Chhattisgarh State Electricity Regulatory Commission
Civil Lines, G.E. Road, Raipur – 492001
Tel: 0771-4048788, Fax-4073553
Website: www.cserc.gov.in, E-mail:cserc.sec.cg@nic.in

Petition No.41 of 2009 (D)

In the matter of correct calculation of load factor as provided in PPA and settlement of energy bills.

M/s Sarda Energy and Minerals Ltd.
Industrial Growth Centre, Siltara, Raipur …. Petitioner

V/s

Chhattisgarh State Power Distribution Company Ltd.
(Successor company of Chhattisgarh State Electricity Board), Raipur …. Respondent

Present: Manoj Dey, Chairman
B.K. Sharma, Member

ORDER
(Passed on 21.01.10)

M/s Sarda Energy and Minerals Ltd. (SEML, for short), Industrial Growth Centre, Siltara, Raipur filed a petition under section 86(1)(f) of the Electricity Act, 2003 (the Act, for short) against the Chhattisgarh State Power Distribution Company Ltd. (CSPDCL, for short), Raipur on the ground that, the respondent is unilaterally deducting the amount from the payment of the energy bills for the power being supplied by the petitioner to the respondent. The history of the case is that M/s SEML entered into a power purchase agreement (PPA, for short) with the respondent for 5 MW round-the-clock (RTC, for short) power supply for one year i.e. from 01.04.08 to 31.03.09 on firm-basis as anticipated surplus availability. Subsequently, the petitioner obtained an inter-State short-term open access (STOA, for short) from the State Load Despatch Centre (SLDC, for short) for sale of 30 MW power during off-peak period for the period from 05.12.08 to 31.03.09. The petitioner though having PPA only for 5 MW RTC power but continue to inject much more than agreemented power into the grid. The petitioner has been found injected as much as 27.1 MW maximum power during peak hours between the period 05.12.08 to 15.12.08 and 35.1 MW maximum power during peak hours between the period 15.06.09 to 15.07.09 as per the meter reading instrument (MRI, for short) out put data. The Chief Engineer (Commercial) of the respondent company persuaded the petitioner for execution of PPA for excess power being injected into the grid of the respondent during peak hours, but the petitioner did not execute PPA for excess power being injected into the grid during peak hours over and above the agreemented 5 MW RTC power. The petitioner continued to submit the bills to the respondent by calculating the load factor (LF, for short) on the basis of 5 MW RTC contracted power, and the respondent released the payment of the bills calculating

the LF based on 35 MW of the power (5 MW RTC + 30 MW additional) for peak power, though there was no PPA for 30 MW peak power. The deduction of the payment by the respondent from the bills submitted by the petitioner resulted this petition.

2. The petitioner in its petition pleaded that they have been submitting the bills based on the terms and conditions of the PPA for 5 MW of the power. The SLDC while conveying the approval for STOA has quoted in the letter "you will continue to give 5 MW power (RTC) to CSEB as per existing PPA", and hence they were supplying the power accordingly and they are liable to get payment as per modalities related in sub-clause 2 (b) of the PPA which read as "the company shall be permitted to inject more than the contracted quantum of power without 110% restriction during the evening peak hours i.e. 18:00 hours to 23:00 hours subject to the technical limitation of equipment/line rating at sending and receiving ends and shall be paid @ Rs. 2.80 per unit for this power provided they maintain LF of 85% and above (even more than 100%) during the peak hour." The petitioner also quoted clause 2(e) of the PPA which read "notwithstanding to the above in case the CSERC issues any other guidelines, the same shall be acceptable and binding on both the parties. Whereas Board and company agree that contracted capacity can be increased or decreased on availability and requirement basis by mutual agreement between Board and company subject to technical feasibility and conditions prescribed by the Board during the period of agreement." Further the clause 2(f) quoted by petitioner read "the rates and modalities as approved by the CSERC for purchase of power beyond 31.03.08, if any, shall be acceptable and binding on both the parties."

The petitioner has pleaded that in the present case there has neither been any direction from the CSERC nor has there been any mutual agreement between CSPDCL and SEML to change the 'contracted quantum of power' from 5 MW as agreed upon in the PPA. It is further stated by the petitioner that the deduction from payment was done by the respondent company without giving any detail/reason and even the LF on the basis of which the payment has been released till the filing of the petition. The respondent has unauthorizdly deducted Rs. 1,91,22,709/- from their energy bills. The petitioner has therefore prayed to instruct the CSPDCL to furnish weekly details of calculation of LF and to release forthwith withheld amount of Rs. 1,97,38,498/- along with surcharge calculated on simple interest basis on the number of days outstanding after due date of 30 days and to release payment of power purchase bill to SEML, in future accordingly.

3. The respondent in its reply submitted that the concurrence for 30 MW of inter-State STOA communicated to the petitioner by the SLDC, Bhilai on 03.12.08 w.e.f. 05.12.08 to 31.03.09 for the off-peak period was only subject to clear understanding that 30 MW power shall be supplied by the petitioner to the CSEB during peak hours. Accordingly, a letter No. 2577 dated 31.12.08 was written by the CE (Commercial) of the respondent company to the petitioner for entering into a PPA for 30 MW power being injected into the grid of CSEB during peak hours, but the petitioner did not turn to execute the PPA, however, the petitioner continued to inject much more power during the peak hours than the agreemented 5 MW power. The petitioner injected 27.1 MW maximum power during peak hours as per MRI print out data for the period from 05.12.08 to 15.12.08 and therefore the Board and subsequently CSPDCL started accounting of energy for passing the bills on the basis of 35 MW power

though PPA was available for 5 MW only. In the meantime, M/s SEML vide their letter No. 1154 dated 08.12.08 issued a three months notice to the respondent company as per the provision of the PPA for premature termination of PPA of 5 MW RTC power being supplied to the respondent as per which the PPA to be terminated on 08.03.09. The petitioner continued to inject much more power during the peak hour against agreemented 5MW power during the currency of the agreement and thereafter also i.e. even though when no any PPA remained in force between the petitioner and the respondent. The petitioner did not turn to execute PPA for the power being injected into the grid without any PPA even though the permission for 30MW STOA was extended up to 30.09.09. The maximum power injected into grid during peak hour by the petitioner between the period from 15.06.09 to 15.07.09 was observed as 34.1 MW as per the MRI print out. It is further pleaded by the respondent that the power purchase bills raised by the petitioner were entertained and payment made by the respondent company despite termination of PPA of 5 MW power only on the premise that the petitioner later or sooner shall enter into the PPA for 30 MW peak power, and now if the petitioner's contention before the Commission is that, since they have not executed the agreement for supply of 30 MW power during peak hours since 05.12.08, and the supply of power to the respondent should be accounted on the basis of 5 MW RTC power only, then whatever energy injected by the petitioner beyond 08.03.09 i.e. after the date of termination of PPA is not supplied under any PPA and thus the petitioner is not liable to claim any amount from CSPDCL on account of any injection of power beyond 08.03.09 and thus whatever payment has been made by the CSPDCL beyond the period 08.03.09 is liable to be recovered from the petitioner.

4. While going through the petition, replies and arguments by the petitioner and the respondent during the hearing, the Commission felt that there is lack of communication and understanding between them and therefore, the Commission suggested both the parties to arrange their meeting and try to get matter clear and resolve the issue by mutual consideration. In case the dispute is not resolved by mutual consent then the petitioner may file their rejoinder. Both the parties agreed for the same and had two meetings but the dispute could not be resolved and thus the petitioner submitted its rejoinder.

5. The petitioner in its rejoinder submitted that observation of respondent that the concurrence from SLDC for STOA was only subject to 'clear understanding that peak power shall be supplied by the petitioner to CSEB', is not valid, as nothing is mentioned in this respect in concurrence letter except mentioning "you will continue to give 5 MW power (RTC) to CSEB as per existing PPA." There has also no mention of the willingness of respondent to avail 30 MW power during peak load hours, as was mentioned by SLDC in its subsequent concurrence letter for STOA for the period from 01.04.09 to 30.06.09. It is further stated that in response to the CE (Commercial) of the respondent company letter dated 31.12.08, SEML replied on 29.01.09 stating that "till the expiry of existing PPA, we will be supplying power to CSPDCL as per existing terms and conditions of PPA and we will be raising the energy bills accordingly." Thus, it is ex-facie clear that the supply of power to the respondent by the petitioner was under the provisions stipulated in terms and conditions as entered into PPA between the parties and as explained and stated, the petitioner never offered 30 MW peak power to CSPDCL, hence there was no case for executing such PPA (i.e. for 30MW peak power). On the issue of injection of

more than the contracted quantum of power without 110% restriction during the evening peak hours it is said that it is in accordance with the provisions of clause 2 (b) of the PPA dated 16.05.08. It is further mentioned that submission of the respondent that “the petitioner injected power up to 27.10MW maximum during peak hours for the period from 05.12.08 to 15.12.08 and therefore the Board and subsequently CSPDCL (respondent) started accounting of energy and passing of export bills on the basis of 35 MW export though PPA was available for 5 MW only” is not a valid calculation. It is further stated that the petitioner vide its letters dated 13.05.09 and 22.06.09 communicated its willingness to execute PPA for the period starting from 01.04.09 and finally the PPA to sell 30 MW peak power to respondent by the petitioner from 01.04.09 to 30.09.09 was signed on 17.09.09.

6. We have gone through the petition and rejoinder of the petitioner and reply of the respondent in details and the arguments of both the parties in length and observed that, the petitioner has shown disagreement with contention of the respondent that, concurrence for 30MW of inter-State STOA communicated to the petitioner by SLDC on dated 03.12.08 for the off-peak period is only subject to clear understanding that 30MW peak power shall be supplied by the petitioner to the CSEB and the petitioner may execute PPA subsequently. It is pleaded by the petitioner that SLDC in the letter dated 03.12.08 has mentioned to continue to supply 5 MW RTC power as per existing PPA, and nothing mentioned by the SLDC in their concurrence letter about the willingness of the respondent to avail 30MW peak power as being mentioned in subsequent concurrence letter. It is observed that the petitioner continued to inject power to the extent of 34.1 MW as can be confirmed from the MRI print out, even after termination of the PPA for 5 MW power. The power sale bills were raised by the petitioner for the power injected into the grid by them during peak hours without any PPA and the payment made by the respondent were accepted by the petitioner. The petitioner subsequently executed PPA with the respondent on dated 17.09.09 for 30MW peak power from retrospective effect i.e. w.e.f. 01.04.09 up to 30.09.09. It clearly indicates that the petitioner principally agrees with procedure of subsequent execution of PPA with retrospective effect and thus contention of respondent that they were of the view that petitioner may execute PPA subsequently with effective from retrospective date appears to be true. Therefore view of the petitioner that they do not agree with contention of respondent that respondent were with understanding that 30 MW power shall be supplied by the petitioner to the respondent for which PPA can be signed subsequently, is not convincing. The respondent in its reply has raised a point that if the petitioner’s contention is that, since they have not executed the agreement for supply of 30MW power during peak hour since 05.12.08, and the supply of power to the respondent should be accounted on the basis of 5MW RTC power, then with the same analogy whatever power supplied by the petitioner beyond 08.03.09 during peak hours after termination of the PPA shall be considered as power supplied without any PPA and thus, the petitioner is not liable to claim any amount from the CSPDCL for the power injected into the grid without PPA and whatever payment has been made by the CSPDCL to the petitioner beyond the period 08.03.09 is liable to be recovered from the petitioner. The petitioner has not commented anything on this point of the respondent, and then subsequently executed PPA for 30 MW peak power with respondent on 17.09.09 made effective from 01.04.09 till 30.09.09.

7. We do not find any justification on contention of the respondent that though the PPA for 30MW power for the peak hour was not executed by the petitioner, they started accounting of energy for passing the bills on the basis of 35MW of power despite the PPA was available for 5MW only. The petitioner has pleaded that LF during the peak hour shall be calculated based on only 5MW contracted power as per provision in clause 2(b) of the PPA as per which the generators have been permitted to inject more than contracted quantum of power beyond 110% LF without any restriction even more than five times of the contracted power during the evening peak hours, i.e. 18:00 to 23:00 hours. Though as per clause 2(b) of PPA the generators are permitted to inject more than 110% of the contracted power during peak hours but injection of power to the extent of more than five times of the contracted power in the instant case is not convencing. Despite above, since there is no any restriction in clause 2(b) of PPA to limit the injection of quantum of power by the generator into the grid during peak hour, there appears no reason to disagree with pleading of petitioner. The PPA was signed by both the parties agreeing all the terms and conditions of PPA. No party has raised any clause of the PPA which may be in contravention to any of the provisions in the Act, rules and regulations. Thus, the terms and conditions of the PPA which has been agreed and signed by both the parties need to be followed.

8. In view of above, we are of the opinion that the load factor during peak hour shall be calculated based on 5MW contracted power instead of 35MW and payment be made as per provision in clause 2(b) of PPA for the period 05.12.08 to 08.03.09 i.e. till termination of PPA for 5MW power. Further, for the period from 09.03.09 to 31.03.09 when no PPA was available the petitioner is not entitled to get any payment for injecting energy into the grid. We therefore order accordingly. The respondent is directed to make the payment to the petitioner within 30 days of the difference amount alongwith surcharge applicable. The respondent is also directed that in future the details of calculation of weekly load factor on the basis of which release of payment is accepted be communicated to the generators having PPA to supply power with them.

Sd/-
Member

Sd/-
Chairma