



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad - 500004

I.A. No.6 of 2006
in
O.P. No.15 of 2006

Dated 19.11.2012

Present
Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member

Between

Central Power Distribution Company of Andhra Pradesh Ltd,
Corp. Office, Mint Compound, Hyderabad.

.... Petitioner

AND

M/s.IL&FS Wind Farms Limited
Bandra East, Mumbai.

..... Respondent

This petition coming up for hearing on 06.09.2011 in the presence of Sri. P. Shiva Rao, Advocate for the petitioner and Sri. Promod Tikkas, Manager for the respondent and having heard the parties concerned, the Commission passed the following:

ORDER

This petitioner filed the above said petition under Section 62 of the Electricity Act, 2003 and under section 94 (2) of Electricity Act 2003. The case of the petitioner is briefly as follows.

- a) The respondent, M/s. IL&FS Wind Farms Ltd., (earlier known as Infrastructure Leasing & Financial Services Limited) after obtaining sanction from Non-conventional Energy Development Corporation of AP Ltd (NEDCAP) commissioned 6.5 MW wind power project at Ramagiri, Anantapur District on 07.11.1995. The respondent entered into Wheeling Agreement with erstwhile AP State Electricity Board on 15.09.1995 for wheeling of energy delivered from the wind power project as per the provisions of Government orders prevailing at that time.

- b) The Commission after coming into existence under the provisions of AP Electricity Act, 1998 (APER Act, 1998) has taken up the review of NCE Policy as per the powers vested in terms of APER Act, 1998. The Commission extended the Government of AP orders upto June 2001 and in the orders dated 20.06.2001 in OP No. 1075 of 2000 issued orders on NCE policy. The Commission in the order fixed uniform tariff for NCE projects at Rs. 2.25 per unit with 5% escalation per annum with 1994-95 as base year. The Commission in the order informed that the tariff fixed will apply upto 31.03.2004 and fixation of tariff to take effect from 01.04.2004 will be undertaken by the Commission after discussions with all the concerned parties.
- c) The Commission stipulated that “there will also be a review of the purchase price with specific reference to each developer on completion of 10 years from the date of the commissioning of the project (by which time the loans from financial institutions would have been repaid) when the purchase price will be reworked on the basis of Return on Equity, O & M expenses and the variable cost”.
- d) The respondent, in compliance with the Commission orders dated 20.06.2001 in OP No. 1075 of 2000, entered into Power Purchase Agreement (PPA) with Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) on 24.08.2001 for sale of energy delivered from their 6.5 MW wind power project in Anantapur District. The PPA superseded in its entirety the earlier Wheeling Agreement and is for duration of 20 years from the commercial operation date of the project i.e., PPA will be in force upto 06.11.2015. The PPA was revised on 08.09.2003 in view of change of name of the respondent. The PPA under Article 2.2 also provides that there will be review of tariff by the Commission on completion of 10 years from the date of the commissioning of the respondent’s project, when the purchase price will be reworked on the basis of Return on Equity, O & M expenses and the variable cost. The tariff to the respondent was paid up to 31.03.2004 as per the Commission order dated 20.06.2001 in OP No. 1075 of 2000.
- e) The Commission initiated suo motu proceedings for determination of tariff applicable to NCE projects to take effect from 01.04.2004 onwards. The

Commission vide orders dated 20.03.2004 in RP No. 84 of 2003 in OP No. 1075 of 2000 issued orders fixing tariff for NCE projects to take effect from 01.04.2004. The Commission fixed tariff for wind power projects at Rs. 3.37 per unit freezed for next 5 years.

- f) The Commission in the order reiterated that review of tariff for individual projects will be undertaken on completion of 10 years from the date of the commissioning of the project, by which time the loan is expected to have been substantially repaid and the purchase price will be based on Return on Equity, O & M expenses, variable cost and residual depreciation, if any. The respondent is being paid the tariff at Rs. 3.37 per unit from 01.04.2004 as per the Commission order dated 20.03.2004 in RP No. 84 of 2003 in OP No. 1075 of 2000.
- g) The respondent's project has completed 10 years of operation by 06.11.2005. As such, the tariff for the respondent's project to take effect from 07.11.2005 is to be reviewed and re-fixed. Section 62 of the Electricity Act, 2003 empowers the Commission to determine the tariff for supply of electricity by a generating company to a distribution licensee.
- h) The petitioner has formulated the tariff proposals (which are enclosed as Annexure to the petition) and based on the detailed calculations made, the petitioner proposes a tariff of Rs. 1.43 per unit, excluding Income Tax to be paid at actuals, if any, for the energy purchases from the respondent's wind power project during the period from 07.11.2005 to 06.11.2015.
- i) The petitioner prayed that the Commission be pleased to pass directions permitting the petitioner to pay tariff to the respondent for energy delivered at the tariff of Rs. 1.43 per unit, subject to final orders in the main petition and / or pass such other order as the Commission deem fit and appropriate in facts and circumstances of the case.

2. The case of the respondent is as follows:

- i) Since commissioning in the year 1997, respondent's wind farm of 6.5 MW capacity is running continuously with the highest machine availability (98.7%) and grid availability (99.05%), however in spite of above, the wind farm could able to achieve an average PLF of 12.7% (on delivered basis).

Respondent is thus suffering due to lower wind availability in the region attributing to lower PLF.

- ii) With the closure of Original Equipment Manufacturers (OEM) in India, the components of wind electric generators are being imported for replacement against damaged one. Cost on account of Long term maintenance of the wind farm has gone up tremendously. With the aging of the machines, O & M expenses of the wind farm have also gone up drastically reducing the margin considerably. Considering this, any further reduction in tariff would become unviable in running the wind farm any more.
- iii) Regulatory Commissions in the State of Gujarat, Rajasthan and Madhya Pradesh have determined the tariff for wind projects at Rs. 3.56; 4.50 and 4.35 considering the project life of 20-25 years without any review of tariff in between project lifecycle. The tariff is determined giving due consideration for the mitigation of risk associated with technological obsolescence and operational difficulties of the wind farm over the project life unlike the order issued by APERC having condition of review of tariff after completion of 10 years from COD. Similarly TNERC and KERC have increased existing tariff after completion of 10 years, but did not reduce the tariff.
- iv) Considering the trends / precedent set by the above mentioned State ERC's, it submitted that this Commission may consider for increase in tariff for the existing wind farm projects.
- v) CERC issued guidelines vide notification dated 16.09.2009 specifying the norms for various non-conventional sources of energy including power from Wind Electric Generators. For getting 14% return on equity a tariff of Rs. 3.37 / unit is required to be allowed over a period of 20 years. This implies that any reduction in tariff below Rs. 3.37 / unit will reduce the return on equity which will be inferior to that allowed for conventional power project and will be inconsistent with the provision of 61 (h) of EA, 2003 and National Electricity Policy. Therefore any reduction in tariff below Rs. 3.37 / unit will jeopardize the project operation tending to suffer heavy losses by the wind farm developer.

- vi) CERC has allowed a levelised tariff of Rs. 5.63 per kwh for a period of 13 years PPA for the wind farms with CUF of @ 20% which is more than the average CUF for the projects in AP. It is therefore submitted that the disparity between the actual PLF attained by our wind farm in Andhra Pradesh and the PLF considered by CERC while arriving at a tariff in AP may be taken into consideration while determining the tariff for existing wind farms completing 10 years period from the COD which makes ground for increase in tariff for the existing wind farm projects.
- vii) Respondent is facing hardship in running the project due to loss of revenue solely attributable to very low wind regime in the region from last 15 years and therefore submits that any further reduction in tariff would lead to closure of wind farm operation.

3. Therefore, it is prayed that, the Commission may issue order for proportionate increase in tariff consistent with the mandate of EA, 2003, National Electricity Policy and in line with guidelines issued by CERC.

4. The learned advocate for the petitioner argued that the Commission has to decide the interim tariff pending disposal of the main petition filed for fixation of tariff by way of review on completion of 10 years and this is abnormally delayed due to the continuous litigation ran by the NCE developers right from the Commission up to Apex Court. If, the interim tariff is not fixed, untold hardship is going to be caused for the petitioner since they are now paying more than Rs.1.43 on adhoc arrangement.

5. Where as the representative for the respondent argued that the relief sought for interim petition and the main petition is one and the same and Commission can not pass an order in the interim petition as it may affect the relief sought in the main petition itself. Whatever it may be, payment of tariff of Rs. 1.43 / unit as proposed by the petitioner is not at all remunerative. Commission may consider difficulties being faced by the respondent in running its wind power project and increase the tariff to be paid by the petitioner to the respondent.

6. Now the point for consideration is, whether the petitioner is entitled for fixation of interim tariff as prayed ?

7. It is not a hard and fast rule that the Commission is going to fix the tariff as sought by the petitioner either in the main petition or in the interlocutory application. It may fix the tariff at one rate in the interlocutory application and the same may be altered or modified depending up on the circumstances placed before the Commission at the time of final hearing.

8. Now the point before the Commission is about the determination of the tariff in the interim petition pending disposal of the main petition.

9. As can be seen from the above, there is no dispute that, upon completion of 10 years from the date of commissioning of the project, the tariff of the same is to further reviewed, basing on the factors like O & M expenditure, Return on Equity, Variable Cost and residual depreciation if any. The rationale for further reviewing the tariff after completion of 10 years basing on the factors like O & M expenditure, Return on Equity, Variable Cost and residual depreciation is that, by the end of 10 years the developer would have substantially repaid the loan. It is therefore, abundantly clear that, once the loan corresponding to 70% of the project cost is substantially repaid (through interest and depreciation components of the tariff), the tariff after 10 years would substantially come-down, since, it would include O & M expenditure, Return on Equity and residual depreciation, if any. The variable costs are any way, not applicable to the Wind Power Projects. It is a matter of fact, that the DISCOMs are presently paying an ad-hoc tariff of 50% of Rs.3.37 per unit (the tariff determined in 20-03-2004 order) working out to around Rs.1.69 per unit. The prayer of the petitioner, to fix an interim rate of Rs.1.43 per unit is not reasonable since it is lesser than the rate of Rs.1.69 per unit, which is 50% of the rate paid for the 10th year (Rs.1.69 per unit is being presently paid on ad-hoc basis by the petitioner). The petitioner is therefore directed to pay Rs.1.69 per unit for the power supplied to them by the developer, beyond 10th year, pending fixation of final tariff applicable beyond 10th year.

This order is corrected and signed on this 19th day of November, 2012.

Sd/-
(C.R.SEKHAR REDDY)
MEMBER

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN