

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad-500 004

Present

Sri A.Raghotham Rao, Chairman

Sri R.Radha Kishen, Member

Sri C.R.Sekhar Reddy, Member

O.P No. 36 of 2009

Dated: 27-07-2010

In the matter of

M/s. Konaseema Gas Power Ltd.,
2nd Floor, Progressive Towers,
Khairatabad, Hyderabad.

..... First Party

and

1. Central Power Distribution Company of Andhra Pradesh Ltd
2. Southern Power Distribution Company of Andhra Pradesh Ltd
3. Northern Power Distribution Company of Andhra Pradesh Ltd
4. Eastern Power Distribution Company of Andhra Pradesh Ltd

..... Second Party

This petition coming up for hearing on 23.01.2010 in the presence of Sri. P. Shiva Rao, Advocate for Second Party, there being no representation on behalf of

the First Party and having stood over for consideration to this day, the Commission delivered the following:

ORDER

This is a petition filed u/s 86(1) (k) read with 11 (2) of the Electricity Act, 2003 (for short 'EA 2003') requesting the Commission to pass appropriate orders to off set adverse financial impact on the First Party to issue appropriate directions to Government of Andhra Pradesh (for short 'GoAP') to bear the additional expenditure involved in complying with its directions and to pass such other order or orders in the interest of justice.

2. In brief, the averments mentioned by the First Party in the said petition are as follows:

a) GoAP accorded permission to the First Party to establish and operate 445 MW power project at Ravulapalem, in E.G. District. On 31-03-1997, First Party entered into a Power Purchase Agreement (for short 'PPA') with APSEB and subsequently executed an Amended and Restated PPA with APTRANSCO, the predecessor-in-interest of Second Party herein. However, consequent to third transfer scheme, the PPA was deemed to have been entered into with Second Party herein being successors – in – interest of APSEB by operation of law.

b) Even though the First Party was ready by completing the project in full shape for commercial operation, it could not operate the project for want of supply of natural gas by GAIL. There is also other type of gas i.e R-LNG available at Hazira from other supplier, which was permitted to be used by Central Power Projects by the CERC through GAIL. But cost of R-LNG is higher than the price of substantially lower quantity of gas being supplied to existing projects in the state by GAIL. As per the terms of PPA, the price of the fuel including the transportation charges are pass through to Second Party, provided that the Second Party shall pay the price of invoice of GAIL or other supplier whichever is less. Therefore, the First Party could not venture to use the R-LNG, though ready having completed the project long back.

c) GoAP, with a view to augment the supply of energy by adding some more generation, issued directions u/s 11 of EA 2003 to First Party to make use of R-LNG gas for temporary period upto 31.05.2009 and produce the energy, vide letter No. 2043 / Power.I (1) / 2009 dt. 09.04.2009. In compliance of the said directions, the First Party entered into Gas Supply Agreement with GAIL for Spot R-LNG who in turn has supply agreement with Hazira LNG Pvt. Ltd., at Gujarat for supply of R-LNG gas besides Transportation Agreements with RGTIL and GAIL to receive gas at First Party place. As per the said agreements the cost of R-LNG works out to Rs. 294.34 /mmbtu and taxes extra besides transportation charges from Hazira of Gujarat State to the place of First Party. The First Party has been using R-LNG from 16-04-2009 in compliance of the directions at higher cost than the sources of GAIL and has been supplying the energy to Second Party.

d) As per section 11 (2) of Electricity Act, this Commission is empowered to off set the adverse impact on the First Party in complying with the directions of GoAP. Even though GoAP advised Second Party to pay the values as specified which are pass through, the Second Party is saying unless the nature of off setting adverse impact is decided by the Commission either directing the GoAP to pay or directing the Second Party to pay the same, they are not authorized to pay the bills. Therefore, the Commission may pass appropriate directions to bear additional expenditure involved in complying with the directions.

3. On 04.02.2010, on behalf of Second Party, a common reply is filed inter-alia stating that

a) The First Party generated power using R-LNG and supplied energy of about 33.058441 Mu to Second Party during April and May 2009. Meanwhile by its order dated 28.04.2009, APERC gave its approval for using RIL gas at the rate fixed by EGoM, Gol at 4.205 US\$ / MMBTU. At the said price, the variable charge works out to about Rs. 1.85 / Kwh.

b) While furnishing the provisional bill for R-LNG, First Party requested Second Party to release payment subject to the outcome of the petition filed before APERC to off set the financial impact. Second Party made payment towards R-LNG (fixed cost as per PPA + variable cost as per actuals) after taking an undertaking from the

First Party that such payment is made subject to fixation of rate by the Commission as required by GoAP in its direction dated 09.04.2009. By availing R-LNG generated power from First Party, the additional burden borne by Second Party is about Rs. 4.265 crs [i.e., difference between variable cost due to R-LNG and RIL (Rs. 3.95 (under testing) – Rs.2.66) x 33.058441 MU].

c) In view of the above, Second Party requests the Commission (i) to fix the rate for fixed cost as per the PPA and variable charge as per actuals which is pass through as per the Government letter No. 2043 dt. 09.04.2009 (ii) to offset the financial impact to Second Party which arose due to orders of GoAP vide letter No. 2043 dt. 09.04.2009 and pass orders directing the GoAP to reimburse to Second Party to a tune of Rs. 4.202 crs, since the same was already paid by Second Party to First Party (IPP).

6. Perused the record and heard the counsel for the Second Party.

7. Before proceeding further, it might be necessary to briefly summarise the background against which the directions under Section 11 were given together with the directions themselves and other stipulations as contained in GoAP letter No.2043/Power.1 (1)/2009, dt.09-04-2009 as hereunder:

(a) Background: The background against which the above said directions were given includes:

- (i) Severe shortage of power in the State.
- (ii) Four new IPPs (viz. 370 MW Vemagiri, 220 MW GVK Extn., 464 MW Gowthami and 445 MW Konaseema) remaining idle or running at sub-optimal level because of lack of availability of gas originally contemplated to be provided by GAIL.
- (iii) Natural gas supplies from Reliance KG D-6 fields expected only from 1st week of June 2009.
- (iv) Using R-LNG becoming possible due to Commissioning of East – West pipeline by M/s.RGTIL (Reliance) connecting Gujarat and AP.

- (v) The variable charge with R-LNG being cheaper as compared to variable charge with Naphtha and power procurement from open market being available at an exorbitantly higher price.
 - (vi) CERC permitting M/s. NTPC to procure R-LNG from available sources to generate power from their gas based power plants to augment the generation.
 - (vii) APPCC proposing to procure R-LNG through GAIL from available sources in Gujarat to utilise the idle capacity of new IPPs to meet ensuing power demand in the State during April 2009 and May 2009 and requesting GoAP vide letter dated 06-04-2009 to cause necessary directions to the new IPPs under Section 11 of E.A Act 2003 to operate their plants using R-LNG round the clock from 10-04-2009 to 31-05-2009.
- (b) Directions: The directions given by GoAP keeping in mind the public interest under Section 11 of the Electricity Act 2003 include:
- (i) M/s. GVK Extn., M/s.Gauthami, M/s. Vemagiri, & M/s. Konaseema shall operate the projects using R-LNG Round the clock from 10-04-2009 or from the date R-LNG is made available on directions of APPCC by (a) availing the supply of R-LNG from available sources through GAIL as supplier; (b) by utilising the gas by permissible “swap method” utilising the gas transportation network.
 - (ii) IPPs shall enter into necessary Agreements for the implementation of the above directions like Gas Supply Agreement with M/s. GAIL for procurement of R-LNG, Gas Transmission Agreement with M/s. RGTIL for transportation of R-LNG from Gujarat to Andhra Pradesh, and Gas Transmission Agreement with M/s. GAIL for transportation of R-LNG from Oduru in AP to respective IPPs.
- (c) Other stipulations : The other stipulations include:
- (i) APPCC is advised that variable charge to be paid by AP DISCOMs to IPPs shall include the following which pass through as per standard Regulations like (a) The cost of R-LNG including applicable charges

and marketing margin etc., levied by GAIL. (b) Transmission charges including applicable charges like Service charges etc., levied by M/s.RGTIL. (c) Transmission charges including applicable charges like Service charges etc., levied by M/s. GAIL. (d) The applicable taxes if any levied in Gujarat and AP.

- (ii) APPCC is directed to co-ordinate with GAIL, the RGTIL and the IPPs to operationalise these directions.
- (iii) Further as provided under Section 11 (2), APERC shall offset the financial impact to IPPs for complying with the directions.
- (iv) APPCC is directed to take steps to get the concerned order in this regard from APERC.

8. Further to the foregoing, the issues that fall for consideration of the Commission are (i) offsetting the adverse financial impact of the directions referred to in subsection 11 (1) of Electricity Act 2003 on the first party consequent to the directions of GoAP (ii) offsetting the financial impact to the second party due to orders of GoAP vide letter No. 2043, dated 09-04-2009 and pass orders directing GoAP to reimburse to second party, since the same was already paid by the second party to the first party.

9. The issues are dealt with as hereunder issue wise:

- (a) Offsetting the financial impact on the first party consequent to the directions of GoAP: The financial impact on the first party is different for different time periods namely period from 10-04-2009 to 27-04-2009 and period from 28-04-2009 to 31-05-2009. This is because of the fact that different provisions apply for different time periods.

Coming to the time period from 10-04-2009 to 27-04-2009, the applicable provisions of the PPA namely clause 3.3 (II) states that in the event of purchase of natural gas from sources other than GAIL, the cost "C" shall be the cost as per GAIL price or the cost of the alternate fuel supplier whichever is less. On the other hand, the directions of GoAP under section 11 of Electricity Act 2003 require the first party to

operate the plant using R-LNG which is available at a higher cost than the sources of GAIL. The adverse financial impact on the first party consequent upon complying with the above said directions, is the difference in amount in variable charge worked out with R-LNG as fuel as compared to that using the GAIL price. This needs to be offset to the first party for the period from 16-04-2009 (the date on which generation with R-LNG commenced) to 27-04-2009.

As regards the time period from 28-04-2009 to 31-05-2009, the applicable provisions of the PPA stand modified by Commission's orders dated 28-04-2009 in I.A No. 5 of 2009 in O.P.No. 11 of 2009, inter-alia, permitting to avail RIL gas at the price approved by EGoM in supercession of clause 3.3 (case-II) of the existing PPA subject to certain terms and conditions indicated therein. On the other hand, the directions of GoAP under section 11 of Electricity Act 2003 require the first party to operate the plant using R-LNG which is available at a higher cost than RIL gas at the price approved by EGoM. The adverse financial impact on the first party consequent upon complying with the above said directions, is the difference in amount in variable charge worked out with R-LNG as fuel as compared to that using the RIL gas at the price approved by EGoM. This needs to be offset to the first party for the period from 28-04-2009 to 31-05-2009.

In view of the above, Commission hereby directs APPCC to make the payments to the first party in line with the respective offset principles mentioned in the two preceding paragraphs, for the respective periods i.e from 16-04-2009 to 27-04-2009 and from 28-04-2009 to 31-05-2009, duly adjusting amounts already paid. Fixed costs are any way to be paid as per PPA only. Further, since the transportation tariff to be levied by GAIL and M/s. RGTIL are only provisional, necessary adjustment has to be made once the actual tariffs are fixed by Petroleum and Natural Gas Regulatory Board (PNGRB).

(b) Offsetting the financial impact to the second party due to orders of GoAP vide letter No. 2043, dated 09-04-2009: As regards the request of second party to offset to them, the financial impact which arose due to orders of GoAP vide letter No. 2043, dated 09-04-2009, Commission is of the view that the prayers of the second party (respondent) made in the counter/reply can not be entertained while disposing the petition filed by the first party (petitioner). Even assuming, from the academic point of view, that the prayers made in the counter/reply can be dealt with while disposing the petition filed by the first party (petitioner), a look at section 11 (2) of Electricity Act 2003 reveals that offsetting the adverse financial impact of the directions given by appropriate government **on any generating company** is only covered and not offsetting any consequential adverse financial impacts. In view of the above, Commission is not inclined to give any direction as prayed for by the second party.

The order is corrected and signed on this 27th day of July, 2010.

Sd/-
(C.R.Sekhar Reddy)
MEMBER

Sd/-
(R.Radha Kishen)
MEMBER

Sd/-
(A.Raghotham Rao)
CHAIRMAN

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