



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

I.A. No.5 of 2006
In
O.P. No.14 of 2006

Dated 16.11.2012

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

Between

Central Power Distribution Company of Andhra Pradesh Ltd,
Corp. Office, Mint Compound, Hyderabad.

.... Petitioner

AND

M/s.NILE Limited
Industrial Estate, Nacharam,
Hyderabad – 500 076.

..... Respondent

This petition coming up for hearing on 06.09.2011, Sri. P. Shiva Rao, Advocate for the petitioner and Sri. C. Gunaranjan, Advocate for the respondent present. The Commission passed the following:

ORDER

This petition is filed under Section 62 of the Electricity Act, 2003 for determination of tariff to take effect on completion of 10 years from the date of commissioning of the project. The case of the petitioner is briefly as follows.

- a) The respondent, M/s. NILE Ltd., after obtaining sanction from Non-conventional Energy Development Corporation of AP Ltd (NEDCAP) commissioned 2 MW wind power project at Ramagiri, Anantapur District on 30.08.1995. The respondent entered into Wheeling Agreement with erstwhile AP State Electricity Board on 21.07.1995 for wheeling of energy delivered from the wind power project as per the provisions of Government orders prevailing at that time.

- b) The Commission after coming into existence under the provisions of AP Electricity Act, 1998 (APER Act, 1998) has taken up the review of NCE Policy as per the powers vested in terms of APER Act, 1998. The Commission extended the Government of AP orders upto June 2001 and in the orders dated 20.06.2001 in OP No. 1075 of 2000 issued orders on NCE policy. The Commission in the order fixed uniform tariff for NCE projects at Rs. 2.25 per unit with 5% escalation per annum with 1994-95 as base year. The Commission in the order informed that, the tariff fixed will apply upto 31.03.2004 and fixation of tariff to take effect from 01.04.2004 will be undertaken by the Commission after discussions with all the concerned parties.
- c) The Commission stipulated that “there will also be a review of the purchase price with specific reference to each developer on completion of 10 years from the date of the commissioning of the project (by which time the loans from financial institutions would have been repaid) when the purchase price will be reworked on the basis of Return on Equity, O & M expenses and the variable cost”.
- d) The respondent, in compliance with the Commission orders dated 20.06.2001 in OP No. 1075 of 2000, entered into Power Purchase Agreement (PPA) with Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) on 20.05.2002 for sale of energy delivered from their 2 MW wind power project in Anantapur District. The PPA superceded in its entirety the earlier Wheeling Agreement and is for duration of 20 years from the commercial operation date of the project i.e., PPA will be in force upto 20.08.2015. The PPA under Article 2.2 also provides that there will be review of tariff by the Commission on completion of 10 years from the date of the commissioning of the respondent’s project, when the purchase price will be reworked on the basis of Return on Equity, O & M expenses and the variable cost. The tariff to the respondent was paid up to 30.03.2004 as per the Commission order dated 20.06.2001 in OP No. 1075 of 2000.

- e) The Commission initiated suo-motu proceedings for determination of tariff applicable to NCE projects to take effect from 01.04.2004 onwards. The Commission vide orders dated 20.03.2004 in R.P.No.84 of 2003 in O.P No. 1075 of 2000 issued orders fixing tariff for NCE projects to take effect from 01.04.2004. The Commission fixed tariff for wind power projects at Rs. 3.37 per unit freezed for next 5 years.
- f) The Commission in the order reiterated that review of tariff for individual projects will be undertaken on completion of 10 years from the date of the commissioning of the project, by which time the loan is expected to have been substantially repaid and the purchase price will be based on Return on Equity, O & M expenses, variable cost and residual depreciation, if any. The respondent is being paid the tariff at Rs.3.37 per unit from 01.04.2004 as per the Commission order dated 20.03.2004 in RP No. 84 of 2003 in OP No. 1075 of 2000.
- g) The respondent's project has completed 10 years of operation by 29.08.2005. As such, the tariff for the respondent's project to take effect from 30.08.2005 is to be reviewed and re-fixed. Section 62 of the Electricity Act, 2003 empowers the Commission to determine the tariff for supply of electricity by a generating company to a distribution licensee.
- h) The petitioner has enclosed the tariff proposals. Based on the detailed calculations made, the petitioner proposes a tariff of Rs.1.43 per unit, excluding Income Tax to be paid at actuals, if any, for the energy purchases from the respondent's wind power project during the period from 30.08.2005 to 30.08.2015.
- i) The petitioner prayed that the Commission be pleased to pass directions permitting the petitioner to pay tariff to the respondent for energy delivered at the tariff of Rs.1.43 per unit, subject to final orders in the main petition and / or pass such other order as the Commission deem fit and appropriate in facts and circumstances of the case.

2. The case of the respondent as set out in the counter is briefly as follows:
- i) The petitioner has entered into a Power Purchase Agreement with the respondent on 20.05.2002 in terms of which the respondent shall be paid the tariff for the energy delivered at interconnection point for sale to the petitioner at Rs. 2.25 Ps per unit with escalation of 5% p.a. with 1994-95 as base year and to be revised on 1st of April of every year upto the year 2003-04. In terms of this agreement, the petitioner was purchasing electricity from this respondent at a price of Rs. 3.48 Ps per unit.
 - ii) The Commission, in pursuance to the order dated 20.06.2001 in O.P No. 1075 of 2000, has initiated a suo-moto review of incentives to take effect from 01.04.2004. The Commission, pursuant to the said suo-moto review, passed its order dated 20.03.2004, in which, after considering the proposals of the petitioner, the Commission determined the tariff for all the renewable energy developers, including that of the wind developers, referring to factors like plant load factor, O & M expenses, opined that the cost-based approach, if adopted, would lead to distortion and would result in higher tariff in the initial years resulting in extra burden on the consumers. Hence, this Commission decided to continue the guidelines of MNES in a refined format without going into cost details. This tariff was fixed for a period of 5 years w.e.f. 01.04.2004 and to be reviewed thereafter. This Commission further specified that such of those projects which complete 10 years from the date of commissioning of the project, the tariff of the same will be further reviewed basing on the factors like O&M expenditure, return on equity, variable cost and residual depreciation if any.
 - iii) This petition was filed by the petitioner on 16.03.2006 contending that this respondent completed 10 years of operation by 30.08.2005 and proposing for fixing of tariff of Rs.1.43 Ps per unit. This respondent, without going into merits of the case, is restricting to answer the averments made by the petitioner in the memo dated 10.05.2006 in which the petitioner sought to take up interim petition for the alleged urgency and revenue loss to the utility. The prayer in the main petition and the interim application i.e., to fix

the tariff of Rs. 1.43 Ps per unit being one and the same, allowing of interim application would tantamount to allowing main case itself which is not permissible and would be in violation of principles of natural justice.

- iv) This respondent has serious objections with respect to re-determination of the tariff, since this Commission has already determined the tariff for a period of 5 years w.e.f. 01.04.2004. Any further revision of tariff is permissible only after 01.04.2009; as such the present application is totally misconceived. Even assuming for the same argument, without conceding, to the preliminary objections of re-determination of tariff, merely because the petitioner has proposed the purchase price at Rs. 1.43 Ps per unit, until and unless the Commission determines the same, no such directions could be granted in as much the same would amount to granting of main relief in an interim application without determination of the claims of the parties.
- v) It is pertinent to mention here that the question whether the tariff paid by the petitioner is excessive or not would be only decided in the main petition and merely basing on presumption and surmises, the petitioner is not entitled for any kind of interim relief.
- vi) In case the relief sought by the petitioner is granted, it would cause undue hardship to the respondent in terms of meeting the respondent's financial obligations.

3. Hence, it is prayed that, this Commission may be pleased to dismiss the interim application and pass such other order or orders as this Commission may deem fit and proper in the interest of justice.

4. The learned advocate for the petitioner argued that the Commission has to decide the interim tariff pending disposal of the main petition filed for fixation of tariff by way of review on completion of 10 years and this is abnormally delayed due to the continuous litigation ran by the NCE developers right from the Commission up to Apex Court. The interim tariff is not fixed; untold hardship is going to be caused for the petitioner since they are now paying more than Rs.1.43 on adhoc arrangement.

5. Where as the learned advocate for respondent argued that the relief sought for in the interim petition and the main petition is one and the same and Commission can not pass any order in the interim petition as it may affect the relief sought in the main petition itself. He has relied upon a ruling reported in 2004 AIR SCW 6955 (State of UP Vs. Ram Sukh Devi).

6. Now the point for consideration is, whether the petitioner is entitled for fixation of interim tariff as prayed?

7. It is not a hard and fast rule that the Commission is going to fix the tariff as sought by the petitioner either in the main petition or in the interlocutory application. It may fix the tariff at one rate in the interlocutory application and the same may be altered or modified depending up on the circumstances placed before the Commission at the time of final hearing.

8. In the ruling relied upon by the counsel for the respondent, the appointment of an individual is made on compassionate appointment, ignoring the Government order on humanitarian grounds and held that it is improper as it amounts to granting of final relief at interim stage and it is impermissible. The relief sought cannot be modified as it has to give appointment or reject the same. So the facts of this case are different than the facts of the case on hand. Hence it is not applicable.

9. Now the point before the Commission is about the determination of the tariff in the interim petition pending disposal of the main petition.

10. As can be seen from the above, there is no dispute that, upon completion of 10 years from the date of commissioning of the project, the tariff of the same is to further reviewed, basing on the factors like O & M expenditure, Return on Equity, Variable Cost and residual depreciation if any. The rationale for further reviewing the tariff after completion of 10 years basing on the factors like O & M expenditure, Return on Equity, Variable Cost and residual depreciation is that, by the end of 10 years the developer would have substantially repaid the loan. It is therefore, abundantly clear that, once the loan corresponding to 70% of the project cost is substantially repaid (through interest and depreciation components of the tariff), the tariff after 10 years would substantially come-down, since, it would include O & M

expenditure, Return on Equity and residual depreciation, if any. The variable costs are any way, not applicable to the Wind Power Projects. It is a matter of fact, that the DISCOMs are presently paying an ad-hoc tariff of 50% of Rs.3.37 per unit (the tariff determined in 20-03-2004 order) working out to around Rs.1.69 per unit. The prayer of the petitioner, to fix an interim rate of Rs.1.43 per unit is not reasonable since it is lesser than the rate of Rs.1.69 per unit, which is 50% of the rate paid for the 10th year (Rs.1.69 per unit is being presently paid on ad-hoc basis by the petitioner). The petitioner is therefore directed to pay Rs.1.69 per unit for the power supplied to them by the developer, beyond 10th year, pending fixation of final tariff applicable beyond 10th year.

This order is corrected and signed on this 16th day of November, 2012.

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

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN