

WEST BENGAL ELECTRICITY REGULATORY COMMISSION

WEST BENGAL

Petition No. OA-268/17-18

Date of hearing: 20th February, 2019

Time of hearing: 15.00 hours

Coram:

Shri Dugadas Goswami, Member

In the matter of

Application under section 86(1)(f) of the Electricity Act, 2003 for direction upon WBSEDCL (Respondent) to pay Rs. 253.18 lakh along with the interest @ 1.25% to Nippon Power Limited (Petitioner).

And

In the matter of

M/s Nippon Power Limited,
4A & 4B, 240B A.J.C. Bose Road
Kolkata 700 020.

..... Petitioner

And

In the matter of

West Bengal State Electricity Distribution Company Limited
Vidyut Bhavan
Block DJ, Sector – II
Salt Lake City
Kolkata 700 091.

..... Respondent

Representatives attended:

M/s Nippon Power Limited (NPL) [Petitioner]

1. Sri Pradip Kumar Tarafder, Advocate,
2. Sri Amalendu Ghosh, Employee,
3. Sri Kishore Dutta, Employee,
4. Sri Swapan Sengupta, Employee.

West Bengal State Electricity Distribution Company Limited (WBSEDCL)

[Respondent]

1. Sri Vishrov Mukherjee, Partner, J Sagar Associates,

2. Sri Nirmal Kumar Ghosal, Legal Advisor,
3. Sri Manab Das, SE (E),
4. Sri Subrata Chowdhury, Sr. Manager (HR&A),
5. Sri Shyamal Kanti Das, SE (E).

SUBMISSION DURING HEARING

The contention of the petition submitted by NPL is that presently NPL has been supplying power to WBSEDCL from its 3 MW hydro generating plant at Darjeeling to the point of inter-connection as per the present Power Purchase Agreement entered between NPL and WBSEDCL on 16.11.2010 effective from 30.03.2007 for a period of 35 years. NPL contends, the power supply line being used for transmission of power to the inter-connection point is a transmission line and not a distribution line as is being claimed by WBSEDCL. As a result WBSEDCL is not making the payments to NPL for deemed generation loss as per the scale applicable for transmission line outages. Accordingly, they have prayed before the Commission to pass an order directing WBSEDCL to pay NPL a sum of Rs. 253.18 lakh along with interest @ 1.25% and amend the PPA by replacing the words "distribution line" with the words "transmission line" and by replacing the words "90%" with the words "95%" in paragraphs 3.2, 3.3 and 3.4 of the PPA. WBSEDCL has strongly objected to the contention of NPL.

Sri Pradip Kumar Tarafdar, Ld. Advocate of NPL referred to the earlier PPA executed in 1997 between NPL and WBSEDCL where this line was treated as transmission line and availability of transmission line was pegged at 96% whereas the agreement signed in 2010 erred to define the line in contravention of the definition of consumer, transmission line and distribution system as contained in the Electricity Act, 2003. He also referred to Regulation 23 of the West Bengal Electricity Regulatory Commission (Open Access) Regulations, 2007 of WBERC on open access and prayed before the Commission to direct WBSEDCL to make corrections in the PPA and pay the loss arising out of this incorrect description of the line in the PPA.

Sri V. Mukherjee, Ld. Advocate appearing for the WBSEDCL stated that –

- a) The petition is barred by limitation as it was submitted long after 3 years passed from the execution of PPA;
- b) The line is very much a distribution line and it is clear from the phrase in the bracket

of the definition of "Transmission Lines" under section 2(72) of the Act;

- c) NPL agreed to all the changes made in the PPA of 1997 only to avail the benefits of higher tariff and only then this new PPA was signed in 2010 and once higher benefit of the 2nd PPA enjoyed they like to avail other benefits of previous PPA which stood repealed (clause 3.2 of PPA);
- d) this is a commercial arrangement between a distribution licensee and a generator and does not have any relation, whatsoever, with open access;
- e) WBSEDCL is a distribution company and draws all power from the NPL through its own system without involving any system of transmission line and therefore it cannot be treated as a transmission line because it is essentially a distribution line;
- f) He referred to certain judgements - dated 16.10.2015 between AP Power Coordination Committee vs. Lanco Kondapalli Power Limited [(2016) 3 SCC 468] (para 30 and 31); Nabha Power Limited vs. Punjab State Power Corporation Limited [(2018) 11 SCC 508] (Nabha Power)] (para 49, 72) of the Supreme Court of India and argued that Commission has no scope to interpret / interfere with the PPA already signed between the parties;
- g) As per annexure at page -29 to his written submission, outage during the entire period i.e., from 2007-08 to 2016-17, was much higher than 90%;
- h) Nippon was asked in 2007 by a letter to construct alternate bay for evacuating power from their plant within a short distance, with no response as yet.

On these grounds he stated that the petition is not maintainable.

ORDER

Upon hearing both the sides, the Commission directs that –

- a) WBSEDCL to file notarized statement supported by documents on outage and other written arguments / papers as they wish, with this Commission within two weeks and with a copy to NPL.

- b) NPL to submit rejoinder, if any, on the documents / written arguments / papers within another three weeks.
- c) Date of next hearing will be fixed after six weeks.

DATE: 26.02.2019

Sd/-
(DURGADAS GOSWAMI)
MEMBER