

ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad-500 004

O.P.No. 27 of 2009

Dated: 14 -06-2011

Present
Sri A.Raghotham Rao, Chairman
Sri R.Radha Kishen, Member
Sri C.R.Sekhar Reddy, Member

In the matter of:

M/s. Vemagiri Power Generation Ltd. (M/s. VPGL)
Skip House, 25/1, Museum Road,
Bangalore – 560 025.

.....Petitioner

And

1. Central Power Distribution Company of A. P. Ltd.
2. Southern Power Distribution Company of A. P. Ltd,
3. Northern Power Distribution Company of A. P. Ltd
4. Eastern Power Distribution Company of A. P. Ltd,

.....Respondents

This petition coming on for hearing on 27.06.2009, 04.07.2009, 16.07.2009, 25.07.2009, 01.08.2009, 11.08.2009, 20.08.2009, 05.09.2009 and 08.09.2009 in the presence of Sri J.P.Rajguru, Legal Counsel; Sri.C.B.Ramesh Babu, Vice-President and Sri.D.V.N.Kamaraju, for the Petitioner and Sri P.Shiva Rao, Advocate for the respondents , the Commission passed the following:

ORDER

In this petition, the petitioner requested the Commission to offset the adverse financial impact in view of the directions issued by Government of Andhra Pradesh u/s 11 (1) of the Electricity Act, 2003 [Act].

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

(i) The predecessor of the petitioner entered into a Power Purchase Agreement [PPA] with APSEB on 31.03.1997 and the same was subsequently amended on 18.06.2003 and 02.05.2007. As per the clause 2.1 of the amended PPA dated 02.05.2007, “the company shall sell, and the DISCOMS shall purchase, for the consideration of Capacity Charge, all the available capacity of the project limited to Installed Capacity of 370MW. Notwithstanding anything to the contrary contained in the Agreement, the company shall not be required to or obligated in any manner whatsoever to sell or otherwise provide to APDISCOMS any capacity over and above the Installed Capacity by the Project at any point of time during the term of this Agreement. The Company shall be free to dispose off capacity not exceeding 17.625MW (the “Excess Capacity”) over and above the Installed Capacity to any third party as it deems fit, without requiring any further approval from APDISCOMS for disposal of excess capacity”.

(ii) However, as a result of the directions given by GoAP u/s 11 of the Act, the petitioner had to supply 387.625MW [the tested capacity] to the respondents.

(iii) Direction dated 09.04.2009 issued by GoAP u/s 11 also states that APERC shall offset the financial impact of the petitioner for complying with the said direction.

(iv) Direction u/s 11 admittedly deprives the petitioner the leverage of selling to third parties at market driven prices which has to be offset by giving adequate compensation to the petitioner.

(v) Letters of Intent [LOI] issued by BSES Rajdhani and the Tamil Nadu Electricity Board [TNEB] for the months of February, March and April 2009 state that the purchase cost of TNEB for power being supplied from Chattisgarh is Rs.8.54 per KWH; that of BSES for power being supplied from Chattisgarh is Rs.8.59. Copies of LOI are also submitted along with the petition.

(vi) The petitioner is entitled for compensation as there is a significant difference between the market price [the purchase cost as per the LOI] and the PPA price. Further, it is submitted that the petitioner should be paid for the excess power supplied to the respondents at Rs.8.54/kwh inclusive of fuel cost.

(vii) Direction is given by GoAP which has an economic impact, the same has to be fully offset by adequate compensation and it will ensure that the petitioner receives the same return on its investment. Therefore, the Commission is requested to award compensation to which the petitioner is entitled under law.

3. During hearing on 04.07.2009, the Commission directed respondents to furnish the particulars of Power Purchase Costs for the period from 14.04.2009 to 31.05.2009. In pursuance thereof it is submitted in writing vide Lr No. CE/IPC/112.F. (VPGL-Excess Energy-09)/D.No.75/09, dt: 16.07.2009, that

(i) During May 2009, respondents made short term purchases on emergency basis only.

(ii) Power purchases made by respondents through traders and Exchange is only to an extent of 7.07% of total Purchases during May 2009.

(iii) Considering the total purchases made during May 2009, the average power purchase cost of respondents works out to Rs.3.06/Kwh.

4. During the course of hearing, the respondents admitted in writing that payment was made to the petitioner for 370 MW only as per the PPA and that payment was not made to it for the balance 17.625 MW capacity supplied to the respondents for the period from 24.04.2009 to 31.05.2009. Respondents also furnished the following information as directed by the Commission;

(i) Statement showing the excess energy supplied by the petitioner to respondents for the period from 24.04.2009 to 31.05.2009,

(ii) Statements showing source wise purchases and percentage of source in total purchases for the months of April and May, 2009.

5. Further to the forgoing the only issues that needs to be considered by the Commission and a decision taken is what compensation to be paid to the petitioner to offset the adverse financial impact on the generating company, in view of the directions, issued by GoAP u/s. 11(1) of Electricity Act, 2003.

6. Before going further, it is apt to extract the following from the order of the Commission dated 03-06-2011 in O.P.No.41 of 2009:

(i). **Extract from para 8(ii):**

[Actually quoted from joint application dated 03-12-2010]:

“M/s. Vemagiri, sought open access permission to sell their excess capacity to third parties and the same was not accepted, since the methodology for segregation of excess energy and PPA energy are not provided in the PPA dated 02.05.2007. Therefore, M/s. Vemagiri and APDISCOMs have agreed to propose a formula for “segregation of energy of excess capacity and the PPA capacity” and the same was filed by way a petition before APERC on 08.09.2009 for approval. APERC registered the petition as O.P.No. 41 of 2009”

(ii). **Extract from para 9:**

“Commission having carefully examined the sample calculation in para 8 (vii) supra and duly noting the CEA opinion that by incorporating the correction factors, the requirement of APDISCOMs will also be met, hereby approves the procedure indicated in para 8 (vii) for segregation of excess energy. However, for the periods, wherein the data required for implementing the above procedure is not available, the formula originally proposed by the APDISCOMs and VPGL i.e., the formula mentioned at para 4 of this order shall be followed for segregation of excess energy”

7. The present case is regarding determination of the quantum of financial impact that is to be compensated to the petitioner in pursuance of the direction of GoAP under section 11 of the Electricity Act, 2003 for supply 17.625 MW of power, which is the capacity beyond the installed capacity of 370 MW of power as per the PPA. This power was supplied from 24-04-2009 to 31-05-2009.

8. As per section 11 of the Act the Commission has to determine the amount for offsetting the financial impact of the direction under section 11. This obviously presupposes that the generator would, but for the direction under section 11, have sold the particular quantum of power in the open market at prices higher than what he received from the DISCOM as a result of the sale made to DISCOM in pursuance of the section 11 direction. Hence, the price at which the DISCOM purchased power in the open market at that point of time is not the really relevant factor. The relevant consideration is the gap between what the generator could have otherwise (notionally) secured in the open market as compared to the price actually received from the DISCOM.

9. In view of the above, the Commission has now assess the rate which the generator would have obtained for sale of this power from the open market, had there been no such direction under section 11. This figure can only be an intelligent conjecture since the actual event of sale by the generator in the open market for this quantum of power did not actually take place, due to the operation of the section 11 direction.

10. During the relevant period, the petitioner had the right under law and the PPA to sell the capacity of 17.625 MW in the open market. The rejection of his request for sale in open market on the ground of absence of a segregation formula cannot be sustained since the formula has subsequently been approved by the Commission with retrospective effect including the relevant period of the present issue.

11. Keeping in view, the rates prevalent in the open market during the period of the present issue, namely 24-04-2009 to 31-05-2009, the prices at which the DISCOM made open market purchases during this time and also the rate as per the PPA for the installed capacity of 370 MW, the Commission is of the opinion that the rate of Rs.5-50 per/kwh is reasonable in the instant case to offset the financial impact on the petitioner due to the section 11 direction of the GoAP. At this figure, the petitioner will receive in addition to the variable charge as per the PPA, an amount exceeding 350% of the fixed charges payable as per the PPA.

12. Having decided the price to be paid; now the quantum of energy supplied from the excess capacity has to be determined, since, the adverse financial impact would be the product of price and the quantum. Commission vide its order dated 03-06-2011 in O.P.No. 41 of 2009 had approved the procedure to be followed for segregation of excess energy. However, APDISCOMs have already filed the quantum of excess energy supplied from 24-04-2009 to 31-05-2009 using the formula mentioned at para '4' of the order dated 03-06-2011 in O.P.No. 41 of 2009. The quantum filed is 13.9798 MUs. However, APDISCOMs are free to adopt the above quantum, subject to certifying that "data required for implementing the procedure in para 8(vii) for segregation of excess energy is not available" and filing the same for record in the Commission in as much as the above quantum is computed using the formula originally proposed by APDISCOMs and VPGL mentioned at para 4 of the order dated 03-06-2011 in O.P.No. 41 of 2009.

13. APDISCOMs are hereby directed to offset the adverse financial impact on the generator in view of the GoAP direction u/s. 11(1) of Electricity Act, 2003 in terms of para 11 and 12 above and report compliance within a week of this order, duly enclosing the required certification as indicated in para 12 above.

This order is corrected and signed on this 14th day of June, 2011.

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

Sd/-
(R.Radha Kishen)
MEMBER

Sd/-
(A.Raghotham Rao)
CHAIRMAN

//Certified Copy//