

**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
Hyderabad**

Dated: 26-09-2006

Present

Sri K. Swaminathan, Chairman
Sri Surinder Pal, Member
Sri. Radha Kishen, Member

I.A.No.10 of 2006
in
O.P. No.27 of 2006

Between

Andhra Pradesh Power Generation Corporation Ltd,
Vidyut Soudha, Hyderabad.500 082.

..Petitioner

and

1. Central Power Distribution Company of Andhra Pradesh Ltd,
'Singareni Bhavan', Red Hills, Hyderabad-500 004
2. Eastern Power Distribution Company of Andhra Pradesh Ltd,
TPT Colony, Seethammadhaara,
Visakhapatnam-13.
3. Northern Power Distribution Company of Andhra Pradesh Ltd
1-1-503, NIT Main road, Chaitanyapuri, Kazipet,
Warangal-506 004.
4. Southern Power Distribution Company of Andhra Pradesh Ltd,
19-3-13(M), Upstairs, Renigunta Road,
Tirupati-517 501

..Respondents

This petition coming on for hearing on 16.09.2006 in the presence of Sri K.Gopal Choudary, Advocate, for the petitioner and Sri P.Shiva Rao, Advocate, for the respondents and having stood over for consideration to this day, the Commission delivered the following:

ORDER

This Interlocutory Application (No.10 of 2006) is a petition filed under Section 94(2) of the Electricity Act, 2003 (for short 'the Act') seeking the issue of a direction to the respondents to pay the petitioner fixed and variable costs in respect of existing stations of the petitioner, pending disposal of the main petition in O.P.No.27 of 2006.

2. The following are the averments made in I.A.No.10 of 2006:

(a) The petitioner filed an application for the determination of tariff for the supply of electricity to the respondent - Distribution Licensees/DISCOMs in Andhra Pradesh during the financial year 2006-07 under Section 62 of the Act, which is taken on the file of the Commission in O.P.No.27 of 2006.

(b) It is submitted that during the financial year 2005-06 the petitioner was being allowed fixed costs of Rs.1535.19 crores in accordance with the previous orders of the Commission, which were applicable only up to 2005-2006. There has been substantial increase in the petitioner's costs and the petitioner is entitled to a revised higher tariff for subsequent years. For the year 2006-07, the Commission is to determine the tariff having regard to the application of the petitioner together with O.P.No.6 of 2006 and O.P.No.7 of 2006. It is submitted that, as the petitioner's application is yet to be published as required by Section 64 of Act and thereafter sufficient and significant time is necessary for the public hearing and other due process for determination of the tariff in accordance with law, the determination of tariff is likely to take considerable time.

(c) It is submitted that, as per the Tariff Order dated 23.03.2006 passed by the Commission in respect of the Annual Revenue Requirements and the Distribution and Retail Supply Tariffs of the Distribution Licensees, at paragraph 264, the Commission has noticed the pending petitions of the petitioner. The Commission has also accepted the fixed costs of Rs.1,564.68 crores for all the stations of APGENCO excluding RTPP-II (without considering SLBPH). The Commission has also provided for Rs.141.49 crores as the fixed costs for RTPP-II expecting the commencement of operation from August, 2006.

(d) It is further submitted that, as per the aforesaid Tariff Order dated 23.03.2006, at paragraph 265, the Commission has considered the variable costs of various stations as set out in Table 30 therein.

(e) Pending disposal of the petitioner's application and connected petitions, it is only just and equitable that the petitioner be allowed to claim fixed costs at Rs.1,564.68 crores for the existing power stations from 01.04.2006 onwards, and further an additional amount at Rs.141.49 crores in respect of fixed costs for RTPP-II from August, 2006 or such other date when that plant actually commences operation. It is further just and equitable that the petitioner be allowed to claim variable costs as set out in Table 30 of the Tariff Order dated 23.03.2006. No prejudice would be caused to the respondent - DISCOMs if they are directed to pay the said fixed and variable costs.

(f) Pending disposal of O.P.No.27 of 2006, it is prayed that the Commission may be pleased to direct the respondents to pay to the petitioner –

- i) Fixed costs on the basis of Rs.1,564.68 crores for 2006-07 with effect from 01.04.2006 in respect of all the existing stations of APGENCO in operation as on date; and
- ii) Fixed costs on the basis of Rs.141.49 crores for eight months of 2006-07 in respect of RTPP-II with effect from the month in which the said station commences operation; and
- iii) variable costs for the energy delivered by the petitioner to the respondent - DISCOMs at the various rates set out in Table 30 of the Order dated 23.03.2006 passed by the Hon'ble Commission in O.P.Nos.2 to 5 of 2006 duly adjusted for actual gross calorific value of the fuel and the actual landed costs of fuel for the respective months; and/or
- iv) issue such other order as the Commission may consider fit and expedient in the facts and circumstances of the case.

3. On behalf of all the respondents, a common counter was filed –

- (a) In this counter, the respondents have contested the component-wise costs claimed by the petitioner in the main petition (O.P.No.27 of 2006) and stated that the petitioner is entitled for an amount of Rs.1311.93 Crores as against Rs.1564.68 Crores allowed in the Tariff Order dated 23-03-2006 towards fixed costs for 2006-07 in respect of the old Generating Stations and in respect of RTPP Stage – II, the petitioner is entitled for Rs.181.53 Crores as per CERC norms dated 26.03.2004, instead of Rs.141.49 Crores allowed in the Tariff Order.

(b) Similarly, in the case of variable charges also, the respondents have referred to the variable costs claimed by the petitioner in the main petition (O.P.No.27 of 2006) and contested the same on the grounds of CERC norms not being available for the generating units below 200 MW capacity and on the premise that in respect of the stations where R & M works are carried out, the operational norms should be improved. Accordingly, the respondents provided variable costs different from those approved in the Tariff Order of 2006-07 and also different from those claimed by the petitioner.

(c) The respondents have also stated that the petitioner is not entitled for the amounts claimed in the interim petition. The respondents are not liable to pay more than what is admitted in the counter.

(d) The respondents further stated that the petitioner is demanding higher charges without prima-facie evidence, by means of an interim order without discharging its obligation of providing station-wise PPAs and the interim orders should be restricted to the amounts admitted by the respondents, as the matter needs to be examined in detail, and the assessment made by respondents is based on the CERC guidelines and as per the orders of the Commission,

(e) It is prayed that the Commission may be pleased to dismiss the petition.

4. In the reply to the counter filed by the respondents, the petitioner stated that –

(a) The averments in the counter filed on behalf of the respondent - Distribution Licensees substantially relate to the merits of the tariff determination and require to be taken into consideration by the Commission at the final hearing of the matter along with such further counter / comments filed by respondents and others to the

application / amended application of the petitioner and the comprehensive response of the petitioner thereto. The petitioner is therefore not making any point-wise reply to the counter filed by the respondents at this stage. It is however, submitted that the material averments of the respondents in the counter are incorrect and misconceived.

(b) The petitioner has made the application for issue of an interim order directing the respondents to pay fixed charges and variable charges as per the amount approved by the Commission in the Tariff Order dated 23.03.2006 in O.P.No.2/2006 to 5/2006. That amount is an amount admitted and accepted by the respondents and has been allowed as pass-through to the consumers and is being recovered by the respondents from the consumers through the respondents' tariff. No prejudice would be caused to the respondents by directing them to pay the amounts as allowed to them in the aforesaid Tariff Order.

(c) In the unlikely event that the Commission eventually determines tariff and charges less than those allowed in the interim order as prayed for, there would be no difficulty whatsoever for the excess amounts to be adjusted against the amounts overdue and payable by the respondents to the petitioner, and therefore there would be no prejudice whatsoever to the respondents by reason of the Commission granting the interim order as prayed for by the petitioner. It is submitted that the petitioner has made out a prima-facie case and the balance of convenience is strongly in favour of the petitioner.

(d) Therefore, it is submitted that the Commission may be pleased to grant the interim order as prayed for and/or make such further other order as the Commission considers fit and expedient in the facts and circumstances of the case.

5. Heard the counsel for both the parties on 16.09.2006.

6 On 16.09.2006, Sri. Gopal Choudary, the learned counsel for the petitioner herein, submitted that –

(a) During the financial year 2005-06, the petitioner was being allowed fixed cost of Rs.1535.19 crores in accordance with the previous orders of the Commission which were applicable only up to 2005-06. In view of substantial increase in cost, the petitioner is entitled to receive higher tariff for subsequent years, but the Commission is yet to determine the tariff for the year 2006-07 and the application filed by the petitioner for determination of tariff together with connected petitions in O.P.Nos.6 and 7 of 2006 which are pending before the Commission. For determining the tariff for the year 2006-07, petitioner's application is required to be published u/s 64 of the Act and thereafter the public hearing and other processes for determination of tariff in accordance with the law, all will take considerable period of time.

(b) With effect from 01.04.2006, there is no order of the Commission in favour of the respondents to purchase power and it is an illegality. In passing the interim order as prayed for by the petitioner, a legal base for purchase of power by the respondents can be created and the illegality can be cured. Moreover, the petitioner is asking for payment of the amount, which is being collected by the respondent as a pass-through, and therefore it is just and equitable that the respondents be directed to pay fixed and variable costs as prayed for in the petition.

7. Sri.P.Shiva Rao, learned counsel for the respondents, submitted that –

(a) Interim order can be passed for maintaining status-quo of a past or present situation, but future status cannot be created by an interim order. Allowing the petition would amount to creating future status and this is not permitted under law.

(b) When the respondents are disputing the figures and the parameters based on which calculations are to be made for determination of the tariff for FY 2007 u/s 62 of the Act, it would not be appropriate to pass interim orders.

(c) Moreover, the petitioner has filed another Application viz., I.A.No.12/2006 for amendment of the petition filed by it in O.P.No.27 of 2006 and for incorporation of paragraphs 10 to 30 by substituting earlier paragraphs 10 to 16 in the said main petition. As the Commission has not yet taken decision in I.A.No.12 of 2006, it is considered that there is no regular petition in O.P.No.27 of 2006 as of now before the Commission. Unless a decision is taken on the said I.A.No.12 of 2006, the main petition in O.P.No.27 of 2006 is not complete. Under such circumstances, interim orders in I.A.No.10 of 2006 are not warranted.

8. The point that arises for consideration is:

“whether the petitioner is entitled for interim relief as prayed for”

9. The relief sought by the petitioner in this I.A. insofar as it pertains to the fixed charges for 2006-07, is strictly in terms of the Tariff Order dated 23.03.2006 issued by the Commission for FY 2006-07. In their counter, the respondents have referred to the component-wise fixed costs claimed by the petitioner in the main petition (O.P.No. 27 of 2006) and contested those claims by proposing alternate costs, the total being less than what is already approved in the Tariff Order for 2006-07. Thus while the petitioner has prayed for maintaining the status-quo by way of Interim Order, the respondents oppose it to create a new situation. This is contrary to the assertion of the respondents' counsel advanced during the course of

arguments that Interim Orders can be passed for maintaining status-quo of a past or present situation. Thus as per their own admission, the objection of respondents for issue of Interim Order is not sustainable insofar as the petitioner's prayer for fixed charges is concerned.

10. The other relief sought by the petitioner in this I.A. is for directions to pay the variable charges for thermal stations as per the rates specified in the Table 30 of the Tariff Order for 2006-07, duly adjusted for actual gross calorific value of fuels and actual landed cost of fuel. As in the case of fixed charges, the respondents in their counter, have taken recourse to the variable charges claimed by the petitioner in the main petition and contested the same by proposing alternate rates, which is not a matter for consideration in this I.A. Regarding adjustment for fuel prices, it is pertinent to note that the respondents have insisted in their counter that the petitioner should claim it on monthly basis (as in the case of Central Generating Stations) instead of on quarterly basis as now being claimed by the petitioner. Thus the Commission sees no merit in the objection of the respondents to the Interim relief sought for by the petitioner in the variable charges adjusted for actual fuel prices on monthly basis.

11. The Commission is also unable to agree with contention of the learned counsel for the respondents that unless the Commission takes a decision on I.A.No.12 of 2006 in O.P.No.27 of 2006, the Interim Order on I.A.No.10 is not warranted. The prayers in I.A.No.10 and I.A.No.12 are different and are not inter-related. Neither the main petition nor the I.A.No.12 thereon gets affected by an Interim Order on this I.A. (No.10 of 2006).

12. Accordingly, the Commission allows the prayer of the petitioner in this I.A. as follows:

The respondents shall pay:

- i). Fixed costs on the basis of Rs.1,564.68 crores for 2006-07 with effect from 01.04.2006 in respect of all the existing stations of APGENCO in operation as on date;
- ii) Fixed costs on the basis of Rs.141.49 crores for eight months of 2006-07 in respect of RTPP-II with effect from the month in which the said station commences operation; and
- iii) variable costs for the energy delivered by the petitioner to the respondent - DISCOMs at the various rates set out in Table 30 of the Order dated 23.03.2006 passed by the Commission in O.P.Nos.2 to 5 of 2006 duly adjusted for actual fuel prices as per the existing arrangement, for the respective months.

This Order is corrected and signed this 26th day of September, 2006.

Sd/-
(R.RADHA KISHEN)
MEMBER

Sd/-
(SURINDER PAL)
MEMBER

Sd/-
(K.SWAMINATHAN)
CHAIRMAN

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