



## ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 342/2010

Petition No.: 04/2010

### ORDER SHEET

01.09.2016

Before the Assam Electricity Regulatory Commission  
ASEB Campus, Dwarandhar,  
G. S. Road, Sixth Mile, Guwahati – 781 022

M/s Eastern India Powertech Limited (EIPL)

----- Petitioner

Assam Power Distribution Company Ltd. (APDCL)

-----Respondent

Counsel for Petitioner:

Mr. R Kumar, CFO, EIPL  
Mr. G. Sivasankaran, VP (Operation), EIPL  
Mr. G N Sahewalla, Sr Advocate  
Mr. D Senapati, Advocate  
Mr. A A Pansari, Advocate

Representative for Respondent:

Mr. K Talukdar, GM (TRC), APDCL  
Mr. H M Sharma, GM, APDCL  
Mr. B M Saikia, DGM, APDCL  
Mr. K Goswami, DGM, APDCL  
Mr. R R Kaushik, Advocate

#### In the matter of

Hearing dated 01.09.2016 on the Petition No. 4 of 2010 filed by M/s Eastern India Powertech Limited in the matter of commercial disputes and Non Payment of contractually due payments by ASEB/APDCL to EIPL

#### **CORAM**

Shri Naba Kr. Das Chairperson  
Shri Dipak Chakravarty, Member  
Shri Subhash Ch. Das, Member

#### **ORDER**

1. A Hearing was held on 01<sup>st</sup> September, 2016, on the Petition No 04 of 2010 filed M/s Eastern India Powertech Limited in the matter of Commercial Disputes and Non Payment of contractually due payments by ASEB/APDCL to EIPL.
2. The Counsel of the Petitioner (EIPL) mentioned that, as per the provisions of the Electricity Act'2003 and various judgments of the Hon'ble Supreme Court & Hon'ble High Courts, the Commission has got the power to decide on the modalities for proceedings in the present case, i.e. either do Adjudication on its own or appoint Arbitrator(s) for adjudication of the case.  
The Commission informed that, clarification regarding Gauhati High Court Order dated 20/07/2016 is required before deciding on the issue of doing Adjudication on its own or appointment of Arbitrator(s). However, to sort out the dispute faster, process may be started for deciding on the basic principles for proceeding in the matter.
3. The Counsel of the Petitioner mentioned that they have filed a Petition on 31/08/2016 to implead the State of Assam represented by the Secretary, Dept of Power, Dispur, Guwahati-6 as Respondent-2 in the present case, because

- the PPA contained an exclusive guarantee given by Govt. of Assam, guaranteeing the payment to the Petitioner in case Respondent fails to make payments.
4. The representative of the Respondent (APDCL) reiterated most of the written submissions made vide Petition dated 17/08/2016, some of the salient submissions made are as follows:
    - a) APDCL referred to directive of Hon'ble APTEL vide Order dated 18/05/2016 and stated that, the Commission is required to compute amount due for the period of commissioning till closure of the plants. APDCL further stated that, Tariff for the period prior to and post FY 2007-08 should be determined first before computation of amount due.
    - b) APDCL referred to Petition 19/2005 filed before the Commission, and stated that in the Petition prayer was made for directing EIPL for submission of Tariff Petitions for the plants of EIPL for FY 2005-06 with regard to change in law clause of PPA, however the matter was disposed of without a conclusive decision.
    - c) The representative of APDCL stated that most of the disputed issues have achieved finality in the APTEL Order dated 12/08/2014 for FY 2008-09.
    - d) In reply to query regarding considering Patherkandi sub-station for Adamtila and Paliapool sub-station for Banskandi as mutually agreed interconnection points, APDCL mentioned that by virtue of taking joint meter readings in those points, the interconnection points are finalized.
  5. The counsel of EIPL highlighted that APDCL has never prayed that Tariff should be determined first in Commercial Dispute case before the Delhi High Court at the time of proceedings prior to issuance of Delhi High Court Order dated 21/05/2008. APDCL replied that as Delhi High Court had not deliberated on the merit of the case, and only applicability of 86 (1)(f) was decided. Therefore, the merit related issues were not raised at that point of time.
  6. In reply to query regarding incorporating the Govt of India notification dated 30/03/1992 that determined the factors in accordance with which the tariff for sale of electricity by Generating Company to Board & other persons in the PPA between Petitioner & Respondent signed on 09/02/1995, both Petitioner & Respondent stated that the clauses of PPA were made in line with the Govt of India notification with some modifications.
  7. In reply to query regarding adoption of principles of Tariff Order of FY 2008-09 dated 20/10/2011 for the period of Commercial dispute i.e. since COD till FY 2007-08, as an option for resolving the dispute faster, the Petitioner & Respondent stated that they will need some time for submission of their views & comments.
  8. The Commission heard both the Petitioner & Respondent and ordered the following:
    - I. At this point of time, the prayer of Petitioner to implead the State of Assam represented by the Secretary, Dept of Power, Dispur, Guwahati-6 as Respondent-2 is under examination and the Commissions reserves its decision on the matter.
    - II. The Petitioner & Respondent is required to submit list of components of PPA which contradict with Gol notification dated 30/03/1992.
    - III. The Petitioner & Respondents is to examine and submit their views & comments regarding adoption of principles of Tariff Order of FY 2008-09 dated 20/10/2011 for the period of Commercial dispute i.e. since COD till FY 2007-08 as an option for resolving the dispute faster.
    - IV. Both the Petitioner and Respondent will make submissions as per the provisions of the Regulations of the Commission and will provide copies of their submissions to the opposite party.

The matter will be posted for further Hearing on 24<sup>th</sup> October, 2016.

Sd/-  
(Subhash Ch.Das)  
Member  
AERC

Sd/-  
(Dipak Chakravarty)  
Member  
AERC

Sd/-  
(Naba Kumar Das)  
Chairperson  
AERC