



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

I.A.No.9 of 2017  
in  
O.P.Nos.28 & 29 of 2016  
Dated: 26-08-2017

Present  
Sri Justice G. Bhavani Prasad, Chairman  
Dr. P. Raghu, Member  
Sri P. Rama Mohan, Member

**Between:**

Southern Power Distribution Company of Andhra Pradesh Ltd (APSPDCL)  
Eastern Power Distribution Company of Andhra Pradesh Ltd (APEPDCL)  
... Petitioners

**A N D**

----NIL--- ... Respondents

This petition has come up for hearing finally on 19-08-2017 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioners, Sri Gautam Chawla, learned counsel representing M/s. Thermal Powertech Corporation India Ltd., Sri Anand K Ganesan, learned counsel representing M/s. KSK Mahanadi Power Company Ltd. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

**ORDER**

A petition by the two distribution licensees of the State of Andhra Pradesh requesting to revise the retail supply tariff order of the Commission for FY 2017-18 by revising the energy availability upwards by 386 MUs for KSK Mahanadi Power Company Limited, allow additional fixed cost of ₹91.60 crores and additional variable cost of ₹129.88 crores with consequential corrected unit costs, approve PGCIL charges to a tune of ₹275.65 crores to Thermal Powertech Corporation India Limited and KSK Mahanadi Power Company Limited and consequently amend the retail power supply tariff order and effect necessary changes in the revenues of the Distribution Licensees.

2. The petitioners contended that their power purchase agreement along with Telangana DISCOMs with Thermal Powertech Corporation India Limited is for a contracted capacity of 500 MW for 25 years out of which the share of the petitioners is 46.11% or 230.55 MW. The petitioners and Telangana DISCOMs also have a power purchase agreement dated 31-07-2012 with KSK Mahanadi Power Company Limited for 400 MW power up to 15-06-2016. The petitioners entered into a PPA dated 19-12-2014 with the same generator for supply of 400 MW power from 16-06-2016 to 31-03-2021 which was approved by the Commission in OP 3/2015 on 19-08-2015. Under the agreements, the procurer has to pay the transmission charges and the two generators connected to CTU have to be reimbursed the PGCIL charges on actual basis. However, in the ARR filings, the petitioners included the PGCIL charges of ₹275.65 crores in the “Other Costs” of power purchase leading to the said PGCIL charges not being considered. Similarly, in the ARR filings, the petitioners did not show the actual energy availability of KSK Mahanadi Power Company Limited at 2,978.4 MUs at 85% as per the agreements but showed only 2,592.96 MUs at 80% availability. This resulted in lesser fixed costs and variable costs being approved and the actual unit cost will be ₹3.938 but not ₹3.67 as approved. Hence the petition to allow ₹107.34 crores to Thermal Powertech Corporation India Limited and ₹168.31 crores to KSK Mahanadi Power Company Limited towards PGCIL charges and to further allow ₹91.60 crores towards additional fixed costs and ₹129.88 crores towards additional variable costs to KSK Mahanadi Power Company Limited making consequential amendments and changes in the retail supply tariff order including the revenues of the licensees.

3. The petition has been placed in public domain on the websites of the Commission and the petitioners inviting views/objections/suggestions of any interested person or stakeholder.

4. Thermal Powertech Corporation India Limited in their response have requested to allow the prayers in the petition to the extent of the cost of payment towards statutory / PGCIL charges to which they are entitled to be reimbursed.

5. KSK Mahanadi Power Company Limited in their submissions stated that the Retail Supply Tariff Order did not in any manner amend the PPA or the tariff which could not have been done. The normative availability as per the PPA could not have been considered at a lower level than agreed. Hence it desired the approval of the requests of the petitioners to the extent it is concerned.

6. As against this request of both the Distribution Licensees and the generators, Sri M. Venugopala Rao, Senior Journalist and Convenor, Centre for Power Studies has requested for taking the points raised by him into consideration and referred to the views placed before the Commission earlier by Dr. M. Thimma Reddy. The learned objector referred to the various clauses in the PPA and stated that as per the Case I bidding SBD dated 19-05-2017, 230.55 MW of TPCIL should be transmitted from the bus bar by the STU i.e., APTRANSCO as the source of generation is within the State. The bid evaluation committee also evaluated without considering CTU charges. However, the APTRANSCO did not lay the line and it has to be clarified whether it is collecting transmission charges for this capacity also, which will impose an additional burden of ₹2560 crores in 23 years. In OPs 28 and 29 of 2016, the DISCOMs claimed ₹107 crores towards PGCIL charges for evacuating power from TPCIL. The failure of APTRANSCO should not penalize the consumers of power and the Commission may recommend to the State Government to order an enquiry into the failure of the APTRANSCO. The Commission may also examine as to how an NOC was issued to PGCIL for such evacuation of power. If PGCIL charges were taken into account, TPCIL which was L5 would not have been selected. The Commission may reject the request for collection of PGCIL charges from the consumers or direct APTRANSCO to pay the said charges till it lays the line for evacuation as requested by the DISCOMs long back.

7. The learned objector stated, in so far as KSK Mahanadi is concerned that the Commission may take an appropriate decision on PGCIL charges in respect of the generation plant located in Chattisgarh.

8. The learned objector referred to the objections of Dr. Thimma Reddy about the absence of any requirement for such power and the prevailing experience and situation show the same to be imprudent and unwarranted. The DISCOMs failed to

give the factual position even in response to the objections raised by Dr. Thimma Reddy and the alleged inadvertence in calculations is difficult to understand. If the prayers are approved, there will be increase in surplus, fixed costs (₹67.452 crores) and additional charges (₹221.48 crores) which leads to either increase in tariff or additional subsidy by the Government or a later true-up. In addition, the DISCOMs desire to purchase power from Lanco, Spectrum and GVK I which will further increase the surplus power and additional fixed charges for backing down. This is in addition to 534 MW additional surplus with APGENCO due to stopping of supply to Telangana. The consent by the Commission without taking a realistic view of the prevailing situation and long term forecast is resulting in imprudence and injustice. Therefore, the learned objector requested the Commission to take an appropriate decision on the issue.

9. TPCIL claimed in response that under the Power Purchase Agreement clause 4.3, the transmission charges paid by TPCIL have to be reimbursed and the PPA which was approved by the Commission on 13-08-2013 cannot be varied. In the absence of STU network, TPCIL was asked by the petitioners to transmit power through CTU network. After bifurcation of the State into Andhra Pradesh and Telangana, TPCIL is an inter-state generating station with its connection to CTU network being proper. Even construction of STU network with significant capital expenditure will be recovered from the end users only. TPCIL has no control over network expansion of APTRANSCO and hence TPCIL desired the petition to be allowed concerning it.

10. KSK Mahanadi Power Company Limited in its reply to the objections denied the purchase of power from it being imprudent and unwarranted and claimed to be entitled to reimbursement of transmission charges under the PPA. The PPA discovered under a competitive bidding process cannot be amended and hence it desired the petition to be allowed to the extent it is concerned.

11. The petitioners in their replies to the objections stated that the PPAs cannot be reopened herein and the APPCC decided that the POWERGRID network will be utilized by the petitioners till the completion of the APTRANSCO evacuation scheme. Later the Standing Committee decided on 31-07-2014 not to duplicate the transmission asset and the APPCC again decided to have a permanent evacuation

system but the 40<sup>th</sup> meeting of the Standing Committee again did not agree with the same.

12. On the above material on record, the point for consideration is whether the revised higher energy availability for KSK Mahanadi Power Company Limited and additional fixed costs and variable costs for it apart from PGCIL charges to both the generators have to be approved with consequential amendments to the RSTO and in the projected revenues of the petitioners?

13. The contents of the PPAs between the petitioners and the two generators are not in dispute. Nor is the liability of the petitioners for payment of transmission charges to the generators in question. The terms of the PPAs making the PGCIL costs reimbursable to both the generators is not an issue nor is the necessity to take the availability at 85% in respect of KSK Mahanadi as per the PPA in controversy. The originally projected figures in the ARR filings by the petitioners and the presently revised calculations as per the PPAs are not mathematically questioned. The two generators of course are conveniently sailing with the petitioners and except Sri M. Venugopala Rao and Dr. M. Thimma Reddy, the learned objectors, no other interested person or stakeholder has responded to the Public Notice inviting their views/objections/suggestions on the issues involved herein. It is only Sri M. Venugopala Rao who placed before the Commission the genuine concerns about sacrificing the interests of the power consumers by design or default while reminding the Commission of the objections taken by Dr. M. Thimma Reddy during the tariff fixation proceedings of 2017-18.

14. Though the APTRANSCO should have provided the evacuation facility, for the power generated by TPCIL and supplied to the petitioners, from the generation station within the State of Andhra Pradesh, the generator himself appeared to have no role or choice in the matter. In its response to the objections, the generator has pointed out that it was asked by the petitioners to transmit power through CTU network and the response of the petitioners to the objections shows that notwithstanding the decision of the APPCC twice to have an evacuation scheme for the purpose for APTRANSCO, the same was turned down by the 37<sup>th</sup> and 40<sup>th</sup> meetings of the Standing Committee on the ground that the same would result in duplicate transmission asset and transmission charges liability. It was

further said that there was no requirement of separate link by APTRANSCO. That apart, even the objections show that the construction cost would have been around ₹700 crores according to some estimates which is not an insignificant sum and which might have persuaded continuance of utilizing evacuation through CTU facilities. Assuming that the facts and circumstances may have to be so construed as a positive failure of APTRANSCO in this regard, still that will not detract from the right of the generator to have the transmission charges reimbursed as per the contractual obligations under the PPA.

15. In so far as KSK Mahanadi Power Company Limited is concerned, admittedly the generating plant is located in the State of Chhattisgarh and PGCIL charges for evacuation of power of that plant to the network of the petitioners probably becomes inevitable due to which the learned objector himself desired the Commission to take an appropriate decision in that regard.

16. Had the APTRANSCO laid the line in respect of TPCIL, much avoidable expenditure might have been avoided according to the learned objector which may be in tune with the balance of probabilities but the fact being the absence of availability of any such evacuation facility, there appears no legal possibility to wriggle out of the contractual obligations with the two generators to pay the evacuation charges and if the non-laying of an evacuation line by the APTRANSCO was due to the reasons stated in the response of the petitioners to the objections, there appears no strong ground for ordering an enquiry into any such failure though the fact that the power consumers of the State are likely to be further burdened with such charges cannot be ex facie discredited.

17. Coming to the increased energy availability, consequential liability for additional fixed costs and variable costs and revision of tariff, even the objections laid more emphasis on the imprudence and unwarranted nature of the unnecessary and uncalled for purchase of power from KSK Mahanadi but not the incorrectness of the calculations originally made or the correctness of the calculations subsequently projected now. If the petitioners and the generator are bound by the contractual obligations under the PPA, there cannot be any reduction in scale of the quantum of the power to be purchased or the price to be paid than what was agreed to under the PPA itself. It is true that the additional amounts to be paid to

a tune of ₹221.48 crores and the backing down charges which also quantify to a significant sum make up a significant additional burden which has to be met by an increase either in tariff to the consumers or subsidy payable by the Government or the amounts to be trued-up later. It is also true that the quantum of surplus power available as per the ARR filings show that such inadvertence in the presentation of the relevant matters before the Commission is leading to avoidable complications and avoidable burden on the consumers. The DISCOMs, as rightly pointed out by the learned objectors, have sought for the further approval of the Commission for purchase of power from 3 more gas based generators etc., and are also saddled with surplus power accumulated with them due to severance of ties with the State of Telangana in sharing of power. It is also true that the absence of adequate research by the concerned, may be including the Commission, at the relevant times and stages might have resulted in some avoidable inconvenience to the sector and the people. But such circumstances cannot be a ground for erasure of the contractual obligations of the parties. The Commission cannot refuse to give effect to the undisputed contractual rights and liabilities on any such ground.

18. The contention of TPCIL that post bifurcation, it became an interstate generating station in respect of Andhra Pradesh and Telangana States and hence the utilization of CTU network is proper also is a strong ground which cannot be brushed aside in respect of the present determination concerning FY 2017-18 and any omission or default of the petitioners or the APTRANSCO may have no adverse impact on the contractual rights of TPCIL. After the PPAs with the generators have been considered on merits, consented to by the Commission and given effect to by the parties, it may not be open to the Commission now to go behind the reasonableness of the agreed terms and conditions or the prudence or propriety or wisdom of purchasing power from the said generators. Under the circumstances, there appears no legal possibility of rejecting the requests on any factual or practical considerations.

19. However, the claim of the petitioners that the situation is brought about by inadvertence is an obvious attempt to make a mountain of a mistake appear like a mole hill. As Sri Venugopala Rao rightly pointed out such inadvertence is difficult to comprehend, understand and condone and therefore, the Commission proposes

to request the Government of Andhra Pradesh in its Energy Department to examine the entire issue and take all necessary remedial action concerning the “inadvertence” that already occurred and taking precautions to avoid repetition of such “inadvertences” in future at the cost of the public exchequer and the public interest at large.

20. Accordingly, the petition is allowed. No costs. A copy of the order be communicated to the Principal Secretary, Energy Department, Government of Andhra Pradesh for taking necessary action in public interest in the light of the conclusions and observations in this order.

This order is corrected and signed on this the **26<sup>th</sup> day of August, 2017.**

**Sd/-**  
**P. Rama Mohan**  
Member

**Sd/-**  
**Dr. P. Raghu**  
Member

**Sd/-**  
**Justice G. Bhavani Prasad**  
Chairman