BEFORE THE GUJARAT ELECTRICITY REGULATORY COMMISSION

GANDHINAGAR

Petition No. 972 of 2009

In the Matter of:

Petition for adjudication of disputes that have arisen between the petitioner and the respondents on the interpretation and implementation of the Power Purchase Agreement dated 30th May, 1996.

Petitioner	:	Gujarat Urja Vikas Nigam Limited Sardar Patel Vidyut Bhavan, Race Course, Vadodara -390007.
Represented By	:	Learned Advocate Shri Anand Ganesan with Ms. Shailaja Vachharajani and Shri S.S.Mistry

V/s.

Respondent	:	Essar Power Limited Essar House, P.O.Box No: 7975, Mahalaxmi Road, Mumbai – 400034.
Represented By	:	Advocate Shri Rohan Shah

CORAM:

Shri P.J.Thakkar, Member
Shri K. M. Shringarpure, Member
Shri Anand Kumar, Chairman

Date: 14/12/ 2016

DAILY ORDER

1. The matter was kept for hearing on 19.11.2016. Advocate Shri Ronak Shah, on behalf of the respondent, Essar Power Ltd. submitted that the Commission may grant 10 days' time to file their submission. He submitted that it is necessary to recalculate and verify the claim submitted by GUVNL as the details submitted by the petitioner is upto March 2009. The respondent has also to verify the claim of the petitioner in the light of the order of the Commission as well as Hon'ble APTEL and Hon'ble Supreme Court of India. He further submitted that the Commission may adjourn the matter and keep the hearing at any time after 10 days.

1.1. On a query from the Commission, as to whether any hearing is required in this case, he clarified that the Commission may give one hearing after 10 days. Based on above submissions he requested to grant 10 days' time to file his updated calculations against the claim of the petitioner.

2. Learned Advocate Shri Anand Ganesan, on behalf of the petitioner, submitted that the petitioner has claimed an amount of Rs. 580.64 Crores which includes Rs. 527.27 Crores against under allocation of power and Rs. 53.37 Crores towards incentive on deemed generation and DPC upto March 2009. Now, only the DPC amount for the period from April, 2009 to till date needs to be worked out as per the terms of the PPA.

2.1. The aforesaid claim with detailed calculations was not only submitted to the Hon'ble Commission but also to the Respondent and that the Respondent filed their reply on 30.09.2009 alongwith their own calculations against the claim of the petitioner. Therefore, the DPC needs to be worked out for the period from March 2009 till date with consideration of the Commission's Order as well as the order of Hon'ble Tribunal and Hon'ble Supreme Court of India.

2.2. He submitted that there is no need for further hearing in the present matter. The Commission may, therefore, pass an appropriate order after considering the calculations already on record with a directive to pay the same alongwith DPC as per the terms of PPA for the period from April 2009 till the date of payment.

3. We have carefully considered the submissions made by the parties. The present petition was filed by the petitioner on 04.07.2009 based on the order dated 18.02.2009 passed by the Commission in Petition No. 873 of 2006. The Commission in para 10.22 decided and directed the parties as under:

"10.22. The Commission has already held that part of the claim is barred by limitation. Hence, the claim of the petitioner for adjustment of Deemed Generation Incentive for the period prior to 14.09.2002, being three years prior to the date of filing of the present petition is not admissible and is denied. The parties are directed to work out the accounts for the period starting from 14.9.2002 in the manner provided in this order and submit the same to the Commission for validation and further directions".

3.1. In the aforesaid directives as contained in Order dated 18.02.2009, the Commission directed the petitioner to workout the amount to be recovered from the respondent for the period starting from 14.09.2002. In compliance of the same, the petitioner had preferred the present petition.

3.2. The order dated 18.02.2009 was challenged before the Hon'ble APTEL by the petitioner as well as the respondent by filing Appeal No. 77 of 2009 and 86 of 2009 respectively. In the said appeals Hon'ble APTEL passed Judgment dated

22.02.2010. The said judgment was challenged by the GUVNL by filing Civil Appeal No. 3455 of 2010 before Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India passed Judgment dated 9.08.2016 and allowed the Civil Appeal filed by the GUVNL and upheld the Commission's Order dated 18.02.2009. The petitioner has preferred the present petition in which the Commission passed a Daily Order dated 20.09.2011. In para 4 of the said order the Commission has recorded as under:

"4. We have carefully considered the submission made by the parties. The petitioner and the respondent have requested to adjourn the matter till the final decision of the Hon'ble Supreme Court of India. Since the matter is pending before the Hon'ble Supreme Court of India and both the parties requested to adjourn the matter, the matter is adjourned sine die with a direction to the both the petitioner and the respondent to intimate to the Commission about the status of the case pending before the Hon'ble Supreme Court of India from time to time."

3.3. Now, as the final order of the Hon'ble Supreme Court of India has been pronounced on 09.08.2016, the present petition is kept for hearing.

3.4. We also note that the Commission in its order dated 18.02.2009 had already decided the issues pertaining to under allocation of power by the respondent to the petitioner and also the issue of incentive on deemed generation with a directive to calculate the amount payable by the respondent to the petitioner. The relevant portion of the said order is reproduced below:

"11. In view of the aforesaid discussion, the Commission orders as follows:

1. *EPL has the obligation at all times under the PPA to declare capacity for the entire generating station, in the manner provided in Schedule VI of the PPA.*
2. *Once the declared availability for the entire plant is known, GUVNL may proceed to issue dispatch instructions to the extent of its allocated capacity in accordance with the terms of the PPA.*
3. *The supply of electrical output will always be in proportion to the allocated capacity i.e. 300:215 MW, in accordance with the dispatch instructions.*
4. *The claims of GUVNL for the period before 14.9.2002 on account of (i) diversion of allocation (except to the extent of settlement of Rs. 64 crores for diversion of electricity by EPL to Essar Steel / sister companies in excess of 215 MW for the period between 1998 to September, 2004) and (ii) adjustment of Deemed Generation Incentive, is barred by limitation.*
5. *For the period after 14.9.2002, whenever EPL has failed to declare the entire capacity of the plant, all supplies made to Essar Steel / sister companies of EPL in excess of the proportionate principle referred to above is liable to be held as supply of electricity made by GUVNL to Essar Steel / sister companies of EPL. GUVNL shall be compensated for such supply at the prevailing HTP 1 tariff less variable cost, which principle of compensation has been previously accepted by the parties for diversions by EPL in excess of 215 MW.*

6. *For the period after 14.9.2002, if GUVNL has not scheduled energy to the extent allocated under the proportionate principle (when EPL has declared capacity for the entire generating station in terms of Schedule VI of the PPA), EPL can supply the additional power that is available only to Essar Steel / sister companies and shall only reimburse the proportionate of annual fixed cost to GUVNL.*
7. *On the issue of Deemed Generation Incentive, in view of the applicability of the Amendment Notification dated 6.11.1995, GUVNL is entitled to recover the Deemed Generation Incentive paid to EPL for the period between 14.9.2002 to 29.5.2006.*
8. *The parties are directed to work out the accounts for the period starting from 14.09.2002 in the manner provided in this order.*
9. *The amount that has been deducted and / or is being deducted by GUVNL on ad hoc basis from the invoices raised by EPL be adjusted in accordance with the principles set out in this order."*

3.5. From the above it is clear that the amount payable by the respondent needs to be calculated based on the principles decided in the aforesaid order by the Commission. Further the delay payment charges (DPC) on the above payments needs to be calculated as per the terms of the PPA between the parties. We, therefore, decide that there is no need for further hearing in the matter. The Commission will determine and decide the amount payable by the respondent to the petitioner based on the calculations submitted by the petitioner and the respondent, in terms of the order dated 18.02.2009 passed in Petition No. 873 of 2006 and the provisions of the PPA between the parties.

4. In view of above, we direct the petitioner and the respondent to submit detailed calculations based on order dated 18.02.2009 in Petition No. 873 of 2006 and PPA dated 30.05.1996 within 15 days from the date of this order. The matter is reserved for final order.

5. We order accordingly.

Sd/-	**Sd/-**	**Sd/-**
[P. J. THAKKAR]	**[K. M. SHRINGARPURE]**	**[ANAND KUMAR]**
MEMBER	**MEMBER**	**CHAIRMAN**

Place: Gandhinagar

Date: 14/12/2016.