



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad - 500004

O.P. No. 8 of 2011

&

I.A. No. 3 of 2011

Dated: 30-11-2012

Present

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

Between

Eastern Power Distribution Company of AP Ltd
P & T Colony, Seethammadhara,
Visakhapatnam

...Petitioner

AND

M/s Navabharat Ventures Ltd
Samalkot, E.G. Dist.

... Respondent

The petition(s) coming up for hearing on 24.12.2011. Sri P.Shiva Rao, Advocate for the petitioner present. No representation on behalf of the respondent. The Commission passed the following:

ORDER

The petition(s) filed by the petitioner are (i) for fixing the tariff on completion of 10 years of the project from the date of COD of the respondent under section 62 & 86 (1) (b) of the EA 2003 and (ii) to pass directions permitting the petitioner to pay tariff as proposed by them in the petition, subject to final orders in the main petition under section 94 (2) of EA 2003.

2. The material averments of the petitioner as in main O.P. are briefly as follows:

- a) M/s Navabharat Ventures Ltd (NVL) Commissioned 2 MW Bagasse Co-generation project in their sugar plant at Samalkot,

E.G. District on 07-02-1999. M/s NVL entered into Power Purchase Agreement (PPA) with erstwhile A.P. State Electricity Board (APSEB) for sale of surplus energy after meeting the captive consumption. The PPA was entered for a period of 20 years from the Commercial Operation Date (COD) of the project.

- b) The AP Electricity Regulatory Commission (APERC) passed orders in June, 2001 fixing tariff payable to New & Renewable Energy (NRE) projects for the period upto 31.03.2004. The APERC in its order indicated that tariff (fixed cost) for each individual project will be reviewed after completion of 10 years of operation by which time the loans from financial institutions would have been repaid.
- c) From 01.04.2004 onwards, the APERC determined fixed cost and variable cost separately payable to NRE projects. The APERC reiterated in this order that there will be review of tariff (fixed cost) for each individual project on completion of 10th year of operation of each individual project.
- d) The Government of AP issued transfer scheme under the provisions of the Electricity Act, 2003 transferring the trading of electricity and PPAs from Transmission Corporation of AP Ltd (APTRANSCO) to AP Distribution Companies (DISCOMS) with effect from 09.06.2005. The PPA entered into between APTRANSCO and NRE projects have been vested with concerned DISCOMS in whose area of operation the respective project is located. As such, the PPA between APTRANSCO & M/s NVL is vested with APEPDCL from 09.06.2005.
- e) In the year 2006, M/s NVL proposed to replace 2 MW Co-generation unit by 9 MW co-generation unit with a proposal for sale of 6 MW capacity to APTRANSCO. The APEPDCL entered into new PPA with M/s NVL on 06.05.2006 in super session of earlier PPA. The tariff payable to 2 MW capacity

portion (COD in the year 1999) and 7 MW portion (COD in the year 2006) was indicated separately as Schedule 1 A & 1 B of the PPA. The Article 2.2 of the PPA also provides that tariff payable after the 10 years of operation will be reviewed by the APERC.

- f) The APERC issued consent to the PPA dated 06.05.2006 between APEPDCL & M/s NVL.
- g) M/s NVL project's 2 MW capacity portion completed 10 years of operation on 06.02.2009. The fixed cost payable to M/s NVL for the period from 07.02.2009 (11th year of operation) is to be fixed by the APERC.
- h) In the light of the above, the petitioner formulated the fixed cost proposals, which are filed as Annexure-3. Based on the detailed calculations made, the petitioner proposes the fixed cost payable to the respondent during the period from 11th year to 20th year. The parameters considered for calculating the proposed fixed charges are also submitted in the Annexure.

3. The petitioner in their main O.P. prayed that the Commission may be pleased to:

- a) Approve fixed charges payable as per the proposal of the petitioner for the energy purchases from the respondent's Bagasse based Co-generation power project during the period from 07.02.2009 to 06.02.2019.
- b) And / or pass such other order / orders as the Commission may deem fit.

4. The petitioner in their IA having generally narrated the sequence of events as in the main O.P., had essentially prayed to pass directions permitting the petitioner to pay tariff as proposed in their petition. Subject to final orders in the main petition.

5. The respondent though represented in the proceedings of the Commission in the beginning but failed to attend before the Commission for the subsequent adjournments. They have not filed any counter and further when no representation is made on behalf of the respondent, we are constrained to hear the counsel for the petitioner and to pass appropriate orders. The counsel for the petitioner reiterated the grounds mentioned in the petition filed by him, while advancing arguments before the Commission.

6. The issues have been examined by the Commission. The present case is concerning the 2 MW capacity covered by Schedule 1-A of the Commission's detailed consent orders issued vide letter dated 25.03.2006. Now the two points concerning the 2 MW capacity, that arise for the consideration of the Commission are:

- (i) Whether Commission can embark on the final determination of tariff applicable beyond 10th year keeping in view the recent orders of Hon'ble ATE dated 20.07.2012?
- (ii) If not, what tariff can be allowed in the interregnum period?

7. The above two issues are as examined here under:-

While considering issue at (i) above, it is necessary to cognize the observations of the Hon'ble ATE vide its order dated 20.07.2012. For that purpose the same is extracted as here under:

"We feel that, the interim tariff of the mini-hydro generators from 11th year onwards should be decided by the State Commission, as it would not be appropriate for the Tribunal to usurp the powers of the State Commission to determine tariff. However, we feel there is difficulty for the State Commission to give an interim order without specific directions from this tribunal in view of the pendency of the appeal before the tribunal, as the tariff for the 11th year onwards will depend on the final outcome of this appeal".

8. As can be seen from the above, there is difficulty for the State Commission, even to give an interim order, in view of the pending of the appeal before the Tribunal, as the tariff for the 11th year onwards will depend on the final outcome of this appeal. That being the case, the Commission

feels that final determination of tariff for the period beyond 10 years cannot be embarked upon now. Accordingly, this exercise is not being done in the present order, with liberty granted to the petitioner to file for the same after the final outcome of the appeals pending before the Hon'ble ATE.

9. The issue no. (ii) on which the Commission needs to give its finding is, what tariff can be allowed in the interregnum period. On this, the prayer of the petitioner is that they may be permitted to pay the respondent company based on the tariff proposed in their petition in the interim, subject, however, to final orders in the petition. There is neither a counter nor representation from the respondents. However, during the course of hearing, it was brought to the notice of the Commission, that a number of NCE developers who have completed 10 years of operation have approached APDISCOMS to pay the 10th year fixed cost till Commission finalizes the fixed cost payable to them from 11th year of operation and that APDISCOMS have taken a decision to pay 90% of the 10th year fixed cost till Commission finalizes the matter besides variable cost as per Commission's order dated 31.03.2009. The tariff pattern followed in arriving at the 90% of the 10th year fixed cost is as per Commission's order dated 20.03.2004.

10. Be that as it may, the Commission has recently passed an order dated 16.11.2012 in O.P. No. 63 of 2012, determining the interim tariff payable, beyond the 10th year of operation, in the case of a mini-hydel project in terms of order of Hon'ble ATE dated 20.07.2012. The same principles as in the above said orders need to be followed in the instant case which is on similar lines and as such the Commission proposes to adopt the same principles. The direction contained in the above said order is extracted as here under:

“Keeping in view, the financial difficulties being experienced by the mini hydro generators and the distribution licensees continuing to off-take power from these generators even after completion of 10th year of operation, we feel there is urgent need for the State Commission to determine an interim tariff for the period from 11th year onwards. Accordingly, we direct the State Commission to determine the interim tariff for the mini hydro projects who have already completed 10 years of operation for sale to the distribution licensees from 11th year onwards, keeping in view the interim order dated 01.02.2012 passed by this Tribunal.....”

11. In the said case, the Commission took as basis the pattern contained in the Chairman's order dated 19.08.2011 and not the pattern contained in the 20.03.2004 order, in view of the orders of Hon'ble ATE dated 20.07.2012 read with ATE order dated 01.02.2012. In the instance case also, no reliance can be placed on the Commission order dated 20.03.2004, while determining the tariff beyond the 10th year and any determination of interim tariff from 11th year onwards has to be in terms of interim order dated 01.02.2012 only. Further, the request of the petitioner to permit them to pay the tariff as proposed by them as in their petition in the interim period also cannot be accepted in view of the fact that, the same is not inline with the pattern contained in the Chairman's order dated 19.08.2011. However, the said order does not contain the tariff for the 11th year. In view of this fact, determination of interim tariff for the 11th year onwards has to be derived from the tariff stream determined in Chairman's order dated 19.08.2011. For this purpose and before going any further on the matter, it is necessary to extract the Fixed Cost stream determined by Chairman's order dated 19.08.2011 as hereunder:

Year of operation	Tariff (Rs/unit)
1 st	1.82
2 nd	1.79
3 rd	1.76
4 th	1.73
5 th	1.70
6 th	1.67
7 th	1.64
8 th	1.62
9 th	1.56
10 th	1.12

12. As can be seen from the above table, the fixed cost reduction year-on-year is in the range of 1 paise to 44 paise and the average works out to 7 paise per unit. That being the case and in as much as the fixed tariffs get reduced with aging of project, the fixed for 11th year can be fixed at Rs.1.05 per unit i.e., (Rs. 1.12 – Rs. 0.07) and the fixed costs for subsequent years

can be arrived at by reducing the previous year, figure by an amount of 7 paise per unit. In view of the above, the respondents are directed to make payments in accordance with the above fixation of fixed costs in the interim period. The variable cost payable shall be any way as per the Commission's orders dated 31.03.2009.

13. This order is applicable to the 2 MW capacity covered by Schedule 1-A of the Commission's detailed consent order dated 25.03.2006.

This order is corrected and signed on this 30th day of November, 2012.

**Sd/-
(C.R.SEKHAR REDDY)
MEMBER**

**Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN**