

Rajasthan Electricity Regulatory Commission

IA No. 09 of 2017
in Petition No. 966/16

In the matter of application seeking amendment in petition 966/16 filed for determination of transfer price of lignite from Kapurdi mine for FY 2017-18.

Coram:

Sh. Vishvanath Hiremath, Chairman
Sh. R.P. Barwar, Member
Sh. S.C. Dinkar, Member

Petitioner : M/s Barmer Lignite Mining Company Ltd.

Respondent(s) :
1. M/s Jaipur Vidyut Vitran Nigam Ltd., Jaipur
2. M/s Ajmer Vidyut Vitran Nigam Ltd., Ajmer
3. M/s Jodhpur Vidyut Vitran Nigam Ltd., Jodhpur

Date of hearing : 09.02.2018

Present :
1. Sh. Aman Anand, Advocate for Petitioner
2. Sh. P. N. Bhandari, Advocate for Respondents

Order Date : 05.04.2018

ORDER

1. Petitioner, M/s Barmer Lignite Mining Company Ltd. (hereinafter referred as 'BLMCL') has filed an Interlocutory Application on 27.10.2017 seeking amendment in the present petition filed for determination of transfer price of lignite from Kapurdi mine for FY 2017-18 .

2. The application was heard on 09.02.2018. Sh. Aman Anand, Advocate appeared for Petitioner and Sh. P.N. Bhandari, Advocate appeared on behalf of the Discoms.
3. Petitioner in the application and during hearing made the following submissions:
 - (i) M/s Barmer Lignite Mining Company Ltd. had filed petition no. 966/2016 on 29.11.2016 for determination of transfer price of lignite from Kapurdi mine for FY 2017-18. The said petition is pending before this Commission.
 - (ii) Commission vide its order dated 27.04.2017 has allowed interim transfer price for recovery of transfer price of lignite from Kapurdi mine for FY 2017-18 on ad-hoc basis, subject to adjustments based on final tariff and transfer price to be determined. The said interim transfer price is applicable with effect from 1.04.2017 till 31.03.2018.
 - (iii) Petitioner through the present application has prayed to allow amendment in the present petition as it has been necessitated due to certain material subsequent developments, which given as under:-
 - (a) The Jalipa lignite mine is likely to achieve commercial operation on 01.11.2017 and thereafter it is proposed to taper down the capacity of Kapurdi Mine to 6.5 MTPA; and supply the balance of 0.5 MTPA of lignite from Jalipa Mine from 01.11.2017 to the end of financial year 2017-18. This change in the supply arrangement is necessary to ensure that the power plant operations are not hindered for want of fuel as permission to extract 7 MTPA of lignite from Kapurdi Mine is going to expires at the end of financial year 2018.
 - (b) Commission vide its order dated 06.04.2017 has declined to accept

the MDO rate of Rs. 1552/- per ton, based on which the transfer price petition for FY 2017-18 has been filed. Petitioner has filed an appeal against the order dated 06.04.2017 before the Hon'ble Appellate Tribunal for Electricity, which has been admitted and pending adjudication. Since there is no stay of the operation of the order dated 06.04.2017, Petitioner based on the earlier directions of this Commission i.e. basis extrapolation of extraction rates for Sonari Mines, with due adjustment has purpose the MDO cost for Kapurdi mine and thus arrived, for Jalipa also. It is submitted that all calculations are subject to adjustments, once the final MDO cost is decided.

- (iv) Petitioner also filed an amended transfer price petition for FY 2017-18, taking into account the above subsequent developments, and consequential changes, along with the application.
- (v) Present application has been made bona-fide and in the interest of justice. No prejudice would be caused to the Respondents if the present application for amendment is allowed. The Petitioner will suffer serious and grave prejudice if the present amendments are not permitted.
- (vi) In view of the aforesaid facts and circumstances it is prayed to:-
 - a) allow the present application and take the amended transfer price petition for FY 2017-18 on record;
 - b) Till the disposal of the present application, grant a sustainable ad hoc interim transfer price of lignite from Kapurdi and Jalipa Mines with effect from 01.11.2017, in order to ensure that the power plant operations are not hindered for want of fuel; and/or
 - c) Pass any such order or further order(s) as this Commission may deem just fit and proper in the facts and circumstances of the present case.

4. Sh. P.N. Bhandari, learned Advocate who appeared for Discoms made the following preliminary objections on the I.A.

- (i) Under the garb of amendment, Petitioner cannot introduce a full-fledged petition running into 155 pages with 16 Annexure. Since a fee of Rs.15.50 lacs has been deposited, therefore there is not an iota of doubt that it is a fresh petition. Hence it would patently improper to treat it as a part of petition No.966 of 2016. This is grossest malpractice and should be curbed firmly.
- (ii) Since the establishment of the Commission, no other applicant has been given such a liberty, which the Petitioner is attempting to play with the established rules and procedures.
- (iii) Petitioner cannot introduce a totally new case, while continuing with the earlier petition No.966/2016 which was filed more than a year back in 2016. If certain new developments have taken place, it should have withdrawn the earlier petition and filed a fresh petition.
- (iv) The Commission may kindly consider whether a fresh petition, with substantially different norms and assumptions, can be filed along with fresh annexure without withdrawing the earlier petition and when the Registry has charged the full fee of Rs.15.50 lacs, whether the petition can it be called an I.A.
- (v) In the amended petition, not even once, it has been indicated as to which part of the earlier petition is proposed to be amended by which expression. If the earlier petition was required to be amended, the I.A. would have suggested specific amendments which have not been done.

- (vi) Production in Kapurdi mine has gone up from 3 lac MT per year to 7 lac MT per year. Further, there is no direction of either of Coal Ministry or Environment Ministry of GoI to start Jalipa mine forthwith. Also, there is no objection to be appears regarding maintaining of the same production level from Kapurdi mine beyond 2018. Therefore, Petitioner may be directed to produce the relevant documents so that a view can be taken whether tapering the production from Kapurdi mines is mandatory or desirable or cost effective at this stage.
- (vii) Hence at this stage, any tempering of production from Kapurdi mine and starting the operations of Jalipa mine appears to be misconceived and misdirected.
- (viii) Fresh bidding for appointment of MDO is shortly being launched therefore, the task of Jalipa mine should be started only after the bidding exercise is concluded. If a new MDO is appointed, then all the expenditure incurred by the present MDO would generate disputes. Hence during the short transitional period fresh mining in Jalipa is avoidable.
- (ix) Adhoc transfer price of lignite for FY 2017-18 has already been allowed by the Commission only 6 months back, hence there is no justification for determining provisional transfer price once again. The period for the validity of transfer price may be extended for FY 2017-18 also.
- (x) Since this objection goes to the very root of the problem, it is respectfully submitted that the Commission may kindly first decide about the preliminary objections. The Discoms will submit detailed reply, if required, after the decision of the Commission on the preliminary objections.

Commission's view and decision

5. Commission has considered the above submissions made in the application dt. 27.10.2017 seeking amendment to the petition filed for determination of transfer price of lignite from Kapurdi mine for FY 2017-18.
6. It is submitted by Petitioner that Jalipa lignite mine is likely to achieve commercial operation on 01.11.2017 and permission to extract 7 MTPA of lignite from Kapurdi Mine is going to expire at the end of financial year 2018, there is change in the supply arrangement of lignite to the RWPL's power plant. Therefore, taking into account the above subsequent developments, and consequential changes, Petitioner has considered the same MDO cost for Jalipa mine for FY 2017-18 as considered for Kapurdi mine on the basis of extrapolation of extraction rates for Sonari Mines subject to adjustments of final MDO cost is decided.
7. To take into account the subsequent developments and consequential changes, Petitioner prayed to allow amendment in the present petition filed for determination of lignite transfer price for Kapurdi mine for FY 2017-18.
8. Per contra Respondents contended that Commission may not allow the amendment in the present petition as Petitioner under the garb of amendment desires to introduce a full-fledged petition containing about 155 pages with 16 Annexure. Petitioner further contended that since a fee of Rs.15.50 lacs has been deposited with the application, therefore, there is not an iota of doubt that it is a fresh petition.
9. Respondents has also contended that production in Kapurdi mine has reached upto 7 MTPA, hence at this stage, any tapering of production from Kapurdi mine and starting the operations of Jalipa mine should be avoided. Further, no objection appears to be there regarding maintaining of the same

production level from Kapurdi mine beyond 2018. It is also submitted that the Petitioner has not produced the relevant documents which can establish that tapering the production from Kapurdi mines and operation of Jalipa mine is necessary at this stage.

10. It is also contended that fresh bidding for appointment of MDO is being completed shortly therefore, the task of Jalipa mine should be started only after the bidding exercise is concluded. If a new MDO is appointed, then all the expenditure incurred by the present MDO would generate disputes. Hence during the short transitional period fresh mining in Jalipa is avoidable.
11. It is also stated that the adhoc transfer price of lignite for FY 2017-18 has already been allowed by the Commission only 6 months back, hence there is no justification for determining provisional transfer price once again. The period for the validity of transfer price may be extended for FY 2017-18 also.
12. Commission observes that the Petitioner has filed an application along with an amended petition as per Tariff Regulations, 2014, considering Jalipa mine likely to be achieve commercial operation on 01.11.2017, and prayed to allow the application and take into record the amended transfer prices for FY 2017-18 considering both Kapurdi and Jalipa mines.
13. Commission observes that amended petition has been filed for approval of transfer price of lignite for FY 2017-18 taking into consideration of Jalipa mine which needs to be considered on merit. Therefore, Commission allows the application of the Petitioner.
14. Petitioner in the IA has also prayed to grant adhoc interim transfer price of lignite from Kapurdi and Jalipa mines with effect from 01.11.2017.

15. Commission observes that since the financial year 2017-18 is already over and Petitioner has the permission for extraction of lignite from Kapurdi mine upto September, 2018. Further it is observed that Petitioner has neither produced the environmental clearance for operating Jalipa mine nor could establish that the tapering of production from Kapurdi mines and operating of Jalipa mine is necessary at this stage. Therefore in the Commission's considered view, there is no need to allow separate transfer price for the Jalipa mine at this juncture in the interim price of the FY 2017-18.

16. In the light of the above, Commission allows the existing transfer price of lignite allowed for FY 2017-18 for Kapurdi mine, for lignite extracted from Jalipa mine also if at all extracted.

17. Application is disposed of accordingly.

(S.C. Dinkar)
Member

(R.P. Barwar)
Member

(Vishvanath Hiremath)
Chairman