



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

O.P. No.14 of 2017

Date: 24-02-2018

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

Between:

M/s. Tirumala Cotton & Agro Products Pvt. Ltd.

... Petitioner

A N D

1. State Load Dispatch Centre

2. Southern Power Distribution Company of Andhra Pradesh Ltd. ... Respondents

This Original Petition has come up for hearing finally on 03-02-2018 in the presence of Sri Challa Gunaranjan, learned counsel for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

ORDER

A petition to direct the respondents 1 and 2 to allow scheduling to wheel the banked energy of the petitioner generated from its wind project near Vajrakaroor, Uravakonda Mandal, Anantapur District from the date of synchronization i.e. 31-03-2015 to 22-06-2015 to its scheduled customers in Service Connection Nos.GNT-740 and GNT-491 and to permit the petitioner to wheel the energy accordingly and to pass other appropriate orders.

2. The case of the petitioner is that it is an incorporated company, engaged in manufacture and sale of cotton and agro products, with wind power plants at various places in the State of Andhra Pradesh for its captive consumption. The petitioner intended to use the power generated from its power plant located at Uravakonda to its two manufacturing units at Timmapuram, Guntur District and made an application on 23-03-2015. After due process, Long Term Open Access Agreement dated 22-06-2015 was entered into with the 2nd respondent / Distribution Company for wheeling 0.5 MW and 0.3 MW to the 2 unit Nos. HTSC-GNT-740 & 491 respectively for 20 years. The Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code) Regulation, 2006 was amended by Regulation 2 of 2016 with effect from 05-01-2016 providing for energy banking in accordance with the Andhra Pradesh Solar Power Policy and the Andhra Pradesh Wind Power Policy, 2015. The incentives operate during the operative periods of the policies and energy injected into the grid from the date of synchronization to the Commercial Operation Date will be considered as deemed energy banking and the unutilized banked energy shall be considered as deemed purchase by the Distribution Company at the pooled power purchase cost determined by the State Commission. The energy settlement had to be done on monthly basis and the amending Regulation 2 of 2016 came into force retrospectively with effect from 13-02-2015. The terms and conditions of clauses 2 and 3 of Appendix-3 to Regulation 2 of 2016 mention the terms and conditions in this regard and the petitioner's wind power plant was synchronized on 31-03-2015 and Long Term Open Access Agreement was concluded on 22-06-2015. 5,50,280 units generated between 31-03-2015 and 23-06-2015 have to be considered as deemed banked energy governed by clause 3 and the petitioner requested the 1st respondent for adjusting 5,41,580 units in the bill

to be made on 05-12-2016 for the petitioner's consumption for the two connections in GNT-491 and GNT-740. The 2nd respondent addressed the 1st respondent on 16-02-2016 informing that the net generation after deducting 2% banking charges was worked out for the period at 5,23,447 units, which was requested to be adjusted to the petitioner's scheduled consumers. The 1st respondent did not adjust the same in the Open Access Settlement dated 19-12-2016 and 20-01-2017, which is against the Regulation No.2 of 2016. The petitioner addressed a letter dated 21-01-2017 to the 1st respondent and the 1st respondent did not respond. The petitioner approached the office of the 1st respondent and he was informed that schedule cannot be allotted to him and that as per clause 3.d of Appendix-3 of the Regulation 2 of 2016, the energy banked between 1st April to the end of 31st January of each financial year shall be deemed to have been purchased by the distribution companies, when it remained unutilized. The petitioner could not utilize the deemed banked power before 31-01-2016 and as per the conditions of Regulation 2 of 2016, the generator could not have been able to communicate any withdrawal schedule ten days before the commencement of monthly billing cycle. Regulation 2 of 2016 will fulfill its objective only when deemed banked energy is permitted to be wheeled and as Regulation 2 of 2016 was issued only on 05-01-2016 with retrospective effect, the energy generated during the period from 01-04-2015 could not have been utilized by scheduling. Therefore, the petitioner desired that appropriate directions under clause 15 of Regulation 2 of 2016 be issued to the respondents, permitting the petitioner to wheel the deemed banked energy as a onetime measure. Hence, the petition.

3. The 1st respondent / Distribution Company filed a counter stating that Appendix-3 of Regulation 2 of 2016 is relevant and the 1st respondent did not

respond to the 2nd respondent nor did it allot any schedule to the petitioner to wheel the deemed banked energy. However, the Chief General Manager concerned in a letter dated 04-02-2017 stated that the petitioner is eligible for sale of deemed banked energy to the 2nd respondent at pooled cost as per the Regulation. Hence, the deemed banked energy from 31-03-2015 to 22-06-2015 should be utilized before 31-01-2016 and otherwise the energy banked from 1st April to the end of 31st January of each financial year shall be deemed to be purchased only as per Regulation 2 of 2016. Hence, the 1st respondent desired the petition to be dismissed with costs.

4. The 2nd respondent filed a counter stating that it has accorded the approval to the petitioner for Long Term Open Access and as per Regulation 2 of 2016, the Appendix-3 governs the terms and conditions for banking facility. The petitioner requested for adjustment of deemed banked energy generated between 31-03-2015 and 22-06-2015 as per Regulation 2 of 2016. The net generation after deducting 2% banking charges is worked out on actual meter readings as 5,23,447 units and the deemed banked energy, which accumulated was not utilized by the petitioner, by the end of January, 2016. The petitioner is eligible for the sale of deemed banked energy only at pooled cost and it was advised to submit its invoice to the General Manager, APPCC for arranging payment. Hence, the 2nd respondent desired the petition to be dismissed with costs.

5. The petitioner filed a reply affidavit to the counter affidavits filed by respondents 1 & 2 claiming that the Chief General Manager of the 2nd respondent is stated to have addressed the petitioner on 04-02-2017 that the petitioner is eligible for sale of deemed banked energy at pooled cost as per the Regulation, but no such letter was received by the petitioner. In fact, the 2nd respondent issued a letter dated

16-12-2016 to the 1st respondent in accordance with the petitioner's letter and Regulation 2 of 2016. When Regulation 2 of 2016 was issued on 05-01-2016 only applying for a schedule ten days prior to the billing month did not arise and the Regulation which encourages NCE power plants will fulfill its objective only when deemed banked energy is permitted to be wheeled. Hence, the petitioner may be permitted to wheel the energy.

6. The point for consideration is whether the petitioner is entitled to wheel the deemed banked energy from 31-03-2015 to 22-06-2015 to its scheduled consumers or receive only pooled cost for the said quantum of energy?

7. The admitted facts are contained in the letter of Chief General Manager of the 2nd respondent to the Chief Engineer of the 1st respondent dated 16-12-2016, wherein the net generation after deducting 2% banking charges during the period from 31-03-2015 to 22-06-2015 was called as deemed banked energy units and quantified at 5,23,447. The said quantity of energy was requested by the 2nd respondent to be adjusted by the 1st respondent. The 2nd respondent in its counter stated that the generator did not utilize the accumulated deemed banked energy by the end of January, 2016 as prescribed by Appendix-3 clause 3.d of Regulation 2 of 2016. The 1st respondent also relied on the said clause and further clause 3.f of the said Appendix-3 under which such unutilized banked energy was directed to be considered as deemed purchase by the Distribution Company at the pooled power purchase cost applicable for that financial year as determined by the Commission under relevant Regulations. Whether the letter dated 04-02-2017 from the 1st respondent to the petitioner as stated in the counter of the 1st respondent was received by the petitioner and the 2nd respondent or not, the provisions of Regulation

2 of 2016 in Appendix-3 clauses 3.d and 3.f are not in dispute and significantly Appendix-3 or clause 3 do not appear to have bestowed any attention to the difficulty arising due to the retrospective effect given to Regulation 2 of 2016. No enabling provision has been made to overcome the physical impossibility for the generator to apply for fixing a schedule and wheeling of energy in respect of energy generated during and before January, 2016. Though it is true that the Regulation is intended to promote Non-Conventional Energy, even the pleadings in the petition clearly show that unless the power conferred by clause 15 of Regulation 2 of 2016 is taken recourse to, the Regulation as it stands does not enable any consideration of the request of the petitioner. Clause 15 deals with difficulties in giving effect to any of the provisions of the Regulation but if no provision is made in the Regulation regarding a particular contingency, it cannot be construed to be a difficulty in giving effect to any provisions of the Regulation. The omission in this regard, whether conscious or not, does not enable the petitioner or the Commission to supply any new provision for giving a benefit to the generator which was not provided for by the Regulation. If clause 15 has no application, it is obviously the Appendix-3 clause 3.f of Regulation 2 of 2016 that applies to this case. If so, as per the calculation furnished by the learned Standing Counsel for the 2nd respondent, the amount payable to the petitioner comes to Rs.18,00,658/- @ Rs.3.44 ps per unit for 5,23,447 units generated during the relevant period. That leads to a difference of Rs.11,72,521/- as the petitioner would have got Rs.29,73,179/- if permitted to adjust deemed banked energy @ Rs.5.68 ps per unit. However that becomes inevitable in view of the specific language of the governing Regulation, the inapplicability of clause 15 of Regulation 2 of 2016 and the absence of any scope for invoking any other inherent power or jurisdiction for permitting the petitioner's prayer as it stands. As the

quantum of energy generated during the relevant period which remained unutilized as well as the pooled cost are not in dispute, the petitioner should be entitled to Rs.18,00,658/-. As the 2nd respondent is not responsible for non-payment of the pooled cost for the energy generated during the relevant period and as the 1st respondent is not responsible for the payment, it will be just and equitable to direct the parties to bear their own costs and no request was made for grant of any interest, which therefore was not considered.

8. Therefore, the petitioner is entitled under Appendix-3 clause 3 proviso to (f) of Regulation 2 of 2016 / Regulation 2 of 2006 [Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code) Regulation 2 of 2006] to Rs.18,00,658/- (Rupees eighteen lakhs six hundred and fifty eight only) from the 2nd respondent towards 5,23,447 units @ Rs.3.44 ps per unit generated during the relevant period and the Original Petition is allowed accordingly in favour of the petitioner against the 2nd respondent, without costs.

This order is corrected and signed on this the **24th day of February, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman