



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P.No.59 of 2014

Date: 02-05-2015

Present

Justice G.Bhavani Prasad, Chairman

Sri.P.Raghu, Member

Sri.P.Rama Mohan, Member

Between

M/s. Hetero Wind Power Ltd.

Rep. by its Director & CEO

8-3-166/7, Hetero House

Erragadda, Hyderabad - 500 018

Petitioner

AND

Transmission Corporation of Andhra Pradesh Limited (APTRANSCO),

Rep. by its MD, Vidyouth Soudha,

Somajiguda, Hyderabad and others

Respondents

This Petition has come up for final hearing on 25-04-2015 in the presence of Sri.Prasada Rao Vemulapalli on behalf of the petitioner and Sri. P.Shiva Rao, Advocate for the respondents. After carefully considering the material available on record, the Commission passed the following:

ORDER

1. A Petition is filed under 86(1)(a), (e) and (k) of Electricity Act, 2003 read with Article 15 of Regulation 2 of 2006 seeking clarification concerning Regulation 2 of 2014 as amended with regard to banked energy from 1st January to 31st March, 2014 for the Petitioner's Wind Power Project at Thirumalayapalli in Kadapa district as Group Captive Project to cater to the needs of the Group Companies in the State of Andhra Pradesh. The averments of the petitioner are as hereunder:

- i. The Petitioner is a limited company registered under the Companies Act, 1956. The Petitioner belongs to Hetero Group and is promoted by M/s. Hetero Drugs, Ltd., and M/s. Hetero Labs Ltd., Hyderabad

who is in the field of manufacture of drugs and associated products at various places in the State of Andhra Pradesh.

- ii. To avoid the perennial problem of power cuts, which has been adversely affecting the productivity of the manufacturing units of Group scattered all over the State, the management of the Group established the petitioner company at Thirumalayapalli in Kadapa District. The petitioner Company has an installed capacity of 54 MW of electric power generated through wind energy. The Nodal agency (NREDCAP) had approved the same for an initial capacity of 54 MW through letter dated 06-06-2011.
- iii. Having regard to the increased demand for electric power and with a view to encourage power generation through renewable energy sources the GoI and the GoAP have declared Non-Conventional Energy Policies (NCE) for Solar, Wind & Mini-Hydel projects in the State. Accordingly the Commission issued Regulation No.1 of 2006 with regard to interim balancing and settlement code of open access transactions treating the unutilized energy as banked energy to be kept in separate account. Clause 12.2 of the said Regulations states “The banking facility to the Wind and Mini Hydel power generators shall be subject to the conditions specified in Appendix-3”. For the convenience and ready reference the Appendix-3 of Regulation 2 of 2006 is extracted here under:

- 1. *“Banking is allowed during all the 12 months.*
- 2. *Drawls are subjects to the following:*
 - a. *The Banking year shall be from January to December,*
 - b. *The Banking charges shall be in kind @ 2% of the energy delivered at the point of injection.*
 - c. *Drawls shall be permitted only during the 6-months period, from July to December. The Banked energy remaining unutilized as on 31st December shall be treated as lapsed.*
 - d. *Drawl of Banked energy during the peak hour’s i.e 06:00 to 09:00 hours and 18:00 to 21:00 hours shall not be permitted”.*

- iv. Thus by virtue of Regulation 2 of 2006 the Banking Energy Year is from 1st of January to 31st December. Due to several representations made by Non-Conventional Energy developers the Commission made certain amendments to the Regulation 2 of 2006 through Regulation No.2 of 2014 on 01-04-2014. The relevant portion of the said Regulation is extracted here under for the sake of convenience.

“2. Inclusion of definition for “Banking”.

The following definition is included below the clause 2(c) of the principal regulation.

C(2) “Banking” means a facility through which the unutilized portion of energy (underutilization or excess generation over and above scheduled wheeling) from any of the three renewable generation sources namely Wind, Solar and Mini-Hydel, during a billing month if kept in a separate account and such Energy accrued shall be treated in accordance with the conditions laid down in Appendix-3 of the Regulation.

Amendment to clause 10.3 of principal regulation.

Following proviso is added below the Clause 10.3 of principal Regulation.

Provided that, such under-drawls shall be treated as input into Banking in accordance with clause 2(C) (2), if such energy is sourced from Wind, Solar and Mini-hydel Generators.

- 1. Banking allowed during all the 12 months.*
- 2. Drawls are subject to the following conditions:*
 - a. The Banking year shall be from April to March.*
 - b. Banking charges shall be in kind @ 2% of the energy delivered at the point of drawl.*
 - c. Drawls from banked energy shall not be permitted during the five (5) month period from 1st April to 30th June and 1st February to 31st March of each financial year. In addition, Drawl of banked energy during the Time of the Day (ToD) applicable during peak hours, as specified in the respective Retail Supply Tariff Order, shall also not be permitted throughout the year:.*

- d. *The energy banked between the period from 1st April to end of 31st January of each financial year which remains unutilized as on 31st January, shall be purchased by the Discoms, as per the wheeling schedule. The energy credited into bank during the month of February & March of each financial year will be carried forward to the month of April of the next financial year for the credit of the banking account for the next year.*
 - e. *Generators have to communicate time block wise banked energy withdrawal schedule and allocations to respective Open Access/Scheduled consumers at least ten (10) days before the commencement of billing cycle.*
 - f. *The purchase price payable by the DISCOMs for unutilized banked energy will be equivalent to 50% of the Polled Cost of Power Purchase, applicable for that financial year, as determined by the Commission under RPPO/REC Regulation (1 of 2012), DISCOMs shall settle such purchase transactions with the generators by 31st March of each year”.*
- v. Thus by amending the principal Regulation the Banking Energy Year is changed from 1st January to 31st December to 1st April to 31st March of succeeding year. Drawal of Banked energy is from 1st July to 31st January of the succeeding year. From the above it appears that there is a void as to the banked energy for the period from January to March, 2014 but the drawal period of banked energy is almost the same as in the principal regulation except that it is extended till the end of January. In the absence of clarity in drawal of the banked energy particularly for the period Jan’14 to March’14, the Petitioner Company is unable to draw the banked energy pertaining to Jan’14 to March’14.
- vi. The Petitioner had accumulated about 1.32 crore units in the Bank during the period Jan’14 to March’14 and the same is not in a position of being wheeled from the wheeling period of 1st July’14 to 31st January’15. It is to submit that if the Petitioner is not permitted to draw the banked energy accumulated to the tune of

about 1.32 crore units, it will suffer huge revenue loss of about ₹5.90 Crores (considering average cost of capital drawal, APPCC avg. polled cost & sale to 3rd party consumers it works out to about ₹4.50/unit). This loss is due to silence about the banked energy from 1st January 2014 to 31st March 2014 in Regulation No.2 of 2014. The Petitioner made a representation to the APSPDCL on 28-08-2014 and requested it to intervene in the matter.

- vii. In the above circumstances it is just and necessary to clarify the position of banked energy accumulated from 1st January 2014 to 31st March 2014 as otherwise the Petitioner will be put to huge loss, which the Petitioner Company will not be able to absorb due to its nascent stage.
- viii. The Petitioner therefore prayed that the Commission be pleased to:
 - (a) Clarify the position of the energy banked between 1st January 2014 to 31st March 2014 and consequently,
 - (b) Permit the Petitioner to draw the energy banked from 1st January 2014 to 31st March 2014 to facilitate the Petitioner to wheel the same during the left over period of four months commencing from October 2014 to 31st January 2015, and
 - (c) Pass such further or other orders as Commission may deem fit and proper in the circumstances of the case and in the interest of justice.

2. Counter dated 23-04-2015 was filed on behalf of M/s. APSPDCL. The averments are as hereunder:

- i. All the allegations made in the petition except those are specifically admitted are false and hence denied.
- ii. The Regulation 2 of 2014 came into force from the date of publication i.e from 01-04-2014.
- iii. As per the preamble clause 1(ii) of Regulation 2 of 2014 “This regulation shall come into force on the date of its publication in Andhra Pradesh Gazette and will have prospective effect only”.
- iv. As per para No.4, Appendix-3, 2a, it is noted that “the banking year shall be from April to March”.

- v. Combined reading of both paragraphs indicates that the banking year will be 1st April 2014 to 31st March 2015. The validity of the banking period from 1st January 2014 to 31st March 2014 is null and void and the same may be treated as lapsed.
- vi. Hence the banking condition for the period 1st January'2014 to 31st March'2014 as per Regulation 2 of 2014 is not applicable and it is to submit that 2 of 2006 Regulation is applicable for the above said period and according to the clause 2(c), of Appendix-3 of Regulation, the banked energy remaining unutilized shall be treated as lapsed.
- vii. It is prayed that the Commission may be pleased to dismiss the petition under reply with costs.

3. The point for consideration is whether the petitioner is entitled to any relief concerning banked energy for the period between 01-01-2014 and 31-03-2014?

4. As can be seen from the facts, the prayer of the petitioner is (a) to clarify the position of the energy banked between 1st January, 2014 to 31st March, 2014 with reference to Regulation 2 of 2014. (b) permit the petitioner to draw the energy banked from 1st January, 2014 to 31st March, 2014 to facilitate the petitioner to wheel the same during the left over period of four months commencing from October 2014 to 31st January 2015. The second part of the prayer at (b) above, has lost its relevance with the lapse of time. Coming to the prayer at (a) above, which seeks clarification on the position of energy banked between 1st January, 2014 to 31st March, 2014 with reference to the Regulation 2 of 2014, it is also misplaced in as much as Regulation No.2 of 2014 comes into force on the day of its publication i.e 01-04-2014 in the Andhra Pradesh Gazette and will have prospective effect only. Against the above back drop the piquant situation of the developer is that he has banked energy between 1st January, 2014 to 31st March, 2014 (to the extent of about 1.32 crores units before Regulation 2 of 2014 came into force essentially changing the Principal Regulation 2 of 2006) and not being able to draw and wheel the same in view of amendment of the principal regulation 2 of 2006 with effect from 01-04-2014. The loss on account of this as stated by the petitioner is to the extent of ₹5.9 crores.

5. As can be seen from the above, the company is put in a situation of loss for no fault of it but solely due to the change in Regulation. In this context the

Commission is mandated to promote cogeneration and generation of electricity from Renewable sources of energy in terms of 86 (1) (e) of the Electricity Act, 2003. That being the case the Commission is duty bound to address the issue on hand. The principal Regulation 2 of 2006 at Article 15 also provides that in case of any difficulty in giving effect to any of the provisions of this Regulation, the Commission may by general or special order issue appropriate directions to open access generators, schedule consumers, OA consumers, Transmission Licensee(s) , Distribution Licensee(s) etc., to take suitable action not being inconsistent with the provisions of the Act, which appear to the Commission to be necessary or expedient for the purpose of removing difficulty. The instant case appears to be one such case warranting the invocation of Article 15 and to pass appropriate orders. A just and equitable disposal could be allowing the petitioner herein to avail all the benefits to which he is entitled in terms of the principal Regulation 2 of 2006 in its un-amended form to the extent of energy banked from January, 2014 to March, 2014. That would effectively mean allowing the developer to draw / wheel the energy banked from January, 2014 to March, 2014 during the months of July to December (being the period of drawal in Regulation 2 of 2006) in the immediate next available opportunity, without changing other terms and conditions of Regulation 2 of 2006. The Commission believes that this would meet the ends of justice. Hence, the respondent is directed to allow the petitioner to draw banked energy (for the period from January 2014 to March, 2014), from July 2015 to December, 2015.

6. In view of the above, the petition is allowed to the extent indicated above. No costs.

This order is corrected and signed on this 2nd day of May, 2015.

Sd/-
P.Rama Mohan
Member

Sd/-
Dr.P.Raghu
Member

Sd/-
Justice G.Bhavani Prasad
Chairman