



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

I.A.No.16 of 2017
in
O.P.No. 36 of 2017

Dated: 26-08-2017

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

Between:

M/s. Orange Uravakonda Wind Power Pvt. Ltd

... Applicant / Petitioner

A N D

Southern Power Distribution Company of
Andhra Pradesh Limited

... Respondent

This Interlocutory Application has come up for hearing finally on 26-08-2017 in the presence of Sri S. Niranjan Reddy, Senior Advocate for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondent. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

ORDER

The application for interim directions has been filed seeking clearance of all the dues till date by the respondent to the petitioner as per the Power Purchase Agreement dated 31-05-2016 and a further interim direction to accept the monthly invoices and make monthly payments henceforth pending the main O.P.No.36 of 2017.

2. The petitioner contends that since the commencement of commercial operation of the generation project by it on 28-07-2016, the respondent is receiving supply of power and paying for the same as per the invoices raised by the petitioner at the agreed tariff rate. The respondent stopped payment since January, 2017 and refused to accept the invoices raised from April, 2017. The Power Purchase Agreement between the

parties is awaiting the consent of the Commission. The events leading to such pendency have been explained in the main petition.

3. In the counters of the respondent in the main petition and in the Interlocutory Application, the respondent contended on the whole that negotiations are on with the developers in the interests of the consumers so as to bring the tariff to a reasonable level, while the Power Purchase Agreements including that of the petitioner were submitted to the Commission for a consideration of the issue, subject to the outcome of O.P.Nos.1 and 5 of 2017 pending on the file of this Commission and the negotiation process with the wind developers. While asserting the scope for exercise of the jurisdiction by the Commission for revisiting the regulation or the tariff or both, the respondent contended that the petitioner was informed not to pump any power to the grid and if it was so injected, the same will not be accounted. The Power Purchase Agreement, therefore, has to be treated as unenforceable having not received the approval of the Commission so far and hence the Interlocutory Application or prayer also cannot be sustained.

4. The Hon'ble High Court was stated to have passed an order on 24-08-2017 in W.P.M.P.No.33469 of 2017 in W.P.No.19688 of 2017 not extending the time for disposal of the Interlocutory Applications originally fixed by it while disposing of the main Writ Petition.

5. The entitlement of the petitioner for the reliefs prayed in the main petition to compel the respondent to be bound by its obligations under the Power Purchase Agreement dated 31-05-2016 and the other consequential and ancillary reliefs has to be determined in the main petition on merits and any expression of opinion on the issues involved in the main petition in this interlocutory adjudication is likely to prejudice the rights and contentions of the parties. Therefore, without touching upon the questions in controversy arising for determination in the main petition, this Interlocutory Application has to be decided protecting the ultimate rights and interests of the parties to be declared in the main petition. The communication said to have been sent to the petitioner and other wind developers not to feed any power into the grid was sent by the

Chief General Manager of APSPDCL on 29-06-2017. The fact that the generating unit of the petitioner had its Commercial Operation Date on 28-07-2016 to the knowledge of the respondent and that since then the power generated by that unit is injected into the grid and received by the respondent being not in dispute and the Power Purchase Agreement entered into between the petitioner and the respondent dated 31-05-2016 being not denied as a matter of fact, injection of power by the petitioner and receipt of the same by the respondent upto 28-06-2017 cannot by any means of construction be considered as irregular or illegal. While the quantum of power so supplied upto 28-06-2017 may not be in dispute, the supply of such power in any view, was never intended to be gratuitous. Irrespective of the nature of relationship arising between the parties under the Power Purchase Agreement, the obligation of the respondent to compensate the petitioner towards the value of the power so received from 28-07-2016 to 28-06-2017 cannot be seriously disputed. Regarding the estimation of the value of such power for the purpose of this inquiry, though the tariff as per Regulation 1 of 2015 is Rs.4.84 ps / Rs.4.83 ps per unit, the reasonableness and justification for it are the questioned by the respondent claiming it to be the basis for the negotiation process between the wind developers and the public utilities on the aspect. According to Sri P. Shiva Rao, learned Standing Counsel for the respondent, in view of the subsequent events in which a much lesser price has been quoted by a wind developer in identical circumstances, it is now clear that the price payable now in the State of Andhra Pradesh is very high. He submitted that as that bid was for Rs.3.46 ps per unit, an amount of Rs.3.50 ps per unit can be taken as a reasonable basis for making the entire payment for the power received by the respondent from 01-12-2016 (unpaid balance for December, 2016) till 28-06-2017 as the value of power supplied from 28-07-2016 to 31-12-2016 was already paid by the respondent as per the regulation tariff. Though the learned counsel for the petitioner insisted on payment of the agreed price, pending final determination of the rights of the parties in the main petition, it would be in the interests of justice to ensure that a reasonable payment towards the value of the power supplied is received by the petitioner, as it is stated by the learned counsel to be under great financial stress and strain due to nonpayment of the arrears. Any such interim relief cannot be misconstrued as indication of any final determination by the Commission as it

is only intended to protect the interests and rights of the parties pending the main petition. The question relating to the power injected into the grid from 29-06-2017 should also be left open to be decided in the main petition. The amount so paid as an interim measure has to be paid within a reasonable time and such payment as already stated is without prejudice to the rights and interests of the parties in the main petition.

6. Therefore, towards the power injected by the petitioner into the grid and received but not paid for by the respondent from 01-12-2016 to 28-06-2017, the respondent shall make the payment to the petitioner at the rate of Rs.3.50 ps per unit on or before 11-09-2017. Such payment by the respondent and receipt of the same by the petitioner is without prejudice to the rights and contentions of both parties in the main petition. In the event of the main petition O.P.No.36 of 2017 being not disposed of within a reasonable time, the petitioner is at liberty to approach the Commission for any appropriate interim relief regarding the power injected by it into the grid and received by the respondent from 29-06-2017, if there was any such injection and receipt since 29-06-2017. I.A.No.16 of 2017 is disposed of with the above direction. No costs.

This order is corrected and signed on this the 26th day of August, 2017.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman