

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad-500 004

O.P No. 19 of 2011

Dated: 22.09.2012

Present

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

Between

M/s. Jeypore Sugar Company Ltd
Chagallu, West Godavari District.

...Petitioner

AND

1. Andhra Pradesh Power Co-ordination Committee,
2. Transmission Corporation of AP Ltd (APTRANSCO)
3. Central Power Distribution Company of AP Ltd (APCPDCL)
4. Southern Power Distribution Company of AP Ltd (APSPDCL)
5. Northern Power Distribution Company of AP Ltd (APNPDCL)
6. Eastern Power Distribution Company of AP Ltd (APEPDCL)

... Respondents

This petition is coming up for hearing on 06.08.2011 in the presence of Sri. C.Gunaranjan, Advocate for the petitioner and Sri. P. Shiva Rao, Advocate for the respondents, the Commission passed the following:

ORDER

The petitioner has filed original petition u/s 11 (2) and the Conduct of Business Regulations (CBR) seeking determination of tariff in respect of the power supplied by Bagasse based Co-generation projects by using coal during non-crushing period in terms of G.O. Rt. No. 54 Energy (Power-II) Department dated 22.04.2010 and G.O.Rt. No. 83 Energy (Power-II) Department dated 19.06.2010.

2. The petitioner is a company incorporated under the provisions of the Companies Act, 1956 having its registered office at Chennai, interalia, engaged in the business of manufacture and sale of sugar and allied products. The

petitioner company has sugar unit located at Chagallu, West Godavari District with an installed capacity of 8500 TCD. The petitioner company has also established Non-Conventional Energy Project i.e., Bagasse based co-generation project within the sugar unit premises with a capacity to generate 12 MW. The State Government notified the Third Transfer Scheme in G.O.Ms. No. 58, Energy (Power-III) dated 07.06.2005 in exercise of the powers conferred by the Reform Act, whereby the generating capacities of the non-conventional energy stations including all obligations of APTRANSCO to purchase unallocated energy from the non-conventional energy stations stood allocated and transferred by operation of law to the various DISCOMs. Consequently, purchase of surplus energy in respect of the petitioner's power plant which were hitherto vested in APTRANSCO stood severed, transferred and vested in the respondent 3 to 6.

3. Parliament enacted the Electricity Act, 2003 with the object of consolidating and amending the laws relating to the regulation of electricity. In the Electricity Act, 2003 it is contemplated that generation of electricity be freed from regulation substantially and the renewable sources of energy have been given mandatory promotion and protection. There is mandatory purchase by the Distribution Licensees of a minimum amount of the consumption in their local areas from renewable energy sources at tariffs to be determined by the State Commission upon application by the generating company. The Electricity Act 2003 was brought into force with effect from 10.06.2003.

4. The Commission in terms of order dated 20.06.2001 in O.P. No. 1075 of 2000 has undertaken review of incentives including purchase price to be given effect from 01.04.2004 in respect of Non-Conventional Energy Projects. Accordingly, vide orders dated 20.03.2004 in R.P. No. 84 of 2003 in O.P. No. 1075 of 2000 this Commission fixed purchase price of power from New and Renewable Energy Projects. The purchase price thus fixed consisted of fixed cost and variable cost. The fixed cost is determined for a period of ten years and the variable cost is fixed for the period from 2004-05 to 2008-09 i.e., for a period of 5 years. In the said order, it is also stated that further review of the

tariff structure valid for a control period of 5 years shall be reviewed on completion of the said period after consultation with the developers.

5. The Commission has undertaken the process of determining the power purchase price / tariff, variable cost and after hearing the respective stake holders has by its order dated 31.03.2009 determined the variable cost in respect of Bagasse based co-generation projects for the years 2009-10 to 2013-14. The petitioner for present is not concerned either with the power generated during season by using Bagasse as fuel nor the tariff payable on account of supplies made thereunder.

6. The Government of AP having noticed the severe power shortage in the current year because of increase in demand of power and corresponding generation not meeting the requirement has been directing the distribution companies in the State to procure power under short-term purchases through power exchanges. In spite of the same, the demand and supply gap could not be fulfilled. The Government of AP also noticed the fact that the Bagasse based co-generation projects have been facing shortage of Bagasse due to shortfall in cultivation of sugarcane in general and therefore these co-generation projects were not operating even to the optimum level. The Government after consulting the Distribution Companies, the request to permit for open access has been denied for the reason that the developers have already entered into power purchase agreements with Distribution Companies and therefore obligated to supply entire energy. However, the request for usage of coal as fuel during non-crushing period has been considered favourably in view of large gap in the demand and supply in the State. Accordingly, the Government exercising the powers conferred under Section 11(1) of the Electricity Act, 2003 issued G.O.Rt. No. 54, Energy (Power-II) Department dated 22.04.2010 directing the co-generation projects to operate the projects to full capacity by using coal as fuel and supply the said power to respondents and further the respondents were directed to pay the tariff as is in force and also pay additional amounts as per the orders that may be passed by this Commission under section 11(2) of the Electricity Act, 2003.

7. The Government therefore to over come the power shortage and in the interest of general public decided to utilize the idle capacity of the co-generation projects during this non-crushing season by permitting the co-generation projects to operate, maintain and generate to full capacity of the projects by using coal as fuel initially for a period of three months and supply the power to distribution companies.

8. In pursuance to the directions issued in the G.O.Rt. No. 54, the 1st respondent through the Chief engineer / IPC issued notice dated 27.04.2010. The petitioner herein attended the meeting on 01.05.2010 and provided the details of (a) the expected power generation using coal and net capacity export to the grid for sale to DISCOMs and anticipated the date of commencement of generation using coal (b) source of coal (c) expected cost of generation and (d) stock details of Bagasse and its usage period. The petitioner through association attended the meeting and submitted the relevant information and details as sought for. Later on the petitioner through association submitted representation dated 05.05.2010 requesting to fix the tariff of ₹ 6.67 per unit. Further the petitioner has submitted another representation dated 13.05.2010 requesting the respondents to pay ₹ 5.50 per unit on adhoc basis pending finalization and approval of tariff by this Commission.

9. In the meanwhile, the Government issued G.O.Rt. No. 83, Energy (Power-II) Department dated 19.06.2010 extending the orders issued in G.O.Rt. No. 54, Energy (Power-II) Department dated 22.04.2010 till 15.11.2010 or commencement of crushing whichever is earlier. The Government also issued G.O.Rt. No. 87, Energy (Power-II) Department dated 21.06.2010 whereby a High Level Committee was constituted to assess the quantum of power available and also fix interim price for the power so generated using coal as fuel, subject to final orders those may be passed by this Commission in the pending proceedings.

10. The Commission in various proceedings concerning fixation of tariff has outlined the factors needed to be considered in the process of determination of variable cost. These factors are (a) Auxiliary power consumption (b) Cost of fuel (c) Heat rate of the plant (d) Calorific value of the fuel (e) Specific fuel

consumption (f) Any other parameters. The petitioner now hereby make following submissions in support of the rate that is sought to be fixed by the Commission.

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|----|-----------------------------|---|---|
| a) | Auxiliary Power Consumption | : | 15.52% |
| b) | Cost of Fuel | : | ₹ 4050/- per Tonne |
| c) | Heat rate of the plant | : | 4500 K.Cal / kWh |
| d) | Calorific Value of the fuel | : | 4371 K.Cal / kg |
| e) | Specific fuel consumption | : | 1.219 Kg / kWh |
| f) | Any other parameters | : | ₹ 0.28 towards
miscellaneous expenses
like water treatment cost,
coal and ash handling
charges. |
| g) | Fixed Cost | : | ₹ 1.47 Average |

12. The petitioner therefore prays that the Commission may be pleased to

- a) fix the tariff as ₹ 6.69 Ps per unit for generation and supply of power from the petitioners co-generation power plants to the respondents by using coal as fuel;
- b) direct the respondents to pay ₹ 6.69 Ps per unit for the power generated and supplied by the petitioner's co-generation plants using coal as fuel during non-crushing season.
- c) pass such other order or orders as this Commission may deem fit and proper in the circumstances of the case.

13. The material averments of the reply filed by the respondents are briefly as follows:

- a) The Govt. of AP (GoAP) issued directions vide G.O.Rt. No. 54 dated 22.04.2010 under Section 11 of the Electricity Act 2003 to Bagasse Cogeneration Project Developers, who are having Power Purchase Agreements (PPAs) with DISCOMs for sale of energy at tariff determined by the Commission, to generate power with coal after availing the available Bagasse fuel and supply to APDISCOMs. The GoAP directed APDISCOMs to pay the tariff as is in force from time to time immediately and also to pay any

additional amount as per the orders that may be passed by the Commission under Section 11(2) of the Electricity Act, 2003. The GoAP also sought Commission to decide the adverse financial impact, if any, on the Bagasse cogeneration developers in complying with the said directions.

- b) Subsequently, the GoAP vide G.O.Rt. No. 83 Energy (Power-II) Department dated 19.06.2010 extended the earlier orders upto 15.11.2010 or commencement of crushing operations, whichever is earlier.
- c) The petitioner's project has not generated and supplied energy with coal, as directed by the GoAP. As such, the petition filed by the petitioner seeking to offset the adverse financial impact need not be considered and shall be rejected.
- d) The respondents pray the Commission to dismiss the petition.

14. During the hearing, both the petitioner and the respondents reiterated their views as contained in their respective petition and counters.

15. In this context, the only issue that needs to be addressed by the Commission is whether the petition of M/s.Jeypore Sugar Company Ltd can be dismissed on the ground that the petitioner has not generated power using coal as fuel and therefore, the adverse financial impact in complying with the said directions of GoAP, need not be offset by the Commission as contemplated under section 11 of Electricity Act, 2003.

16. In order to address the above issue, it is necessary and apt to extract section 11 of Electricity Act, 2003 as hereunder:

“Section 11. Directions to generating companies: --- (1) The Appropriate Government may specify that a generating company shall,

in extraordinary circumstances operate and maintain any generating station in accordance with the directions of that Government.

Explanation. - *For the purposes of this section, the expression “extraordinary circumstances” means circumstances arising out of threat to security of the State, public order or a natural calamity or such other circumstances arising in the public interest.*

(2) The Appropriate Commission may offset the adverse financial impact of the directions referred to in sub-section (1) on any generating company in such manner as it considers appropriate.”

17. As can be seen from the above, section 11 contemplates offsetting the adverse financial impact of the directions given by the appropriate government to a generating company. In the instance case, the respondents have stated that the petitioner has not generated power using coal as fuel pursuant to the directions issued by the GoAP under section 11 of the Electricity Act, 2003. That being the case, the question of Commission offsetting the adverse financial impact does not arise. Accordingly, the petition stands dismissed.

This order is corrected and signed on this 22nd day of September, 2012

Sd/-
(C.R. Sekhar Reddy)
Member

Sd/-
(A. Raghotham Rao)
Chairman