



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE TWENTY SIXTH DAY OF OCTOBER,
TWO THOUSAND AND TWENTY TWO

:Present:

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

O.P.No.18 of 2020

Between:

Khandaleru Power Company Ltd., Represented by its Director,
Priti Nandita Residency, G-2, D.No.10-2-289/96, Shanti Nagar,
Masab Tank, Hyderabad - 500028.

... Petitioner

And

1. Andhra Pradesh Southern Power Distribution Company
Limited (APSPDCL), Rep. by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram, Tiruchanoor Road, Tirupati,
Chittoor District, Andhra Pradesh-517503.

2. The Chief Engineer, IPC,PP&S/APSPDCL, Kesavayanagunta,
Tiruchanur Road, Tirupati-517501.

3. The General Manager, IPC,PP&S/APPCC, Vidyut Soudha,
Vijayawada-520004.

4. The Superintending Engineer, Operation Circle, APSPDCL, Nellore.

... Respondents

This Original Petition has come up for hearing today in the presence of Sri Challa Gunaranjan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents, that 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:

ORDER

This O.P. is filed by a Company, which established a Hydel Project, for the following reliefs:

“a) to adopt the tariff of Rs.3.73/- per unit as discovered through transparent competitive bidding process undertaken by the 1st respondent in terms of the RfS (Bid) No. APSPDCL/MHP/01/2017 dt. 03.04.2017 in terms of S.63 of the Electricity Act, 2003 which has been in-principle approved by this Hon'ble Commission vide letter dated 30.05.2018, and consequently direct the respondents to act on the terms of the PPA dt.16.02.2019;

b) to direct the respondents to pay the invoice Nos.1/2019-2020, 2/2019-20, 3/2019-2020, 4/2019-20 dated 05.12.2019, 06.01.2020, and 06.02.2020 raised by the petitioner for the months of October, 2019 to January, 2020, as well as the future bills raised by the petitioner;

c) to direct the respondents to commission the balance 3 MW unit of the petitioner's Project, and permit the petitioner to supply the power generated from its Project to the 1st respondent in terms of the PPA dated 16-2-2019; and

d) Pass such order, further relief(s) in the facts and circumstances of the case as this learned Commission may deem just. and equitable in favour of the Petitioner”.

Post filing of this OP, a significant event has taken place, viz., that the petitioner has opted out of the PPA and secured Open Access for sale to third parties for both the Units i.e., Units-1 and 2.

In view of the same, the prayers (a) and (c) have become infructuous.

As regards prayer (b), Sri Challa Gunaranjan, learned counsel for the petitioner, and Sri P.Shiva Rao, learned Standing Counsel for the respondents, submitted that the only issue that required adjudication is - whether the petitioner is entitled to payment for the power received; and, if so, at what rate? They also agreed

on the period during which supply was made by both the Units, viz., from March, 2020 to October, 2021.

As regards Unit No.2, Sri P.Shiva Rao, learned Standing Counsel for the respondents, fairly submitted that as Unit No.2 was officially synchronised and power was received in pursuance of the interim order of this Commission, the respondents will make payment for the power received by them at the cost as may be determined by the Commission.

In respect of Unit No.1, the learned Standing Counsel submitted that as it was not synchronised, the power supply, if any, from the said Unit cannot be paid for as the same is illegal and unauthorised. Sri Challa Gunaranjan, learned counsel for the petitioner, submitted that Unit No.1 was also synchronised as far back as 17-12-2017. In support of his submission he has relied upon the certificate of the even date. Sri P. Shiva Rao, however, submitted that the synchronisation of Unit No.1 was for the limited purpose of obtaining Open Access and not for supply to the respondents.

The necessity for adjudication of the controversy - whether Unit No.1 was synchronised or not - is obviated in view of the petitioner's own pleadings in its rejoinder. In para 18 of the rejoinder, the petitioner averred as under:

“ In reply to Para Nos.2(b) to (d), it is submitted that the same is denied and is irrelevant to the issues in the present petition. **Moreover, the petitioner is not claiming any amounts against the energy supplied at the time save as in accordance with the interim order of this Hon'ble Commission**” *(Emphasis supplied)*.

We have perused para 2(b) to (d) of the counter, with reference to which the above rejoinder has been filed. Para 2(d) specifically referred to Unit-1, which reads as under:

“ 2(d) Further, the petitioner continuously vide its letters dated 27-10-2016, 25-11-2016 and 15-12-2016 stated that their plant of 6 MW (2X3MW) under stage-I is completed in all aspects including infrastructure facilities to evacuate power and ready for trial production and requested to allow them to sell the power through Open Access method”.

In the context in which the petitioner has made its averment in para 18, it is clear that it has finally given up its claim for payment in the rejoinder stating that the energy supply was made outside the scope of the interim order passed by this Commission.

We are, therefore, of the opinion that the petitioner itself has narrowed down the controversy relating to payment by confining its claim for payment only in respect of the energy supplied in accordance with the interim order of this Commission. As noted above, the supply was made in pursuance of the interim order of this Commission from the month of March, 2020 to October, 2021. Admittedly, the interim order pertains only to Unit-2. Thus, the claim for payment in respect of Unit-I has been given up by the petitioner and the relief in respect of the same cannot be pursued at this stage.

Accordingly, the respondents are liable to pay for the power supplied for Unit-2 for the period from March, 2020 to October, 2021.

The next issue is the rate at which the respondents shall make payment to the petitioner.

APSPDCL and APEPDCL issued a Request For Selection (RFS) of developers for procurement of 20 MW power from Mini Hydel Projects in Andhra Pradesh through competitive bidding route on 03-4-2017. The petitioner submitted its bid for 6 (six) (2x3) MW of Hydel Power capacity at Khandaluru Reservoir, Vepinapi village, Rapur Mandal, Nellore District, quoting a tariff of Rs.5.06 ps., per unit. The petitioner's bid was treated as a successful bid. After determination of Pooled Cost at Rs.3.741 ps., vide: its order dated 03-3-2018 in OP No.3 of 2018, the Commission has accorded permission to the DISCOMs, vide: its letter dated 30-5-2018, to enter into PPA as per the terms and adopt the tariff as per the A.P. Electricity Reforms Act, 1998 and the Electricity Act, 2003. The relevant contents of the said letter, reads as under:

"With reference to your letter last cited and with due regard to the justifications furnished vide your letter 11th cited on the subject to the effect that (a) all the three (3) technically qualified bidders viz. M/s. Khandaleru Power Company Limited (6MW), M/s.Victory Power Systems Private Limited (9MW) and M/s. Raji Power Private Limited (4MW) have agreed to supply power at a tariff of Rs.3.73 per unit (against their respective quoted tariffs of Rs.5.69, Rs.5.70 and Rs.5.76 per unit) for a period of 12 years, "

In pursuance of the aforementioned approval accorded by this Commission, respondent No.1 has issued LOI dated 18-7-2018 with a tariff of Rs.3.73 ps., per unit at interconnection point for a period of 12 years from the Commercial Operation Date (COD). On 16-2-2019 respondent No.1 entered into a PPA with the petitioner at a tariff of Rs.3.73 ps., per unit at interconnection point for a period of 12 years.

The above facts clearly reveal that the respondents not only issued LOI, but also entered into the PPA agreeing to pay tariff at Rs.3.73 ps., per unit. It is a different matter that, later, the respondent reneged on the PPA tariff and

insisted on the petitioner to renegotiate the tariff. It is this action of the respondent that eventually forced the petitioner to give up the PPA and opt for Open Access. As the petitioner supplied power as per the interim orders passed by this Commission, it is entitled to be paid a reasonable tariff for the power supplied by it. Even though the Commission has not approved the PPA, as mentioned above, it has, in fact, permitted respondent No.1 to enter into the PPA at the reduced tariff of Rs.3.73 ps.,per unit as against the quoted tariff of Rs.5.06 ps.

Therefore, we feel it appropriate that the respondents shall pay the petitioner a tariff of Rs.3.73 per unit for the power supplied by it from Unit-II, for the period from March, 2020 to October, 2021, on or before 31-12-2022. If payment is not made within the time as stipulated above, the amount shall carry interest @ 12% per annum from 01-01-2023 till payment is made.

In the result, the OP is partly allowed in respect of Prayer No.(b).

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
P. Rajagopal Reddy
Member