



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P. No. 48 of 2017

Dated 07.04.2018

Present

Sri Justice G. Bhavani Prasad, Chairman

Dr. P. Raghu, Member

Sri P. Rama Mohan, Member

Between:

Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL)

Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL)

....Petitioner(s)

AND

Andhra Pradesh Power Generation Corporation Limited (APGENCO)

....Respondent

This petition has come up for hearing finally on 31.03.2018 in the presence of Sri P. Shivarao, learned Standing Counsel for the Petitioner(s). No objector was present. After carefully considering the material available on record and after hearing the arguments of all the parties, Commission passed the following:

ORDER

A petition under Section 86 (1) (b) of the Electricity Act, 2003 and Sections 21 (1) and (5) of the Andhra Pradesh Electricity Reform Act, 1998.

2. The two distribution licensees in the State of Andhra Pradesh are the petitioners and the respondent is a generating company wholly owned by the Government of Andhra Pradesh. The respondent AP GENCO and the four DISCOMs of the erstwhile State of Andhra Pradesh had a Power Purchase Agreement dated 30.12.2010 regarding the sale of power generated from 2 X 25 MW Nagarjuna Sagar Tail Pond Dam Hydro Electric Scheme and the same was submitted to the erstwhile APERC for consent on 5.01.2011. The Commission returned the Power Purchase agreement on 23.08.2014 with a direction to make required amendments in line with Regulation 1 of 2008. The project which is located in the territory of the State of Andhra Pradesh had a capacity test on 05.01.2017 for unit-1 and on 28.01.2017 for unit-2. The Commercial Operation dates were declared by the respondent on the same dates and the Amended and Restated Power Purchase Agreement was communicated by the respondent on 7.04.2017. The Andhra Pradesh Power Coordination Committee in its meeting dated 19.06.2017 approved the agreement and accordingly the petitioners entered into an amended and restated agreement with the respondent on 02.08.2017. The Commercial Operation date was reckoned with effect from 29.01.2017. Hence, the long-term Power Purchase Agreement dated 2.08.2017 may be approved and any other appropriate orders may be passed.

3. The Amended and Restated Power Purchase Agreement dated 2.08.2017 dealt with generation tariff in Article-3 and Annexure-1 to the agreement, gave cost estimate upto the commercial operation date of the project and it was clearly specified in the note that the final project cost approved by APERC will be taken into account for tariff purpose.

4. After the petition was taken on file, a public notice was given inviting views/suggestions/objections of interested persons / stake holders and the public notice was placed on the websites of the Commission and the petitioners.

5. Sri M. Venugopala Rao, Senior Journalist and Convenor, Center for Power Studies, Sri Ch. Narasinga Rao, CPI (M) State Secretariat Member, Sri A. Punna Rao, Sri B. Tulasidas and Sri Penumalli Madhu, State Secretary, CPI (M), in identical objections stated that the respondent took more than six (6) years to declare the Commercial Operation Dates (COD) of the two units of the project and the project was selected through a memorandum of understanding. The capital cost was stated to be Rs. 279.24 Crores (provisional). The Commercial Operation dates of the two units were not within the stipulated period as per the applicable regulations and standard practices. The delay in declaration of the Commercial Operation Dates should be determined based on the applicable regulations. Interest during construction (IDC), financing charges (FC), overheads and price escalation etc. after the scheduled COD are linked with such delay and should be disallowed. The additional expenditure and increase of cost due to the failure of the respondent and its contractors should be disallowed. The amount of liquidated damages to which the DISCOMS are entitled from AP GENCO due to such delay should be determined and deducted from the Capital Cost. The reasons for the delays, the responsibility for the same, claims of insurance or liquidated damages or penalties have to be examined with reference to the terms and conditions of the contracts and determined. As per Article 10.8 of Regulation 1 of 2008, capital expenditure after one financial year from the applicable COD should not be admitted by the Commission. The guiding principles laid down in the tariff regulations of Central Electricity Regulation Commission (CERC) of 2014 should be followed. The provisional capital cost works out to Rs. 5.58 Crore/MW and seems to be higher. The objectors gave instances of the CERC and TSERC reducing the

impermissible components of claimed capital cost and the objectors therefore requested that the Commission may determine the permissible capital cost and then the tariff based on the regulations of itself and CERC whichever are in the interest of the consumers at large.

6. The petitioners in their replies to the said objections stated that the present public hearing is only for consent to the Power Purchase Agreement and not for tariff for the project. The objections relating to the same need to be gone into in a tariff application to be filed by the APGENCO. There is no provision for liquidated damages in any of the Power Purchase Agreements entered into by the APDISCOMs with Central and State PSUs. Still they will be bound by the directions of the Commission in this regard.

7. The respondent did not file any pleading. The objectors also did not make any oral submissions or further submissions after the responses of the petitioners for which a reasonable opportunity was given by the Commission on three dates of hearing.

8. It is the function of the State Commission under Section 62(1) (a) of Electricity Act, 2003, to determine the tariff for supply of electricity by a generating company to a distribution licensee and under section 86(1) (b) to regulate electricity purchases and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies through agreements for purchase of power for distribution and supply within the State. Section 185(3) of the Electricity Act, 2003 makes the provisions of the Andhra Pradesh Electricity Reform Act, 1998 applicable to the State of Andhra Pradesh to the extent not inconsistent with the provisions of the Electricity Act, 2003. Section 21(5) of the Andhra Pradesh Electricity Reform Act makes any agreement relating to any transaction of the nature described in subsections (1) to (4) of the provision void, if they are made without or not subject to the consent of the Commission.

9. The Andhra Pradesh Electricity Regulatory Commission made Regulation 1 of 2008 governing the terms and conditions for determination of tariff for supply of electricity by a generating company to a distribution licensee and purchase of electricity by distribution licensees, under sections 61, 62, 86(1)(b) and 181 of the Electricity Act, 2003. Sections 61, 62 and 64 of the Electricity Act, 2003, section 21 of the Andhra Pradesh Electricity Reform Act, 1998 and Regulation 1 of 2008 together provide a consolidated and self-contained statutory background for the determination of tariff. Regulation 1 of 2008 clearly defines capital cost as the capital expenditure admitted by the Commission for determination of tariff and the tariff shall be determined on an application for the purpose after due publication inviting objections / suggestions from the public and after conducting a public hearing. The regulation also provides in clause 8.3 proviso for recovery of any excess amounts collected than the tariff determined by the Commission. Clause 10 in Part-II of the Regulation makes the norms specified by the CERC Regulations also relevant and the Regulation lays down in great detail all the factors to be taken into account in determining the tariff.

10. The present Power Purchase Agreement submitted for approval in Article-3 extracts in general all the ingredients referred to in Regulation 1 of 2008 and it was specifically stated to be as per prevailing APERC Regulations. Approved Capital cost was specified to be the completed cost or additional project cost approved by the APERC and the Capital cost was defined as the capital expenditure of the project or its unit or stage as admitted by the Commission for determination of tariff and as already stated, the note to Annexure-1 clearly states that the final project cost approved by the Commission will be taken into account for tariff purposes. Thus, it is clear that the Power Purchase Agreement itself does not determine the tariff which is obviously left for determination in an appropriate application under Regulation 1 of 2008.

11. If so, the point for consideration is whether the points raised by the learned objectors make the approval of the agreement not open to consideration at this stage.

12. The crux of the objections raised by the learned objectors is the long delay involved before the Commercial Operation Dates of both the units of the project were declared which has an inflationary effect on the capital cost of the project and which makes the components of IDC, FC, price escalation, increase in overheads, increase in cost of contract, increase in any other cost in any other form etc. liable to be disallowed or reduced. Such delay also raises the question of liquidated damages or fixing of responsibility or insurance claims or penalties etc. But all these, even according to the learned objectors, are with reference to Regulation 1 of 2008 and the tariff regulations of CERC relating to the determination of tariff. Even their request is to determine the permissible capital cost and then the tariff as per regulations in the interest of power consumers. As and when an application for determination of tariff is made concerning this power purchase agreement and this power project, all these relevant issues raised by the leaned objectors will be definitely considered on merits in accordance with law. As and when such an application for determination of tariff were to be filed before this Commission, the entire record in this petition be also placed before the Commission by the office of the Commission for consideration. Subject to the same, no other factual or legal hindrance appears to adversely affect the Power Purchase Agreement in question and this agreement between the three entities which are wholly owned by the Government of Andhra Pradesh has to be approved.

13. Accordingly, the amended and restated Power Purchase Agreement between the respondent and the petitioners for sale of power from Nagarjuna Sagar Tail Pond Hydro Electric Station (2 X 25 MW) dated 2nd day of August, 2017 is approved subject to the determination of tariff in accordance with law on merits as and when an application for such determination is made before this Commission. The Power Purchase Agreement in general

and Article-3 and Annexure-1 thereof in particular shall be subject to the Orders that may be passed in such application for determination of tariff.

14. This petition is ordered accordingly. No Costs.

This order is corrected and signed on this the **7th day of April, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman