

**CENTRAL ELECTRICITY REGULATORY COMMISSION
NEW DELHI**

Petition No. 116/MP/2019

Subject : Petition for resolution of disputes regarding payment of capacity charges for the allocated capacity for Muzzafarpur Thermal Power Station (MTPS) Stage II (2x195MW)

Petitioner : Kanti Bijlee Utpadan Nigam Limited

Respondents : Jharkhand Bijli Vitran Nigam Limited & 4 ors.

Date of Hearing : **22.2.2022**

Coram : Shri I. S. Jha, Member
Shri Arun Goyal, Member
Shri Pravas Kumar Singh, Member

Parties present : Ms. Swapna Seshadri, Advocate, KBUNL
Shri Anand K Ganesan, Advocate, KBUNL
Ms. Ritu Apurva, Advocate, KBUNL
Shri Jai Dhanani, Advocate, KBUNL
Shri Arijit Maitra, Advocate, GRIDCO
Shri Venkatesh, Advocate, DVC
Shri Ashutosh Kumar Srivastava, Advocate, DVC
Shri Rishabh Sehgal, Advocate, DVC
Ms. Mehak Verma, Advocate, DVC
Shri Mahoranjan Sahoo, Advocate, DVC

Record of Proceedings

The case was called out for virtual hearing.

2. At the outset, the learned counsel for the Respondent, GRIDCO submitted that in terms of the direction of the Commission vide ROP of the hearing dated 13.1.2022, the Respondent on 27.1.2022 has filed affidavit, placing on record the Minutes of meetings dated 1.11.2021 and 1.12.2021, between the Ministry of Power (GOI), the Government of Odisha, and the Petitioner regarding settlement of outstanding dues of the Respondent, waiver of late payment surcharge (LPSC) and reallocation of GRIDCO's share of power from the project of the Petitioner. He also submitted that another meeting was held on 17.2.2022 between the CMD (Chairman-cum-Managing Director), NTPC and Chief Secretary, Odisha, wherein, the issue of waiver of capacity charges and LPSC of the Respondent GRIDCO was discussed and considered, subject to approval of the Minutes of meeting by the Boards of the respective parties. The learned counsel, accordingly, prayed that the hearing of the petition may be deferred, as the settlement talks between the parties are at an advanced stage.

3. The learned counsel for the Petitioner submitted that the prayer of the Petitioner to bring on record subsequent developments in the matter, was only to place on record the



fact that the Odisha Electricity Regulatory Commission (OERC) order rejecting the approval of the PPA for purchase of power by Respondent, GRIDCO from the Petitioner in terms of Section 86(1)(b) of the Electricity Act, 2003, has been stayed by the Appellate Tribunal for Electricity (APTEL). The learned counsel, while confirming that a meeting was held between the said parties on 17.2.2022, clarified that no such settlement has been reached between the parties, as submitted by the Respondent, GRIDCO. She, however, submitted that the discussion in the said meeting related to the Respondent GRIDCO submitting a proposal to the Petitioner indicating their requirements. The learned counsel, therefore, submitted that the matter may not be kept in abeyance and the same may be disposed of, without any prejudice to the parties settling the matter between themselves.

4. In response, the learned counsel for the Respondent GRIDCO, referred to the draft Minutes of the meeting dated 17.2.2022 and reiterated that the proposal of Respondent GRIDCO for waiver of LPSC and capacity charges have been discussed and considered in the said meeting, subject to approval by the Boards of the respective parties. He further submitted that in terms of Section 89 of the Civil Procedure Code, 1908, when there exists an element of settlement between the parties, the Commission may not decide the matter. The learned counsel for the Petitioner reiterated that no settlement has been worked out by the parties on 17.2.2022 and that the unsigned draft minutes of meeting cannot be relied upon by the Respondent GRIDCO.

5. The learned counsel for the Respondent, DVC submitted that SLDC, Bihar was neither communicating any declared capacity to the Respondent on a day-ahead basis nor getting any consent from the Respondent for scheduling the same. As the Respondent was completely unaware of the declared availability of the generating station of the Petitioner, it cannot be held liable to pay capacity charges.

6. The Commission, after hearing the parties, deferred the hearing of the petition for four weeks, to enable the Petitioner and the Respondent GRIDCO to work out settlement, if any, as stated. The Respondent GRIDCO shall, thereafter, place on record the document of settlement, if any, reached between the parties, failing which the matter shall be considered and disposed of, on merits, in terms of the submissions by the parties.

By order of the Commission

Sd/-

(B. Sreekumar)
Joint Chief (Law)

