



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

I.A. No.8 of 2006
in
O.P. No.17 of 2006

Dated 16.11.2012

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

Between:

M/s. Central Power Distribution Company of A.P. Ltd

... Petitioner

AND

M/s. Weizmann Ltd

....Respondent

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

ORDER

The petitioner filed the above said petition u/s 62 of the Electricity Act, 2003 and under S.94(2) of EA 2003. The case of the petitioner is briefly as follows:

a) The respondent, M/s. Weizmann Limited obtained sanction from Non-conventional Energy Development Corporation of AP Limited (NEDCAP) for commissioning 6 MW wind power project at Ramagiri, Anantapur District and 2 MW wind power project at Tallimadugula, Anantapur District. The respondent on 22.10.1995 entered into Power Purchase Agreements (PPAs) (2 numbers) for 6 MW capacity at Ramagiri, Anantapur District with erstwhile APSEB. The respondent commissioned wind power projects on 13.09.1995. Subsequently, the respondent entered into 3 wheeling agreements with erstwhile APSEB on 06.09.1997 (2 Agreements for 6 MW) and 05.08.1998

(1 Agreement for 2 MW) for wheeling of energy delivered from the wind power project as per the provisions of Government orders prevailing at that time.

b) The Andhra Pradesh Electricity Regulatory Commission (APERC) came into existence under the provisions of AP Electricity Reform 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 up to 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 up to 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. Further, the Commissions stipulated that “there will also be a review of the purchase price with specific reference to each developer on completion of ten 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.”

c) The respondent filed an appeal against the Commission directions and obtained interim orders from Hon’ble High Court. The respondent continued 3rd party sales as per Hon’ble High Court interim orders. Subsequently, the respondent agreed for sale of energy to be delivered from 8 MW wind farms to APTRANSCO and selling energy. The tariff to the respondent was paid up to 31.03.2004 as per the Commission order dated 20.06.2001 in OP No.1075 of 2000.

d) 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 RP No. 84/2003 in OP No. 1075/2000 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. 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 and 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. 84/2003 in OP No.1075/2000.

e) The respondent's project has completed 10 years of operation by 12.09.2005. As such, the tariff for respondent's project to take effect from 13.09.2005 is to be reviewed and re-fixed. Section 62 of the EA 2003 empowers the Commission to determine the tariff for supply of electricity by a generating company to a distribution licensee.

f) The petitioner has formulated the tariff proposals, which are enclosed as Annexure hereto 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 13.09.2005 to 12.09.2015. The petitioner submits that the Annexure may please be read as integral part of this petition.

g) The petitioner, therefore, prays that the Commission may be pleased to
(i) Approve tariff as 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 13.09.2005 to 12.09.2015.
(ii) And/or pass such other order/ orders as the Hon'ble Commission may deem fit.

h) Pending disposal of main petition it is 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 petitioner and/or pass such other order as the Commission deem fit and appropriate in facts and circumstances of the case.

2. On 27.05.2006, the counter is filed on behalf of the respondents. The case of the respondent is briefly as follows:

a) The petitioner has entered into two power purchase agreements with this respondent on 07.09.1995 and 28.10.1995 respectively in terms of which the respondent shall be paid the tariff for the energy delivered at inter connection point for sale to the petitioner at Rs.2.25 per unit with escalation of 5% p.a. with 1994-95 as base year and to be revised on 1st April of every year upto 2003-04. In terms of this agreement the petitioner was purchasing electricity from this respondent at a price of Rs.3.48 per unit. The Commission in pursuance to the order dt.20.06.2001 in OP 1074 of 2000 has initiated a suo-motu review of incentives to take effect from 01.04.2004. The Commission in the said suo-motu review after considering the proposals of the petitioner determined the tariff for all the renewable energy developers including that of the wind developers in its order dt.20.03.2004. In so far as the wind developers were concerned the Commission referring to the 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 the Commission decided to continue the guidelines of MNES in a refined format without going into cost details. The tariff was fixed for the period of 5 years w.e.f. 01.04.2004 and to be reviewed thereafter. The Commission further specified that such of those projects which completes 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.

b) This petition was filed by the petitioner on 16.03.2006 contending that this respondent completed 10 years of operation on 06.09.2005 and 27.10.2005 respectively and proposing for fixing of tariff of Rs.1.43 per unit. The prayer in the main petition and the interim application i.e, to fix the tariff of Rs.1.43 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 principle of natural justice as held by the Hon'ble Apex Court.

The respondent has serious objections with respect to re-determination of the tariff, which this Commission has already determined 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 preset application is totally misconceived. Even according to the petitioner the respondent completed 10 years of operation on 30.08.2005 and the present application is moved on 16.03.2006 before the Commission as such there is no urgency as contended by the petitioners in taking up the interim application. The respondent has long term PPA and the power generated by it is supplied to the petitioner as such the contention of the petitioner that in the event of this Commission fixing the tariff of Rs.1.43 per unit, it would be difficult for them for recovering excess amount is totally incorrect and misplaced. 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 direction. On the other hand status quo could be maintained with respect to the existing tariff rate of Rs.3.37 per unit and on Commission finally deciding a higher rate while disposing the original petition filed by the petitioner on 16.03.2006, the difference could be included in the remittance that would be effected for wind power purchased by the petitioner in the months following the order of the Commission and in the event the Commission deciding a tariff rate which is less than the existing rate, the difference could be recovered by the petitioner from the subsequent bills for wind power purchase by the petitioner.

c) The respondent reserves its right to file additional counter if need be there and also a detailed counter on the merits of the case.

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

3. 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. If 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.

4. Where as the learned advocate for respondent argued that the relief sought for interim petition and the main petition is one and the same and Commission can not pass an 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).

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

6. 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.

7. 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.

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

9. 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 be 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