

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

O.P.(SR) No. 12 of 2011

Dated: 14-09-2011

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

Between

M/s Hyderaabad Chemicals Ltd

Its sister concern of M/s. Hyderabad Chemical Products Ltd

A-24 / 25, APIE, Balanagar, Hyderabad – 500 037.

..... Petitioner

AND

Central Power Distribution Company of A.P. Ltd.
Mint Compound, Hyderabad.

. . . Respondent

This petition coming up for hearing on 3-9-2011, in the presence of Sri. Koka Srinivasa Kumar, Advocate for the petitioner and having stood over for consideration to this day, the Commission delivered the following:

ORDER

This petition is filed u/s 62 (1) (a) read with s / 86 (1) (b) and (f) of the Electricity Act, 2003 (for short '*the Act*') by the petitioner seeking adjudication of the dispute between the petitioner and the respondent with regard to reviewing the power purchase price of Rs. 2=70 ps per unit under Power Purchase Agreement (for short '*the PPA*') and re-fixing the same at Rs.3=50 ps per unit as per the earlier order of the Commission.

2. The averments mentioned in the petition, in brief, are as follows;

(a) The petitioner is a company registered under Companies Act 1956. The petitioner along with its sister concern has established wind power project at Kadavakallu village in Anantapur district after obtaining necessary permissions and sanctions from the authorities concerned.

(b) Before deciding to evacuate power generated from the project of the petitioner, it is ascertained from the letter dt. 29-10-2004 of the Commission that the tariff as fixed by the Commission is applicable for sale of power to the respondent by all existing as well as new projects commissioned during 01-04-2004 to 31-03-2009 and that tariff of Rs.3=37 ps would be viable for the project. The project of the petitioner was commissioned and synchronized with the grid on 31-03-2005, but the respondent did not come forward to enter into a PPA. Instead, it is suggested that the petitioner should go for open access stating that the respondent is not willing to purchase power from the petitioner's project.

(c) The petitioner which was under severe constraint and was suffering losses apart from pressure from the bankers who had funded the project, mentioned in detail in the petition, agreed for tariff of Rs 2=70 ps per unit, against Commission determined rate of Rs. 3=37 ps per unit, even though it was not viable. Under such compelling circumstances, on 09.06.2006, the petitioner entered into a PPA with the respondent for sale of power by the former to the latter. The position between the contracting parties is unequal bargain that prevailed in favour of respondent which is in a dominant position and thus obtained an unfair advantage in form of tariff. Thus there was undue influence. There was no free consent to the contact. The tariff agreed is unviable considering huge investment. In addition, there are multiple barriers in the establishment of the project. Cost of spares has also risen and in most of the cases they have to be imported. Therefore, the operational expenses have steeply increased. Developers who have signed PPAs prior to March 2005 and latter to March 2009 have the benefit of Commission's determined tariff but projects like the petitioner have to suffer having agreed to negotiated tariff.

(d) The average tariff for wind project all over is India not less than Rs 3.50 per unit. The petitioner seeks practical decisions from the respondent and therefore made a representation on 24-11-2010 for modifying the agreement between them in respect of tariff. On 22-12-2010, respondent sent a reply, but it did not consider the request of the petitioner. No reason was given for rejecting the request of the petitioner and the same is arbitrary.

(e) The petitioner also approached GoAP, Energy department on 25-07-2009 with a request to re-fix tariff on par with new projects as the agreed tariff is not remunerative as mentioned supra. The petitioner was directed to approach the Commission for suitable relief. Therefore, there is no other remedy available to the petitioner except to approach the Commission.

3. In pursuance of Conduct of Business Regulation, Commission decided to hear the petitioner on the question of maintainability of the petition and accordingly notice of hearing was given to the petitioner.

4. On 03-09-2011, heard the counsel for the petitioner. While reiterating the contentions raised in the petitioner, the counsel for the petitioner submitted that earlier when the respondent refused to purchase power, the petitioner approached the Commission for certain relief. However, the Commission dismissed the said petition stating that it is not in a position to issue any direction to the respondent as there is no PPA between the parties. For the said reason the petitioner could not get payment for the power received by the respondent since synchronisation of the project with the grid. Because of dominant position of the respondent, the petitioner is left with no other alternative except to agree for tariff of Rs 2=70 ps, even though the same is not viable and grossly lower than the Commission determined tariff of Rs. 3=37 ps per unit, and then only enter into PPA with the respondent. Otherwise, the project would not have gone ahead. Because the PPA was signed under undue influence and without free consent, petitioner has been representing to the respondent to re-fix the tariff as per the orders of the Commission, but to no avail. Hence, there is a dispute and the Commission is empowered to resolve the same.

5. The main issue involved in the petition is “undue influence”. It is the petitioner who has pleaded undue influence exercised by the respondent to enter in to PPA at that rate and the burden to prove undue influence is heavily on the petitioner. The request to consider his case by numbering the petition is bonafide. It cannot be rejected at the threshold. It is proper and reasonable to afford an opportunity of hearing the petitioner as well the respondent 6.

6. Hence we are of the considered opinion that the petitioner has raised substantial issues to be decided by the Commission. Therefore, the Commission has decided to admit the petition filed by the petitioner for hearing the parties concerned on merits of the case. Accordingly, it is ordered to number the petition and issue notice of hearing to both the parties herein.

The order is signed on this 14th day of September, 2011

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

Sd/-
(A.Raghotham Rao)
CHAIRMAN

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