



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

WEDNESDAY, THE FIRST DAY OF AUGUST TWO THOUSAND EIGHTEEN

:Present:

Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member

I.A.No.15 of 2018 in O.P.Nos.60 & 61 of 2017

Between:

1. Southern Power Distribution Company of A.P. Limited
2. Eastern Power Distribution Company of A.P. Limited ... **Petitioners/Applicants**

A N D

M/s. Spectrum Power Generation Limited ... **Respondent/Respondent**

This Interlocutory Application has come up for hearing finally on 07-07-2018, in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioners, Sri Ch. Pushyam Kiran & Sri M. Naga Deepak, learned counsel for the respondent, Sri M. Venugopala Rao, Senior Journalist & Convener, Centre for Power Studies, Sri S. Prathap, Technical Secretary, APSEB Assistant Engineers' Association and Dr. S. Chandra Mouli, President, APSEB Engineers' Association, learned objectors. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties and the learned objectors, the Commission passed the following:

ORDER

An Interlocutory Application under Section 62 (1) and 86 (1) (b) of the Electricity Act, 2003 read with clause 55 of the Andhra Pradesh Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 for an interim order permitting both the distribution licensees of the State of Andhra Pradesh to procure power from the respondent at the tariff approved by the Commission in its order dated 29-11-2017 as a short term purchase with a single part tariff of Rs.3.31 / kWh during the first quarter of the FY 2018-19.

2. The petitioners stated that their Power Purchase Agreement with the respondent expired on 18-04-2016 and the proposal of the respondent for renewal of the Power Purchase Agreement for 15 years is pending with the State Government for permission. At present, both the distribution licensees are procuring power from the respondent as short term purchase based on the order of the Commission in I.A.No.8 of 2017 in O.P.Nos.28 & 29 of 2016 dated 29-11-2017. In anticipation of the positive permission from the State Government, the availability of power from the respondent was estimated at 697 MU, at a fixed cost of Rs.1.63 / kWhr and a variable cost of Rs.2.39 / kWhr (pass through based on gas price) in the ARR for FY 2018-19. Hence, the Application.

3. A public notice of the Interlocutory Application was hosted on the web site of the Commission inviting views / objections / suggestions of interested persons / stakeholders and Sri M. Venugopala Rao, Senior Journalist & Convener, Centre for Power Studies, Sri Penumalli Madhu, State Secretary, Communist Party of India (Marxist) and Sri Ch. Narasinga Rao, State Secretariat Member, Communist Party of India (Marxist) in identical objections stated that the distribution companies are seeking the consent of the Commission for purchase of power without any Power Purchase Agreement or public hearing or Commission's consent. The approvals by the Commission in the tariff order for 2018-19 in spite of objections of the objectors was stated to be questionable and detrimental to larger consumer interest for the various reasons stated in the objections. Having projected the availability of power from the respondent, Godavari Gas Power Plant and Lanco Kondapally and despite the fact that the Commission in the tariff order for 2018-19 had already given its approval for purchase of power from Spectrum Power Generation Limited for 2018-19 with a variable cost of Rs.2.39 per kWh and a fixed cost of Rs.0.92 per

kWh, it is not known as to why the subject Application was again filed. While seeking approval for purchasing power from Godavari Gas Power Plant etc., if the distribution companies are indicating their requirement only for the first quarter, the Commission has to amend its tariff order accordingly. If so, approval of purchase of power from the respondent for the entire year is blunder. Without making the information about the need for purchasing power in spite of surplus and the details of working out the fixed cost available, public hearing is a hollow formality and therefore the objectors may be provided an opportunity to make a further study of this information and make further submissions.

4. The APSEB Assistant Engineers' Association in its objections stated that there is no need for short term purchase from the respondent, which levies excess burden on the consumers and increases the power procurement cost. AP Genco thermal power plants which are public assets are underutilized and the distribution companies should submit the data to the Commission that the short term power purchase permitted in I.A.No.8 of 2017 in O.P.Nos.28 & 29 of 2016 did not impose any additional burden on the distribution companies or the consumers. Instead of paying power procurement cost of Rs.230.84 crores to the respondent unnecessarily, the distribution companies can buyout this project, which is more beneficial to the consumers. Hence, the Association sought for dismissal of the Application.

5. The APSEB Engineers' Association filed its objections stating that for the reasons stated by them, the approvals given by the Commission in the tariff order for 2018-19 are detrimental to larger consumer interest due to imposition of avoidable fixed cost and grant of higher fixed charges than at the time of expiry of the Power

Purchase Agreements to the respondent and Lanco without any data. If Hinduja National Power Corporation Limited gets an order from the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court for purchase of power by the distribution companies and the distribution companies also entered into Power Purchase Agreements with Lanco and the respondent in haste, the same will be a further burden on the consumers. Fixed cost component of GMR Vemagiri is much less and it has more efficient machines. The existing gas supplies of Lanco and the respondent may be hence diverted to GMR Vemagiri which saves about Rs.0.26 ps per unit. Hence, the distribution companies may be advised to go for competitive bidding to procure power through exchange. To protect AP Genco and the consumers, no power may be procured from Lanco and the respondent.

6. The petitioners in their response stated that the lowest price discovered by the distribution companies in a recent e-bidding process of the Government of India is Rs.4.98 / kWh, which is substantially more than the per unit prices of Lanco and the respondent. Lanco, Godavari Gas Power Plant and the respondent plant are one of the cheapest sources of power and no fixed charges have been proposed for deemed generation. Apart from the cost benefits, operational flexibility and grid balancing, safety and stability are in favour of the gas plants and the fixed charges payable as per the tariff order for FY 2018-19 are lesser than the fixed charges at the time of expiry of the Power Purchase Agreements. No Power Purchase Agreements with the respondent or Godavari Gas Power Plant are filed before the Commission and the availabilities from these plants were approved after public hearing in a transparent manner at several places. The questions raised were already considered by the Commission in its retail tariff order. The grid planning becomes easier with these gas plants as against the exchanges where the prices

vary widely. Andhra Pradesh has a share of 46.11% only in GMR Vemagiri, while in Lanco and the respondent plants, its share is cent percent. Any diversion of gas leads to uncertainty.

7. Sri M. Venugopala Rao in his further submissions dated 02-06-2018 stated that each transaction of power purchase is to be seen separately and though the distribution companies did not provide the relevant information relating to fixed cost, the Commission did not get the information leading to lack of transparency in the regulatory process. The Commission simply took into account the fixed charges proposed by the distribution companies. In all fairness, only the fixed charges that were applicable at the time of the expiry of the Power Purchase Agreements should be continued. Gas based power plants are run as base load plants and not peak load stations. Fixed charges for deemed generation were already included in the inflated fixed charges in spite of the directions of the Commission. The learned objector made elaborate submissions on undesirable approach of the distribution companies, imprudence of Power Purchase Agreements, dangers of Hinduja National Power Corporation Limited, not finalizing long term load forecast, mutually contradictory observations of the Commission etc., the Commission is therefore requested to modify its consent given in the tariff order for 2018-19 permitting the distribution companies to purchase power from the respondent only for the first quarter of 2018-19 reducing the fixed charges on par with the fixed charges applicable at the time of expiry of the Power Purchase Agreement, with no provision for deemed generation.

8. The APSEB Assistant Engineers' Association also filed further submissions on 02-06-2018. The claims of the distribution companies about the power purchase cost of Krishnapatnam and RTPP-IV are unjustified and in fact the buyout of the

project of the respondent is the best option. Any analysis of advantages on renewal of the Power Purchase Agreement with the respondent is unavailable and the distribution companies shall place before the Commission as ordered in I.A.No.8 of 2017 material to show that there was no additional burden due to these purchases. The power procurement cost on Rs.230.84 crores due to the respondent is an unnecessary burden and liability and the buyout of the project would be more beneficial to the consumers.

9. APSEB Engineers' Association in its further objections dated 01-06-2018 stated that the State has surplus power of 7829.03 MU and in case of this purchase, the distribution companies have to pay an additional fixed cost of Rs.1.02 to SDSTPS. The meagre generation of power from the respondent cannot meet the variations in renewable energy and there is no need to procure power from the respondent, if power has to be procured from Hinduja National Power Corporation Limited.

10. The petitioners filed their response to these objections also stating that at the time of expiry of the Power Purchase Agreement, per unit fixed charges for the respondent is Rs.1.91/ kWh and the fixed charges are very much less compared to per unit price paid to the generators at the time of expiry of the Power Purchase Agreements. There is no gas availability to GMR Vemagiri, Konaseema, GVK Extension and Gauthami plants. No fixed charges are being paid to the respondent and Andhra Pradesh State Load Despatch Centre has a chance to dispatch the energy on merit basis only.

11. The point for consideration is whether the petitioners have to be permitted to procure power from the respondent at the tariff approved by the Commission by an order dated 29-11-2017 during the first quarter of 2018-19 also ?

12. I.A.No.8 of 2017 between the two distribution licensees of Andhra Pradesh, the respondent and M/s. Lanco Kondapalli Power Private Limited was an Interlocutory Application for grant of approval for procurement of power from the 1st and 2nd respondents therein and M/s. Godavari Gas Power Plant during 2017-18. The objectors herein were the objectors therein also. In a detailed order on merits in accordance with law, the Commission observed that if procurement of power from the respondent and Lanco were to be cheaper to the distribution companies notwithstanding any liabilities towards persons having Power Purchase Agreements with them, the same is ex-facie beneficial both to the distribution licensees and the consumers and hence, it concluded that if appropriate conditions are imposed, the procurement of power for FY 2017-18 from these generations can be permitted while leaving open various questions raised outside the scope of the Interlocutory Application to be determined in appropriate proceedings. The distribution companies were permitted to procure power from the respondent herein at a single part tariff of Rs.3.31 per unit during that financial year, strictly following the principle of merit order dispatch and the distribution companies shall not be liable for any obligation to pay any fixed charges or penalty or otherwise, if they do not purchase power from these three gas power plants. It was also directed that there shall be no payment of fixed charges for deemed generation and no reworking of the fixed charges based on actual generation in respect of these short term purchases. Further, the distribution companies were directed to place before the Commission within two months on expiry of the financial year 2017-18 material to substantiate that these short term purchases did not impose any additional burden on the distribution companies or the consumers due to any payment to any generators permitted in the merit order dispatch due to these short term purchases.

13. In the retail sale tariff order for FY 2018-19, the Commission dealt with the objections from different persons against the purchase of power from Lanco and the respondent and the distribution companies in their response to the objections further pointed out about the gas getting diverted to Andhra Pradesh Gas Power Corporation Limited if power from these stations is not procured resulting in loss of revenue to the distribution companies from their industrial consumers and that they projected procurement of power from the respondent in the Aggregate Revenue Requirement for FY 2018-19. These aspects were kept in view by the Commission. The Commission considered the possibilities of supply from the respondent, Godavari Gas Power Plant and Lanco as filed by the licensees though power purchase from these plants was earlier permitted upto March, 2018 only, restricting to the present cheaper tariff. However, in case of generating stations included in the sources of supply with no Power Purchase Agreements existing or approved, prior intimation to and prior approval of the Commission was stated to be necessary before receiving any supply of power. As against the higher figures projected by the distribution companies, the Commission only considered the unit rate of Rs.3.31 for the respondent, which the respondent itself offered through a Memo dated 25-10-2017 filed before the Commission in I.A.No.8 of 2017. The unit rate was split into a variable cost of Rs.2.39 per unit and a fixed cost of Rs.0.92 per unit for consideration of the merit order dispatch.

14. The present request of the distribution companies for procurement of power from the respondent is in tune with what the Commission has permitted in I.A.No.8 of 2017 extended further to FY 2018-19 by the retail sale tariff order dated 27-03-2018. It is true that the Interlocutory Application was filed even ahead of the retail supply tariff order but the same fits in with the direction of the Commission not

to receive supply of power without prior intimation to and prior approval of the Commission in cases where there is no approved Power Purchase Agreement. Condition of prior intimation is satisfied and it is stated that the distribution companies are procuring power from the project as permitted under the retail supply tariff order of FY 2018-19 pending approval of the Commission and as the matter is pending consideration of the Commission, the petitioners cannot be presumed to have committed any wrong in receiving supply as an act of court i.e., pendency before it should not prejudice rights of either party. In fact, the Commission is now presented with a fait accompli with the first quarter of FY 2018-19 having already expired and the purchase for that period having already been made. The bulk of the objections of the objectors are against the merits of the order in I.A.No.8 of 2017 and the retail supply tariff order of FY 2018-19 and the Commission is disabled from going into the merits of those contentions all over again, as this cannot be converted into a petition for review or appeal and those two orders have become final in the absence of any challenge before any appropriate forum till now. While any changes in allocation of gas or diversion of supplies of gas is not within the purview of this Commission, the statements made by the distribution companies about 100% energy from the respondent being available to Andhra Pradesh, bidding through e-bidding portal of the Government of India resulting in substantially higher price, the respondent being one of the cheapest sources of power, the fixed charges now arrived being much less than the fixed charges at the time of expiry of the Power Purchase Agreement, there-being no fixed charges for deemed generation, this purchase being more conducive to grid planning, the non-payment of any fixed charges to the respondent for energy not dispatched etc., can be believed to have been made responsibly. There is no ex-facie reason to suspect or reject them. It is

true that in the final objections of Sri M. Venugopala Rao and APSEB Engineers' Association, again questions were raised about the proposals of the distribution companies and the orders of the Commission but as already stated, the earlier orders in I.A.No.8 of 2017 or the retail supply tariff order for FY 2017-18 cannot be reopened in this Interlocutory Application. That apart, in the orders dated 30-06-2018 in I.A.No.14 of 2018, a similar situation ended in favour of procurement of power from Godavari Gas Power Plant during the first quarter of FY 2018-19 but, of-course the said plant is owned by the distribution licensees themselves. In the present application also, the request for relief is only in respect of first quarter of FY 2018-19 and Sri M. Venugopala Rao in his objections dated 02-06-2018 himself has suggested that the permission given in the tariff order for FY 2018-19 may be restricted to first quarter of 2018-19 reducing the fixed charges to the level at the time of expiry of the Power Purchase Agreement with no provision for deemed generation. The petitioners as already stated, asserted that the fixed charges are less than earlier and there is no provision of deemed generation.

15. However, the various conditions imposed while permitting procurement of power from this respondent and two others in I.A.No.8 of 2017 on 29-11-2017 concerning submission of information did not appear to have been complied with so far. The distribution companies were specifically directed to place before the Commission material to substantiate absence of any additional burden due to these purchases within two months of expiry of FY 2017-18. The office of the Commission, on verification, informed that no such material has been filed so far.

16. Therefore, the applicants are permitted to procure power from the respondent at a single part tariff of Rs.3.31 per kWh during the first quarter of FY 2018-19 consisting of variable cost of Rs.2.39 and fixed cost of Rs.0.92 per unit. However, such short term procurement of power shall be strictly following the principle of merit order dispatch and the applicants shall not be liable for any obligation to pay any fixed charges or penalty or otherwise, if they did not purchase power from the respondent. There shall be no payment of fixed charges for deemed generation and no reworking of fixed charges based on actual generation in respect of these short term purchases from the respondent. The applicants shall, within a month from now place before this Commission material to substantiate that the short term purchases in pursuance of the orders in I.A.No.8 of 2017 in O.P.Nos.28 & 29 of 2016 dated 29-11-2017 and the order on tariff for retail sale of electricity during FY 2018-19 dated 27-03-2018 did not impose any additional burden on the distribution licensees or the consumers due to any payment to any generators permitted in the merit order dispatch due to these purchases. In default of furnishing of any such information, permission granted herein and earlier in respect of the respondent, M/s. Lanco Kondapalli Power Private Limited and Godavari Gas Power Plant will be open for reconsideration *suo-motu* by the Commission, if it so decides on merits. The Interlocutory Application is ordered accordingly. No costs.

This order is corrected and signed on this the **1st day of August, 2018.**

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman