



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE TWENTY SEVENTH DAY OF MAY
TWO THOUSAND AND TWENTY

:Present:

Justice C.V. Nagarjuna Reddy, Chairman
Sri P. Rajagopal Reddy, Member
Sri Thakur Rama Singh, Member

O.P.Nos.45, 46, 48, 49 & 51 of 2019

O.P.No.45 of 2019

Between:

1. South Indian Sugar Mills Association (SISMA)
2. M/s. K.C.P. Sugars & industries Corporation Limited
3. M/s. EID-Parry (India) Ltd Formerly Parry Sugar Industries Ltd
4. M/s. SNJ Sugars and Products Ltd. ... **Petitioners**

A N D

1. Andhra Pradesh Southern Power Distribution Company Ltd. (APSPDCL)
2. Andhra Pradesh Eastern Power Distribution Company Limited (APEPDCL)
3. The Chief Engineer / IPC ... **Respondents**

O.P.No.46 of 2019

Between:

M/s. Nava Bharat Ventures Ltd ... **Petitioner**

A N D

1. Andhra Pradesh Eastern Power Distribution Company Limited (APEPDCL)
2. The Deputy CCA (PPS) ... **Respondents**

O.P.No.48 of 2019

Between:

E.I.D-Parry (India) Limited ... **Petitioner**

A N D

1. Andhra Pradesh Eastern Power Distribution Company Limited (APEPDCL)
2. The Deputy CCA (PPS) ... **Respondents**

O.P.No.49 of 2019

Between:

M/s. K.C.P. Sugars & industries Corporation Limited ... **Petitioner**

A N D

1. Andhra Pradesh Southern Power Distribution Company Ltd (APSPDCL)
2. The Deputy CCA (PPS) ... **Respondents**

O.P.No.51 of 2019

Between:

M/s. SNJ Sugars and Products Ltd. ... **Petitioner**

A N D

1. Andhra Pradesh Southern Power Distribution Company Ltd. (APSPDCL)
2. The Chief Engineer (IPC) ... **Respondents**

All these Original Petitions have come up for hearing finally on 10-03-2020 in the presence of Sri Challa Gunaranjan, learned counsel for the petitioners and Sri P. Shiva Rao, learned Standing Counsel for the respondents. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

COMMON ORDER

This batch of five Original Petitions raised similar issues, though the form of the prayer varies between O.P.No.45 of 2019 on the one side and O.P.Nos.46, 48, 49 & 51 of 2019 on the other side. Grievance of the petitioners in substance is that the Power Purchase Agreements (PPAs) with the respondents envisaged payment of electricity charges by the bagasse based co-generation projects and biomass based power projects etc., for the energy supplied by the respondents to maintain auxiliary in the power plants in situations of non-generation of power and that the respondents have collected the electricity charges by purporting to apply Regulation

No.3 of 2017 @ Rs.11.77 ps per unit. The petitioners in O.P.No.45 of 2019 viz., South Indian Sugar Mills Associations (SISMA) & 3 others, claimed re-categorization for the period from 05-06-2017 to 31-03-2018. The petitioners 2 to 4 however filed O.P.No.49 of 2019, O.P.No.48 of 2019 and O.P.No.51 of 2019 respectively for a similar relief for the period from 01-04-2018 to 31-03-2019. One other industry i.e. M/s. Navabharat Ventures Limited filed O.P.No.46 of 2019 for a similar relief for the period from 01-04-2018 to 31-03-2019.

2. The brief facts leading to filing of these Original Petitions are that petitioners 2 to 4 in O.P.No.45 of 2019 who are also petitioners in O.P.No.49, 48 & 51 of 2019 and also petitioner in O.P.No.46 of 2019 have established bagasse based co-generation power projects in the State of Andhra Pradesh between the years 2002-2005. They entered into PPAs with the AP Transco. With the formation of respondents 1 and 2, the PPAs stood transferred in their favour for supply of power. The PPAs also contemplate the tariff payable by the petitioners for the demand and energy supplied by the respondents through auxiliary and other consumption.

3. While the petitioners were paying the electricity charges as per the terms of the PPAs, this Commission issued “Andhra Pradesh Electricity Regulatory Commission (APEREC) Regulation on Power Evacuation from Captive Generation, Cogeneration and Renewable Energy Source Power Plants (Regulation No.3 of 2017)”. This was published in the official gazette on 06-06-2017 and the Regulation has accordingly come into force with effect from the said date. Under clause 17 of the said Regulation, a separate tariff of Rs.11.77 ps per unit was fixed for the power supply extended by AP Transco / Discoms either at Low Tension (LT) or at High Tension (HT) as desired by the power producer / developer for maintenance, startup operations and lighting purpose. The respondents settled the bills of the petitioners

for the power supplied by the latter after deducting the electricity charges for the power supplied by the respondents and utilised by the petitioners applying tariff of Rs.11.77 ps per unit.

4. This Commission has undertaken tariff exercise for FY 2018-19 and issued Retail Supply Tariff Order for FY 2018-19 on 27-03-2018 and the said order has carved out a new category i.e., HT (II) (F) for startup power which includes maintenance and lighting purpose by fixing the tariff at the rate of Rs.11.77 ps per unit without any demand charges and minimum charges. This Tariff Order however gave an option for the captive and co-generation plants with their process plants being located in the same premises and having single connection with the grid (Transco / DISCOMs) and who continuously depend on the licensees' supply for part of their energy requirement either to continue in the existing (present) category or to be included in the new category. The petitioners alleged that despite this Tariff Order, the respondents have not chosen to issue any notice or give an opportunity to the petitioners to exercise their option, but have unilaterally subjected the petitioners to the tariff of Rs.11.77 ps per unit without prior notice or intimation. They also averred that petitioner No.2 in O.P.No.45 of 2019 addressed letter dated 28-03-2018 to the Dy. CCA / APTRANSCO to bill the energy supplied by them as per article 2.5 of the PPA by excluding them from new HT-II (F) category. The petitioners also alleged that this Commission on 23-07-2018 gave specific direction to the respondents to strictly comply with the Tariff Order by providing option to the captive and co-generation plants with their process plants being located in the same premises with single connection with the grid and who continuously depend on the licensees' supply for the part of their energy requirement either to continue in the present category or to be included in the new category. The grievance of the

petitioners is that even after the said letter of the Commission, the respondents continued to bill the petitioners under HT (II) (F) category. In O.P.No.45 of 2019, the petitioners averred in para 4 that though Regulation No.3 of 2017 was notified on 05-06-2017, the respondents continued to charge the tariff as per PPAs till December, 2017 and for the first time in January, 2018, the respondents have unilaterally made adjustments while considering the export invoices of the generators by making short payments. However, contradictory averment is made in para 8 that the respondents have charged the petitioners under HT (II) (F) for the period from June, 2017 to 31-03-2018 and accordingly sought for re-categorization for the said period.

5. Be that as it may, in its Tariff Order dated 22-02-2019 for FY 2019-20, this Commission has clarified that unless option is given to the existing generators for change of category, they should not be included in the new category and that new category shall be applied to the newly established generators. Specific direction was given by this Commission to bill the existing generator already having PPA as per the clause enumerated therein from 01-04-2019, without disturbing the billing already done and payments already made under HT (II) (F). It is common case of the petitioners as well as the respondents that the aforementioned direction of this Commission is being complied with by the respondents with effect from 01-04-2019 by billing them under HT Category I as per clause 2.5 of the PPAs instead of applying HT (II) (F) tariff. The petitioners in O.P.Nos.46, 48 and 51 have therefore prayed relief of restoring original category from 01-04-2018 to 31-03-2019.

6. On behalf of the respondents, counter affidavits have been filed. It is *inter alia* averred therein that till Regulation No.3 of 2017 was issued, the billing was carried out by A.P. Power Coordination Committee (APPCC) under HT Category I tariff to

the petitioners, that post Regulation No.3 of 2017, the energy drawn by the petitioners / generators was charged @ Rs.11.77 ps per unit and revised billing was done with effect from 06-06-2017 as per clause 2.2 of the PPAs. That this Commission vide its letter dated 16-11-2017 directed the respondents/Discoms to implement the tariff rate as per Regulation No.3 of 2017 published on 06-06-2017 and report compliance by 29-11-2017 and that the Retail Supply Tariff Order for FY 2018-19 was understood by the Discoms to the effect that option may be given to only those developers who continuously depend on licensee's supply and billing is accordingly carried out on contracted maximum demand for the energy drawn by them from the grid. The respondents further averred that in order to implement the Retail Supply Tariff Order for FY 2018-19 dated 27-03-2018, APPCC issued the following working instructions to AP Discoms:

“DISCOMs may give option to Captive/Co-generation plants either to continue in the existing HT-I(A) category or to be included in new category HT/LT II (F) in the following cases:

- a. The Captive/Co-generation plants who are having HT service connection Agreement.
- b. In case the Captive/Co-generation plants doesn't have HT service connection Agreement and want to utilize the power for both in-house processing plant as well as for start-up & maintenance purpose may opt for HT-I (A) category, duly entering HT agreement in category-I (A) with required CMD by paying the necessary charges as per the procedure in vogue.

Explanation:

HT category-I(A) is the Industrial general category and is applicable for

- (i) Industry General & Industrial colonies
- (ii) Seasonal Industries.”

The counter affidavit further averred that following the above noted working instructions, the respondents / Discoms served notices to the developers to exercise the option. But no one has come forward to exercise the option. It is further averred that after the Retail Supply Tariff Order for FY 2019-20 was issued which contain clear instructions, the respondents started billing as per clause 2.5 of the PPAs under HT I category.

7. After considering the respective pleadings of the parties, the point that arises for consideration is whether the petitioners are entitled to re-categorization of their services for the period prior to 01-04-2019.

8. We have heard Mr. Challa Gunaranjan, learned counsel for the petitioners and Sri P. Shiva Rao, learned Standing Counsel for the respondents and carefully perused the record.

9. It is not in dispute that clause 2.5 of the PPA governed billing for the electricity supplies made to the petitioners by the respondents. This clause to the extent it is relevant is extracted below:

“where in any Billing month, the Gross Energy and demand supplied by the APTRANSCO to the company, as a bilateral arrangement to maintain the auxiliaries in the power plant in situation of non-generation of power plant shall be billed by the APTRANSCO as per the explanations given, and the Company shall pay the APTRANSCO for such energy and demand supplies. Further, since the Company’s power house is running in parallel with APTRANSCO network, the Company has to pay Grid Support Charges as decided by APERC for grid support given to the process unit in the premises

Explanation 1: The Generating Plants viz., Bagasse based cogeneration projects, Biomass based power projects and power projects based on Waste to Energy (Projects based on any waste of renewable nature from urban and industrial sector) use the power generated for their captive purpose in the same premises and export surplus power to grid.

Explanation 2: If the Company is not willing to avail power from APTRANSCO for their processing unit in the same premises during outages of their power plant by providing suitable interlocking arrangements between power plant and processing unit and desires to draw power from Grid for starting and maintenance purpose of the generating station through the dedicated line intended for export of power, the following conditions will apply:

- i) The Company has to declare the Load requirement for Starting and Maintenance purposes of the power plant and agreed to by APTRANSCO/DISCOM.
- ii) The Company will not have a separate H.T. Service connection number, H.T. Agreement and contracted Maximum Demand. The Gross energy and the recorded maximum demand shall be billed as per APTRANSCO's the then tariff rates applicable to H.T.-I consumers.
- iii) In the event of exceeding the declared load, penal charges will apply as per Tariff conditions.
- iv) In case the developer wants the power from grid for their processing plant during planned outage, a separate requisition for sanction of Temporary supply for the purpose shall be utilising the existing infrastructure for the project.

Explanation 3: If the Company is willing to avail power from APTRANSCO for their processing unit in the same premises during outages of their power plant, and desires to draw power from Grid for starting and maintenance purposes of the Generating station through the dedicated line intended for export of power. The following conditions will apply

- i) The Company will have a separate H.T. Agreement and Contracted Maximum Demand with APTRANSCO / APDISCOM
- ii) The Gross Energy and the Demand will be billed by APTRANSCO as per the then tariff applicable to H.T.I consumers”.

In short under the above mentioned clause, the power utilised by the petitioners was being billed by the respondents based on gross energy and the recorded maximum demand as per the tariff rates applicable to H.T. consumers. This arrangement was however changed with the issuance of Regulation No.3 of 2017 with effect from 06-06-2017. Under the said Regulation, billing pattern was changed for the category of consumers in which petitioners fall. Under this Regulation, a tariff of Rs.11.77 ps per unit was fixed. However, in the Retail Supply Tariff Order for FY 2018-19 on 27-03-2018, a separate category was created as ‘LT-II (F)’ sub category for Low Tension consumers and HT-II (F) sub category for High Tension consumers for which Rs.11.77 ps per unit was fixed as tariff. It is relevant to reproduce relevant portion of the Tariff Order hereunder:

“Para-280: The Commission has examined the proposal of the licensees and included it in the Low Tension as ‘LT-II (F)’ sub-category and in High Tension as ‘HT-II (F) sub-category, as provided for in the Regulation 3 of 2017 the commission has directed the consumption charges for use of power for start up operation for plant maintenance to be without any Fixed Charges and

minimum charges for FY 2017-18 continue to exist and nothing has been placed before the commission to take a different view. The concept of fixed charge/demand charge/demand charge is for a continuous and consistent supply of power to a consumer at the contracted capacity and may not be justifiably applicable to an occasional and intermittent supply. Hence, the request of the licensees for imposing Demand Charges is not accepted.

The conditions applicable are as follows:

i) Supply is to be used strictly for generator start-up operations, maintenance and lighting purpose only.

ii) Monthly minimum charges are not applicable

iii) Allowable Maximum Demand is to be limited to the following percentages of the maximum capacity unit in the generating station in case of generators other than Wind and Solar, and to the plant capacity in case of Wind and Solar generators.

Thermal – 15%, Gas based – 6%, Hydel – 3%, Wind and Solar – 2%,
Other NCE sources – 10%

If the Maximum Demand exceeds the limits specified above, the energy charges shall be charged at 1.2 times of normal charge for the entire energy consumed.

iv) All other conditions applicable to LT-II and HT-II categories shall also supply to the LT-II (F) and HT-II (F) categories respectively to the extent they are not contradictory to the above.

v) This category is also applicable to all the wind and solar plants who have PPAs with licensees.

It is to be clarified that the startup power category is intended for those

generators who require occasional and intermittent supply for start up operations of the generating unit(s) alone. **However, the Captive and Co-generation plants with their process plants being located in the same premises and having single connection with the grid (Transco/ DISCOMs) and who continuously depend on the licensees' supply for part of their energy requirement may be given option to either continue in their present category or to be included in this category. Without giving opportunity to all such generators to exercise option in this regard, the category change shall not be affected".**

10. Though the petitioners have contended that the respondents have not given an option either to continue in the existing category or to be included in the new category, respondents in their counter however stated that in compliance with the directions issued in the Tariff Order, APPCC has issued working instructions to APDISCOMs vide letter No.GM/APPCC/SAO/AO/F.HT/D.No.323/18 dated 26-07-2018 for billing of energy drawn by all NCE generators at DISCOM level and these instructions are summarized hereunder:

“DISCOMs may give option to Captive/Co-generation plants either to continue in the existing HT-I (A) category or to be included in new category HT/LT II (F) in the following cases:

- a. The Captive/Co-generation plants who are having HT service connection Agreement.
- b. In case the Captive/Co-generation plants doesn't have HT service connection Agreement and want to utilize the power for both in-house processing plant as well as for start-up & maintenance purpose may opt

for HT-I (A) category, duly entering HT agreement in category-I (A) with required CMD by paying the necessary charges as per the procedure in vogue.

Explanation:

HT category-I (A) is the Industrial general category and is applicable for

(i) Industry General & Industrial colonies

(ii) Seasonal Industries”.

It is also specifically averred in the counter affidavit that APDISCOMs have served notices on the developers for exercise of option, but they have not come forward to enter into a fresh Agreement. No rejoinder is filed by the petitioners controverting this averment.

11. This Commission reiterated the directions contained in its Tariff Order to strictly comply with the said direction for giving option. Obviously considering the grievance of the sugar industry, this Commission in its Tariff Order for FY 2019-20 directed as under:

“..... the Commission by the specific order hereunder considers it necessary and expedient to continue the billing for drawl of power by such generators in accordance with the specific clauses of the power purchase agreements from the date of this order coming into force i.e. 01.04.2019, **while not disturbing the billing already done and payments already made towards such charges from the date of introduction of HT-II (F) category up to date**”. (Emphasis added)

12. Based on the above direction, the respondents have been billing the petitioners as per the terms of the PPAs with effect from 01-04-2019. From the conspectus of the facts discussed above, it is no doubt true that the petitioners were

entitled to be billed as per PPA terms if they specifically opted so instead of being billed under HT / LT II (F). While some sporadic representations were stated to have been made on behalf of the petitioners, no specific instance of the petitioners approaching the respondents clearly exercising their option for being billed as per the PPA terms have been placed before the Commission. In spite of the same, this Commission would certainly have positively considered the petitioners' cases without standing on technicalities, but for the fact that in the 2019-20 Tariff Order, this Commission has specifically directed that billing according to the specific clauses of the PPAs shall be done at the tariff rate coming into force i.e., 01-04-2019 "while not disturbing the billing already done and payments already made towards such charges from the date of introduction of HT-II (F) category up to date".

13. Mr. Challa Gunaranjan submitted that respondents have neither issued any bills nor the petitioners made payments and that unilaterally withholding all the amounts from out of the bills payable to the petitioners does not fall under the embargo created by the Commission in the Tariff Order for FY 2019-20. We are afraid we cannot accept this contention as the above quoted words from the Tariff Order cannot be literally construed. Even in the absence of physical billing and the payment by the petitioners, the fact remained that amount equivalent to the power consumed by the petitioners as calculated at Rs.11.77 ps per unit in terms of Regulation No.3 of 2017 and also as per the Tariff Order for FY 2018-19 was recovered by the respondents from out of the bills payable to the petitioners. Therefore, the petitioners' cases squarely fall under the exception created by the Commission in the above mentioned Tariff Order. Consequently, grant of relief as claimed by the petitioners in the present petitions would amount to reviewing the Tariff Order. No such Review Petitions are filed by the petitioners, instead in

O.P.No.45 of 2019, the petitioners prayed for revisiting clause 17 of Regulation No.3 of 2017 and in other O.Ps., they claimed the relief under Section 86 (1) (f) of the Electricity Act, 2003 to adjudicate the disputes between them and the respondents. Regulation No.3 of 2017 having been given effect to and charges having been recovered at Rs.11.77 ps per unit and subsequent Retail Tariff Order for FY 2018-19 having already come into force, this Commission does not find any reason to clarify or revisit clause 17 of Regulation No.3 of 2017 or to undo what has already been done under the Retail Supply Tariff Order for FY 2018-19. As noted hereinabove, grievance of the petitioners persisted till 31-03-2019 and was redressed with effect from 01-04-2019.

14. In the above facts and circumstances of the cases, this Commission is not inclined to grant the reliefs claimed in these Original Petitions and accordingly these Original Petitions are dismissed without costs.

This Common Order is corrected and signed on this the **27th day of May, 2020**

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
P. Rajagopal Reddy
Member