



Madhya Pradesh Electricity Regulatory Commission

5th Floor, Metro Plaza, Arera Colony, Bittan Market, Bhopal 462 016

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Petition No. 147/2005

Subject: In the matter of approval of Power purchase Agreement between M/s Nuclear Power Corporation of India Limited (NPCIL) and MPSEB for purchase of 180 MW power from Tarapur Atomic Power Station Unit 3 & 4 Tarapur, Maharashtra and 93 MW from Kakrapar Atomic Power Station Unit 1 & 2 Kakrapar, Gujrat.

Order Dated December 14, 2005

Shri A.B. Bajpai Addl. S.E. O/o ED (Commercial) appears on behalf of MP State Electricity Board.

2. MP State Electricity Board (hereinafter referred to as MPSEB) in the capacity of Trading Licensee in Madhya Pradesh, through its authorized representative Shri A.B. Bajpai has filed a petition before the Commission for approval of the Power purchase Agreement executed between MPSEB and M/s Nuclear Power Corporation of India Limited (hereinafter referred to as NPCIL) for purchase of 180 MW power from Tarapur Atomic Power Station (hereinafter referred to as TAPS), Tarapur, Maharashtra and 93 MW power from Kakrapar Atomic power Station (hereinafter referred to as KAPS), Kakrapar, Gujrat.

3. The subject Power purchase Agreement has been executed on August 8, 2005. This has come into effect on the date of signing of the agreement and shall continue to remain for a period of 15 (Fifteen) years. The Petitioner has submitted that M/s NPCIL are engaged in establishing the Units 3 & 4 at Tarapur Atomic Power Station of the capacity of 540 MW each (2 X 540 = 1080 MW Total) and Units 1 & 2 at Kakrapar Atomic Power Station of the capacity of 220 MW each (2 X 220 = 440 MW Total). Ministry of Power, Govt. of India vide its orders of November 04, 2004 bearing number 5/WR/CSA/GM-04 and of January 12, 2005 bearing number 8/12/97-TH-3 has allocated the 180 MW from TAPS and 93 MW from KAPS to Madhya Pradesh. The evacuation of the power from TAPS is through 400kV transmission line of Power Grid Corporation of India Limited (PGCIL). The evacuation of power from KAPS is through 220 kV transmission line of PGCIL. The rates of supply of this energy shall be as per tariff notifications issued by Department of Atomic Energy (DEA), Govt. of India from time to time in accordance with section 22(1) (b) of the Atomic Energy Act, 1962 (Central Act 33 of 1962) as amended from time to time and subject to the fuel and heavy water adjustment charges as advised by DEA from time to time. As on date the Tariff Notifications issued by DEA are :

(i) 1/2(7)/03-Power/675 Dated September 15, 2003 for KAPS unit 1&2

(ii) 1/9(1)2005-Power/288 Dated May 10,2005 for Taps unit 3&4

The statutory taxes, duties, levies, cess, etc. or any kind of imposition(s) whatsoever imposed/charged by any Government, local body/authority shall be billed to MPSEB in proportion to the energy drawal by MPSEB. The payments shall be made by MPSEB through irrevocable revolving Letter of Credit (LC) opened in favour of NPCIL and maintained by MPSEB. The Board shall open the LC prior to the commencement of power supply and maintain the LC covering the monthly payment towards power supplied from the power stations of NPCIL as per the provisions of the Tripartite Agreement signed by Government of India, Government of Madhya Pradesh and Reserve Bank of India. The agreement also provides for the rebate of 2.5% on the amount of bill paid through LC and levy of surcharge of 0.041% per day i.e. 15% per annum compounded quarterly.

4. The Commission has further noted that the subject Power Purchase Agreement under the clause 10.0 ♦Successors and Assigns♦ provides that in case of the Bulk Power Customer i.e. the Board in the instant case is wound up and/or its generation, transmission and distribution activities are taken over by other organization(s)/agency(ies), partly or wholly, the subject Agreement shall be binding/ mutates upon the successor organization(s)/agency(ies), and guarantee by the concerned State Govt. i.e. GoMP in the present case, shall continue to

remain valid with respect to the obligations of the successor organization(s)/agency(ies). In such an event the Tripartite Agreement arrangement and LC arrangement shall also be binding in respect of the successor organization(s)/agency(ies) with such modifications and changes as may be considered necessary.

5. The Board has further submitted that the subject Power Purchase Agreement has already been ratified in the 33rd meeting of the MP State Electricity Board held at Bhopal on September 26, 2005. The copy of the resolution has been filed by the Board.

6. The Commission has heard the request of the Petitioner. The Commission has also noted that the subject approval provides for the provisions to be operative in case the Board ceases to exist beyond June 09, 2006. The Commission has also noted the subject agreement filed before the Commission is a standard agreement that has been executed between the NPCIL and the beneficiaries i.e. State Electricity Board. The Commission also noted that the CERC had sought the opinion of Attorney General of India regarding whether the Electricity Act 2003 envisages that tariff for sale of electricity by a generating company or a licensee to an electricity trader is to be regulated by the appropriate Commission exercising the jurisdiction over such a generating company or the licensee. Hon^{ble} Attorney general of India opined that the absence of a specific provision under section 62(1) of the Electricity Act 2003 does not necessarily imply that there is no power on the appropriate Commission to regulate tariffs for the supply of electricity to traders. He has further opined that a harmonious and contextual construesion of the various provisions of the Act would support the power of regulation of tariff even for supply of electricity to traders by generating companies / licensees. He has stated that section 62(1) cannot be read in isolation in dealing with the question of tariff determination by an appropriate regulatory Commission and in view of the above, he had answered the query of CERC in the affirmative. In this particular case, the MPSEB would be supplying the electricity so procured from NPCIL to the three distribution companies. In view of the foregoing, the Commission, in principal, approves the subject Power Purchase Agreement signed between the MPSEB and NPCIL.

7. The Case has accordingly been disposed of by the Commission.

Sd/-
(R.Natarajan)

Member (Econ.)

Sd/-
(D.Roybardhan)
(P.K.Mehrotra)
Member (Engg.)

Sd/-

Chairman