



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

SATURDAY, THE TWENTY FOURTH DAY OF NOVEMBER
TWO THOUSAND EIGHTEEN

:Present:
Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

O.P.No.16 of 2018, O.P.No.17 of 2018 & O.P.No.18 of 2018

O.P.No.16 of 2018

Between:

Southern Power Distribution Company of Andhra Pradesh Limited
... **Petitioner**

A N D

M/s. SEI Green Flash Private Limited
... **Respondent**

O.P.No.17 of 2018

Between:

Southern Power Distribution Company of Andhra Pradesh Limited
... **Petitioner**

A N D

M/s. SEI Arushi Private Limited
... **Respondent**

O.P.No.18 of 2018

Between:

Southern Power Distribution Company of Andhra Pradesh Limited
... **Petitioner**

A N D

M/s. Rain Coke Limited
... **Respondent**

All these Original Petitions have come up for hearing finally on 17-11-2018, in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioner in each case and Sri Srinivas Mantha, learned counsel for the respondent in each

case. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

COMMON ORDER

Petitions by the petitioner against the respective respondents under Section 86 (1) (b) of the Electricity Act, 2003 for grant of consent for the proposed amendments entered into and initialled by the petitioner and the respective respondents in the respective Power Purchase Agreements between them.

2. The case of the petitioner is that the Government of Andhra Pradesh permitted the AP distribution companies in 2014 for procurement of 1000 MW solar power through competitive bidding process and the AP distribution companies entered into Power Purchase Agreements for a capacity of 619 MW with the consent of the Commission including with the respective respondents.

3. The respondent in O.P.No.16 of 2018 entered into a Power Purchase Agreement at a levellised tariff of Rs.7.02/kWh with the petitioner for setting up of a 30 MW solar power project at 132 KV voltage level of 132/33 KV substation, Burakayalakota, Chittoor District. The Power Purchase Agreement was amended for change of location to 132/33 KV substation, Adurupally, Nellore District.

4. The respondent in O.P.No.17 of 2018 entered into a Power Purchase Agreement at a levellised tariff of Rs.6.91/kWh with the petitioner for setting up of a 30 MW solar power project at 132 KV voltage level of 132/33 KV substation, Kadiri, Ananthapur District.

5. M/s. Rain Cements Limited entered into a Power Purchase Agreement, which is the subject matter of O.P.No.18 of 2018 with the petitioner at a levelled tariff of Rs.6.93/kWh for setting up of a 22 MW solar power project at 132 KV voltage level of 132/33 KV substation, Dharmavaram, Ananthapur District. Later the Power Purchase Agreement was amended on 05-08-2015, changing the connectivity from 132 KV to 33 KV voltage level and also to execute the project through the Special Purpose Vehicle, the respondent in O.P.No.18 of 2018.

6. All the three respondents could not complete the respective projects within the Scheduled Commercial Operation Dates i.e., by 31-03-2016. The petitioner encashed the respective performance bank guarantees submitted by the respondents on such default. The petitioner issued final notices to the respondents vide letters dated 20-09-2016 to commission the respective projects to the full capacity on or before 30-09-2016, failing which the respective Power Purchase Agreements be deemed to be terminated without further notice. The respondents filed O.P.Nos.7, 8 and 9 of 2017 before the Commission to set aside the letter of the Chief General Manager dated 20-09-2016, declare the respective Power Purchase Agreements dated 05-12-2014, 05-12-2014 & 08-12-2014 to be in force and continuing and to grant time till 30-06-2017 or such further extended time as requested by the respective respondents herein for completing the projects and commissioning them. During the course of time, the respondents were granted permission for synchronization of the projects with certain conditions subject to the undertakings furnished by them and the projects were commissioned on 27-10-2017, 28-10-2017 and 07-11-2017 respectively. The Commission in its orders dated 16-12-2017 in O.P.Nos.7, 8 and 9 of 2017 directed the parties to negotiate between themselves the possible way out from the impasse before considering the

matter on merits. If there is a consensus, the Commission will consider the manner in which such consensus can be legally and factually be given effect to. On the request of the petitioner, the Government of Andhra Pradesh constituted a committee under G.O.Rt.No.26 dated 21-02-2018 with Vice Chairman & Managing Director of NREDCAP as Convener, Managing Director, Andhra Pradesh Solar Power Corporation Limited, Director (Projects), Transmission Corporation of Andhra Pradesh Limited and Advisor to Principal Secretary to Government, Energy, I & I Department as Members to examine the issues relating to solar power generators including the respondents herein and report of the committee may be acted upon by the Andhra Pradesh Power Coordination Committee on merits to be submitted to the Commission for taking further action. The committee gave its report on 03-05-2018 with the following recommendations:

- (a) To revival of the PPAs of said SPDs (M/s. SEI Arushi Pvt. Ltd., M/s. SEI Green Flash Pvt. Ltd., M/s. Rain Coke Ltd., and Waaneep Solar Pvt. Ltd.) as a special case for the reasons stated.
- (b) To accept the first year tariff as Rs.3.74 / unit which is on par with average pooled power cost approved by APERC for the FY 2017-18 in lieu of original PPA tariffs by the aforesaid SPDs (M/s. SEI Arushi Pvt. Ltd., - Rs.5.88 / unit, M/s. SEI Green Flash Pvt. Ltd., - Rs.5.97 / unit, M/s. Rain Coke Ltd., - Rs.5.89 / unit and M/s. WAANEAP Solar Private Limited – Rs.5.76 / unit) and to refund the PBGs.
- (c) To reckon the project CODs as per the actual date of commissioning for the contract purpose. But payment for energy being pumped to the grid as may be decided by APERC during the period from CoD of the Project till the dispute is settled by the APERC in pending cases.

- (d) After obtaining the orders from APERC in respect of aforesaid recommendations (I) to (III), APDISCOMS and the Developers are required to amend the relevant PPA clauses. All other terms & conditions of the PPA remain unaltered.
- (e) To repay the PBG amount already recovered from the developers in Lump sum without interest or any other mode for such repayment to the Developers as may be decided by APERC in pending cases.
- (f) In respect of M/s WAANEEP Solar Private Limited the refund of PBGs by DISCOMs is to be done after successful completion of total project capacity (25 MW) based on the APERC decision.

7. The petitioner submitted the report of the committee, which was accepted by both the parties, to the Commission. On 14-06-2018, the Commission passed orders in O.P.Nos.7, 8 and 9 of 2017 stating that "In so far as the relief of setting aside of the letter of Chief General Manager is concerned, the same becomes redundant in view of the understanding between the parties and in so far as the relief of declaration relating to the Power Purchase Agreement is concerned or other miscellaneous prayers are concerned, it is for the 1st respondent to appropriately come up before the Commission for giving effect to the understanding between the parties about the first year's tariff in deviation from the tariff agreed under the Power Purchase Agreement and about the reckoning of the date of the commercial operation as the actual date of commissioning and any other consequential changes that may have to be made in the Power Purchase Agreement in pursuance of the report of the committee accepted by the Andhra Pradesh Power Coordination Committee, the 2nd respondent herein and the petitioner and the Commission will have to deal with the same on merits in accordance with law as and when such an

approach is made. The present petition therefore has to be disposed of in terms of the above discussion”.

8. Accordingly, the respective amendments were incorporated in the existing Power Purchase Agreements and the draft amendments were entered into and initialled by both the parties.

9. With regard to the payment for the energy being pumped into the grid during the periods from the respective Commercial Operation Dates till the settlement of the dispute by the Andhra Pradesh Electricity Regulatory Commission, the respondents respectively submitted undertakings during the synchronization approval that they do not insist the petitioner to accept the power from the projects until pending issues are resolved in their favour and that any inadvertent power pumped into the grid during the period of synchronization will be free of cost to the petitioner and the respondents will not claim for it. By respective letters dated 17-10-2017, the petitioner respectively informed that the permission is only for relay setting and test synchronization purpose and any inadvertent power pumped into the grid during the period of synchronization and after synchronization, till the date of finalization / settlement of the issue pending before the Commission will be free of cost to the petitioner and the developer will not have right to claim financial or any other benefits. The respondents acknowledged the letters respectively and informed that they need to run the plant in generation mode in order to achieve stable operations for at least a month by which time finalization / settlement of the issue is expected, which is pending before the Andhra Pradesh Electricity Regulatory Commission. They agreed to abide by the decision of the Commission on all matters concerning synchronization, commissioning and PPA related issues. The committee stated in

respect of this issue in its report that payment for the energy pumped into the grid will be as may be decided by the Commission during the period from Commercial Operation Date till settlement of the dispute in pending cases. The report of the committee also explicitly mentioned the COD as the date of actual commissioning of the project for the purpose of contract but not for payment under the contract. The Commission in its order dated 14-06-2018 stated with reference to the submissions of both the learned counsel that supply of power during the period of synchronization free of cost to the petitioner herein has to be given effect to by the Commission as there is no legal or factual hindrance for recognizing and accepting the same. The petitioner therefore requested for the consent of the Commission for the respective amendments and an appropriate order regarding the energy being pumped into the grid during the period of synchronization of the respective projects till 14-06-2018 on which date O.P.Nos.7, 8 & 9 of 2017 were disposed of and other appropriate orders.

10. The respondents did not file formal counters.

11. During the hearing of the petition, both parties were directed to file their respective calculation memos in respect of the relief relating to the energy pumped during the period in issue and quantifying the energy supplied into the grid during the period of synchronization of the projects respectively till the disposal of O.P.Nos.7, 8 & 9 of 2017 and the value thereof. Both parties filed their respective calculation memos and the respondents filed identical memos respectively on 02-11-2018 before the Commission stating that the calculation sheets submitted by the petitioner quantifying the energy pumped into the grid from the Commercial Operation Date till 14-06-2018 are true and correct and matching with the submissions of the respective respondents. However, the respondents contended that the rate for

imported energy has to be calculated at the agreed tariff of Rs.3.74 upto 0.1% of the capacity and above the same at the HT rate of Rs.11.77 + electricity duty of 0.06 ps. The petitioner proposed the tariff at HT rate for the total imported energy and to that extent, the calculations have to be rectified. When the committee report was accepted in *toto* and recorded by the Commission, the Power Purchase Agreement has to be acted upon in total and again relying on the letters dated 17-10-2017 is improper and is against the understanding between the parties and the respondents, hence asserted that they are entitled for the agreement Power Purchase Agreement rate of Rs.3.74 ps along with interest from 14-06-2018.

12. On the directions of the Commission, the petitioner filed the details of the solar tariffs discovered through competitive bidding between December, 2016 and September, 2018 for the purposes of reference and guidance in determining this question in issue.

13. The legal advisor of the petitioner further filed the details of the lowest tariffs discovered for the Solar Parks in the various States and the lowest tariffs discovered for the grid connected Solar Projects in the various States for perusal.

14. The points that arise for consideration are,---

(a) consent for the proposed amendments in the Power Purchase Agreements between the parties; and

(b) an appropriate direction concerning energy pumped into the grid during the period from synchronization of the projects till 14-06-2018 when O.P.Nos.7, 8 & 9 of 2017 were decided by this Commission.

15. The factual background for the questions in issue herein is that the Government of Andhra Pradesh permitted Andhra Pradesh distribution companies to procure 1000 MW solar power through competitive bidding process and with the consent of the State Electricity Regulatory Commission, Andhra Pradesh distribution companies entered into Power Purchase Agreements for a capacity of 619 MW out of which generating units for 512 MW have been commissioned. For the remaining capacity of 107 MW, the respondent in O.P.No.16 of 2018 in respect of 30 MW, the respondent in O.P.No.17 of 2018 in respect of 30 MW and the respondent in O.P.No.18 of 2018 in respect of 22 MW apart from one M/s. WAANEER Solar Private Limited in respect of 25 MW could not complete their projects within the revised Scheduled Commercial Operation Dates i.e., 31-03-2016. The respondents in O.P.Nos.16 and 17 of 2018 entered into Power Purchase Agreements on 05-12-2014 and the respondent in O.P.No.18 of 2018 entered into a Power Purchase Agreement on 08-12-2014 and the levellised tariffs agreed are Rs.7.02, Rs.6.91 and Rs.6.93 respectively per kWh. The tariffs quoted for the 1st year were Rs.5.97, Rs.5.88 and Rs.5.89 per unit respectively which had to be paid by the Andhra Pradesh distribution companies as per the Power Purchase Agreements. The petitioners herein enforced the provisions of clause 10.5 (a) to (c) of the Power Purchase Agreements against the defaulted PPAs and encashed their Performance Bank Guarantees. Notices were also issued to the respondents on 26-07-2016 to ensure the commission of the projects with full capacity as per the time lines of the Power Purchase Agreements, failing which the Power Purchase Agreements shall be deemed to be terminated without further notice. A final notice was issued on 20-09-2016 that in default of commissioning of the projects with full capacity on or before 30-09-2016, the Power Purchase Agreements shall respectively be deemed

to be terminated without further notice. It is against these final notices that O.P.Nos.7, 8 and 9 of 2017 were filed before the Commission.

16. During the course of hearing of those petitions, on 16-12-2017 after hearing the learned counsel for both parties, the Commission noticed that apart from the legal validity or otherwise of the letter from the Chief General Manager in question, the fact that the tariff for renewable energy has come down drastically during the years all around also has to be taken into consideration, which makes it necessary to discuss the feasibility of purchasing power from the generating companies in question from a holistic perspective to arrive at a reasonable and workable solution. Accordingly, this Commission has directed both parties to negotiate between themselves the possible way out from the impasse before considering the matter on merits and in case of any consensus, the Commission will consider the same to the extent that it can legally and factually be given effect to. This exercise was without prejudice to the respective rights and contentions of both parties in the main petitions. Accordingly, the State Government have constituted a committee under G.O.Rt.No.26 Energy, Infrastructure and Investment (Power.II) Department, dated 21-02-2018 with four members including the Convener and the committee formulated its report and made its recommendations on 03-05-2018. Conditional synchronization permission was granted by the petitioner in the meanwhile by a letter dated 17-10-2017, in which the earlier undertakings by the developers that any inadvertent power pumped into the grid during the period of synchronization will be free of cost to the petitioner and that developers do not insist upon to accept the power from the projects till pending issues are resolved in their favour were referred to, the Andhra Pradesh Power Coordination Committee had informed the respondents that any inadvertent power pumped into the grid during the period of

synchronization and after synchronization till the date of finalization / settlement of the issue in O.P.Nos.7, 8 and 9 of 2017 will be free of cost to the petitioner and the developer will not have the right to claim any financial or other benefits. The developers in their respective responses dated 07-11-2017 only stated that they will agree to abide by the decision of this Commission in O.P.Nos.7, 8 and 9 of 2017 on all matters of synchronization, commissioning and PPA related issues but they did not state in any manner that they are submitting themselves to treat any inadvertent power pumped into the grid during the period of synchronization and after synchronization till the finalization of O.P.Nos.7, 8 and 9 of 2017 to be free of cost without any financial or other benefits. The undertakings by the developers earlier were only about the developers not insisting on the petitioner accepting power from the project till the pending issues are resolved in their favour and further about any inadvertent power pumped into the grid during the period of synchronization being free of cost. The undertakings thus made no reference to the pumping of any inadvertent power after synchronization till the date of finalization / settlement of O.P.Nos.7, 8 and 9 of 2017.

17. The respective projects of the respondents herein were commissioned on 27-10-2017, 28-10-2017 and 07-11-2017. The committee found the levellised tariff under the Power Purchase Agreements to be high, compared to the present solar tariffs and held negotiations with the representatives of the developers to reduce the tariff. After three sittings, the committee was informed on 25-04-2018 by the representatives of the respondents that they were agreeable for the 1st year tariff at Rs.3.74 per unit provided that the Performance Bank Guarantees be refunded. The committee noted that at such rate, levellised tariffs work out to Rs.3.49 per unit saving Rs.357 crores to the distribution companies. The committee took a holistic

approach to protect the interests of the State and the consumers and compared the tariffs in other States like Telangana and Chhattisgarh under similar circumstances, which are much higher. The committee ultimately recommended to revive the Power Purchase Agreements, accept the 1st year tariff at Rs.3.74 per unit in view of the original Power Purchase Agreements tariffs, refund the Performance Bank Guarantees and left the payment for the energy pumped into the grid from the Commercial Operation Date till the settlement of the dispute by the Andhra Pradesh Electricity Regulatory Commission to the Commission itself. Actual dates of commissioning were taken as Commercial Operation Dates and the parties were directed to take steps to amend the Power Purchase Agreements accordingly.

18. The report of the committee was noted by the Commission in its orders in O.P.Nos.7, 8 and 9 of 2017, as also acceptance of the committee report in *toto* by the Andhra Pradesh Power Coordination Committee. The Commission of-course recorded with reference to the undertakings of the developers etc., that consensus between the parties to supply any inadvertent power during the synchronization period to the petitioner free of cost, has to be given effect to by the Commission as there was no legal or factual hindrance for recognizing and accepting the same. Accordingly, this Commission has recorded the committee report and gave opportunity to the parties to act upon the said report for giving effect to the same in accordance with law. The Commission has also recorded the undertaking given by the developers to treat the energy pumped into the grid during the period of synchronization of the respective units as supply free of cost.

19. In so far as new amendments now placed before this Commission in this petition to be consented to by the Commission are concerned, the lowering of the

agreed tariff, taking the actual date of commission as the Scheduled Commercial Operation Date and consequential calculations of the tariff payable over the period of 25 years are found by the committee and the Commission to be beneficial to the State Government, Consumers and the Utilities. As a consequence to the orders in O.P.No.7, 8 and 9 of 2017 dated 14-06-2018, these amendments have to be consented to in the absence of any factual or legal hindrance. In so far as the request for appropriate orders regarding the energy pumped into the grid during the period from the synchronization of the project till 14-06-2018 on which date O.P.Nos.7, 8 and 9 of 2017 were decided is concerned, as already stated, the earlier undertaking by the developers was to supply the inadvertent power free of cost during the period of synchronization and not after synchronization. Though the letter from the Chief General Manager dated 17-10-2017 informed that even after synchronization till the date of finalization of O.P.Nos.7, 8 and 9 of 2017, the pumping of inadvertent power will be free of cost to the petitioner without any financial benefits to the respondents, the respondents in their response dated 07-11-2017 only agreed to abide by the decision of this Commission on all such matters. The committee in its report dated 03-05-2018 also significantly left the decision on payment for energy pumped into the grid from the Commercial Operation Date till the dispute is settled by the Commission in the pending cases to the Commission itself. If it considered such pumping of such power during such period also to have been undertaken free of cost and to have been accordingly informed by the petitioner to the respondents and to have been accepted by the respondents, it would not have specifically framed the question of such payment and would not have left it open to the decision of the Commission while clarifying that any inadvertent power pumped into the grid till the Commercial Operation Date i.e.,

actual date of commissioning of the project was free of cost to the petitioner without any right for any of the respondents to claim any financial or other benefits. The present prayer and the decision are about the power pumped into the grid from the Commercial Operation Date till 14-06-2018 when the three petitions were decided by the Commission. As the Commission is of the opinion that such pumping of any inadvertent power during such period has to be paid by the petitioner to the respondents respectively, the next question would be at what rate the payment has to be made. If the committee had intended the revised tariff of Rs.3.74 per unit to be the basis for the pumped energy during such period, it could have stated so in plain and unambiguous terms and would not have left it for the decision of the Commission as done in its report. The decision of the Commission under such circumstances cannot be construed as compelling it to accept the agreed tariff for such period also and the Commission has to invariably come to its own conclusion on merits in accordance with law as to what will be the reasonable and fair value to be given for such pumped energy during such period. While the parties are not in dispute about the quantum of energy pumped into the grid from the Commercial Operation Date till 14-06-2018, in all the cases the controversy is only about the price to be paid. The committee did not adopt the agreed rate of Rs.3.74 per unit and made it a matter of decision from the Commission obviously implying such price to be independently arrived at on merits on the strength of the relevant circumstances by the Commission itself, which cannot be construed as restricting the Commission to the agreed rate alone. On the directions of the Commission, the petitioner has provided the details of the lowest tariffs discovered for the Solar Parks in the country between December, 2016 to September, 2018 in three separate sheets relating to the Solar Projects, Solar Parks and Grid connected Solar projects

(with a number of items in second and third sheets already covered by the 1st sheet relating to Solar Projects). Taking an overall view and striking a mean, the average price per unit will come to about Rs.2.80 either in respect of the entire period or in respect of the relevant year, 2017 alone. The tariffs discovered varied between Rs.2.44 to Rs.3.50 per unit, which were lesser than the agreed tariff of Rs.3.74 for the 1st year or the levelled tariff for the subsequent years, under the Power Purchase Agreements as amended between the parties. As the Commission is not inclined either to accept the agreed tariff as the basis and norm or to grant any interest or damages on the price to be paid, the situation being brought about mainly due to the failure of the respondents to commission their projects within the agreed or extended time limits, fixing the price to be paid for such pumped power for such period at Rs.3.00 per unit will be striking a reasonable balance on the factual and economical considerations to be taken into account. While therefore the admitted quantum of such pumped energy will be paid at Rs.3.00 per unit, the learned Standing Counsel for the petitioners brought to the notice of the Commission the precarious financial condition of the petitioner that makes it difficult, if not impossible, to make payment of the amounts in *lump sum* to the respective respondents. Taking an overall view, granting reasonable instalments for payment of the amount due will be just and equitable and the petitioner can be reasonably permitted to pay such dues in 12 (twelve) equal monthly installments. As the respondents will be receiving the agreed tariff for the power generated and supplied to the petitioner regularly, the deferment of payment of arrears is not likely to pose any economic difficulty to them. Hence, the amendments are to be consented and the payment for the relevant period for the pumped energy has to be directed to be made accordingly.

20. Therefore, the proposed amendments entered into and initialled by the petitioner and the respective respondents in respect of the respective Power Purchase Agreements are hereby consented to by the Commission. The energy pumped into the grid during the period from the synchronization of the project of the respondent in O.P.No.16 of 2018 on 27-10-2017, of the respondent in O.P.No.17 of 2018 on 28-10-2017 and of the respondent in O.P.No.18 of 2018 on 07-11-2017 till 14-06-2018, the date of decision of this Commission in O.P.Nos.7, 8 and 9 of 2017 shall be paid by the petitioner at Rs.3.00 per unit. The amount so payable for the admitted quantity of the energy pumped into the grid from the respective Commercial Operation Dates till 14-06-2018 shall be paid in 12 (twelve) equal monthly installments by 15th of every month, without any interest, commencing from January, 2019. In the event of any default by the petitioner in payment of such installments, the respective respondents are at liberty to approach the Commission for appropriate reliefs. These three Original Petitions are ordered accordingly. No costs.

This order is corrected and signed on this the **24th day of November, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman