



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

O.P. No. 30 of 2016
Date: 31-03-2018

Present
Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member

Between:

M/s. SIFLON Drugs
Sy.No.25-4, Rachanapalli (V)
Anantapur – 515 004, A.P.
Represented by Sri V.C. Chowdary
Authorised Signatory

... Petitioner

A N D

1. Transmission Corporation of Andhra Pradesh Limited
(APTRANSCO), Represented by its Chairman & Managing Director
2. Southern Power Distribution Company of Andhra Pradesh Limited
(APSPDCL), represented by its Chairman & Managing Director
3. New & Renewable Energy Development Corporation of
Andhra Pradesh Limited (NREDCAP), Represented by its
Vice-Chairman & Managing Director

... Respondents

This Original Petition has come up for hearing finally on 24-03-2018 in the presence of Sri S.V.S. Choudary, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the utilities. 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:

ORDER

A petition to direct the Transmission Corporation of Andhra Pradesh Limited and the Southern Power Distribution Company of Andhra Pradesh Limited to give credit to about 1.2 million units of wind power generated between 23-03-2015 to

14-06-2016 in the energy bills of the petitioner by banking the said wind power units and other appropriate orders.

2. The petitioner's case is that M/s. ITW Signode and Andhra Pradesh State Electricity Board entered into a Wheeling Agreement on 31-03-1995 to be valid upto 22-05-2015 in respect of a 1 MW capacity wind power project for captive purpose at Ramagiri, Anantapur District. The project was later transferred to M/s. Signode India Limited and was acquired by the petitioner on 23-03-2015 for captive consumption of power generated by the bulk drug factory of the petitioner at Rachanapalli, Anantapur District. The New & Renewable Energy Development Corporation of Andhra Pradesh Limited gave No Objection Certificate for the said transfer and the petitioner applied to the Transmission Corporation of Andhra Pradesh Limited for Long Term Intrastate Open Access on 01-05-2015. On the advice of Transmission Corporation of Andhra Pradesh Limited, the petitioner again applied on 29-07-2015. After the title transfer, it took one year four months to get sanction for Long Term Intrastate Open Access and the Southern Power Distribution Company of Andhra Pradesh Limited to enter into an Agreement. The respondents 1 and 2 instead of giving credit to the power units from 23-03-2015, when the petitioner acquired the project, gave such credit only with effect from 15-06-2016 depriving the petitioner of credit of about 1.2 million units, which were evacuated into the grid as evidenced by monthly readings. The representations of the petitioner were refused due to the absence of an Agreement upto 15-06-2016 and all the delay regarding transfer of title was due to the acts of the respondents only as detailed in the petition. Not giving credit to the power units evacuated into the grid by the petitioner will amount to unjust enrichment of respondents 1 and 2 and is inequitable for a public utility.

The petitioner never intended to supply power free of cost to the respondents and hence the petition.

3. A counter was filed on behalf of 2nd respondent stating that they have no knowledge about the ownership transfer till 18-04-2015 and admitting the sequence of events as narrated by the petitioner. The absence of information from the petitioner about installation of ABT energy meters as per the Andhra Pradesh Electricity Regulatory Commission Practice Directions led to reminders to the petitioner and ultimately the Long Term Open Access Agreement was entered into on 15-06-2016. The procedure prescribed in the regulations and fulfillment of the same had to be done by the open access user and the 2nd respondent, after revenue land details were furnished and the original agreement and the amendment agreement were received, affected the ownership transfer on 27-07-2015. During the period from 23-03-2015 to 21-05-2015, the units generated were credited to M/s. Signode India Limited and as there was no agreement with anybody from 22-05-2015 to 14-06-2016, crediting any generating units could not be considered, more so, in view of the Andhra Pradesh Electricity Regulatory Commission Regulation 2 of 2016. There was no delay on the part of the respondents and by the time the petitioner sought for transfer of Long Term Open Access Agreement, the earlier agreement was left with a life of 32 days only. Hence, the respondents sought for dismissal of the petition with costs.

4. The petitioner filed a rejoinder contending that chronic delays on the part of the respondents were sought to be ignored. The petitioner approached NREDCAP, AP Transo and APSPDCL promptly. Due to ignorance of lower level officials, the installation of ABT energy meters had to be approved by a number of officers and the meters had to be tested at a facility in Hyderabad in the presence of the officers.

The busy officials made it difficult for the petitioner and even without an agreement with anybody, power was evacuated into the grid with full knowledge of the respondents and the meter readings were continued to be taken. Hence, the petitioner desired the petition to be ordered.

5. The point for consideration is whether the petitioner is entitled to be given credit for the power evacuated into the grid between 23-03-2015 to 14-06-2016 and if so, at what rate the petitioner is to be paid ?

6. ITW Signode India Limited / Signode India Limited had a Wind Power Wheeling Agreement with Andhra Pradesh State Electricity Board on 31-03-1995 valid till 22-05-2015 in respect of captive wind power plant of 1 MW capacity at Ramagiri, Anantapur District. The agreement clearly states that the successors and assigns of the Andhra Pradesh State Electricity Board and M/s. ITW Signode India Limited are included in the parties to the Agreement and hence, the petitioner and the respondents being the successors of the original parties to the Agreement are bound by its terms upto 22-05-2015 till which date the Agreement was in force. The Memorandum of Understanding between M/s. Signode India Limited and the petitioner was on 23-03-2015 and the letter from NREDCAP dated 13-04-2015 shows that with a gap of only one day, the petitioner addressed the 3rd respondent on 25-03-2015 regarding the transfer for which the Corporation had no objection. Immediately after receipt of the same, the petitioner addressed the 2nd respondent on 18-04-2015 to transfer the Wheeling Agreement in their name (which Agreement was still in force on that day) and start giving credit to the power generated and the unutilized banked units. Approval from the 2nd respondent was only on 27-07-2015 and the period of pendency of the application with the 2nd respondent cannot be counted against the petitioner. The subsequent correspondence also does not

indicate the reasons for the delay to be attributable to the petitioner. Admittedly the evacuation into the grid from the petitioner captive unit from 23-03-2015 to 14-06-2016 was to a tune of 1.2 million units.

7. Regulation 2 of 2006 contains Interim Balancing and Settlement Code for Open Access Transactions and the Regulation was amended by Regulations 1 of 2013, 2 of 2014 and 2 of 2016. The Regulation defines “Banking” and provides for its details in Clause 12. Clause 12.2 states that the banking facility to the Wind, Mini Hydel and Solar Power generators shall be subject to the conditions specified in Appendix-3. Appendix-3 in 3.f provides for unutilized banked energy from Wind Power projects in the proviso to 3.f. It was directed to be considered as deemed purchase at the pooled power purchase cost applicable to that financial year. The provision is as follows,--

“3.f. The purchase price payable by the Discoms for unutilized banked energy will be equivalent to 50% of the Pooled Cost of Power Purchase, applicable for that financial year, as determined by the Commission under RPPO / REC Regulation (1 of 2012). Discoms shall settle such purchase transactions with the generators by 31st March of every year.

Provided the unutilized banked energy from such Solar and Wind Power Projects and for such operative periods as mentioned in G.O.Ms.No.8, dated 12-02-2015 and G.O.Ms.No.9, dated 13-02-2015 shall be considered as deemed purchase by Discom (s) at the Pooled Power Purchase cost, applicable for that financial year, as determined by the Commission under RPPO / REC Regulation (Regulation No.1 of 2012). Discom (s) shall settle such purchase transactions with the generators by 31st March of each year.”

8. The relevant policy is Andhra Pradesh Wind Power Policy, 2015 under G.O.Ms.No.9, Energy, Infrastructure & Investment (PR.II) Department, dated 13-02-2015. It provided for Energy Banking in Para 8 (c) of the Policy and that also states that the unutilized banked energy shall be considered as deemed purchase by Discoms at the pooled purchase cost as determined by the Andhra Pradesh Electricity Regulatory Commission for the applicable year and energy settlement shall be done on monthly basis. Para 12 of the Policy makes the policy applicable for wind power projects approved under the earlier Policy.

9. Irrespective of any technicalities, the petitioner is similarly situated almost in every respect as the eligible generators under the said Wind Power Policy of 2015 and is identically placed as those entitled to the benefits of Appendix-3, 3.f of Regulation 2 of 2006. The pleadings and the documents clearly disclose that the petitioner was prompt in approaching the authorities at every stage and it was not at fault for the absence of any specific agreement between the parties between 22-05-2015 to 14-06-2016, while admittedly the earlier Agreement was in force between 23-03-2015 to 21-05-2015. The correspondence clearly shows that the petitioner approached the 3rd respondent within two days of acquiring the wind power plant and promptly approached the 1st and 2nd respondents on receiving the communication from the 3rd respondent etc., which are not in dispute and the pendency of the matter in correspondence between the parties was for most of the time with respondents 1 and 2. While one cannot take advantage of his own wrong, the narration in the rejoinder about the actual delay occurred is not factually seriously in controversy. If so, the respondents to whose knowledge the power was evacuated into the grid throughout cannot throw the blame for the absence of an Agreement during the relevant period on the petitioner. Whatever energy was

evacuated into the grid was admittedly the subject of regular meter readings and in view of the amendments affected to Regulation 2 of 2006 by Regulation 2 of 2016, the petitioner is entitled to the pooled cost of power purchase for the quantum of power generated by its unit and evacuated into the grid during the period which was never intended to be gratuitous. In the absence of any prohibition under the special Laws and Rules governing electricity, the principle under the Indian Contract Act that a person who received the benefit of a non-gratuitous act is liable to pay the value of the benefit to the person who conferred it should also apply. As such in any view, such a relief has to be granted to the petitioner.

10. Therefore, the respondents 1 and 2 shall give credit to the wind power generated during the period between 23-03-2015 and 14-06-2016 and evacuated into the grid by the petitioner's captive wind power unit and the said unutilized banked energy shall be considered as deemed purchase by respondents 1 and 2 at the pooled power purchase cost as determined by the Andhra Pradesh Electricity Regulatory Commission for the applicable years with the energy settlement being done on monthly basis and the purchase price shall be paid by respondents 1 and 2 to the petitioner accordingly.

11. The Original Petition is allowed accordingly. No costs.

This order is corrected and signed on this the **31st day of March, 2018.**

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman