



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

O.P.No.68 of 2012 & R.P.No.4 of 2013 in O.P.No.13 of 2012
Dated: 18-06-2016

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

Between:

M/s. Axis Wind Energy Limited
Registered Office at #H.No.119/A
Journalist Colony, Jubilee Hills
Hyderabad - 500 033 & 6 others

... Petitioners

A N D

Government of Andhra Pradesh represented by
Energy Department, Secretariat, Hyderabad
& 4 others

... Respondents

M/s. Axis Energy Ventures (India) Pvt. Ltd.
having Corporate Office at #H.No.119/A
Journalist Colony, Jubilee Hills
Hyderabad - 500 033 & 7 others

... Review Petitioners

M/s. Rayala Wind Power Company Pvt. Ltd.
Plot No.1366, Road No.45, Jubilee Hills
Hyderabad - 33 rep. by its Director
Mr. C. Anil Kumar

... Implead Petitioner

A N D

1. Indian Wind Energy Association (InWEA)

... Original Petitioner

2. Eastern Power Distribution Company of Andhra
Pradesh Limited, Represented by its Chairman &
Managing Director, Having its Corporate Office at
'P&T' Colony, Seethammadhara, Visakhapatnam &
& another

... Respondents

These petitions have come up for hearing finally on 04-06-2016 in the presence of Sri S.V.S. Chowdary, learned counsel for the petitioners, Sri Challa Gunaranjan, learned counsel for the implead petitioner and Sri P. Shiva Rao, learned Standing Counsel for the Discoms. After carefully considering the material available on record and after hearing the arguments of all the parties, the Commission passed the following:

ORDER

O.P.No.68 of 2012 is a petition for directions in terms of the orders of the Central Electricity Regulatory Commission dated 15-09-2010 in respect of major wind power projects in view of the then existing vacuum/void in the regulatory context in the State of Andhra Pradesh on the issues of evacuation policy, wheeling and banking facilities.

2. The petitioners claimed to be setting up mega wind power projects in the State of Andhra Pradesh motivated by the new industrial policy of the State. The then Government of Andhra Pradesh also announced a new Wind Power Policy under G.O.Ms.No.48, Energy Department, dated 11-04-2008 amended by G.O.Ms.No.99, Energy Department, dated 09-09-2008. The orders of the erstwhile Andhra Pradesh Electricity Regulatory Commission in O.P.No.6 of 2009 and O.P.No.7 of 2009 dated 01-05-2009 did not cover the aspects of wheeling and banking facilities, though Government of Andhra Pradesh issued orders concerning the banking and wheeling charges. Other States in the country announced wheeling and banking facility and the Central Electricity Regulatory Commission gave directions on power evacuation facilities. The erstwhile Andhra Pradesh Electricity Regulatory Commission in O.P.No.40 of 2010 opined that individual projects are not likely to come up in Andhra Pradesh which needs to be reviewed.

3. Subsequently, the Northern Power Distribution Company of Andhra Pradesh Limited, Warangal and Central Power Distribution Company of Andhra Pradesh Limited, Hyderabad were deleted from the array of respondents as a consequence of the bifurcation of the State of Andhra Pradesh, as per orders in I.A.No.2 of 2015. The petitioners subsequently sought for amendment of the petition in I.A.No.19 of 2013 to incorporate paras 25 to 33 and also to substitute the original prayers with a new para 35. The request for amendment was allowed by the erstwhile Andhra Pradesh

Electricity Regulatory Commission on 13-11-2013. The amendment was claimed to have been necessitated due to the modification of the earlier guidelines dated 30-03-2010 by the orders of the erstwhile Andhra Pradesh Electricity Regulatory Commission in O.P.No.7 of 2012 dated 11-07-2012 and further orders with reference to the capital cost fixation in O.P.No.13 of 2012 dated 15-11-2012. The matters included by the amendment were strongly objected to by the reply filed on behalf of the respondents which desired the directions given in O.P.No.40 of 2010, O.P.No.7 of 2012, Regulation 2 of 2005 and Regulation 2 of 2006 to be followed.

4. Later a comprehensive Regulation was notified by this Commission in Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions for Tariff Determination for Wind Power Projects), Regulations, 2015 (Regulation No.1 of 2015) and the learned counsel for the petitioners desired to have issues not covered by the Regulation adjudicated herein on merits. He accordingly filed a Memo on 04-06-2016 stating the reliefs to which the petitioners are now confining themselves specifying that they will seek adjudication of their right to reliefs (a), (e) and (f) of the original prayer.

5. R.P.No.4 of 2013 in O.P.No.13 of 2012 is a petition by the petitioners to review the orders of the erstwhile Andhra Pradesh Electricity Regulatory Commission in O.P.No.13 of 2012 dated 15-11-2012 with a further request to consider the pre-operative expenses and interest to be paid for determination of tariff, provide annual indexation in the capital cost, consider the cost of power evacuation from the pooling substation upto the grid for determination of tariff, consider the reasonable cost of transmission losses upto interconnection point and consider the PLF component and other appropriate orders.

6. In O.P.No.13 of 2012 for determination of wind power generation tariff, the erstwhile Andhra Pradesh Electricity Regulatory Commission by orders dated 15-11-2012 fixed the preferential generic levellised tariff @Rs.4.70 ps., per unit for all units that entered into Power Purchase Agreements between 15-11-2012 and 31-03-2015 and also gave further directions concerning the first right of refusal on power purchase, the tariff beyond 25th year, cost of power evacuation upto the grid station, dispatch 100% of the available capacity, sharing the CDM benefits, installation of WEGs and their minimum turbine capacity and manner of entering into Power Purchase Agreements.

7. In the review petition, the petitioners claimed the parameters on which they sought for the reliefs to be very much essential for determining the correct tariff and these elements to have significant financial effect on the cost of the project.

8. Subsequently I.A.No.2 of 2014 in O.P.No.13 of 2012 has been filed by the implead petitioner referring to the Regulations and orders of the Central Electricity Regulatory Commission and Tamil Nadu Electricity Regulatory Commission and contending that the evacuation and purchase cost should not be included in the capex of Rs.5.75 crores/MW and has to be dealt with on a case to case basis with compensation to the individual projects by way of incremental wind tariff. The implead petitioner filed further Interlocutory Application to consider the demand of electricity duty under the A.P. Electricity Duty Act, 1939, the sanction fee to be paid to NREDCAP and rebate for payment of electricity bills.

9. The respondents in their replies contended that the Commission has taken all the key parameters into consideration and also the directions of the Appellate Tribunal for Electricity in Appeal No.194 of 2009 as well as the capital cost prevailing in other States. The respondents supported the tariff fixed by the Commission and

also claimed that the additional grounds sought to be raised by the implead petitioner are not tenable.

10. Though questions relating to the jurisdiction of this Commission after bifurcation of the State and constitution of this Commission only for the State of Andhra Pradesh were raised, subsequently the petitioners sought for deletion of the Northern Power Distribution Company of Andhra Pradesh Limited, Warangal and Central Power Distribution Company of Andhra Pradesh Limited, Hyderabad from the array of respondents and the said I.A.No.3 of 2015 was allowed on 07-02-2015. Therefore any jurisdictional issues do not survive for consideration.

11. While the review petition is pending, the Commission has notified Regulation No.1 of 2015 as already referred to and the learned counsel for the petitioners desired consideration of the matter to be confined to the issues not covered by the Regulation. He filed a Memo on 04-06-2016 confining the reliefs now sought for to (b) and (e) of the original prayer in para 18 of the review petition.

12. As both matters involved the same questions of fact and law and essentially involved regulation of wind power projects in the State, both the matters are heard and decided together.

13. The point for consideration is whether reliefs (a), (e) and (f) in O.P.No.68 of 2012 and reliefs (b) and (e) in R.P.No.4 of 2013 in O.P.No.13 of 2012 deserved to be considered at this stage even after promulgation of Regulation No.1 of 2015 or the Regulation has to be allowed to work for some time to have more comprehensive and in-depth consideration of the issues involved which may surface after observing the working of the Regulation for a reasonable time.

14. Andhra Pradesh Electricity Regulatory Commission (Terms and Conditions for Tariff Determination for Wind Power Projects) Regulations, 2015 (Regulation No.1 of 2015) was made in exercise of the powers conferred by Sections 61, 86 and 181 of the Electricity Act, 2003, after previous publication. The draft Regulations were put in public domain and made known widely to all the stakeholders. The views/suggestions/objections of the stakeholders in writing and orally during public hearings were heard and considered in-depth. The situation obtaining elsewhere in the nation and abroad was also broadly kept in view.

15. Capital cost is defined in detail in Regulation 10 and the capital cost indexation mechanism as prescribed in the Central Electricity Regulatory Commission, Renewable Energy Tariff Regulations, 2012 were taken as guiding factors for arriving at the capital cost for each year of the control period beyond 2015-16. The norms for capital cost were carefully chosen to be inclusive of all capital work including plant and machinery, civil work, erection, commissioning, financing and interest, while the capital cost for FY 2015-16 was fixed at 600 lakhs/MW based on such principles. The debt equity ratio, the loan and finance charges, depreciation, the return on equity, the interest on working capital, Operation and Maintenance expenses, the rebate, the Clean Development Mechanism (CDM) benefits, the taxes and duties and the subsidy or incentive by the Government are covered by different Regulations and based on widely accepted principles and norms. While Capacity Utilization Factor (CUF) is confined to be 23.5% under Regulation 21, even deviation from the norms in determination of tariff for individual power projects is permitted subject to the procedure prescribed under Regulation 22, if there is a justification for the same. The normal powers to relax and removing difficulties are kept as safeguards. Issue of orders and practice directions for proper and effective implementation of Regulations is provided under Regulation 24. Evacuation guidelines were stated to be those

specified by the Commission from time to time and the model Power Purchase Agreements earlier approved by the Commission were continued to be effective in so far as they are consistent with the Regulations. Thus Regulation No.1 of 2015 is a self-contained Regulation providing for every conceivable aspect of wind power generation. The general principles or financial principles etc., are comprehensive enough. The residuary requests of the petitioners are about providing grid connectivity and evacuation upto the sub-stations of AP Transco or Discom at the cost of the AP Transco or the Discom or by providing for such cost in the project cost, either waive or include in tariff the supervision charges payable to AP Transco/Discom and provide for coverage of pre-operative expenses also in the tariff. In arriving at either the capital cost or cost components which constitute the tariff structure, all reasonably possible and conventionally acceptable elements have been taken into consideration and illustratively, while the project cost is requested to be fixed at Rs.5.75 crores per MW by the petitioners, Regulation No.1 of 2015 fixed it at Rs.6.00 crores per MW obviously taking into account even such peripheral expenses. If the natural and inevitable tendency of a power generator to claim as much tariff as it can claim by inflating the number and quantum of permissible components were to be considered to be a natural phenomenon, even the project cost estimated to be Rs.5.75 crores by the petitioner must have included some element of exaggeration and guess and the estimate by the Commission at Rs.6.00 crores per MW must be considered eminently justified. At any rate, whether the grid connectivity and evacuation arrangement, supervision charges and pre-operative expenses make a vital difference to the reasonableness of the tariff fixed under Regulation 1 of 2015 can be considered on verifiable and dependable data after Regulation 1 of 2015 is allowed to work on its own contents for a reasonable time. Hypothetical considerations may not be permitted to de-stabilize the positive climate of increasing response from wind power generators to locate their units in the State of Andhra Pradesh in significant

numbers. At any rate, none of the factors of expenditure towards evacuation or supervision or pre-operative formalities appear to be of such a magnitude as to dissuade a prospective developer from coming to the State or to make the tariff fixation under Regulation 1 of 2015 unrealistic or unattractive. Under the circumstances the five reliefs still claimed by the petitioners in R.P.No.4 of 2013 and O.P.No.68 of 2012 together can and have to be postponed for a future date without foreclosing the options of the petitioners to invoke the jurisdiction of this Commission for reconsideration of the said questions, if such a necessity or justification arises.

16. Therefore, the request of the petitioners in O.P.No.68 of 2012 for consideration of the prayers (a), (e) and (f) and the request of the petitioners in R.P.No.4 of 2013 for consideration of the prayers (b) and (e), while not pressing for consideration of other reliefs claimed by them, are not considered for the present and Regulation 1 of 2015 of this Commission shall be allowed to operate un-interfered with for a reasonable period. The petitioners, if required, are at liberty to approach this Commission invoking its jurisdiction to reconsider the questions involved in the five reliefs which they are requesting to be considered by filing appropriate petitions in accordance with law before this Commission after expiry of such reasonable time. Both the petitions are ordered accordingly. The parties shall bear their own costs.

This order is corrected and signed on this the 18th day of June, 2016.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman