



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

O.P.No.44 of 2014
Dated: 07-04-2017

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

Between:

M/s. International Paper APPM Ltd.
(The Andhra Pradesh Paper Mills Limited) ... Petitioner

A N D

Andhra Pradesh State Load Despatch Centre (APSLDC) ... Respondent

This petition has come up for hearing finally on 18-02-2017 in the presence of Sri Vedula Srinivas, learned counsel 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

A petition to direct the respondent to accreditate the petitioner's black liquor based power generation project for participating under the REC framework, approve the methodology for determining net power generation from the steam produced by the black liquor fired recovery boiler out of the total generation of the petitioner's captive generating plants and direct the respondent to measure the generation of electricity from the petitioner's black liquor based generation project in accordance with the methodology approved by the Commission.

2. The petitioner's case is that it is a large integrated paper and pulp manufacturer, which set up two units of captive generation plants of a 34 MW unit generating electricity from the steam produced by the black liquor (coming out from the pulp mills) fired a recovery boiler and coal fired boiler and another unit of 12 MW,

making a total capacity of 46 MW. The respondent is the designated State Agency under the Andhra Pradesh Electricity Regulatory Commission Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy/ Renewable Energy Certificates) Regulations, 1 of 2012, for accreditation and recommending the renewable energy projects in the State of Andhra Pradesh in accordance with the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010. As per the Central Electricity Regulatory Commission procedure for issuance of renewable energy certificates to the eligible entity by the Central Agency under letter dated 01-06-2010, the respondent has to account for the renewable energy injected into the grid and communicate the energy injection report, as per the record of meter readings maintained by it for each accredited renewable energy project of the registered eligible entity connected to the transmission network of the State, to the Central Agency on monthly basis. The petitioner opted for co-firing technology for its captive generating plant for co-firing biomass in conjunction with a coal-fired power plant. The three options are direct co-firing, indirect co-firing and parallel co-firing. The petitioner opted for parallel co-firing concept. The 34 MW captive co-generation plant of the petitioner consists of one boiler utilizing coal and one recovery boiler utilizing black liquor as fuel, which feeds steam into a common header for running steam turbine generators for generation of electricity. The black liquor coming out of pulp mill and fired in recovery boiler is recognized by MNRE as a biomass fuel. The petitioner needs to generate 34 MW of power to meet captive power demand in the plant and the ratio of the steam generated from the renewable fuel (black liquor) and coal would be in the ratio of 63% and 37%. The Commission needs to give a direction to the respondent as prayed for.

3. The Commission is bound to promote co-generation and generation of electricity from renewable energy sources under section 86 (1) (e). Under clause 5.12 of the National Electricity Policy on co-generation and non-conventional energy sources, the duty of the Commission is to promote the non-conventional technologies encouraged in the overall interest of the energy efficiency and grid stability. Even the Tariff Policy under section 3 of the Electricity Act, 2003 prescribes in clause 6.4 about the need for solar specific REC and the need for procurement by the distribution companies at the preferential tariffs determined by the appropriate Commission.

4. Claiming the Central and State REC regulations to be conferring jurisdiction on the Commission, the petitioner relied on Regulation No.5 of the CERC Regulations for making it an eligible entity. It also relied on the letters of the CERC dt.29-01-2010 and 10-07-2013. The petitioner claimed to be satisfying the eligibility criteria and requested for accreditation and approval of the methodology for deriving biomass based generation out of the total generation and determination of net generation from coal fired FBC boiler and black liquor fired recovery boiler. The petitioner suggested a methodology of its own for the purpose which is followed by CDM executive board. Hence, the petitioner desired accreditation for its black liquor based generation project under the Electricity Act, 2003, which in its long cause title mandates promotion of efficient and environmentally benign policies.

5. The respondent in its counter stated that it is the statutory nodal agency for accreditation and the CERC orders in the letter dated 17-02-2014 specifying the revised detailed procedures are applicable, which make fulfillment of eligibility conditions for participating in REC mechanism mandatory. Clause 41 of the CERC (Terms and Conditions for tariff determination from RE sources) Regulations, 2012 states that the use of fossil fuel shall be limited to the extent of 15% of total fuel

consumption on annual basis. The biomass generator violated the limit and hence the petitioner firing 37% coal/fossil fuel and 63% black liquor is not within the purview of the respondent for fixing any methodology of generation. The petitioner has to file a petition with the appropriate authority for identifying the RE source, RE generator and the methodology. Hence, the respondent desired the petition to be dismissed with costs.

6. On 02-04-2016, the Commission on hearing the learned counsel for both parties, passed a docket order observing that as percentage of fossil fuel being involved in the co-generation of the energy by the petitioner is more an issue that can be sorted out by physical inspection than any document, interests of justice will be met by making a joint inspection and if for any technical or physical reason, such a joint inspection is found to be not giving the desired result by arriving at the percentage of fossil fuel, then the hearing of the matter can be proceeded with otherwise. The Commission, therefore, ordered that the respondent shall depute a team of officers to the premises of the petitioner for such a joint inspection to be held at-least a week after intimation of the same to the petitioner and the petitioner shall also participate through its officers in the said joint inspection and assist the officers of the respondent in arriving at the percentage of fossil fuel involved in the co-generation of the energy by the petitioner in question. The report of the joint inspection conducted as per the said orders has been filed before the Commission on 04-06-2016. The joint inspection report shows that it was conducted on 24-05-2016 and the observations were unanimously recorded. The conclusions are that

- “i) The 1x34MW Generating Unit Turbine is connected to the Common Steam Header to which Black liquor fired Recovery Boiler (RB-4) and Coal fired Boiler (CF-6) are connected.

- ii) As this scheme is based on the “Parallel co-firing” principle, the Coal fired boiler (CF-6), Black Liquor fired Boiler (RB-4) & Turbo Generator set all together shall be considered as one Generating Unit.”

The report concluded the Black liquor fuel consumption is about 63.7% & fossil fuel (coal) consumption is about 36.3% which is more than the limit of 15% specified by the MNRE. The minutes of the meeting of the officers of both parties also recorded that for generation of 28.1 MW energy, around 66% of Black Liquor and 34% of Coal are utilized.

7. The point for consideration is whether the captive power generation by the petitioner satisfies the eligibility criteria for participating in renewable energy certificate mechanism.

8. The long cause title of the Electricity Act, Central Act 36 of 2003 envisages the Act to be intended, among other things, for promotion of efficient and environmentally benign policies. Section 86 (1) (e) of the Act makes it a function of a State Electricity Regulatory Commission to promote co-generation and generation of electricity from renewable sources of energy and also to specify, a percentage of the total consumption of electricity in the area of a distribution licensee, for purchase of electricity from such renewable sources. The National Electricity Policy and the National Tariff Policy reiterate the objective.

9. The Central Electricity Regulatory Commission made the Terms and Conditions for recognition and issuance of Renewable Energy Certificates for Renewable Energy Generation Regulations, 2010, which were amended from time to time. The Andhra Pradesh Electricity Regulatory Commission also made Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy / Renewable Energy

Certificates) Regulations, 1 of 2012. The certificates issued under the CERC Regulations, 2010 were recognized as valid instruments for the discharge of the mandatory obligations of the obligated entities to purchase electricity from renewable energy sources (as per Regulation 4 thereof). The CERC Regulations dated 14-01-2010 were subjected to the first amendment Regulations of 2010 dated 27-09-2010 and the second amendment Regulations of 2013 dated 10-07-2013.

10. The petitioner did not admittedly apply for accreditation to the State Agency and straightaway approached the Commission. Under the CERC Regulations, the power of modification, addition, deletion, relaxation or giving directions rests with the Central Electricity Regulatory Commission and the Regulations above referred to have to be harmoniously read with CERC (Terms and Conditions for tariff determination from Renewable Energy Sources) Regulations, 2012, which lay down in clause 41 that the use of fossil fuel shall be limited to the extent of 15% of total fuel consumption on annual basis. In the Statement of Objects and Reasons on 2010 Regulations of the CERC, the CERC observed that MNRE recognizes biomass as renewable energy upto 15% usage of coal in the projects as RE sources and the same will be applicable under REC mechanism. The CERC, which kept usage of fossil fuel in line with the stipulations made by the MNRE in its 2012 Regulations on tariff from renewable energy sources, prohibited use of fossil fuels by its first amendment Regulations of 2014. However, by the second amendment Regulations notified on 05-01-2015, again use of fossil fuels was permitted but limited and restricted to the extent of 15% in terms of calorific value on annual basis till 31-03-2017.

11. The joint inspection report, the contents of which are not disputed by the parties, positively show that the petitioner is using about 37% fossil fuel for its captive generating plant of 34 MW and has thus crossed the regulatory limits to be eligible, to

be called a renewable energy generator. From 01-04-2017, even that relaxation of 15% obviously does not exist. The relevant Central and State Regulations as amended from time to time, which are placed before the Commission by the parties, do not suggest the petitioner to be entitled to the benefit of REC mechanism and the prayer of the petitioner to restrict to grant of renewable energy certificates only to the extent of power generated through steam produced by the RE generator (recovery boiler) does not appear feasible or permissible, when such hypothetical splitting of the captive generating plant which is one does not appear to be contemplated by any provisions of law. Even if the recovery boiler uses renewable fuel and fossil fuel in the ratio of 99.3% and 0.7% at the point of combustion of the RE generator as claimed by the petitioner, the use of any fossil fuel makes the petitioner ineligible from 01-04-2017 in any view. While the result of the fresh application said to have been filed by the petitioner before the respondent for accreditation is not known, when the joint inspection report and the joint minutes dated 24-05-2016 show both the boilers and the turbo generator to constitute one generating unit, with about 34 to 37% of fossil fuel consumption, the contentions of the petitioner read with the various State and Central Regulations are clearly unsustainable.

12. The order of the Chhattisgarh State Electricity Regulatory Commission in Petition No.35 of 2011 dated 09-12-2011 about the methodology for determining the net power generation to form the basis for accreditation, the order of the Chhattisgarh State Electricity Regulatory Commission in Petition No.13 of 2011 dated 01-06-2011 to approach the Commission after such methodology is finalized to arrive at the quantum of energy generation and the order of the Gujarat Electricity Regulatory Commission in Petition No.1356 of 2013 dated 03-03-2014 on the only issue of monitoring and measurement mechanism of energy generation do not guide in the

determination of the questions raised herein as to whether the petitioner satisfies the eligibility criteria at all for claiming the benefit of REC mechanism.

13. Thus, a close and careful consideration of the relevant provisions of law, more particularly, the contents of the Central and State Regulations concerned, as amended from time to time, and their application to the admitted fact situation, as disclosed by the joint inspection report and the minutes of the joint meeting clearly improbablize the eligibility of the petitioner to claim the benefits of the REC mechanism. Absence of proof of any right to accreditation leaves the consequential reliefs of determination of the methodology to assess the net power generation and actual measurement of the same baseless and unsustainable. Hence, the petitioner has to be concluded to be not entitled to the reliefs prayed for from the Commission.

14. In the result, the petition is dismissed. The parties shall bear their own costs.

This order is corrected and signed on this the 7th day of April, 2017.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman