



ASSAM ELECTRICITY REGULATORY COMMISSION

FILE NO. AERC. 342/2010/Pt-I

Petition No.: 04/2010

ORDER SHEET

04.05.2017

Before the Assam Electricity Regulatory Commission
ASEB Campus, Dwarandhar,
G. S. Road, Sixth Mile, Guwahati – 781 022

M/s Eastern India Powertech Limited (EIPL) ----- Petitioner
Assam Power Distribution Company Ltd. (APDCL) -----Respondent-1
Govt. of Assam represented by the Secretary, Dept of Power -----Respondent-2

Date of Hearing: 04.05.2017

Counsel for Petitioner:

Ms. Ankita Agarwal, Advocate, EIPL

Representative for Respondent-1:

Mr. HM Sharma, CGM (Com)
Mr. B M Saikia, DGM(Com)
Mr. A.N.Dev Choudhury, AGM (TRC)
Mr. J.P. Choudhury, AGM (TRC)
Mr. Avijit Roy, Advocate, APDCL
Mr. K Talukdar, Consultant

Representative for Respondent-2:

Absent

In the matter of

Petition No. 4 of 2010 filed by M/s Eastern India Powertech Limited in the matter of commercial disputes and Non Payment of contractually due payments by ASEB/APDCL to EIPL

CORAM

Shri Naba Kr. Das Chairperson
Shri Dipak Chakravarty, Member
Shri Subhash Ch. Das, Member

ORDER

1. The Commission vide its Order dated 13.12.2016 on the Petition No 04 of 2010, directed the Petitioner and Respondent-1 to submit the data sought vide Letter dated 30.11.2016 on or before 03.02.2017. The Commission further directed the Petitioner & Respondent-1 to submit their views and comments on the submission dated 12.12.2016 of the Respondent-2.
2. Prior to the Hearing, on 02.05.2017 EIPL had filed a Petition for adjournment of the Hearing dated 04.05.2017. The Commission started the proceeding asking Petitioner to submit their reasons for seeking adjournment of the Hearing.
3. The Counsel of the Petitioner submitted that, they have preferred an interlocutory application dated 03.04.2017 before the Hon'ble Gauhati High Court, praying for modification and/or alteration of the Hon'ble Gauhati High Court Order dated 08.03.2017 passed in I.A. (Civil) 1784/2016. Therefore, for better clarity on the side of Petitioner, the Hearing on Petition No 4/2010 may

perhaps be deferred till decision of the Hon'ble Gauhati High Court.

4. The Commission opined that as because there is no Order from the Guwahati High Court for staying the proceedings before the Commission, the Commission will go ahead with the Hearing. Furthermore, the Commission stated that in case in future there is any direction from the Hon'ble Gauhati High Court, the Commission will act accordingly.
Thereafter, the Commission asked the Petitioner the reasons why the data sought by the Commission have not been submitted.
5. Regarding non submission of data as per Commission's notice dated 30.11.2016, the Counsel of Petitioner submitted that, in case the matter is referred to an Arbitrator, the data & information that may be sought by Arbitrator may be different from the data & information sought by the Commission. Therefore, the clarity on whether the Commission will Adjudicate upon the disputes or refer the same to Arbitrator is needed. The Counsel of the Petitioner also submitted that it is a well established fact that, the Commission has got the power under Section 86 (1) (f) of the Electricity Act'2003, to Adjudicate upon the dispute and/or refer the matter for Arbitration.
6. Both the Petitioner and Respondent-1 submitted that Respondent-2 has not served copies of its submission dated 12.12.2016 to the parties. Thereafter, during the Hearing itself the submission dated 12.12.2016 of the Respondent-2 was provided to Petitioner and Respondent-1.
7. The Commission after hearing the parties has ordered the following:
 - a. The Commission will Adjudicate upon the Commercial Dispute between Petitioner and Respondent-1, as raised in Petition No 4 of 2010.
 - b. The Petitioner will submit the data sought vide Letter dated 30.11.2016 on or before 20.06.2017. The Respondent-1 may submit counter reply on or before 05.07.2017.
 - c. The Petitioner and Respondent-1 will submit its views and comments on the submission dated 12.12.2016 of the Respondent-2 on or before 05.07.2017 and Rejoinder, if any on or before 15.07.2017.
 - d. The Petitioner and Respondents will make submissions in the Format prescribed vide Regulations of the Commission and will provide copies of their submissions to the opposite party.

The matter is posted for further Hearing on 19th July, 2017.

Sd/-
(Subhash Ch.Das)
Member
AERC

Sd/-
(Dipak Chakravarty)
Member
AERC

Sd/-
(Naba Kumar Das)
Chairperson
AERC