd May, 2005. Later with the joining of the state of Goa, the Commission came to be known as "Joint Electricity Regulatory Commission for the State of Goa and Union Territories" as notified on 30th May, 2008. The Joint Electricity Regulatory Commission (for the State of Goa and Union Territories) started functioning with effect from August 2008 in the district town of Gurgaon, Haryana. The petitioner - Puducherry Power Corporation Limited filed tariff petition no. 18/2010 on 29.11.2010 before this Commission for approval of Annual Revenue Requirements & determination of Tariff for PPCL Gas Power Station (32.5MW) for FY 2011-12. The Commission after hearing all stakeholders approved ARR and determined tariff for the petitioner-PPCL vide order dated 06.08.2011 for FY 2011-12.

2. The petitioner – PPCL filed review petition no. 45/2011 before this Commission to review its own order dated 6.8.2011 passed in petition no. 18/2010. The Commission after hearing all stakeholders partially allowed the review petition vide order dated 03.11.2011.

3. The petitioner against the orders dated 06.08.2011 passed in petition no. 18/2010 and 03.11.2011 in petition no. 45/2011 of the Commission filed appeal no. 41/2012 before Hon'ble APTEL, New Delhi. The Hon'ble APTEL vide order dated 21.11.2012 partially allowed the appeal No. 41/2012 and at pages no. 26 to 28 of the order summarized its observations and findings as under:-

Quote

"1. Tariff Regulation 22(2) provides for determination of the capital cost to be considered on the basis of the audited accounts or approvals already granted by the Commission. The Appellant claimed capital cost of Rs.146.45 crores based on the audited accounts which were not taken into consideration by the Joint Commission and capital cost of only Rs.137.77 was allowed on the ground that the approval of competent authority was not obtained. This is not a proper approach as the approval of the competent authority was not contemplated under the Regulation. Even though the approval of the competent authority for Rs.146.45 crores was placed before the Joint Commission for reconsideration of the capital cost in the Review, the Joint Commission wrongly rejected the claim on the ground that nothing new had been pointed out by the Appellant. The Joint Commission should have scrutinized the audited accounts placed before it by the Appellant and considered the approval obtained from the Government and passed the order after prudence check in accordance with law. The Joint Commission is directed to consider the documents on record and pass order according to law after hearing the parties once again.

2. The Tariff Regulations provide that the components of generation tariff shall be as laid by the Central Commission in the 2004 Tariff Regulations as amended from time to time. The 2009 Tariff Regulations have been made effective by the Central Commission with effect from 1.4.2009. According to the 2009 Regulations, Normative Plant Availability Factor (NAPF) is to be taken as 85% for thermal power stations. However, the Joint Commission in the impugned order adopted NAPF of 87.5% contrary to the Tariff Regulations. The State Commission is directed to pass the consequential order in accordance with the Tariff Regulations.

3. The State Commission has determined the auxiliary consumption as per the Tariff Regulations. No case has been made out by the Appellant for relaxation of the norms for auxiliary consumption.

4. In view of the above, issue No. 1&2 regarding capital cost and Normative Annual Plant Availability Factor is answered in favour of the Appellant. Issue No.3 regarding Auxiliary Consumption is answered as against the Appellant.

5. Thus, the Appeal is partly allowed."

Unquote

4 In the light of observations and findings of the Hon'ble APTEL in appeal no. 41/2012 the petition for approval of Annual Revenue Requirements & determination of Tariff of PPCL- petitioner for FY 2011-12 petition no. 18/2010 and review petition no. 45/2011 were restored by the Commission vide order dated 19.12.2012.

5. The Commission sent notices of hearing to the parties for 23.01.2013. The Commission on 23.01.2013 passed the following order:-

Quote

"The respondent ED- Puducherry filed written submissions dated 18.01.2013 received in the Commission on 22.01.2013 on the observations and findings of the Hon'ble APTEL in appeal no. 41/2012 in Judgment dated 21.11.2012.

The Commission heard representative of the parties at length. The representative of petitioner- PPCL submitted that approval of Rs. 5.92 Cr. for purchase of land and Construction of building for corporate office was submitted to the Hon'ble Commission during the hearing in review petition no. 45/2011 and confirmed that the land was purchased only after approval of competent authority. Whereas the representative of the respondent ED- Puducherry submitted that Regulation 19 of JERC(Terms and Conditions for determination of Tariff Regulations) 2009, provides that while determining the cost of generation, the Commission shall be guided, as far as feasible, by the principles and methodologies of CERC, as amended from time to time.

Quote

"As per the provisions in the CERC (Terms and Conditions for the determination of Tariff Regulations) 2009, the capital cost for determination of tariff is subject to deduction on account of the following from the capital expenditure provided in the audited accounts of the Generating Company.

a) The assets forming part of the capital expenditure but not in use as per regulation (7)

b) ....

c) ....

d) ...."

Unquote

The representative of PPCL submitted that these spares were purchased subsequent to COD and hence not a part of original capital cost cleared by CEA in Techno Economic Clearance (TEC).

Replying to the above submissions of the representative of PPCL, the representative of ED- Puducherry submitted that the cost of spares is more than the norms fixed by CERC.

Keeping in view above submissions made by both the sides, the Commission directed PPCL to produce all relevant records of approvals from TEC onwards and documents related to approval & purchase of spares worth Rs. 1.603 Crs. including bills thereof. The Commission further directed the parties to submit a reconciled statement in respect of items under reference on or before 20.02.2013"

Unquote

6. The Commission on 27.02.2013 passed the following order:-

Quote

"The Commission in the previous order dated 23.01.2013 directed PPCL to produce all relevant records of approvals from TEC onwards and documents related to approval and purchase of spares worth Rs. 1.603 Crs. Including bills thereof and also directed the parties to submit reconciled statement in respect of items under reference.

PPCL submitted same details as asked in the order dated 23.01.2013 by the Commission. However, ED- Puducherry filed an affidavit dated 21.02.2013 presenting during hearing submitting their views with a prayer to the Commission to direct the petitioner to furnish all relevant documents/ records and approvals in order to enable the department to furnish the reconciled statement for the items in the order of the Hon'ble Commission dated 23.01.2013.

During the hearing, representative of ED- Puducherry contended that there was no proper approval of competent authority as per Delegation of Powers for investment approval of procurement of initial spares subsequent to COD of the power plant. In reply to the contention of ED- Puducherry the representative of PPCL submitted that the requisite approval was taken from Chief Secretary, Govt. of Puducherry, who was also the Chairman of PPCL, and a competent authority to grant approval in this case.

The Commission observed that the approval of the Chief Secretary in his capacity as Chairman of PPCL is on record but the requisite authorization of the competent authority showing that the Chief Secretary of the UT had granted approval is not on record and therefore, directed PPCL to produce the correct investment authorization/ approval as per the prevailing Delegation of Powers for capital expenditure.

The Commission further directed that the parties should file a joint reconciled statement after meeting of minds on or before 15.04.2013"

Unquote

7. The petitioner in the affidavit dated 15.04.2013 received in the Commission on 16.04.2013 submitted that in view of earlier orders of the Commission dated 23.01.2013 and 27.02.2013 all the observations and directions of the Hon'ble APTEL given in order dated 21.11.2012 passed in appeal no. 41/2012 have been complied and only issue for determination by the Commission is limited to Rs. 1.603 Cr. The petitioner further submitted that the respondent ED-Puducherry wanted to reopen issue of Rs. 137.77 Cr. Therefore, reconciliation is not possible between the parties as the respondent is reopening the original capital cost of Rs. 137.77 Crs.
8. The respondent has not filed any information in compliance of the order dated 27.02.2013.
9. On a query from the Commission, the petitioner informed that it is the normal industrial practice for the equipment manufacturer to suggest a list of mandatory spares to be procured alongwith the supply of the plant/equipment. In the case of supply of the Gas power plant by BHEL to the petitioner, the supplier viz. BHEL suggested the list of spares only after the commissioning and after operation of the plant for some period. As such, the petitioner had to place an order separately, after getting the recommendation of the equipment manufacturer.
10. The Commission has heard representatives of the parties on 17.04.2013 at length and has gone through the petition no. 18/2010 for approval of ARR and determination of tariff, order dated 06.8.2011 of the Commission, review petition no.45/2011, order dated 03.11.2011 of the Commission, appeal no. 41/2012 and order dated 21.11.2012 passed by Hon'ble APTEL carefully and thoroughly.
11. The Commission noted the audited accounts of the petitioner as also mentioned in the order of the Hon'ble Appellate Tribunal that the said spares had been capitalized in the books of accounts of the petitioner. The Commission observed that these mandatory spares are required for use in the preventive maintenance or breakdown maintenance by the petitioner to have a smooth operation of the plant. The Commission also observed that there is a usual "supply lead time" in the procurement of spares and the recommendation of the mandatory/essential spares is to avoid closure of the plant for a long period for want of spares.
12. The Commission while accepting the capitalization of the mandatory spares subsequently due to late recommendation by BHEL, the Commission as part of the prudence check asked the petitioner whether the same item of spares which was ordered by them subsequently also appeared in the original order placed by the petitioner for the supply of

the power plant and equipment. This was necessary to avoid "double counting" of spares cost in the project cost. The petitioner confirmed that there was no double counting of spares.

13. Accordingly, the Commission approves capital cost of Rs. 146.45 Crores as per the orders of the Hon'ble APTEL dated 21.11.2012

14. While issuing the Tariff order for FY 2013-14, the Commission observed as below:-

    Quote:

    "The Commission, therefore, provisionally approves the capital cost at Rs. 137.77 Crores as against Rs. 148.07 Crores claimed by the petitioner for FY 2013-14, which may be subject to revision depending on the outcome of petition no. 18/2010 and petition no. 45/2011"

    Unquote:

    Accordingly the approved capital cost of Rs. 146.45 Crores will be considered along with the audited accounts at the time of approval of True-up for FY 2011-12, Review for both FY 2012-13 and FY 2013-14.

15. As regards the Normative Annual Plant Availability Factor (NAPAF), the Commission had observed in the Tariff order for FY 2013-14 as below:

    Quote:

    "The Commission, therefore, approves the Normative Annual Plant Availability Factor (NAPAF) at 85% for FY 2013-14"

    Unquote:

    Accordingly, NAPAF at 85% will be considered at the time of approval of true-up for FY 2011-12 and review for FY 2012-13.

Sd/-
(S. K. Chaturvedi)
Member

Sd/-
(Dr. V. K. Garg)
Chairperson

Certified Copy
30.04.13
(R.K. Malik)
Secretary

R. K. Malik
Secretary
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