Chhattisgarh State Electricity Regulatory Commission
Irrigation Colony, Shanti Nagar, Raipur - 492 001 (C.G.)
Ph.0771-4048788, Fax: 4073553
www.cserc.gov.in, e-mail: cserc.sec.cg@nic.in

CSERC
छत्तीसगढ़ राज्य
विद्युत नियामक आयोग

P. No. 07 of 2020

In the matter of:

"Petition under section 86 (1)(f) read with Section 33 (4) of the Electricity Act, 2003 for the payment of fixed charges/capacity charges for the period of backing Down Instructions (BDI) followed by the petitioner and subjected to Merit Order Dispatch (MOD) principle."

M/s R.R. Energy Limited
Garhumaria, NH-200,
Jharsuguda Road, Raigarh, Chhattisgarh ... Petitioner

Versus

1. Chhattisgarh Load Despatch Centre (SLDC)
   Danganiya, Raipur (Chhattisgarh)
2. Chhattisgarh State Power Distribution Company Limited
   Danganiya, Raipur (Chhattisgarh) ... Respondents

PRESENT : Hemant Verma, Chairperson
Vinod Deshmukh, Member (Judicial)
Pramod Kumar Gupta, Member

Appearance : Shri Raunak Jain, Counsel for petitioner

Shri Saurabh Jain, Counsel and Shri P. Bhaskar, EE for Respondent SLDC.

Shri Abhinav Kardekar, Counsel along with Shri Biplab Dutta, EE for respondent CSPDCL.

O R D E R

(Passed on 18th July, 2022)

The petitioner M/s R.R. Energy Ltd. has established a 15 MW biomass-based power plant at Village-Garhumaria, Pussor-Tehsil, Dist.-Raigarh, in the State of Chhattisgarh. The present petition has been filed by the petitioner under section 86 (1)(f) read with Section 33 (4) of the Electricity Act, 2003 for payment of fixed charges/capacity charges for the period of Backing Down Instructions

(BDIs) followed by the petitioner and subjected to Merit Order Dispatch (MOD) principle.

2. The respondent No. 1 SLDC is responsible to ensure integrated operation of power system in the State. The respondent No. 2 CSPDCL is Distribution Company and procures power from biomass power plant owned and operated by the petitioner through Power Purchase Agreement (PPA) executed between the petitioner and the respondent No. 2.

3. The respondent No. 1 SLDC has issued 52 BDI to the petitioner during the period between 17.01.2019 to 20.04.2019. All these BDI have been strictly complied with by the petitioner.

4. It is submitted by the petitioner that the Commission has notified the CSERC (Intra-state Availability Based Tariff and Deviation Settlement Mechanism) Regulation, 2016 ("ABT-DSM Regulations, 2016"), which were made affective from 01.12.2016. As the name signifies, the major part of payment for the stations' output in this tariff scheme is based on 'availability', rather than on installed capacity. Payment under ABT, basically comprises of three parts-capacity charges, energy charge and charges for deviation. The capacity charge for time block is paid for the declared MW output capacity of the station for that particular time block.

5. According to the petitioner Hon'ble Appellate Tribunal for Electricity (APTEL) vide it's judgment dated 26.08.2019 in appeal No. 396 of 2018 "M/s Arya Energy Limited and Anr. V/s Madhya Pradesh Power Management Company Limited" has held that the biomass generators must be paid the fixed cost component while MOD is applied on them even with a single part tariff.

6. In the present case the SLDC has followed and applied MOD principle while issuing the BDIs to the petitioner, hence the petitioner is entitled to claim fixed charges/capacity charges corresponding to it's availability as per the ABT DSM Regulations and power not scheduled. The amount claimed by the respondent is Rs. 42,26,057.00.

7. The respondent SLDC in it's reply denied all averments, which are contrary to what is stated in the petition. According to the respondent, the petitioner has entered into PPA with the respondent CSPDCL for supply of electricity eventually for 20 years. The terms and conditions of the agreement is binding document on the parties. According to the PPA any dispute regarding supply, billing and payment may be submitted for arbitration under section 158 of the Electricity Act, 2003. Hence, the dispute raised in the petition should be referred to the arbitration, under section 158 of the Electricity Act, 2003. The respondent SLDC referred judgments of Hon'ble Supreme Court in "Gujrat Urja Vikash Nigam Ltd. V/s Solar Semiconductor Power Company (India) Ltd. and Ors" published in (2017) 16 SCC 498, and "Gujrat Urja Vikash Nigam Ltd. V/s EMCO Limited and Anr" published in (2016)11 SCC 182. Further, the respondent SLDC referred Hon'ble APTEL judgments passed in appeal No. 283 of 2015 "Nabha Power Limited V/s Punjab State Power Corporation Ltd. and Ors."

8. It is stated in reply by the respondent that backing down of generation is generally required in the event of load crash, high under drawl from the grid, high system frequency (50.05 Hz), transmission constraints or congestion, real time advice from WRLDC and to avoid imposition of congestion charges by WRLDC.

9. The respondent SLDC has classified BDIs and issued directions accordingly. In case of substantial under drawl according to the CERC DSM Regulations, 2014 the intrastate entity has to back down generation of surplus quantum injected into the grid to their accepted schedule. The SLDC may advice the regional entity to surrender their costly power (as per the MOD) and get their schedule curtailed at the state and regional level. On account, of congestion backing down instructions shall be effective till congestion is relieved. In case transmission constrains the backing down instructions shall be effective from the time block in which it was issued.

10. The petitioner and the respondent CSPDCL have agreed that the company shall be under obligation to regulate it's power generation as per directives given by the State Load Despatch Centre.

11. It is submitted by SLDC that in the event of sustained deviation the respondent has to change sign of it's deviation from schedule once after 06 time blocks unless it would be attract penalty and therefore, the BDIs are issued to generators. Further, MOD is issued by the respondent CSPDCL to respondent SLDC and since, the power purchase rates of biomass generators are costlier BDIs are issued to on the basis of MOD. The petitioner's demand for fixed cost is against the respondent CSPDCL, not against the SLDC.

12. The respondent CSPDCL in it's reply denied all contents of the petition. The matter should be decided through arbitration as per provisions of the PPA. It is stated by the respondent that payment of fixed charges to the generating station during the backing down instructions from SLDC is in the nature of incentive. Since, BDIs are only given under abnormal conditions beneficiaries are also affected. As declaration of BDIs is not attributable to the CSPDCL, there is no reason to incentivise the generating stations for it's mere availability when power could not be generated due to BDIs by SLDC.

13. The respondent CSPDCL submits that from January 2019 to March 2019 the biomass power plants are subject to MOD principle and since variable charges of biomass, generators are costlier BDIs issued to them on the basis of MOD. It is stated by the respondent that the petitioner is not entitled to any claim of compensation occurred by the BDIs.

14. As per the respondent CSPDCL the fixed charges are linked to availability of the generating stations declared on daily basis. However, the DSM Regulations, 2016 does not contemplate anywhere a case of payment of fixed charges in relation to declared capacity when BDIs are issued by SLDC. Referring Commissions observing in a bunch matter bearing petition No. 25 to 32 of 2017(D) the respondent submitted that in that matters BDI was not discuss. It is further stated by the respondent that in this case does not anywhere provide that fixed charges are also recoverable on the basis of declared availability of plant even when BDIs are issued for maintaining system stability.

15. The respondent submitted that the case was "M/s Arya Energy Limited and Anr. V/s Madhya Pradesh Power Company Limited" cannot strictly be equated with the facts and circumstances of this case. According to the respondent, he is also subject to BDIs equally as that of petitioner, no Regulation of Commission deals with incentivising the biomass-based generators for the issue BDIs by allowing recovery of fixed charges on mere availability of plant.

16. In rejoinder to the reply filed by SLDC, the petitioner submitted that according to Hon'ble Supreme Court judgments in "Gujarat Vikas Nigam Limited V/s Essar Power Limited" [publish in (2008)4 SCC 755], being special law the Electricity Act, 2003 prevails over section 11 of the Arbitration and Conciliation Act, 1996 and after the date 10.06.2003, on which the Electricity Act, 2003 has come into force, all adjudication of disputes between licensee then generating company can only be done by the State Commission or the arbitrator (or arbitrators) appointed by it. It is also submitted by the petitioner that he is entitled to seek relief of payment of fixed cost/capacity charges against both the respondents jointly. Backing Down Instructions issued by the respondent no.1 SLDC are in clear violation of clause 6.10.4 of the internal operation procedure for Chhattisgarh State Grid.

17. Apart from the above submissions, in rejoinder to the reply by the CSPDCL, the petitioner urged that the capacity charges claimed by the petitioner or not in nature of incentive as envisaged in reply by the respondent no. 2 CSPDCL. These are fixed charges on the basis of deemed generation which are to be borne by the beneficiary to the extent that they agreed to buy the capacity of generating station and it is available. CSPDCL's contention that the ABT-DSM Regulations, 2016 do not provide for payment of fixed charges in relation to declared capacity is completely wrong. Countering the reply of CSPDCL regarding differential treatment for thermal power plant in the matter of deemed generation, the petitioner submits that there is no reasonable basis for this unfair discrimination when both thermal station as well as biomass power plant are under the ABT regime.

18. The parties have also filed their written submissions.

19. Considered pleadings and arguments of the parties. The issue has to decide is whether the petitioner is entitled to get fixed cost/capacity charges corresponding to declare availability on account of energy loss due to BDIs issued and complied with?

20. There is no dispute that 52 BDIs issued by the respondent SLDC to the petitioner during the period between 17.01.2019 to 20.04.2019. It is also not disputed by the respondents that the petitioner has not complied with the BDIs. Therefore, it is clear that the petitioner a biomass generator was ready to supply power but was refrain from supplying power due to the backing down instructions issued by the respondent SLDC.

21. The respondents submitted that the petitioner and respondent CSPDCL are abide by the provisions of a PPA executed between them. According to the provision made in the PPA, the petitioner is obligated to comply the directives issued by SLDC for maintaining the stability of the system. It is also agreed by the parties in the PPA that the CSEB (the predecessor of respondent CSPDCL) would no way be responsible for paying compensation whatsoever in the event of directions issued by the SLDC. The argument of the respondents is not sustainable because at the time of execution of the PPA there was no mechanism for Availability Based Tariff (ABT) and the ABT mechanism is introduced in 2016 and was made effective from 01.12.2016, through the ABT-DSM Regulations 2016. The provisions of Regulations will prevail over the PPA signed by the parties before enforcement of the ABT-DSM Regulations.

22. It is also appeared that the SLDC has issued BDIs on the basis of MOD issued by the respondent CSPDCL to SLDC. Since, the power purchase rates of the biomass generators are costlier; they have been directed for backing down the power generations. It is also argued that BDIs have only be given in abnormal conditions beneficiaries are also affected. As declaration of BDIs are not attributable to the respondent CSPDCL, there is no reason to incentivise the generating stations for it's mere availability when power could not be generated due to the BDIs. We do not find any merit on these arguments, because the MOD is made available by the respondent CSPDCL to SLDC and the SLDC has issued BDIs on the basis of MOD. The State policy incentivise the biomass and other renewable sources of energy and therefore, BDIs issued to such generators like petitioner only on the ground of costlier power cannot be justified. Here, it is to be appropriate to mention that the Hon'ble APTEL in it's judgment dated 26.08.2019 in appeal No. 396 of 2018 "M/s Arya Energy Limited and another V/s Madhya Pradesh Power Management Company Limited" has held that the biomass generators must be paid the fixed cost component while MOD applied on them even with a single part tariff. This Commission is also expressed it's views in it's order dated 08.06.2018 in a bunch matters comprise with inter-alia petition no. 25 of 2017(D) "M/s Balaji Power V/s CSPDCL" on this matter and decided that according to the provisions of clause 4 of ABT-DSM Regulations payment of fixed charges has to be done on the basis of daily declared availability and directed the CSPDCL to implement the ABT-DSM Regulations in it's true spirit. The relevant portion of the order is mentioned below:-

> ***"38. .... In ABT mechanism, biomass generators are required to declare their schedule on daily basis. If there is any revision in daily declared schedule, it is governed by the State Grid Code. While, the effective or implemented daily schedule has to be considered for payment of energy charge and deviation charge, daily declared capacity has to be considered for payment of fixed charge. In ABT regime, there is no concept on payment of fixed charges and energy charges on actual energy supplied and load factor modality. The formula devised by CSPDCL for computation of load factor cannot be permitted according to the law. Accordingly, the petitions are allowed and CSPDCL is directed to pay the bills and implement ABT Regulations in it's true spirit."***

23. On the basis of above we are of the firm view that the petitioner is entitled to get fixed cost from the respondents on declared availability. For this claim the petitioner may file detailed calculation and necessary documents before the competent officers of the respondents. The respondents' officers may decide the claim after examining duly and make payment of the amount as find out. All the process after filing the claim be completed within 45 days. In case of delay beyond 45 days, interest at the rate of 6% per year as per prevailing bank rate would be leviable on the claim amount.

24. It is expected from the SLDC to consider the relevant Regulations and practices before issuing BDIs, so disputes regarding the matter can be avoided.

25. Petition is disposed off accordingly, no orders as to cost.

Sd/-	Sd/-	Sd/-
(Pramod Kumar Gupta)	(Vinod Deshmukh)	(Hemant Verma)
Member	Member (Judicial)	Chairman