

**BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION
GANDHINAGAR**

Petition No. 1979 of 2021

In the matter of:

Petition under Section 62 and Section 86 (1) (f) of the Electricity Act, 2003 for redetermination of tariff of 12 MW Hydro Power Project established by the Petitioner and direction for amendment in the Power Purchase Agreement (PPA) dated 16.03.2018 signed between the Petitioner and the Respondent, based on redetermination of tariff carried out by the Commission with consideration of revised capital cost as the Petitioner has not received capital subsidy of Rs. 5 Crore and under Section 86(1) (b) and 86 (1) (f) of the Electricity Act, 2003 in respect of the matter of Change in Law occurred as per the PPA dated 16.03.2018 executed between the Petitioner and GUVNL and Concession Agreement dated 16.03.2015 with Narmada Water Supply and Kalpsar Department, Government of Gujarat and under Section 62 (6) of the Electricity Act, 2003 read with Article 7 of the PPA dated 16.03.2018 with regard to the delayed payment charges/interest on differential tariff amount for the April 2018 to November 2020.

Petitioner : Ajanta Energy Private Limited,
3rd Floor, OREVA House,
Thaltej Circle, Titanium Square,
S.G. Highway, Ahmedabad, Gujarat.

Represented By : Ld. Adv. Mr. Ashish Jha with Mr. B.J. Kosti
V/s.

Respondent No. 1 : Gujarat Urja Vikas Nigam Limited,
Sardar Patel Vidyut Bhavan,
Race Course Circle, Vadodara- 390 007.

Represented By : Ld. Adv. Ms. Harini Subramaniam with Mr.
H. H. Patel

Respondent No. 2 : Madhya Gujarat Vij Company Limited,
Sardar Patel Vidyut Bhawan,
Race Course Circle, Vadodara 390 007.

Represented By : Nobody was present.

Respondent No. 3 : Dakshin Gujarat Vij Company Limited,
Nana Varachha Road, Kapodara,
Surat- 395 006.

Represented By : Nobody was present.

Respondent No. 4 : Uttar Gujarat Vij Company Limited,
Visnagar Road, Mehsana- 384 001.

Represented By : Mr. K. B. Chaudhari

Respondent No. 5 : Paschim Gujarat Vij Company Limited,
Off. Nana Mava Main Road,
Near Bhaktinagar Railway Station,
Laxminagar, Rajkot- 360 004.

Represented By : Nobody was present.

Respondent No. 6 : Irrigation Department,
Government of Gujarat,
Block No. 9, 2nd Floor, New Sachivalaya,
Sector – 10, Gandhinagar – 382010.

Represented By : Nobody was present.

CORAM:

Anil Mukim, Chairman
Mehul M. Gandhi, Member
S. R. Pandey, Member

Date: 03/10/2022.

DAILY ORDER

1. The matter was kept for hearing on 03.08.2022.

2. At the outset, Ld. Adv. Mr. Ashish Jha, appearing on behalf of the Petitioner, submitted that the present Petition has been filed by the Petitioner seeking re-determination of tariff of its 12 MW Hydro Power Project and direction for amendment to the Power Purchase Agreement (PPA) dated 16.03.2018 in respect of redetermined tariff carried out by the Commission with consideration of revised capital cost as the Petitioner has not received capital subsidy of Rs. 5 Crore from MNRE, Government of India. Further, there is an occurrence of Change in Law event as per the PPA dated 16.03.2018 and Concession Agreement dated 16.03.2015 with Narmada Water Supply and Kalpsar Department, Government of Gujarat which is pass through as a part of tariff and same needs to be decided by the Commission. Also, the Petitioner has prayed to decide and declare that the Respondent GUVNL is liable to pay delayed payment charges on differential tariff amount as per provisions of the Electricity Act, 2003 read with Article 7 of the PPA dated 16.03.2018.
- 2.1. It is submitted that previously the Petitioner had filed a Petition before this Commission being Petition No. 1569 of 2016 for determination of tariff for 12 MW Hydro Power Project of the Petitioner and seeking various other reliefs. The Commission passed an Order dated 24.12.2019 in Petition No. 1569 of 2016 and accordingly worked out the tariff of the Petitioner's project to be Rs. 4.70 per unit (without AD benefit) and Rs. 4.40 per unit (with AD benefit) considering the Capital Subsidy of Rs. 5 Crore while directing the Petitioner to approach to MNRE to avail the Subsidy by making all possible efforts since the same is in the interest of consumers at large after ensuring the due compliance of the relevant requirements. It is also recorded that in case of non-receipt of subsidy from MNRE despite making all possible efforts, the Petitioner is at liberty to approach the Commission. The Commission for determining the tariff had considered the capital cost of Rs. 111.38 Crores from which an amount of Rs. 5 crores as Subsidy amount was deducted and net capital cost of project was considered as Rs. 106.38 Crores.
- 2.2. It is submitted that the Petitioner approached MNRE requesting to release the financial support by providing the Subsidy to the Petitioner's project. However, the MNRE declined to provide said financial support stating that there was no scheme for providing financial support to the Small Hydro Power Project. Therefore, the Petitioner has been deprived of the aforesaid Subsidy as the same is not received by the Petitioner till date.
- 2.3. It is further submitted that since the Commission had determined the tariff of the Petitioner's project with consideration of Subsidy amount of Rs. 5 Crore and net capital cost of Rs. 106.38 Crore but the said Subsidy is not received by the Petitioner from MNRE till date, therefore, the Petitioner is deprived of receiving actual tariff

from the date of commissioning of the project for the energy supplied to the Respondent. It is submitted that there is difference of tariff which is receivable by the Petitioner and actual tariff received since the monthly tariff that is received on energy supplied by the Petitioner is lower and hence the Petitioner is entitled for such differential amount of tariff which also qualifies for delayed payment charges on monthly basis.

- 2.4. It is also submitted that the royalty paid by the Petitioner at the rate of Rs. 0.91 per unit is payable to the Respondent No. 6 Irrigation Department, Government of Gujarat as per the Concession Agreement. It is submitted that the Commission in its Order dated 24.12.2019 in Petition No. 1569 of 2016 decided that the Respondent GUVNL is liable to pay royalty of Rs. 0.91 per unit as pass through to the Petitioner over and above the tariff determined by the Commission. It is further submitted that the Petitioner is also liable to pay GST on royalty amount payable to Respondent No. 6 Irrigation Department, Government of Gujarat by the Petitioner as tax as per GST Act under reverse charge mechanism, which needs to be reimbursed by the Respondent GUVNL but the same is opposed by GUVNL.
- 2.5. Based on the above, it is submitted that the Petitioner has approached the Commission in view of the liberty granted by the Commission in its Order dated 24.12.2019 in Petition No. 1569 of 2016 and accordingly, the present Petition has been filed for re-determination of tariff. The Commission has jurisdiction to determine the tariff under Section 62, 86 (1) (a), (e) of the Electricity Act, 2003 and also to approve the revised Power Purchase Agreement to be signed by the Petitioner with the Respondent GUVNL.
- 2.6. In response to query of the Commission regarding applicability of GST on Royalty amount at present or any liability arisen on the Petitioner, Ld. Adv. for the Petitioner submitted that as an advance intimation the Petitioner is seeking relief under 'Change in Law' provisions of the PPA since the Petitioner is liable to pay GST as per GST Act, 2017 which is an additional burden and same is required to be reimbursed.
3. Ld. Adv. Ms. Harini Subramanian, appearing on behalf of the Respondents No. 1 GUVNL, submitted that the present Petition has been filed by the Petitioner seeking re-determination of tariff for its project and also seeking direction for amendment in the PPA dated 16.03.2018 and hence there is no objection to admissibility of this Petition since the Commission has jurisdiction to decide the same. Accordingly, while admitting the Petition, the Commission may post the matter for hearing on any date subject to the convenience of the Commission, and Ld. counsel for the Petitioner also agreed to the same.

4. We have considered the submissions made by the parties. We note that the present Petition is filed under Sections 62 and 86(1)(b) & 86(1)(f) of the Electricity Act, 2003 read with Articles 7 of Power Purchase Agreement executed on 16.03.2018 between the Petitioner M/s Ajanta Energy Pvt. Limited and the Respondent GUVNL read with Concession Agreement dated 16.03.2015 between the Petitioner Ajanta Energy Pvt. Limited and Narmada Water Resources, Water Supply and Kalpsar Department, Government of Gujarat.
- 4.1. We note that in the present matter, the Petitioner Ajanta Energy Pvt. Limited is a developer having set up 12 MW (3x 4 MW) Small Hydro Power Project at Dolatpura, Downstream of Kadana Dam, across Mahi river, Taluka: Kadana, District: Mahisagar, Gujarat and has entered into Power Purchase Agreement (PPA) dated 16.03.2018 with the Respondent GUVNL. Accordingly, the Petitioner is a generating company under Section 2 (28) of the Electricity Act, 2003. We also note that the Respondent GUVNL is a licensee which is procuring power from the aforesaid 12 MW (3x 4 MW) Small Hydro Power Project of the Petitioner in terms of PPA executed between the parties. Thus, the issue involved in the present matter between the Petitioner and the Respondent pertains to the terms & conditions of the PPA executed between them seeking redetermination of tariff on account of non-receipt of Capital subsidy from MNRE along with other reliefs. Thus, this Commission has jurisdiction under the Electricity Act, 2003 to decide the matter. Hence, we decide to admit the Petition.
- 4.2. The Petitioner is directed to file further submissions with regard to applicability of GST on Royalty amount under reverse charge mechanism as per provisions of the GST Act, 2017 and liability that has arisen including proof of payment etc. in this regard.
5. Next date of hearing will be intimated separately.
6. Order accordingly.

Sd/-
[S. R. Pandey]
Member

Sd/-
[Mehul M. Gandhi]
Member

Sd/-
[Anil Mukim]
Chairman

Place: Gandhinagar.

Date: 03/10/2022.