



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 419/2013/Pt III

Petition No.: 03/2016, 04/2016 & 05/2016

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
Government of Assam represented by Chief Secretary ----Respondent-1
Assam Power Distribution Company Ltd. (APDCL) ----Respondent-2

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-1:

Mr. M. Barua, Jt. Secretary, Dept. of Power

Representative for Respondent-2:

Mr. K Talukdar, GM (TRC), APDCL
Mr. H M Sharma, GM, APDCL
Mr. B Hazarika, AM(TRC), APDCL
Mr. R R Kaushik, Advocate

In the matter of

Hearing dated 01.09.2016 on the Petition
No.03, 04 and 05 of 2016

CORAM

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

ORDER

1. A Hearing was held on 01st September, 2016, on the Petition No 03, 04 and 05 of 2016.
2. Both the Petitioner & Respondents reiterated most of the written submissions made vide Petitions submitted prior to Hearing. Some of the salient submissions made are as follows:
 - 2.1. The Counsel of the Petitioner (EIPL) submitted that they have filed a Petition for withdrawal of Misc Petition dtd 16/07/2016 (Petition No 4/2016), as because the prayer made in Petition No 4/2016 has become infructuous in the aftermath of the APTEL order dated 20/07/2016.
 - 2.2. The Counsel of the Petitioner pleaded for computation of Interim Payment amount for the Period of FY 2009-10 to FY 2014-15 at the Tariff approved vide the AERC Order dated 20/10/2011. The Counsel of the Petitioner reiterated their written submissions and stated that, as per the APTEL Order dated 12/08/2014 & 18/05/2016, the Commission is required to compute amount due to EIPL for the period of FY 2009-10 to FY 2014-15 at the Tariff approved vide AERC Order dated 20/10/2011, till Tariff for the period of FY 2009-10 to FY 2014-15 is determined by the

Commission. The Learned Counsel reiterated that Clause 26 & 102 of the APTEL order dated 12/08/2014 need to be considered while computing the amount due.

- 2.3. The Representative of APDCL mentioned that no Interim Payment need to be considered. The tariff is required to be first determined for the period from COD till closure of the plants and thereafter to compute the amount due to EIPL, after adjusting the payment already made by APDCL.
- 2.4. In reply to query, by the Commission about submission of data by the Petitioner beyond the closure of the plants, the Counsel of the Petitioner mentioned that the data were submitted as per Hon'ble APTEL Order dated 12/08/2014. The Commission stated the complete data as per the Commission's Notice dated 04/06/2016 has not been submitted by the Petitioner and asked the Petitioner to indicate a date by which the remaining data will be submitted. The Counsel of the Petitioner (EIPL) mentioned that the balance required data as per Commission's Notice dated 04/06/2016 will be submitted by 14/09/2016.
- 2.5. The Counsel of the Petitioner (EIPL) further mentioned that adjustment of Rs. 5.36 Cr with APDCL has already been made.
- 2.6. The Commission observed that there is a difference of opinion between the Petitioner and Respondent-2 regarding their understanding of the Order dated 18/05/2016 of the Hon'ble APTEL between the Petitioner and the Respondent-2. Both agreed that the said Order clearly specified the period for which the details of power injected from the date of commissioning to shutting down of the generating units into the grid of Assam Distribution Company need to be submitted, but there is a difference of opinion with regard to period for which actual amount due to EIPL after adjusting the payments made by APDCL need to be computed by the Commission as per the Hon'ble APTEL's direction.

While the Representative of APDCL was confident that the Hon'ble APTEL has directed for computation of amount due since COD till closure of the plants after adjusting payments already made, the Counsel of the Petitioner stated that the amount due is required to be computed only as per the para 26 & 102 of the Hon'ble APTEL Order dated 12/08/2014.
- 2.7. The Commission asked whether APDCL has raised the issue regarding applicable period as submitted at any time of the proceedings before the Hon'ble APTEL.

The Representative of APDCL, mentioned that the issue has been raised before Hon'ble APTEL and considering the issue only, the Hon'ble APTEL has issued the Order dated 18/05/2016 for consideration of due payment to the Petitioner after adjustment of any payment made by APDCL from COD till closure of the plants.
- 2.8. The Representative of APDCL reiterated their plea that first Tariff should be determined as per the Act, Regulations and Govt. Notifications of tariff and then to compute the amount due to the Petitioner, after adjustment of the payments already made by APDCL from COD till closure of the plants.
- 2.9. The Counsel of the Petitioner (EIPL) mentioned that Hon'ble APTEL Order dated 18/05/2016 has not superseded the Hon'ble APTEL Order dated 12/08/2014. The Learned Counsel mentioned that, at the time of the issuance of Order dated 12/08/2014, the Hon'ble APTEL was aware that the plants were closed and the order was issued to ensure that the closed plants become operational again.
- 2.10. The Commission observed that the Review Petition No 11/2016 filed by EIPL for recall of the Hon'ble APTEL Order dated 18/05/2016 has been disposed of vide APTEL order dated 20/07/2016 without any modification to the APTEL Order dated 18/05/2016.
- 2.11. The Counsel of Petitioner prayed that considering the conflicting interpretation of the

Hon'ble APTEL Order dated 18/05/2016, a clarification may perhaps be sought by the Commission from Ho'ble APTEL about the period for calculation of due payment to EIPL after adjustment of payment already made by the Respondent-2.

3. The Commission after hearing both the Petitioner & Respondent(s) ordered the following:
 - 3.1. The Petition No. 4 of 2016 filed by the Petitioner is hereby disposed of on withdrawal by the Petitioner.
 - 3.2. The Petitioner is directed to submit all balance data certified by authorized Chartered Accountant, as asked for vide Commission's notice dated 04/06/2016, on or before 14/09/2016.
 - 3.3. The Plant wise Tariff Petitions filed by EIPL for the period FY 2009-10 to FY 2014-15 is being dealt through separate proceedings.
 - 3.4. The Petitioner will make submissions as per the provisions of the Regulations of the Commission and will provide copies of their submissions to the Respondents.

The next date of Hearing will be notified separately.

Sd/-
(Subhash Ch.Das)
Member
AERC

Sd/-
(Dipak Chakravarty)
Member
AERC

Sd/-
(Naba Kumar Das)
Chairperson
AERC