

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

I.A. No.4 of 2012
in
O.P. No.15 of 2009

Dated: 28.09.2012

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

Between:

Andhra Pradesh Generation Corporation Ltd.
Vidyut Soudha, Hyderabad - 500082

....Petitioner

AND

1. Andhra Pradesh Central Power Distribution Company Limited
2. Andhra Pradesh Eastern Power Distribution Company Limited
3. Andhra Pradesh Northern Power Distribution Company Limited
4. Andhra Pradesh Southern Power Distribution Company Limited

....Respondents

This petition coming up for hearing on 04.08.2012 in the presence of Sri K.Gopal Choudary, Advocate for the petitioner and Sri P.Shiva Rao, Advocate for the respondents, the Commission passed the following order:

ORDER

This is a petition filed by the petitioners under section 94 (2) of the Electricity Act, 2003 by the petitioner. The case of the petitioner is briefly as follows:-

- (i) The Petitioner herein has filed an application for determination of tariff for the supply of electricity to the Distribution Licensees in Andhra Pradesh during the financial years 2009-2014 under section 62 of the Electricity Act, 2003. The said application was filed before the Hon'ble Commission on 04.02.2009 under O.P. No.15 of 2009.

- (ii) As per the Retail Supply Tariff order dated 30.03.2012 passed by the Commission against O.P. Nos. 01 of 2012 to O.P. 04 of 2012 filed by DISCOMS in respect of the Annual Revenue Requirements and the Distribution and Retail Supply Tariffs of the Distribution Licensees in ANNEXURE-F at page 241, the Commission has provided for total fixed costs of the Petitioner at Rs. 5071.10 crores for 2012-2013.

**APGENCO'S STATION-WISE CHARGES FOR FY 2012-13
(APPROVED BY APERC)**

(Rs in Crs)

S.No	Station	Capacity (MW)	ROCE	Depreciation	O&M	Fixed cost Approved
	APGENCO					
	THERMAL					
1	VTPS I	420.00	191.84	72	219.50	483.34
2	VTPS II	420.00				
3	VTPS III	420.00				
4	VTPS IV	500.00	277.08	169.63	76.83	523.54
5	RTPP I	420.00	101.07	39.20	83.79	224.06
6	RTPP II	420.00	206.66	146.30	71.72	424.68
7	RTPP III	210.00	183.51	102.33	35.87	321.71
8	KTPS A	240.00	98.90	67.50	198.72	365.12
9	KTPS B	240.00				
10	KTPS C	240.00				
11	KTPS D	500.00	104.62	32	83.61	220.23
12	KTPS Stage VI	500.00	338.01	179.14	76.83	593.98
13	RTS-B	62.50	18.82	2.62	30.45	51.89
14	KTPP I	500.00	385.40	227.92	76.83	690.15
	TOTAL THERMAL	5092.50	1905.91	1038.64	954.15	3898.70
	HYDEL					
15	MACHKUND PH AP Share	84.00				14.31
16	TUNGBHADRA PH AP Share	57.60				9.80
17	Upper Sileru (USR) PH	240.00	57.69	20.27	57.22	135.18
18	Lower Sileru (LSR) PH	460.00				
19	DONKARAYI	25.00				
20	SSLM Right Bank PH	770.00	78.70	32	48.52	159.22
21	Nagarjuna Sagar PH (NSPH)	815.60	92.59	38.50	32.97	164.06
22	NSRCPH	90.00				
23	NSLCPH	60.00				

S.No	Station	Capacity (MW)	ROCE	Depreciation	O&M	Fixed cost Approved
24	POCHAMPAD PH (Small Hydel)	27.00				
25	NIZAMSAGAR PH (Small Hydel)	10.00	16.05	5.75	11.03	32.83
26	PABM (Small Hydel)	20.00				
27	SINGUR (Small Hydel)	14.16				
28	Mini Hydro & others	15.00	3.08	1.00	4.39	8.47
29	SSLM Left Bank PH	900.00	369.48	122.09	25.11	516.68
30	Priyadarshini Jurala H.E. Project – AP Share	234.00	89.96	23.22	13.59	126.78
31	Pochampad – IV (New project)	9.00	3.62	0.92	0.53	5.07
	TOTAL HYDRO	3831.36	711.17	243.75	193.36	1172.40
	TOTAL APGENCO	8923.86	2617.08	1282.39	1147.51	5071.10

- (iii) The Commission has further provided for an amount of Rs. 69.92 crores towards income tax and others (Annexure G (i) at Page 242 of the order dated 30.03.2012). The amount of income tax to the extent of Rs. 69.92 crores is to be released according to be statutory schedule for the payments of advance tax. The provision for incentive for an amount of Rs. 51.27 Crs is also made to claim on the basis of actual generation.
- (iv) As per the aforesaid tariff order dated 30.03.2012, at pages 238 & 239, the Commission has provided for the variable costs of various thermal stations, for claiming every months; however subject to adjustment for the actual values of gross calorific value of fuel and landed cost of fuel for every quarter.
- (v) The amounts stated above and prayed for herein below in this application have been allowed as a pass through to the consumers

and are being recovered by the Respondents under the Respondent's retail supply tariff. It is therefore only just and equitable that the Petitioner be allowed to claim, and be paid, the said amounts from the Respondents till the disposal of the pending tariff determination petitions. It is also necessary that the Petitioner be provided with a legal basis for the claim and recovery of fixed, variable and other costs and amounts pending disposal of the pending tariff determination petition.

- (vi) In like circumstances for the years 2007-2008, 2008-2009, 2009-2010, 2010-2011 and 2011-2012, this Commission was pleased to pass order dated 16.10.2007 in I.A.s 11/2007 and dated 19.12.2008 in I.A. 10/2008 in O.P. 4 of 2007 and also dated 26.02.2010 in I.A. 16/2009 and dated 19.05.2012 in I.A.s 4/2011 and 10/2011 in O.P. 15 of 2009 respectively allowing the petitions for interim orders and directing the Respondents therein to pay to the Petitioner as per the amounts admitted in the retail supply tariff order for the respective years.
- (vii) In Commission's tariff order dated 30.03.2012 provided the prima facie basis of the minimum amounts which would be admissible to the Petitioner, without prejudice to the claims and contentions of the Petitioner which would be considered and decided at the time of disposal of the main Petition. If no interim order is issued by Hon'ble Commission for the payment as given in the Tariff order, the Petitioner will not have a legal basis for claiming such amount from the Respondents otherwise it will be open to suffering irreparable harm and injury to the Petitioner. The Respondents will not suffer any prejudice whatsoever as the amounts now claimed herein are already being recovered by the Respondents from the consumers through the retail supply tariff. The balance of convenience is clearly in favour of the Petitioner for the grant of interim order as prayed for herein. It is also just and equitable that the Hon'ble Commission grant the interim order as prayed for by the Petitioner herein.

(viii) Hence it is, prayed that the Commission may be pleased to direct the Respondents to pay generation Tariff to the Petitioner for FY 2012-13:

- (a) Fixed costs of the aggregate of Rs. 5071.10 crores in respect of the generating stations in operation as on 01.04.2012 in monthly installments; and
- (b) Amounts aggregating to Rs. 69.92 crores towards income tax in such installments corresponding to the statutory requirements relating to the payment of the said sum as advance tax; and
- (c) Variable costs for the energy delivered by the Petitioner to the Respondent Discoms from 01.04.2012 at the various rates set out in pages 238 & 239 of the Tariff Order dated 30.03.2012 passed by the Hon'ble Commission duly adjusted for actual gross calorific value of the fuel and the actual landed costs of fuel for the respective months; and
- (d) Incentives for generation as eligible on the basis of normative generation;

2. The material averments of the counter filed by the respondent nos. 1 to 4 are briefly as follows:

- (a) The petition under reply is not maintainable at law and facts on record.
- (b) The findings of commission in the Tariff Order dated 30.03.2012 for bulk purchases of energy are indicative and instructive, but not actual figures of liability to the petitioner.
- (c) The Discoms have been paying the tariff as provided in the tariff order dated 30.03.2012. As per the Tariff orders, fixed costs of Rs.5071.10 crores per year, are being paid on monthly proportionate basis to APGENCO. Therefore, there need not be any interim orders as the same would be tantamount to reiterating the contents of tariff order.

- (d) In the instant case, already there is a system being adopted in pursuance of the tariff order 2012-13. As such no interim order is necessitated.
- (e) In the tariff order 2012-13, provision was made for payment of income tax and incentive to be reimbursed from time to time after submission of bills by APGENCO duly certified by Chartered Accountants. The incentive amounts will be paid at the end of FY 2012-13 in accordance with the Regulation No. 1 of 2008.
- (f) The variable charges are being paid on monthly basis as allowed in Tariff order dated 30.03.2012. Adjustments towards FSA claims are being done on quarterly basis by duly considering the variation of gross calorific value and landed cost of fuel.
- (g) The petitioner has been making quarterly FSA claims by taking into consideration the variations in the GCVs and prices of coal and oil. Similarly, the respondents have been submitting the quarterly FSA proposals for approval of the Commission. The respondents request the Commission to permit to pay the FSA claims of APGENCO after realising the FSA amounts from the end consumers for the respective quarter, to avoid the incurring of carrying costs (interest) by Discoms.
- (h) The respondents have complied the earlier orders passed by APERC in IA No. 11/2007, IA No. 10/2008 in OP No. 4 of 2007, IA No. 16/2009 in OP No. 15/2009, IA No. 4 of 2011 in OP No. 15/2009 for FY 2010-11 and IA No. 10 of 2011 in OP No. 15/2009 for FY 2011-12. The respondents paid the amounts relating to fixed charges and variable charges as per the respective tariff orders.
- (i) It is incorrect to state that the petitioner required a legal basis for their regular claims pending disposal of main OP No. 15/2009. In fact the tariff order dated 30.03.2012 binds both the parties and that can be taken as a legal basis for the regular claims of the petitioner. As such the petition is infructuous.

- (j) The respondents have already been paying the fixed as well as variable charges as per the tariff order for FY 2012-13. As such, there will be no irreparable loss if interim order is not passed. There are no grounds warranting to pass interim order.
- (k) Hence, the Commission may be pleased to dismiss the IA No. 4 of 2012 filed in OP No. 15/2009.

3. Now, the points for consideration are:

- (i) whether the petitioner is entitled for fixed costs of Rs.5070.10crores in respect of generating stations in operation as on 01.04.2012 in monthly instalments and Rs.69.62 crs towards income tax as prayed for;
- (ii) whether the petitioner is entitled for variable costs for the energy delivered by the petitioner to the respondents from 01.04.2012 at various rates mentioned in the tariff order dated 30.03.2012 passed by the Commission;
- (iii) whether the petitioner is entitled for incentives for generation as eligible on the basis of normative generation?

4. In absence of an order of the Commission determining the tariffs under section 62 of the Act in respect of generating stations of the petitioner for supply of electricity to the respondents, there is no legal basis for the claims of the petitioner on the respondents.

5. The station-wise fixed costs and variable costs indicated in Tariff Order, dated 30-03-2012, have been considered for the purpose of estimation of power purchase cost forming part of ARR for the determination of retail supply tariffs. The argument of respondents that similar orders passed in the earlier years may be passed in the present IA also is taken into consideration.

6. In view of the foregoing discussion and after careful examination of the material facts submitted by the petitioner and the respondents, the

Commission issues the following directions pending disposal and subject to the final outcome of O.P.No.15 of 2009:

7. The respondents shall pay to the petitioner for FY 2012-13, with effect from 01.04.2012:

- i) Fixed charges for petitioner's generating stations as per Annexure-F of Tariff Order, dated 30th March, 2012;
- ii) Fixed charges for KTPS-Stage-VI and other new stations on proportionate basis depending upon the actual COD and actual capital cost based on audited accounts;
- iii) Payment of Advance Income-tax on proof of payment;
- iv) Variable charges for thermal stations as per Annexure – D(iii) of the Tariff Order dated 30th March, 2012, duly adjusted for the Gross Calorific Value (GCV) and landed cost of fuel;
- v) Incentive on annual basis;

8. All the above payments excepting Advance Income-tax and incentive shall be made on monthly basis, the payments due for and up to the end of the month preceding the date of issue of this Order to be made within 30 days of the issue of the order.

This order is corrected and signed on this 28th day of September, 2012

Sd/-
(R.ASHOKA CHARI)
MEMBER

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

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN