



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

WEDNESDAY, THE EIGHT DAY OF AUGUST TWO THOUSAND EIGHTEEN

:Present:

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

I.A.No.16 of 2018 in O.P.No.8 of 2018

Between:

1. Southern Power Distribution Company of A.P. Limited
2. Eastern Power Distribution Company of A.P. Limited ... **Petitioners/Applicants**

A N D

M/s. Lanco Kondapalli Power Limited ... **Respondent/Respondent**

This Interlocutory Application has come up for hearing finally on 01-08-2018, in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioners and Sri N. Phani & Sri M. Sridhar, learned counsel representing Sri Challa Gunaranjan, learned counsel for the respondent. 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

I.A.No.16 of 2018 in O.P.No.8 of 2018 is an Interlocutory Application under Section 62 (1) and Section 86 (1) (b) of the Electricity Act, 2003 read with Clause 55 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for an interim direction to the applicants to continue to procure power from the respondent at the tariff approved by the Commission vide its order dated 29-11-2017 for short term purchase with a fixed cost of Rs.0.96 / kWhr and variable cost of Rs.2.33 / kWhr (pass through based on gas price) during the first quarter of FY 2018-19.

2. The case of the applicants is that the Power Purchase Agreement between them and the respondent expired on 01-01-2016 and with the approval of the State Government, Distribution Companies of Andhra Pradesh Limited filed a draft Power Purchase Agreement dated 28-04-2017 before the Commission to accord approval, which is pending. The applicants estimated the levelized fixed and variable costs at Rs.0.71 / kWhr and at Rs.2.41 / kWhr at a threshold PLF of 80%. The applicants are procuring power from the respondent as short term purchase for FY 2017-18 as per orders dated 29-11-2017 in I.A.No.8 of 2017 in O.P.Nos.28 & 29 of 2016. In the ARR of FY 2018-19, the applicants proposed to purchase power from the respondent expecting the renewal of the Power Purchase Agreement. They estimated the availability from the project at 1230 MU with a fixed cost of Rs.1.06 / kWhr and variable cost of Rs.2.26 / kWhr. Hence, the application.

3. A public notice was given inviting views / objections / suggestions of interested persons / stakeholders. Sri M. Venugopala Rao, Senior Journalist & Convener, Centre for Power Studies, Sri Ch. Narasingrao, State Secretariat Member, Communist Party of India (Marxist) and Sri Penumalli Madhu, State Secretary, Communist Party of India (Marxist) filed separate but identical objections dated 24/25-04-2018. These three, in their objections dated 24/25-04-2018 stated that the scope for bargaining might be a reason to take a decision to permit procurement of power from the respondent on priority. Notwithstanding the objections of these objectors, the Commission in the tariff order for FY 2018-19 approved a purchase of 1230.12 MU from Lanco Kondapalli with a tariff of Rs.3.29 ps / kWh consisting of Rs.0.96 ps fixed cost and Rs.2.33 ps variable cost, which is questionable and detrimental to larger consumer interest. The reasons for the objections were reiterated and the chronological events were repeated in detail. The

objectors stated that in spite of the approval by the Commission in the tariff order, the applicants again requested for permission to purchase, though respondent sought for a fixed cost of Rs.0.71 ps per kWh for such short term purchase, the fixed cost suggested by them earlier was Rs.0.96 ps. There was no proof of further capital expenditure and when the level of PLF is much lower than threshold level PLF of 80%, the fixed cost worked out becomes much less and the contentions of the objectors in I.A.No.8 of 2017 may also be taken into account.

4. The APSEB Assistant Engineers' Association desired the Commission not to allow procurement of power from the respondent, so as to favour the consumers.

5. The APSEB Engineers' Association also questioned the permission for procurement of power granted in I.A.No.8 of 2017 and when surplus power is available under the existing Power Purchase Agreements and HNPCL with a capacity of 1040 MW being available for supply and the gas allotment being transferable to M/s. GMR Vemagiri, no purchase from the respondent be considered.

6. Sri M. Thimma Reddy, Convenor, People's Monitoring Group on Electricity Regulation administered a note of caution on availability and supply of natural gas. The supply of natural gas to the respondent has adverse consequences to the distribution companies and a decision has to be taken on all the issues involved. The State Government should take the issues to their logical conclusion.

7. The applicants gave detailed response to the views and objections of the objectors and the questions in controversy between the parties in the main Original Petition cannot be pre-determined in this interlocutory inquiry, except to the extent necessary for determination of the Interlocutory Application.

8. The objectors reiterated their objections in detail again, most of which need to be dealt with in the main Petition. The consideration herein should be confined only to an interlocutory adjudication of the question of the limited procurement of power during the first quarter of FY 2018-19 only.

9. The point for consideration is thus whether the applicants have to be permitted to procure power from the respondent during the first quarter of FY 2018-19 ?

10. In the order on Tariff for Retail Sale of Electricity during FY 2018-19, the Commission considered the availability of electricity from this plant also, as filed by the licensees restricting it to the then existing cheaper tariff. The Commission considered the unit rate at Rs.2.99 including a fixed cost of Rs.0.79 ps and variable cost of Rs.2.20 ps, as permitted in the orders in I.A.No.8 of 2017 in O.P.Nos.28 & 29 of 2016. The power purchase cost at that level is undoubtedly more economical than many other tariffs of supply of power. The question of procurement of power from this plant was considered in good detail in the orders of I.A.No.8 of 2017 and procurement of power from this source was considered to be cheaper even if any liability arises towards persons having Power Purchase Agreements in force. Accordingly, the power purchase at a fixed cost of Rs.0.96 ps and variable cost of Rs.2.33 ps making a total of Rs.3.29 ps per unit was permitted, subject of-course to the principle of Merit Order Dispatch and the other specified conditions including obligation of the distribution licensees to show that these short term purchases did not impose any additional burden on them or the consumers.

11. The present Interlocutory Application is limited to the first quarter of FY 2018-19 and the Commission in the Retail Supply Tariff Order for FY 2018-19

had already directed that the same price paid in FY 2017-18 should be payable for FY 2018-19 also, thus not accepting the projections shown at a higher level by the distribution companies. No authenticated material has been placed before the Commission to consider any deviation from the same in this Interlocutory Application. Another factor staring at the Commission is that both the distribution licensees have already procured power from the respondent during the first quarter of FY 2018-19, which expired by 30-06-2018. The respondent never intended to supply electricity to the applicants gratuitously and the applicants are bound to reimburse the respondent of the cost of such power supply and even on that count, the interlocutory prayer may have to be accepted. Similar orders passed on merits in accordance with law in greater detail in I.A.No.14 of 2018 and I.A.No.15 of 2018 in O.P.Nos.61 & 62 of 2017 relating to Godavari Gas Power Plant and Spectrum Power Generation Limited granting an identical relief also may be perused, the reasoning in which applies to the fact situation herein also.

12. Under the circumstances, the Interlocutory Application has to be ordered.

13. Therefore, the applicants are permitted to procure power from the respondent at a fixed cost of Rs.0.96 ps / kWhr and variable cost of Rs.2.33 ps / kWhr, making a total of Rs.3.29 ps / kWhr during the first quarter of FY 2018-19 and the Interlocutory Application is allowed accordingly. No costs.

This order is corrected and signed on this the **8th day of August, 2018.**

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman