

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

O.P. (SR) No.45 of 2011

Dated 21-11-2011

Present

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

Between

M/s. Gayathri Sugars Ltd
B-2, 2nd Respondent Floor, 6-3-1090, TSR Towers,
Raj Bhavan Road, Somajiguda
Hyderabad – 500 082

– **PETITIONER**

AND

1. Government of Andhra Pradesh
Represented by Principal Secretary
Department of Power
Secretariat, Hyderabad
2. Andhra Pradesh Northern Power Distribution Co.Ltd
Represented by General Manager
Warangal

- **RESPONDENTS**

This petition coming up for hearing on 17-09-2011 in the presence of Sri.S.Rambabu, Advocate for the petitioner and having stood over for consideration to this day, the Commission delivered the following:

ORDER

This petition is filed under Article 11(Dispute Resolution) of the PPA dated 12-05-2006 by the petitioner seeking adjudication of the dispute between the petitioner

and the respondent with regard to reviewing the power purchase price of Rs.2.63 per Kwh and revision of the decision of imposing ceiling limit to the renewable power tariff.

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

- a) The petitioner, M/s. Gayatri Sugars Limited, Nizamsagar's Unit previously known as M/s. GSR Sugars Pvt., LTd is a company incorporated under the Companies Act, 1956 having its registered office at B-2, 2nd floor, 6-3-1090, T.S.R. Towers, Raj Bhavan Road, Somajiguda, Hyderabad – 500082 have set up a Sugar plant having a capacity of 2500 TCD along with Co-generation plant of 16.25 MW.
- b) The petitioner approached the 2nd Respondent and offered to sell the power. The 2nd Respondent agreed to purchase the power as per the Andhra Pradesh Electricity Act. It may also be noted that all the power producers has to sell the power to the 2nd Respondent as per the Electricity Act.
- c) The 2nd Respondent has to fix the tariff based on the guidelines prescribed by the Commission.
- d) The 2nd Respondent determined the fixed costs for 10 years from the date of commercial operation i.e. from 16-05-2007 to 16-05-2017 and 5 years for the variable costs i.e. up to the year 2009 –2010.However, the rates offered by the 2nd Respondent are much lower than the tariff assessed based on the guidelines determined by this Commission. The 2nd Respondent also imposed further reduction to the tariff payable to the petitioner by imposing Ceiling limit for the tariff i.e.Rs.2.63 per Kwh. The said ceiling is not prescribed in the guidelines

- prescribed by this commission. Thus the Respondents have not honoured the guidelines determined by the Commission.
- e) The actions of the Respondents are wrong and contrary to the fundamental rights guaranteed under Article 14 read with Article 301 of the Constitution of India, the Petitioner agreed to execute the contract under the compelling situations as the Petitioner had executed agreements with the farmers for the supply of sugarcane and with the contractors for the supply, erection and commission of the plant. The banks also agreed to sanction loan only upon execution of Agreement with 2nd Respondent. The petitioner was also not allowed to sell the power to any 3rd party agency.
 - f) The Commission has given the guidelines to fix the tariff based on assessing the fixed and variable costs. Thus, the production cost of power per unit will be the same in any Cogeneration unit. But the Respondents have discriminated the company in question by fixing the tariff less than the assessed tariff rate by the Commission which is per se wrong and contrary to the Articles 14 and 301 of the Constitution of India.
 - g) The petitioner struggled to supply the power at the rates prescribed in the Agreement. The Petitioner approached the 2nd Respondent requesting for revision of tariff as per this Commission orders dated 20-03-2004 and 31-03-2009 and thus treat the Petitioner on par with other competitors in the market. But, the petitioner received no response from the Respondents.
 - h) The Commission in the matter of R.P.No 84/2003 in O.P.No.1075/2000 specified that while assessing the variable cost, the control period should be for 5 years.

This implies that the tariff cannot be either less or more than what is assessed based on the formula/method determined by the Commission. But the Respondents actions are contrary to this Commission's Order.

i) It is further submitted that the Commission held in its order dated 27-09-2005 in the matter of O.P.No.9 of 2005 as in case of purchase of electricity other than through long term PP's, the ceiling tariffs shall be the total tariffs (fixed+variable), as worked out for each source of energy (co-generation, Mini-Hydel etc.) on the basis of the aforementioned order of the Commission.

j) It is further submitted that, this Hon'ble Commission held in its order dated 31-03-2009 in O.P.No.16 of 2008 as under:

“Ceiling tariffs in the earlier RPPO Order:

The general opinion expressed is that the objective of encouraging RP will be defeated if scope for a negotiated tariff is made available by prescribing a ceiling concept”.

k) The Commission by considering all the variable items determined the variable cost payable to the co-gen unit from the FY 2009-10 to 2013-2014 and directed the Respondents to implement the same vide order dated 31-03-2009. But in contrary to this order, the Respondents refused to apply the aforementioned variable costs to the Petitioner. Thereby, the very object of this Commission is being defeated. The comparison of the rates determined by this Commission and the rates offered by the Respondents by applying variable cost is as follows:

Nth Year of operation	Fixed Cost determined by the Commission in Rupees per unit	Fixed cost awarded by the Respondents to the Petitioner in Rupees per Unit	Financial Year wise variable cost determined by the Commission in Rupees per unit	Financial Year wise Variable cost considered by the 2nd Respondent in Rupees per Unit	Tariff payable to the Petitioner (in Rupees per unit) as per guidelines of this Commission (2+4)	Tariff being paid to the Petitioner in Rupees per unit (3+5)	Difference amount in Rupees (6-7)
1	2	3	4	5	6	7	8
1 st year (2001-08)	1.72	1.57	1.18	1.14	2.90	2.63	0.27
2 nd year (2008-09)	1.67	1.52	1.24	1.19	2.91	2.63	0.28
3 rd year (2009-10)	1.63	1.48	1.68		3.31	2.63	0.68
4 th year (2010-11)	1.59	1.44	1.76		3.35	2.63	0.72
5 th year (2011-12)	1.55	1.39	1.85		3.40	2.63	0.77
6 th year (2012-13)	1.51	1.35	1.94		3.45	2.63	0.82
7 th year (2013-14)	1.47	1.31	2.04		3.47	2.63	0.84

- l) It is submitted that the 2nd Respondent fixed the tariff payable to the Petitioner by keeping a ceiling of Rs.2.63 per Kwh. Per unit. The petitioner agreed to the said rate reluctantly under compulsion and undue influence as the Petitioner was under pressure to comply its other contractual liabilities.
- m) The 2nd Respondent is/was well aware that, fixing a ceiling on tariff is unconstitutional and detrimental for healthy functioning of an organization and also contrary to the Electricity Act and orders of this Commission.
- n) It is submitted that the Petitioner supplied about 4,21,01,000 units of power till date and it received only Rs11,07,25,630/- whereas as per this commission guidelines he petitioner is entitled for Rs.12,89,59,030/-.Therefore, the balance amount payable to the Petitioner by the 2nd Respondent is Rs.1,83,33,400/- and interest @ 18% p.a from the respective due dates. The said tariff is being offered to several organizations such as Empee Sugars, NDSL etc. Thus the petitioner is

requesting the Respondents to apply the same tariff to it on par with all other organizations and to pay the due amount.

- o) Contrary to fix the tariff, based on the tariff order issued by the Commission which specifies equal tariff to all cogeneration plants as the variable costs will be equal to all the plants have imposed the tariff on the petitioner.
- p) It is submitted that, as per the Agreement in question, the tariff has to be negotiated from the year 2009-10. Therefore the Petitioner is entitled for the revised tariff from the year 2009-10. The Commission has fixed the variable cost as follows:

Financial year	Variable Cost
2009-10	1.68
2010-11	1.76
2011-12	1.85
2012-13	1.94
2013-14	2.04

- q) In view of the above read with this Commissions report, the Petitioner is entitled for the tariff mentioned below:

As per APERC Order Dated 30.03.2004					
Year of Operation	Fixed cost Rs/unit	Financial Year	Variable Cost/unit	Total	
1 st	1.72	2007-08	1.18	2.90	
2 nd	1.67	2008-09	1.24	2.91	
3 rd	1.63	2009-10	1.68	3.31	
4 th	1.59	2010-11	1.76	3.35	
5 th	1.55	2011-12	1.85	3.40	
6 th	1.51	2012-13	1.94	3.45	
7 th	1.47	2013-14	2.04	3.47	
8 th	1.43	Variable cost Highlighted is taken from 2009 order			
9 th	1.35				
10 th	0.90				

- r) The Petitioner submitted a representation vide letter dated 01-04-2011 to the Respondents requesting to reconsider the tariff as well as reimburse the due amounts. The respondents failed to consider the said application and rejected the Application without assigning any reasons.
- s) The Commission has held that the objective of encouraging RP will be defeated if scope for a negotiated tariff is made available by prescribing a ceiling concept. Hence, the imposition of ceiling on tariff payable to the producer is contrary to the object of the Electricity Act and also contrary to law of the land.
3. The petitioner prayed that the Hon'ble Commission may be pleased.
- i) to direct the respondents to implement the guidelines issued by the Hon'ble Commission to determine the tariff payable to the petitioner.
 - ii) to determine tariff payable to the petitioner for power supplied from the date of commercial operation till date.
 - iii) to direct the respondents to implement the Tariff Order determined by the Commission vide order dated 31.03.2009 in O.P. No. 5 of 2009.
 - iv) To pass such other reliefs deemed fit just and proper in the interest of justice.
4. 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.

5. On 17.09.2011, the counsel for the petitioner was heard. The counsel for the petitioner reiterated the contentions raised in the petition.

6. The contention of the petitioner is that the 2nd respondent fixed the tariff payable to the petitioner by keeping a ceiling of Rs. 2.63 per unit and that the petitioner has, reluctantly, under compulsion and undue influence and also under the pressure, agreed to the said rate and to comply its other contractual liabilities.

7. The petitioner has contended that he is not permitted to sell power to third parties and the same has to be supplied to the respondents and ultimately the petitioner company is incurring losses every year and accumulated losses are about Rs.2063.78 lakhs which may ultimately lead to the closure of the project and it may also effect the persons deriving benefit directly and indirectly. The petitioner prayed that therefore, it was just and necessary to take urgent action to protect the petitioner's project.

9. After examining the contentions of the petitioner, 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 21st day of November, 2011.

Sd/-
(C.R.SEKHAR REDDY)
MEMBER

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN

//Certified Copy//