



Chhattisgarh State Electricity Regulatory Commission
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Petition No. 32 of 2020(T)

In the Matter of:

Petition under section 86(1)(a) and 62 of the Electricity Act, 2003 for approval of power procurement price and it's true up based on the bills.

M/s DB Power Limited

.. Petitioner

Vs

Chhattisgarh State Power Trading Company Ltd

.. Respondent-1

Chhattisgarh State Power Distribution Company Ltd

.. Respondent-2

PRESENT

: **D S Misra, Chairman**
: **Arun Kumar Sharma, Member**
: **Vinod Deshmukh, Member (Judicial)**

Appearance

: Shri Deepak Khurana, Shri Vikash Adhiya, Shri Tejasv Anand, Counsels for petitioner

Shri Abhinav Kardekar Counsel for respondent no.1

Ms. Ritu Chouhan, Counsel for respondent no.2

ORDER

(Passed on 31/03/2021)

This order is passed in the instant petition filed by M/s DB Power Ltd. under Section 86 (1) (a) read with 62 of the Electricity Act, 2003, for determination of tariff (energy charge) of the power generated from its coal based thermal power plant of 2X600 MW capacity. The petitioner is supplying 5% of net power generated from this plant to Chhattisgarh State Power Trading Company Limited (herein after referred as CSPTTrCL)/Chhattisgarh State Power Distribution Company Limited (herein after referred as CSPDCL) at Energy (variable) Charge Rate (ECR).

2. Petitioner has sought following reliefs:

- (i)** True up the Energy (Variable) Charges of Rs. 3.584/unit and reimbursable expenses of Rs. 0.059/unit for the Period 01.04.2018 to 31.03.2019;
- (ii)** Direct the Respondent to pay the difference / shortfall in the energy (variable) charge and reimburse expenses for the period 01.04.2018 to 31.03.2019 forthwith upon approval by this Hon'ble Commission;

- (iii) Approve the provisional Energy (Variable) Charges of Rs 3.584/unit and provisional reimbursable expenses of Rs 0.059/unit for FY 2020-21;
 - (iv) Direct the Respondent to reimburse the filing fees paid by the Petitioner towards this Petition;
 - (v) Allow carrying cost;
 - (vi) Direct the Respondent to establish payment security mechanism in favor of the Petitioner in accordance with the provisions of the Agreement; and
 - (vii) Condone any inadvertent omissions / errors / rounding off differences / shortcomings and permit the Petitioner to add/alter the Petition and make further submissions as may be required at a future date.
3. As a regulatory process, petitioner has published the gist of the petition in the "The Hitavada", "Deshbandhu" and "Dainik Bhaskar" newspapers on 04.07.2020 for inviting objections/suggestions from the stock holders.
4. Public hearing on the petition was fixed for 07.12.2020. The Commission heard the parties.
5. **Issue of disposing the instant petition in accordance with the outcome of the appeal (DFR No. 249/2020) filed before Hon'ble APTEL**

Respondent's submission

Respondents submitted that respondent has filed an appeal (DFR No. 249/2020) before Hon'ble APTEL against the order dated 01.01.2020 passed in petition no. 43 of 2017 by this Commission. In view of this, petitioner requested that truing up of the energy charges may be carried out in accordance to the outcome of Appeal pending before Hon'ble APTEL. Further, petitioner has submitted that truing up of the energy charges cannot be carried out for the financial year 2018-2019 as the Commission has not determine the tariff for the financial year 2018-2019.

Petitioner's submission

In response to the above contention of the respondent, petitioner submitted that Hon'ble APTEL has neither stayed nor set aside the order dated 01.01.2020 passed in petition no. 43 of 2017, therefore, correlating the truing up of the energy charge of FY 2018-19 to the pendency of the appeal does not arise.

Commission's view

We have considered the submissions of the parties. It is well settled principles that no proceedings can be held up if there is no orders for the same is issued by the higher courts. As no stay order has been passed by the Hon'ble APTEL in the aforesaid appeal, hence, there is no merit in the contention of the respondent.

6. Determination of energy charge

Provisions of the MYT Regulation, 2015

Clause 41.6 of MYT Regulations, 2015 specify methodology and principle for determination of energy charges of thermal power generating stations. The same has been utilized for determining energy charge rate for the power plant in question. The clause reads as under:

“The energy charge shall cover the fuel cost (primary fuel as well as secondary fuel), and shall be payable by every beneficiary for the total energy scheduled to be supplied to such beneficiary during the calendar month on ex-power plant basis, at the energy charge rate of the month. Total Energy charge payable to the generating company for a month shall be:

(Energy charge rate in Rs./kWh) x {Scheduled energy (ex-bus) for the month in kWh.}

Energy charge rate (ECR) in Rupees per kWh on ex-power plant basis shall be determined up to three decimal places in accordance with the following formulae for coal based stations:

$$ECR = \{[(GHR - SFC \times CVSF) \times LppF / CVPF] + SFC \times LpSF_i\} \times 100 / (100 - AUX)$$

Where,

AUX = Normative auxiliary energy consumption in percentage.

CVPF = Gross calorific value of primary fuel as fired, in kCal per kg, per litre or per standard cubic meter, as applicable.

CVSF = Calorific value of secondary fuel, in kCal per ml.

ECR = Energy charge rate, in Rupees per kwh sent out.

GHR = Gross station heat rate, in kCal per kWh.

LPPF: Weighted average landed price of primary fuel, in Rupees per kg, per litre or per standard cubic meter, as applicable, during the month.

SFC = Specific fuel oil consumption, in ml per kWh.

LPSFi = Weighted Average Landed Price of Secondary Fuel in Rs./ml considered initially.”

The Commission has followed the above provisions of the MYT Regulation, 2015 for determination of Energy charge rate.

I. Auxiliary Energy Consumption

Petitioner Submission

Petitioner submitted that their 600 MW generating unit has natural draft cooling tower (NDCT). Accordingly, Petitioner has claimed 5.55% normative auxiliary energy consumption in accordance with the MYT Regulations, 2015. Further for the purpose of

sharing gains/losses, petitioner submitted that actual auxiliary energy consumption was 5.52% for FY 2018-19.

Respondent Submission

In contrary, Respondent has submitted that as per CSERC Tariff Regulations, 2015, applicable normative auxiliary energy Consumption for the petitioner's plant is 5.25% plus additional 0.3% for static excitation system.

Commission's View

We have considered the submission of the parties. The norms of auxiliary energy consumption is 5.25% for the petitioner's plant as specified in MYT Regulations, 2015. Therefore, we accept the submission of the respondent and considered normative auxiliary energy consumption as 5.25% for truing up of energy charge rate for FY 2018-19. The petitioner has submitted actual auxiliary energy consumption as 5.52 % and the same has been considered by the Commission for sharing gains/losses.

II. Gross calorific value (CVPF) of primary fuel

Petitioner's Submission

The petitioner has claimed energy charge rate for FY 2018-19 on the basis of as received GCV as 2968 kcal/kg and as fired GCV as 2818 kcal/kg for the coal consumed.

Respondent Submission

Respondent submitted that petitioner computed the tariff for FY 2018-19, reduced the CVPF by 150 Kcal/kg to arrived at CVPF "as fired" basis relying on the judgment dated 02.12.2014 passed by the Hon'ble APTEL in Appeal No. 98/2013 whereas CSERC MYT Regulation, 2015 does not provide for drop in the Gross Calorific Value between "as received basis" and "as fired basis". Further, Respondent submitted that Hon'ble APTEL upholding the Hon'ble Punjab Commission's order where in the Hon'ble Commission had allowed deduction in GCV by 150 Kcal/Kg, after carrying out a study in respect of various power plants in Punjab and the judgment dated 02.12.2014 cannot be generalized for instant Petition.

Commission's View

Clause 41.6 of MYT Regulations, 2015 specify methodology and principle for determination of energy charges of thermal power generating stations. Accordingly, CVPF is taken as gross calorific value of primary fuel as fired basis

in kCal per kg. To arrive at the GCV as fired basis from as received basis, petitioner has deducted 150kcal/kg from GCV as received basis at plant for FY 2018-19. In reply to the Commission's query, petitioner submitted the detail calculation of actual SHR for the FY 2018-19 based on consumption of coal as reflected in books of account. The details as submitted by the petitioner is given in table below:

S. No.	Particular	Unit	Qty	Wt. Avg. GCV
1.	Coal Received FY 2018-19			
1.1	Linkage	MT	18,60,725	3,430.61
1.2	Non- linkage	MT	31,11,690	3,208.25
	Total (1.1 + 1.2)	MT	49,72,415	3,291.46
2	Coal Consumed FY 2018-19	MT		
2.1	Linkage	MT	18,60,725	3,430.61
2.2	Non- linkage	MT	28,44,148	3,208.25
	Total (2.1 + 2.2)	MT	47,04,873	3,296.19
3	Generation	kWh	6,72,89,33,980.00	
4	Specific Coal Consumption ((2 X 1000) / 3)	kg/kWh		0.70
5	GCV of Secondary Fuel Consumed (SFC)	Kcal/Kl		10,000.00
6	Secondary Fuel Consumed FY 2018-19	Kl		1,407.47
7	Specific SFC consumed ((6 X 1000 X 1000) / 3)	ml/kWh		0.21
8	SHR (4 X 2 + (7 X 5 / 1000))	Kcal/kWh		2,306.79

After prudence check, GCV for FY 2018-19 were approved at 3,208.25 kcal/kg as against 2,968 kcal/kg as submitted by the petitioner. Further, Hon'ble APTEL has allowed 150 kcal/kg drop in GCV between as received basis and as fired basis in its Judgment in Appeal No. 98 of 2013. But in the instant case, there is no drop in GCV is observed between "as received" and "as fired". Hence, Commission has considered the GCV of 3,208.25 "as fired basis" for computation of ECR.

III. Calorific value of secondary fuel

After prudence check, calorific value of secondary fuel of 10,000 kcal/litre has been considered as submitted by the petitioner.

IV. Gross Station Heat Rate (GSHR)

Petitioner's Submission

Petitioner's has claimed normative GSHR as 2,375 kCal/kWh as prescribed in MYT Regulations, 2015.

Commission's View

The Commission has considered GSHR norms as 2,375 kCal/kWh as specified in the MYT Regulations, 2015, for 'existing generating station'. For the purpose of sharing of gains/losses, the Commission has considered actual SHR as 2,306.79 kCal/kWh for FY 2018-19 as submitted by petitioner.

V. Weighted average landed price of primary fuel

Petitioner's submission

The petitioner claimed actual weighted average landed price of primary fuel from non-linkage sources for the FY 2018-19 as Rs. 4,069.67/MT considering normative transit and handling loss at 0.08% in accordance with CSERC MYT Regulation, 2015.

Respondent's submission

Respondent submitted that the Energy (variable) cost for 5% of net power should be computed considering the weighted average cost of coal from all sources for generating total ex-bus power supplied to all procurer of the Petitioner.

Petitioner's rejoinder

In reply to the above objection, the petitioner submitted that the linkage coal was allocated to any generator only when the generator has PPA with distribution licensee either directly or through any trading company. In the absence of back-to-back long term PPA the petitioner is not able to avail benefit of linkage coal.

Commission's view

The Commission, after prudence check, has considered the landed price of coal as Rs. 4,465/ MT considering the transit and handling loss as 0.08% as against the landed price of coal as Rs. 4,427/MT as claimed by the petitioner. From perusal of records, the Commission has considered the gain of 0.04% in lieu of transit and handling loss.

VI. Secondary fuel oil consumption

The Commission has considered the normative secondary fuel oil consumption for FY 2018-19 as 0.50 ml/kwh in accordance with the MYT Regulations, 2015. Further for the purpose of sharing of gains/losses, the Commission has considered actual secondary fuel oil consumption as 0.21 ml/kwh as submitted by petitioner.

VII. Weighted Average Landed Price of Secondary Fuel

The petitioner has submitted weighted average landed price of secondary fuel as Rs. 47,608/KL for FY 2018-19 and the same has been considered by the Commission.

7. The computation of energy charge rate for FY 2018-19 is as tabulated below:

S. No.	Particular	Unit	FY 2018-19	
			Normative	Actual
1	Aux	%	5.25	5.517
2	CVPF	kCal /kg	3,208.25	3,208.25
3	CVSF	kCal /ml	10.00	10.00
4	GSHR	kCal /kWh	2,375.00	2,306.79
5	LPPF	Rs./kg	4.465	4.427
6	SFC	ml/kWh	0.50	0.21
7	LPSFI	Rs./ml	0.048	0.048
8	ECR (Ex-Bus)	Rs./kWh	3.506	3.376

8. Sharing of gains and loss

Clause-13 of MYT Regulations, 2015 specifies mechanism for sharing of gains and losses on account of controllable factors. Accordingly, aggregate net gain on account of over achievement or aggregate net loss on account of under achievement in reference to the norms set in tariff order for efficiency linked controllable items shall be passed on to the beneficiary/consumer(s) and retained by the generating company in the ratio of 50:50 or as may be specified in the order of the Commission passed under these Regulations.

Clause-11 of the MYT Regulations, 2015 specifies the controllable and uncontrollable factors which is as follows:

"11.1 For the purpose of these Regulations, the term "uncontrollable factors" shall comprise of the following factors, but not limited to, which were beyond the control of the applicant, and could not be mitigated by the applicant:

- (a) Force Majeure events;*
- (b) Change in law,*
- (c) Judicial pronouncements,*
- (d) Fuel prices i.e. price of coal, oil and all primary-secondary fuel;*
- (e) Sales mix and quantum of sales;*
- (f) Cost of power purchase;*
- (g) Costs on account of inflation;*
- (h) Taxes and Statutory levies.*

11.2. For the purpose of these Regulations, the term "Controllable factors" shall comprise of the following:

- (a) Capitalization on account of cost overruns in the implementation of a capital expenditure project not attributable to an approved change in scope of such project,*

change in statutory levies or circumstances beyond control of the generating company or the licensee, as the case may be.

(b) Generation performance parameters like PLF, SHR, Auxiliary consumption, pAF etc;

(c) Energy losses computed in accordance to Regulation 7

(d) Operation & Maintenance expenses;

(e) Failure to meet the standards specified in the Standards of Performance Regulations, except where exempted;

(f) Variation in Wires Availability and Supply Availability.”

The Commission has followed the clause-11 and clause-13 of the MYT Regulations, 2015 for sharing the gains/losses.

9. MYT Regulations, 2015 specifies generation performance parameters like PLF, SHR, Auxiliary consumption, PAF as controllable factor. Based on MYT Regulations, 2015 summary of true up for the FY 2018-19 is tabulated below:

S. No.	Particular	Unit	FY 2018-19	
			Normative	Actual
1	ECR (Ex-Bus)	Rs./kWh	3.506	3.376
2	ECR (after sharing gain & Loss)	Rs./kWh		3.441

10. **Reimbursement of water charges, electricity duty on auxiliary consumption and electricity duty on sale of electricity**

Petitioner’s submission

The petitioner stated that Govt. of Chhattisgarh is levying electricity duty on auxiliary consumption, electricity duty on sale of electricity and water charges. The PPA signed with respondent also prescribes that these charges shall be borne by the buyer i.e. State Trading Company.

Respondent's submission

Respondent has submitted that the water charges being part of the fixed charges should not be allowed to the petitioner as the PPA with the petitioner is for procurement of 5% of net generated energy at variable cost.

Commission’s View

The Commission has considered the submissions of the parties. The MYT Regulations, 2015, provides for reimbursement of statutory taxes, such as electricity duty, cess, water charges etc. as pass through component. Accordingly, the Commission has allowed the petitioner’s claim and CSPTTrCL/CSPDCL is required to pay to the petitioner these charges namely water charges, electricity duty on auxiliary consumption and electricity

duty on sale of electricity on actual basis. However, these charges shall be limited only to the proportion of quantum of power purchased by CSPTTrCL/CSPDCL.

11. Reimbursement of ash disposal expenses.

Petitioner's submission

The petitioner has submitted that it is not claiming expenses incurred towards ash disposal expenses in this petition. However, it reserves its rights to initiate an independent proceeding at a later stage.

Respondent's submission

It is submitted that, expenses incurred towards Ash disposal is a part O&M expenses further under Clause 38.6 income from sale of ash is considered as Non- Tariff income which is a component of fixed charge under Clause 35.1 of CSERC Tariff Regulations, 2015 nor the same has been agreed upon in the PPA. That 5% of power is procured at variable charges hence; the question of reimbursement of charges towards ash disposal doesn't arise.

Commission's view

We have considered the submissions of the parties. This issue has already been settled in order dated 01.01.2020 passed in petition 43 of 2017 filed by the petitioner itself. Therefore, there is no need to consider the matter again and again. Hence claim is denied.

12. Establishment of Payment Security Mechanism

Petitioner's submission

Petitioner submitted that the Article 9.1.1 of the PPA, the Chhattisgarh State Power Trading Co. (CSPTTrCL) is obligated to establish a Payment Security Mechanism (PSM) in form of Letter of Credit (L/C) in favor of the Petitioner. However, the CSPTTrCL has failed to perform this obligation to establish a payment security mechanism despite directive of Ministry of Power dated 28.06.2019 as well as repeated reminders from the Petitioner.

Respondent's Submission

In response to the petitioner's above submission, respondent submitted that as per the clause 3.3.4 of said PPA date 05.01.2011, the petitioner is failed to submit a bank guarantee amounting to Rs. 2.40 crs, which remain enforceable till the termination of PPA.

Commission's View

We have considered the submission's of the parties. The Commission is of the view that the above matter is a dispute between generator and licensee, therefore, is covered under Section 86(1) (f). Hence, it is not the matter related to tariff determination process.

13. Issue of reimbursement of petition filing fees

Petitioner's Submission

The petitioner has pleaded for reimbursement of petition filling fee.

Commission's View

We have considered the claim of the petitioner for reimbursement of filling fee and allowed them to recover the petition filling fee in accordance with the clause no. 82 of the MYT regulations, 2015 which is as under;

“The application filing fee and the expenses incurred on publication of notices in the application for approval of tariff, be allowed to be recovered by the generating company or the transmission licensee/STU or the distribution licensee, as the case may be, directly from the beneficiaries or the transmission customers, as the case may be:”

In the light of the aforesaid provision, the petitioner is at liberty to recover the said amount from the beneficiary.

14. Issue of approving provisional Energy (variable) Charges Rate for FY 2020-21

Petitioner Submission

Petitioner has prayed for approving provisional Energy Charges Rate of Rs 3.584/unit and provisional reimbursable expenses of Rs 0.059/unit for FY 2020-21.

Commission's View

Commission has considered the same and is of the view that the Commission has already passed an order dated 30.05.2020 in the petition no. 12/2020 as under:

“The Commission had estimated the purchase of concessional power at a weighted average rate of Rs. 1.60/kWh for the year 2017-18, pending determination of tariff. For the subsequent years i.e. FY 2018-19, FY 2019-20, the same rate has been continued. However, meanwhile, the Commission, has determined tariff in respect of concessional power of majority of generators. It is, therefore, clarified that for the generators whose tariff has been so determined, energy charges for FY 2020-21 shall be billed at the latest tariff determined by the Commission. For others whose tariff is yet to be determined by the Commission, the energy charges shall be billed at the rate of Rs. 1.60/kWh.”

It is clear from the above paragraph that the Commission has already allowed the generator to bill CSPDCL as per last tariff order for supply of 5% concessional power.

Also, FY 2020-21 has almost elapsed so there is no need to approve any ECR for FY 2020-21.

15. Summary

- (i) Considering the gains and losses with respect to normative parameters, ex-bus energy (variable) charge rate for FY 2018-19 shall be Rs. 3.441 per kWh.
- (ii) As regards to the petitioner's submission for reimbursement of water charges, electricity duty and cess, the Commission is of the view that in the light of specific provisions in the regulations in this regard, water charges, electricity duty and cess paid by the petitioner shall be pass through, therefore, petitioner is at liberty to recover the said amount from the beneficiary.
- (iii) Petitioner is allowed to recover carrying cost/holding cost for the difference in billed amount as per estimated tariff and amount from the date when the bill became due as the petition was filed on 22.01.2020 in place of specified date of 30.11.2019 which is a condonable delay.
- (iv) As regards the request of petitioner for tariff for FY 2020-21, the Commission has already passed an order dated 30.05.2020 in the petition no. 12/2020 wherein allowed the generator to bill the CSPDCL as per last tariff order for supply of 5% concessional power.
- (v) From the submissions of the parties, the Commission has observed that in absence of the proper PPA with CSPDL, generator is not able to get the linkage coal, therefore, the Commission directs them to resolve this issue at the earliest so that issue of linkage coal may be resolved.

16. We order accordingly.

Sd/-
(Vinod Deshmukh)
Member-Judicial

Sd/-
(Arun Kumar Sharma)
Member

Sd/-
(D S Misra)
Chairman