



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 316/2008/B

PETITION NO. 06/2012

ORDER SHEET

12.02.2013

Before the Assam Electricity Regulatory Commission

ASEB Campus, Dwarandhar,
G. S. Road, Sixth Mile, Guwahati – 781 022

Petition No. 6 /2012

Assam Power Distribution Co. Ltd. (APDCL)

—— Petitioner

Eastern India Powertech Limited (EIPL)
(Formerly DLF Power Limited)

—— Respondent

In the matter of

Review Petition filed by the petitioner against Final Tariff Order dated 20.10.2011 for the year 2008-09 against petition No. 14 of 2008 for Adamtilla and Banskandi power plants of EIPL.

ORDER

1. **BACKGROUND**

A review petition dated 16.12.2011 was filed by Assam Power Distribution Company Limited (hereinafter referred to as the “petitioner”) under section 94(1)(f) of Electricity Act, 2003 read with the Regulation 34 of AERC (Conduct of Business) Regulations, 2004 against the final tariff order dated 20.10.2011 for FY 2008-09 in respect of the power plants owned by EIPL at Adamtilla and Banskandi.

A copy of the petition was forwarded to EIPL for their comments on the same on 29.12.2011. EIPL (hereinafter referred to as the “respondent”) submitted their detailed comments vide petition dated 30.01.2012 wherein it was stated that all the averments and submissions made by the petitioner were without merits and hence requested that the review petition may be rejected. They also requested the Commission for issuing necessary amendments and directions as prayed for in their submissions.

The comments on the review petition as filed by the respondent were forwarded to the petitioner on 10.02.2012 for their further comments, if any, on the same.

The Petitioner vide their letter dated 22.03.2012 submitted a rejoinder to the EIPL's reply dated 30.01.2012 to the Commission and prayed for rejection of the submissions of the respondent on the ground that there is no merit in their submissions as the response filed by them are irrelevant and amounts to misinterpretation of the final Tariff Order dated 20.10.2011. The rejoinder from APDCL was forwarded to EIPL on 30.03.2012 for their comments on the same followed by another reminder on 07.06.2012. But no reply was received from EIPL till the date of hearing.

In the intervening period, there were some correspondences made by the respondent with the Commission regarding gas supply to their Banskandi power plant of EIPL.

The review petition was admitted by the Commission and registered as Petition No. 6 on 07.06.2012.

The hearing date, although fixed on 14.06.2012, was eventually deferred in view of APDCL's request on 12.06.2012 expressing their inability to attend the hearing due to unavoidable circumstances.

The Commission subsequently fixed the hearing on the above petition on 03.09.2012 and issued notices to the parties accordingly.

2. Hearing on the Petition:

The Commission took a hearing on the fixed date at the conference hall of the Commission's premises in Guwahati.

Shri A. Anand, Director EIPL and Shri G Sivasankar, GM (Operations), EIPL attended as respondents before the Commission.

Shri S. Baruah, GM (Com-T), APDCL, Shri J. P. Choudhury, AGM (Com), APDCL and Ms. Swapna Seshadri, Advocate appeared on behalf of the petitioner.

The Chairperson initiated the hearing with a brief background of the case and further asked the petitioner to make additional submissions, if any.

Ms. Seshadri stated that the review was sought for on all valid and legal grounds. She requested for a clarification from the Commission whether the depreciation rate of 6% allowed by the Commission was applicable only on the additional capitalization or on the total capital cost as claimed by the respondent. The learned Counsel contended that the claim of respondent regarding full cost recovery due to non-availability of gas is grossly incorrect and unjustified. Besides, it was also argued by the Counsel that the respondent had not confined their submissions to the points raised by the petitioner in their review petition dated 16.12.2011, but, were making additional submissions which were misleading and irrelevant to the review petition filed by APDCL.

The Counsel stated that all contentions made by the respondent against their review petition had no merit and appealed to the

Commission that the relevant AERC Regulations and norms may be applied while deciding the case.

The Commission heard the arguments of the petitioner and then called upon the respondent to put forward their additional submissions, if any.

Shri G Sivasankar, GM (Operations) denied the arguments made by Ms. Seshadri, learned Advocate that EIPL was not confining its response to the points raised in the review petition. He stated that the respondent stands by the submissions made to the Commission and all points raised by the respondent are relevant for effective disposal of the case. He stated that the petitioner failed to abide by the tariff order of the Commission dated 20.10.2011 and appealed to the Commission that the petitioner may be directed to make all outstanding payments for the FY 2008-09 claimed by the respondent in terms of the above tariff order.

The Commission heard both the parties at length and stated that it would examine the submissions made by both the petitioner and respondent before taking a final decision on the matter.

The operational and financial norms with their relevant parameters against which comments were received from the parties have briefly been dealt with in the following paragraphs along with the observations of the Commission:

3. Operational and financial norms and parameters:

3.1 PLANT LOAD FACTOR (PLF):

(a) Submissions of APDCL:

(i) The petitioner prayed for review of PLF for fixing it at 80% for both Adamtila and Banskandi plants on the following reasonings:

(ii) As per regulation 39.2 of AERC Tariff Regulations, 2006, the target PLF for incentive is 80% for stations commissioned on or after the Regulations come into force.

(iii) The Adamtila & Banskandi plants have only completed 15 years of life against the norms of 25 years under the provision of Regulation 2 (42) of CERC Tariff Regulations, 2009. The petitioner stated that the Commission granted relaxation to the Respondent in terms of PLF in comparison with the norms of PLF of NTPS and LTPS which is 50% without considering the age of EIPL plants which are not very old.

(iv) The respondent had itself claimed 80% for both the plants.

(b) Submissions of EIPL:

(i) The respondent stated that the Regulation 39.2 of AERC(Tariff) Regulations does not apply for their EIPL plants, as such regulation is applicable only for plants commissioned after notification of AERC (Tariff) Regulations, 2006 on 24.05.2006 in the Assam Gazette.

(ii) They stated that the Commission has applied its Regulations along with guidelines of the PPA wherein normative PLF of EIPL plants specified as 66.46% and 68.49% for Adamtila and Banskandi plant respectively.

(iii) EIPL further submitted that they claimed PLF of 80% (actual and deemed) for both of their plants on the argument that the capacity of the plants to achieve such PLF has been demonstrated during the capacity availability test. However, the respondent could not achieve 80% PLF only for the reasons such as inadequate supply of gas and other deemed generation situations, which were not attributable to them.

They stated that as these reasons were beyond the control of the respondent, therefore, incentive may be considered for the PLF (actual and deemed) achieved beyond normative PLF approved by the Commission as per the provisions of the PPA.

(c) **Observations of the Commission:** The Commission in its Tariff Order dated 20.10.2011 dealt with in details about considering normative PLF as per the PPA. However, the following points in this regard are also supplemented:

(i) Since, no operating norms has been fixed in the AERC (Tariff) Regulations, 2006 for EIPL plants, normative PLF (66.46% = Adamtila, 68.49% = Banskandi) as stipulated in the PPA were considered by the Commission for determination of tariff. The actual PLF achieved by EIPL was Adamtila : 36.92% and Banskandi: 55.19%.

(ii) In the section 5.2.9 of the tariff Order dated 20.10.2011, it was mentioned that the PLF incentive is payable only on actual generation exceeding targeted PLF as per Regulation 47 of AERC (Tariff) Regulations, 2006. Although there is a provision in the PPA for determination of Fixed part of the tariff considering both Actual and Deemed generation of the plant, the entitlement criteria enumerated thereon under clause no. 3.9.3 of the PPA were not followed by the parties thereby making it difficult on the part of the Commission to take a decision on the matter of Deemed generation of the plants.

(iii) Even though EIPL claimed a committed PLF of 80%, the Commission deemed it appropriate to accept the normative PLF for the FY 2008-09 as per the PPA considering the totality of the circumstances.

3.2 GROSS STATION HEAT RATE (SHR):

(a) Submissions of APDCL:

(i) APDCL stated that the approved SHR for EIPL plants (Adamtila: 2500; Banskandi: 2110) are required to be reviewed on the following grounds:

A. The Detailed project Report dated 30.10.1996 of the respondent itself guaranteed the Station Heat Rate achieved by the plants as 2000 Kcal/kwh.

B. The Tariff Regulations, 2006 of the AERC provide for SHR of Combined Cycle Gas Station as 1950 kcal/kwh.

C. CERC (Tariff) Regulations, 2009 provide for SHR of CCGT within the range from 2040 kcal/kwh to 2100 kcal/kwh.

(ii) APDCL tried to justify their claim by citing specific provisions of National Tariff Policy, APTEL judgment in appeal no. 42 & 43 of 2008, Haryana Power Generation Company Ltd. vs. HERC and in appeal no. 94 & 96 of 2006 NTPC vs. CERC.

(b) Submissions of EIPL:

(i) EIPL contested most of the submissions made by APDCL. They submitted that the Commission has adopted the heat rates specified in the PPA which is the design SHR of the plants after scrutiny of relevant documents like SHR curves supplied by the manufacture Allisen Engine Co., USA and the DPR submitted by EIPL,

(ii) They further submitted that APDCL itself had approved SHR of 2240 Kcal/kwh and 2110 Kcal/kwh for Adamtila & Banskandi respectively considering obviously the design operating condition against the earlier approved SHR of 2000 Kcal/kwh for both of the plants as per DPR based on GOI guidelines. They also contended that reference of National Tariff Policy and other APTEL Judgements by APDCL in this regard are out of context.

(c) Observations of the Commission: After detailed scrutiny of the relevant documents like SHR curves etc. furnished by the manufacturer Allison Engine Co. USA and as per revised DPR submitted by EIPL, the Commission noted that the design SHR of the EIPL plants are as under:

Adamtila	=	2500 Kcal/kwh
Banskandi	=	2110 Kcal/kwh

As CEA norms for Station Heat Rate is based on the Design Heat Rate, after careful consideration of relevant aspects in totality, the Commission has approved the above Design Heat Rates as SHR norms for computation of Variable charge component of the Tariff.

3.3 ADDITIONAL CAPITAL SPARES:

(a) Submissions of APDCL: The Commission has allowed the total initial spares of Rs. 12.825 Cr. (including Rs. 3.0043 Cr. already capitalized by APDCL) which works out to be 11.37% that is more than 4% approved rate as per Regulation 35.3(b) of AERC (Tariff) Regulations, 2006 for gas plants.

They further submitted that the Tariff Regulations, 2006 are statutory in nature and hence the Hon'ble Commission ought to follow the provisions of the Tariff Regulations, 2006 and restrict the initial capital spares to 4% of the original project cost. They also quoted the recent APTEL Judgment dated 11.11.2011 in this regard.

(b) Submissions of EIPL: It is submitted that the Respondent had incurred additional capital cost of Rs. 10.59 Cr. strictly in line with the PPA clause 1.7. They also mentioned that APDCL in the course of the hearing conducted by the Commission stated that the matter of additional capital cost may be decided by the Commission in proper perspective. EIPL further stated that the Hon'ble Commission has done prudent check on the capital cost and the same has been well reasoned out under section 5.2.1 of the order. In view of the above, no review of additional cost is required to be carried out.

They further stated that the reference of APTEL Judgement OP No. 1 of 2011 dated 11.11.2011 is misleading and hence denied.

(c) Observations of the Commission: The admissibility of Additional capital spares of Rs. 9.821 Cr. was clearly dealt with in section 5.2.1 of the order. As mentioned therein, the relevant provision of AERC Tariff Regulations, 2006 could not be applied in case of EIPL plants as they were commissioned in 1997-98, much before notification of AERC Regulations, 2006. Therefore, the Commission was guided by the CERC (Tariff) Regulations, 2001 which stipulates that the project cost shall involve reasonable amount of capitalized initial spares. Apart from the above, the PPA sub-clause 1.7.7 also specifies that the total project cost will cover all expenditure till the C.O.D. plus additional cost which, inter-alia, includes cost of initial spares for five years of operation, metering equipment, communication equipment etc.

The Commission thoroughly examined item wise details of statement of spares indicating part no. and details of expenditure amounting to Rs. 10.59 Cr. submitted by EIPL including physical utilization certificate certified by their Chartered Accountant based on which, the Commission noted that almost 93% of the additional capital spares were utilized by 2002-03 i.e. five years from C.O.D. Accordingly, the Commission approved Rs. 9.821 Cr. against Rs. 10.59 Cr. claimed by EIPL.

The Commission observed that Rs. 125.637 Cr. was approved as total capital cost for both EIPL plants which includes Rs. 1.0043 Cr. as cost of initial spares purchased after C.O.D. Accordingly, the total additional capital cost works out to be Rs. 10.825 Cr. which is 8.6% of the approved capital cost.

While allowing additional cost, the Commission has followed the principles of CERC Tariff order dated September, 2005 and February, 2008 for similar plant i.e. Agartala CCGT of NEEPCO commissioned in 1998-99 wherein additional capital cost allowed was 12.31% upto 2005-06.

3.4 DEBT EQUITY RATIO:

(a) Submissions of APDCL

(i) The petitioner contended that the debt equity norms should have been fixed at 70:30 as per provisions of AERC (Tariff) Regulations, 2006 instead of actual Debt:Equity ratio allowed by the Commission i.e. 65:35 for Adamtilla and 61:39 Banskandi plants.

(ii) The Petitioner reiterates that in the light of the submissions in para 18 and 19 of their petition of 16.12.2011, the Commission may follow the provisions of Tariff Regulations, 2006 which is statutory in nature while deciding the issues. They also quoted a reference to the recent APTEL judgement dated 11.11.2011 in this regard.

(b) Submissions of EIPL: EIPL has denied the contention of para 20 & 21 of the review petition in the light of their comments in para 13 of their submission of 30.01.2012 wherein they stated that the APTEL Judgement dated 14.11.2006 relates to normative debt-equity ratio of 50:50 and hence, it is distinguished from the instant case where the actual debt equity ratio is slightly higher than the stated norms of 70:30 as allowed by the Commission in the Regulations, 2006.

(c) Observations of the Commission: As the provisions of the PPA are silent on the financial closure of the Project indicating debt:equity ratio and as no debt equity ratio was notified for the EIPL plants in the AERC Tariff Regulations, 2006, the Commission, therefore, approved the actual debt:equity ratio after considering the additional capital cost as equity. While allowing the actual debt:equity ratio, the Commission took note of the CERC tariff order September, 2005 for Agartala Combined Cycled gas based power plant wherein debt:equity ratio of 50:50 was considered based on CERC Regulations, 2001 which stipulates that debt:equity ratio be computed as per financial package approved by CEA or appropriate independent agency as the case may be. As per CERC Tariff Regulations, 2004, the debt:equity ratio 70:30 is applicable from FY 2004-05 for central sector generating station, whereas for state sector generating station as per AERC (Tariff) Regulations, 2006, it is applicable from FY 2006-07.

In view of the above, the debt:equity ratios has been approved as under considering the additional capital cost as have been allowed by the Commission.

Adamtilla	=	65 : 35
Banskandi	=	61 : 39

3.5 DEEMED GENERATION:

(a) Submissions of APDCL: The review Petitioner's submission is that the Hon'ble Commission has allowed full fixed charge recovery at a normative PLF even though the actual PLF was not achieved as per the target. This has resulted an additional burden on the APDCL

which needs to be passed through in the distribution tariff. The petitioner further submitted that the full fixed charge recovery on the approved PLF shall make the respondent eligible for claiming incentive for PLF which will effect additional burden to the consumer.

(b) Submissions of EIPL: The respondent submitted that the Commission aptly allowed the full fixed charges at normative PLF because as per PPA, the normative PLF is to be computed considering actual and deemed generation. The respondent stated that the actual generation as per target could not be achieved due to non-availability of gas and other deemed generation situations caused by reasons not attributable to the EIPL. It is argued that such recovery of full fixed charges be allowed in future years in line with the same principle as mentioned.

(c) Observations of the Commission: Under clause 6 of the tariff order, the Commission clearly explained as to why full fixed charges recovery was allowed for 2008-09 as a onetime measure. The Commission could not evaluate the quantum of deemed generation due to inadequate, infirm data and information which were not jointly certified by APDCL and EIPL. Therefore, the Commission in its directives, ordered that the plant generation scheduling be linked with SLDC through robust real time communication link for integrated operation of the EIPL plants with the grid.

However, the Commission has observed that the deemed generation mechanism has not been put in place till date despite the above directives.

It is also noted that the mechanism set out under clause 3.9.3 for ascertaining the deemed generation aspect was not followed by the signatories of the PPA, thus precluding the Commission from taking any prudent decision on the matter.

Under clause 5.2.9 of the tariff order dated 20.10.2011, it is clearly mentioned that incentive in terms of PLF is payable only on actual generation exceeding targeted PLF as per AERC tariff Regulations, 2006. Therefore, no incentive on PLF is payable in the instant case.

3.6 DEPRECIATION:

(a) Submissions of APDCL: The review petition is only seeking clarification that the depreciation rate of 6% allowed by the Commission should be applicable only for additional capitalization allowed as the depreciation on the original capital cost of Rs. 125.63 Cr. already stands paid in earlier years.

(b) Submissions of EIPL: They stated that the Commission has rightly stated that the remaining depreciation including the additional cost approved should be charged @ 6% till the allowed depreciation on the total capital cost is over as approved by the Commission.

(c) Observations of the Commission: As per guidelines of Govt. of India notification dated 30.03.1992 and as per clause 3.3(d) of the

PPA, the depreciation rate is pursuant to GOI guidelines as notified from time to time. With the notification of AERC (Tariff) Regulations, 2006 w.e.f. 24.05.2006, the depreciation rate for gas plant shall be 6% as per depreciation schedule (Annexure-I) annexed with the said Regulations.

Under clause 5.2.4 of the tariff order dated 20.10.2011, the Commission clearly stated that depreciation charges were paid @ 8.05% to EIPL prior to 2008-09 and accordingly, the remaining depreciation charges, if any, shall be allowed on the total approved capital cost including additional capital cost allowed by the commission in the remaining period which shall not however exceed 90% of the total approved project cost including the approved additional capital cost. Therefore, the depreciation allowed in the order of 20.10.2011 does not warrant any review.

4. **Curtailment of Gas Supply to Banskandi Plant of EIPL by AGCL and ONGCL due to non-payment of gas bills w.e.f. November, 2010:**

This issue is not directly related to the subject matter of the review petition filed by APDCL. However, the Commission has noted the urgency of the matter in view of the running of the plant in the power starved Cachar district for benefit of the consumers and hence, calls for early solution of the matter. The Commission, therefore, deemed it appropriate to take up the matter for deliberations in the Hearing to resolve the issue. Details on the issue are stated as under:

EIPL informed under their letter No. EIPL-ASEB-C-2011-911 dated 19.12.2011 that it had raised a supplementary invoice of Rs. 10.64 Cr for the FY 2008-09 for sale of power to APDCL as per AERC final tariff order dated 20.10.2011. However, the petitioner stated that till date ASEB had not made any payment to EIPL as per the said tariff order. EIPL, therefore, requested the Commission to issue necessary directions to APDCL for releasing their energy supply bills as claimed by them. EIPL also informed the Commission under their letter No. EIPL-ASEB-C-2011-835 of 19.12.2011 that the petitioner rejected the EIPL invoice of November, 2011 on the ground that MYT AERC order for FY 2010-13 was followed.

On the other hand, the Assam Gas Company Limited (AGCL) under their letter no. Accounts/TC/D-070/P.07/278 dated 31.12.2011 issued final notice to EIPL for disconnection of gas supply to their Banskandi plant for non-payment of gas bills of Rs. 10.82 Cr as on 13.12.2011 pending from November, 2010. A copy of this letter was also forwarded to the Commission for information.

Further, AGCL under their letter no. GS/DLF(PP)/GM/4/95/VI/109 dated 07.04.2012 informed the GM, Head, Forward Base, ONGCL, Silchar that gas supply to the Banskandi plant would be disconnected from 11.04.2012 for non-payment of Rs. 14.52 Cr outstanding dues as on 31st March, 2012 by EIPL.

Considering the circumstances of the case in totality, the Commission directed APDCL vide letter No. AERC.316/2008/Pt-III/23 dated 16.04.2012 to comply with the final Tariff Order of 20.10.2011 for FY 2008-09 and MYT order 2010-13 and release any outstanding payment to EIPL with immediate effect. APDCL was also directed to submit the detailed status of payment on monthly basis to EIPL from FY 2008-09 to FY 2011-12.

APDCL submitted the payment details vide their letter No. GM(COM-T)/AERC/EIPL_Matters/Part III/2011/24 dated 27.07.2012 as directed by the Commission. From these statements, it appears that APDCL made payments in respect of fixed and variable charges for the FY 2008-09 and FY 2009-10 as per the provisional Tariff Order of 12.05.2009 of the AERC. For the FY 2010-11 and FY 2011-12, APDCL made payments in respect of fixed charges as per Tariff Order 2008-09 and 2009-10 dated 24.07.2009 as per the power purchase cost approved for the FY 2009-10 as mentioned at page no. 191 of section 6.10. However, the variable charges paid for the FY 2010-11 and FY 2011-12 are different than what were approved by the Commission in its Tariff Order of 24.07.2009. APDCL declined to release payment of bills to EIPL as per final tariff order dated 20.10.2011 on the ground that they had filed a review petition before the Commission and the matter is now sub-judice. Petitioner stated that APDCL made regular payments to EIPL against fuel bill amounting to Rs 10.66 Cr from November 2010 upto March, 2012. However, EIPL had not made any payment till date against gas bills to AGCL which resulted an outstanding dues of Rs. 14.52 Cr for the same period.

Further, it was brought to the notice of the Commission by EIPL vide letter No. EIPL-AERC-L-2012-1028 dated 28.08.2012 that ONGCL was contemplating to reduce 25% of gas supply to Banskandi power plant w.e.f.31.08.2012 due to non-payment of their gas charges bills by AGCL. The respondent also informed that this cut would severely hamper the operation of the power plant leading to power supply shortage situation in the Barak Valley. Meanwhile, as already notified, ONGCL had resorted to 25% reduction in gas supply to the Banskandi power plant of EIPL.

During hearing on 03.09.2012, the petitioner stated that they had already submitted under their letter of 27.07.2012 the payment details of Rs 10.66 Cr in respect of fuel bills from November, 2010 to March, 2012 to EIPL, which they understood were not paid to AGCL.

The Commission asked the respondent to clarify the matter regarding payment of gas bills and status of signing of Gas Supply Agreement with AGCL.

The respondent stated that EIPL had not received any copy of the above letter dated 27.07.2012 and therefore, refrained from making any comments on the matter. Regarding Gas Supply Agreement (GSA) with AGCL, a time bound schedule could not be submitted to the Commission. However, it was stated by both representatives from

EIPL that the matter was relentlessly being pursued with AGCL and they assured that EIPL would clear the gas supply bills on priority once the payment of the outstanding dues are released by APDCL followed by signing of the GSA.

After hearing both the petitioner and respondent on the matter, the commission suggested that both APDCL and EIPL should sit together and reconcile the payments made against fixed and variable charges so far made by the petitioner. The Commission further stated that this exercise of reconciliation should be carried out routinely every month. The Commission directed EIPL that a substantial portion about minimum 60% of the payments received from APDCL should be released to AGCL for their gas supply bills.

After deliberating on the above, the Commission makes further observations and issues orders as under:

- i) The Commission reiterates that full fixed charges recovery was allowed in Tariff Order dated 20.10.2011 for 2008-09 as a onetime measure only for reasons already explained. Similarly, Incentive in terms of PLF is payable w.e.f. 24.05.2006 only on actual generation exceeding targeted PLF as per AERC Tariff Regulations, 2006. Hence, no incentive on PLF is payable in the instant case.
- ii) Regarding depreciation, PLF, GSHR, deemed generation, additional capital spares, Debt : Equity ratio etc, the Commission has already dealt with these items at length in its Order dated 20.10.2011 and observations of the Commission are also briefly stated in relevant paragraphs above.
- iii) **The Commission would like to state that the position taken by the APDCL in their letters dated 05.12.2011 and 27.07.2012 that payment of bills on the basis of the final Tariff Order dated 20.10.2011 is not admissible on the ground that a review petition was filed against the AERC Tariff Order of 20.10.2011 and hence the matter is subjudice, is not maintainable. The Commission would like to reiterate that the Commission's final tariff order dated 20.10.2011 is still in force. There is no doubt that APDCL filed a review petition before the Commission against the said order, but the Commission had not passed any interim stay of its order while admitting the review petition. The petitioner had also not prayed for any stay of the tariff order till disposal of the review petition. The earlier provisional order passed by the Commission had already been merged with the final order.**

The Commission also notes with concern that the petitioner should avoid dichotomy while procuring power from generating sources. While the petitioner has honoured the Tariff Order for 2010-13 passed by AERC on 16.05.2011 in respect of fixed and variable charges for state owned power stations (NTPS and LTPS), the tariff order for EIPL owned plants at Adamtilla and

Banskandi passed by the Commission on 20.10.2011 has not been followed.

In view of the above, the Commission orders that the final tariff order dated 20.10.2011 for FY 2008-09 read in conjunction with this amendment order be followed by APDCL with immediate effect while calculating fixed and variable charges for the power plants of EIPL.

- iv) **The Commission orders that both APDCL and EIPL should sit together and reconcile the current as well as outstanding payments made against fixed and variable charges till date within 15 days from the date of this order. The Commission further orders that this exercise of reconciliation should be continued and carried out routinely on monthly basis with intimation to the Commission at regular interval.**
- v) **It was noted by the Commission that that EIPL has not made any payment till date against fuel bill to AGCL from November 2010 which resulted in an outstanding payment of Rs. 14.52 Cr upto March, 2012 even though APDCL released fuel bills of Rs. 10.66 Cr to EIPL for the same period. The Commission, therefore, directs EIPL that at least 60% of each payments received from APDCL from now should be paid to AGCL. The Commission further directs that EIPL should make payments to the gas supplier regularly to avoid gas supply disconnection / curtailment by the supplier.**
- vi) **In the interest of continuation of generation of the EIPL plants, the Commission directed in its order dated 20.10.2011 that Renewal of Gas Supply Agreement (GSA) be made positively by 31st December, 2011. However, EIPL failed to comply with this directive of the Commission even after lapse of one year period. The Commission once again orders EIPL that the GSA with AGCL be renewed within 31.03.2013 and also efforts be made by EIPL that the gas commitment to the plants be enhanced for full capacity generation of the plant. APDCL is also directed to provide necessary assistance by taking up these long pending issues with the Government of Assam for immediate enhancement of natural gas to the committed quantity by the gas suppliers.**
- vii) **The Commission once again directs EIPL and APDCL that the plant generation scheduling be linked with SLDC through robust real time communication link for integrated operation of the EIPL plants with the grid.**

Review of the final tariff order (FY 2008-09) dated 20.10.2011:

It is recorded here that AERC from time to time issued following Tariff Orders in respect of EIPL beyond FY 2008-09 for making payments by APDCL to the generator:

1. Provisional tariff issued on 24.07.2009 approving station wise Power Purchase Cost in respect of EIPL plants as detailed under section 6.10

at page 191 in a tabular form for the FY 2009-10.

2. As per table 5.21 (at page 88 of MYT Order 2010-13) approving power purchase cost for Adamtilla @ Rs. 2.28/KWh and Banskandi @ Rs. 2.37/KWh. AERC issued the MYT Order 2010-13 on 16.05.2011 making it effective from 24.05.2011.
3. The final Tariff Order dated 20.10.2011 for the FY 2008-09 to be read with conjunction with this amendment order against the review petition of APDCL.

The Commission has directed both the petitioner and respondent to resolve the issue of outstanding payment for these periods through monthly reconciliation meeting between them.

While taking up the matter for review, the Commission has kept in mind carefully the Hon'ble APTEL's order dated 20.01.011 for final determination of tariff of EIPL plants for FY 2008-09 by the Commission.

The provision 3.11.2 of the PPA stipulates that "the recovery of full fixed charges for any year is guaranteed as long as PLF is not less than normative PLF (actual and deemed) as under:

Adamtilla	=	66.46%
Banskandi	=	68.49%

However, the payment of fixed charges below the level stipulated above shall be on pro-rata basis."

Although the criteria of determination of deemed generation has been mentioned in the PPA, the same was not followed by the parties thereby making the issue more inconclusive now.

Therefore, to regulate any payment of deemed generation benefit an established scheduling mechanism with properly certified document (jointly certified by both EIPL and APDCL) by the State Load Despatched Centre (SLDC) is necessary. The Commission noted that various charges and countercharges being levelled against each other till date by EIPL and APDCL relating to documentation of the deemed generation quantity has made the issue more compounded and inconclusive.

Under the circumstances, the Commission has deemed it appropriate to deal with the issue of Deemed Generation as under:

Review of normative PLF: The Commission deems it appropriate to review the normative PLF as mentioned in the PPA on the basis of past performance data and other operating conditions affected by the gas supply position. The actual PLF figures in percentage available with the Commission for both the EIPL plants for the period are as under:

	<u>2008-09</u>	<u>2009-10</u>	<u>2010-11</u>	<u>2011-12</u>
Banskandi	52	46	44	44
Adamtila	33	24	4	

After detailed analysis of the facts, the Commission is convinced that the EIPL plants were available with adequate capacity to generate at normative PLF as mentioned above for the said period. But due to various reasons like short/non

supply of gas, backing down due to evacuation problems, lack of real time scheduling mechanism with SLDC etc., which may be attributable to both of the parties, the actual generation is much lower than the normative PLF, approved by the Commission.

In view of above, after detailed analysis, the Commission has taken a comprehensive view of the matter and decided to review and approve the normative PLF for both the EIPL plants from FY 2009-10 onwards as under till the improvement of gas supply position and other related conditions is achieved to run the plants at normal PLF.

Adamtilla	61.46%
Banskandi	63.49%

Amendment of Final Tariff Order of dated 20.10.2011:

The Commission has, accordingly, amended the final tariff order dated 20.10.2011 for FY2008-09 to the extent as under:

Clause – 6 - the following lines to be added as third para:

“However, the recovery of fixed charges for both Banskandi and Adamtilla plants from FY 2009-10 onwards shall be on pro-rata basis based on reviewed normative PLF as under:

Adamtilla	61.46%
Banskandi	63.49%

Clause – 7 – The following lines shall be added after the para

The final tariff per unit sent out for Adamtilla and Banskandi plants are as under:

	Adamtilla	Banskandi
1. Fixed cost (Rs./unit)	1.47	1.57
2. Variable cost (fuel) (Rs./unit)	0.82	0.69
3. Tariff per unit sent out (Rs./unit)	2.29	2.26

“The above tariff (both fixed and variable) in respect of Adamtilla and Banskandi shall also be applicable from FY 2009-10 onwards, thereby superseding the existing other tariff orders issued by the Commission for EIPL plants for the said period.”

“The petitioner is already billing the respondent on provisional basis in accordance with the order dated 12.05.2009 of the Commission. The provisional billing of tariff shall be adjusted in the light of the reviewed tariff now approved as above.”

This amendment being integral part be read with in conjunction with the final tariff order dated 20.10.2011 shall continue to be applicable until it is replaced by another order passed by the Commission.”

Latest status of the EIPL plants:

The Commission has noted with concern that while Banskandi plant had been running at a very low PLF of average 26% (around 4 MW load) for some time,

the Adamtila plant has since been under suspended operation from September, 2010 due to shortage of gas and other reasons.

Now, during pendency of the instant petition, the Commission meanwhile received a communication from APDCL vide letter No. GM(Com-T) /AERC/EIPL-Matters/Part-III/2011/40 dated 10.01.2013 whereby it was informed that the power generation from Banskandi Combined Cycle Power plant of Eastern India Powertech Limited had stopped at 17:22 hours of 08.01.2013 following closure of gas supply to the plant by AGCL.

The Commission desires that efforts be initiated by all concerned to run the plant in the greater interest of the public at large.

With the above discussion, analysis and decision, the Petition No. 6/2012 stands disposed of.

Inform all concerned accordingly.

Sd/-
(T. Chatterjee)
Member,
AERC

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

Sd/-
(J. Barkakati)
Chairperson,
AERC