

Record of Proceedings dated 18.09.2020

O. P. No. 57 of 2018

&

I. A. No. 32 of 2018

M/s. Gayatri Power Pvt. Ltd. Vs. TSSPDCL.

Petition filed Seeking determination of the tariff for 2.2 MW Mini-hydel power project at Rs. 5/- (Levelized for 25 years).

I. A. filed seeking interim tariff at Rs. 4.50 ps. per unit pending disposal of the petition.

Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Mohammad Bande Ali, Law Attachee TSSPDCL for the respondent have appeared through video conference. The counsel for the petitioner reiterated the facts of the case. He has highlighted the various letters that were communicated between the parties in respect of entering into PPA. Also he has stated that the Commission accorded consent to the petitioner's PPA, which has been sought by the DISCOM and simultaneously when the petitioner requested for determination of the tariff by the Commission, it had informed him to initiate proceedings by filing a proper petition in accordance with the regulations. The petitioner had established the project in the year 2014 and had been undertaking supply of power to third parties through exchange. The project is governed by the normatives as fixed by the CERC. In the absence of generic tariff determination by the Commission, the petitioner is at a loss in undertaking supply of power to the DISCOMs. The above situation forced the petitioner to undertake sale of power to third parties through exchange. There are few projects of hydel generation in the state of Telangana. The project is established under 100% equity without there being debt component in the capital cost. The Commission is required to determine the tariff for the project for finalizing the PPA. The Commission did not undertake the determination of generic tariff and in the absence of the same the PPA is not finalized by the TSSPDCL.

The Commission may undertake determination of generic tariff for the hydel projects, however, the same may not be beneficial to the petitioner as such generic tariff would be prospectively applicable and not retrospective. At the most, the tariff may be applicable as reckoned from the year of operation.

The representative of the licensee stated that it is a fact that they have signed draft power purchase agreement and also obtained consent of the same, but by that time the licensee signed the PPA, it had already exceeded the percentage of energy required to be procured from renewable sources of energy. The percentage applicable at that time was 5% of the total consumption of the distribution licensee. Since the licensee had already exceeded the quantum of power procured from renewable sources, the PPA was not proceeded with. Also according to the petitioner, the project does not involve debt component as has been envisaged in the CERC regulation applicable for 2014-2019 on renewable energy sources. Thus also the PPA was not proceeded with. At present, the licensee is not interested to procure power as the petitioner is not suffering any loss, since it is selling its power in the exchange.

The counsel for the petitioner emphasized the fact that at present the Commission has fixed only the minimum percentage required to be procured from renewable source of energy and it does not restrict the licensee from procuring higher capacity over and above the minimum percentage. The Act, 2003 as well as the National Tariff Policy, 2016 mandate the Commission to encourage renewable sources of energy. The Commission may consider the determination of the project specific tariff in the absence of generic tariff for hydel projects. Eventhough, the National Tariff Policy, 2016 mandates procurement of renewable sources other than MSW through competitive bidding route, no guidelines have been issued by the Government of India. As such, the petitioner is entitled to the relief of determination of tariff.

The Commission observed that it will undertake the determination of project specific tariff through public hearing mode and then based on such decision, this petition will be decided applying the said parameters. Hence, the matter is adjourned without any date.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. No. 19 of 2020
&
I. A. No. 13 of 2020

M/s. Ener Sol Infra Pvt. Ltd. Vs TSSPDCL & TSTRANSCO

Petition filed seeking directions to the licensee for grant of approval of tripartite agreement for 2 MW solar power project for third party sale of energy synchronized to licensee's grid.

I. A. filed seeking directions to the respondents to enter into the tri-partite agreement dated 18.07.2018 for approval placed before them pending disposal of the petition.

Sri. P. Srinivasa Rao, Advocate for the petitioner and Sri. Mohammad Bande Ali, Law Attachee TSSPDCL and Sri. G. Karunakar, SE (Commercial) TSTRANSCO for the respondents have appeared through video conference. The counsel for the petitioner stated that he reiterated all the facts of the case. He has highlighted the provisions in the regulation, as also the decisions rendered by the Hon'ble High Court in the matter of allowing open access under section 42 of the Act, 2003. The said judgments are also placed for perusal by the Commission during the course of hearing.

The counsel for the petitioner sought to controvert the submissions made in the counter affidavit filed by TSTRANSCO as SLDC and TSSPDCL. He stated that though approvals were obtained in 2018 itself and application for open access was made in July, 2018, without following the provisions of the Act and regulations, the nodal agency did not accord consent and signed the tripartite agreement even after lapse of two years and four months assuming that the window for the open access application stood closed in August, 2018 itself.

The representative of the 2nd respondent stated that he is not aware of the judgments rendered by the Hon'ble High Court and has not been put on notice about the same by the petitioner herein. No copies were made available enabling the respondent to advert to the same. Therefore, he sought time for making submissions on the basis of the judgments relied upon by the petitioner.

The counsel for the petitioner insisted on passing interim orders directing the respondents to enter into PPA. The representative of the licensee opposed the same. The counsel for the petitioner highlighted the plight of the petitioner stating

that in the absence of allowing the third party sale, the power generated has been injected into the grid and the same has been duly disposed of earning revenue. This was at the cost of petitioner not signing the tripartite agreement as also no consent was accorded to the same, yet, the project was connected to the grid. Therefore, he sought interim directions as prayed for and in the alternative to direct the licensee to pay the amount for the power already drawn by them. This relief is sought in the circumstances that banker has initiated proceedings under SARFAESI ACT 2002. In the event of the said Act being invoked, the petitioner will be put to irreparable loss and will be left with no other way except to close the company.

In the circumstances of the arguments while adjourning the matter, the Commission considered it appropriate to decide on the interim application and pass suitable orders.

Hence, the matter is adjourned.

Call on 25.09.2020 at 11.00 A.M.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. No. 20 of 2020

M/s. Navabharat Ventures Limited Vs TSTRANSCO & TSNPDCL

Petition filed Seeking exemption of the petitioner from RPPO in view of the consumption of power generated from its co-generation units through waste heat received from flue gases.

Sri. Challa Gunaranjan, Advocate for the petitioner and Sri. Y. Rama Rao, Advocate for the respondents have appeared through video conference. The counsel for the petitioner reiterated the facts of the case. The present request of the petitioner is to treat its waste heat management process as renewable source. The petitioner is a ferro alloy unit. Initially, the then APERC had notified the renewable power purchase obligation regulation in the year 2012 and defined the obligated entities, which would cover the petitioner also. The petitioner is entitled to seek exemption under the removal difficulties provision. This Commission had adopted the said regulation upon its constitution, however, the said regulation stood expired after 2017. Hence, this Commission undertook to frame fresh regulation and notified the same in Regulation No. 2 of 2018. The Commission provided for the minimum percentage of renewable

energy to be procured by the licensees. In doing so, while defining the obligated entities, did not make a distinction about obligated entities and source of generation in respect of cogeneration.

The counsel for the petitioner sought to rely on the decisions of the Hon'ble Appellate Tribunal for Electricity in the matters of Century Rayon Limited and others with regard to the definition of cogeneration. He also highlighted the directions of the Hon'ble ATE that all the Commissions are required to follow the directions of the Hon'ble ATE. It has also been stated that though the policy made specific definition about cogeneration, yet, the Hon'ble ATE sought to interpret the same in the context of section 86 (1) (e) of the Act, 2003. The petitioner sought to rely on a decision of the present APERC, which had followed the decisions of the Hon'ble ATE and classified certain consumers as renewable energy source generation entities. It has been held that since the provision is emphatic and clear, policy issued by the government has to be read in conjunction with the provision and therefore, the petitioner is entitled to the relief.

The counsel for the respondents stated that the regulation issued by the Commission is specific and clear without reference to cogeneration. The regulation does not also identify the process, which would constitute a cogeneration plant and therefore, the Commission is bound to follow the definition provided in this statute insofar as cogeneration is concerned. The judgments relied upon by the petitioner were prior to the National Tariff Policy, 2016. The National Tariff Policy, 2016 emphasized that all the entities have to comply with the RPPO and to that extent the Commission had made the regulation, which the petitioner is bound to follow. The petitioner's process cannot be termed as renewable energy source. The Commission may not undertake to give a finding on the process to treat it as renewable source. Decisions of the Hon'ble ATE and decision of the present APERC are not binding to this Commission as they stand on a different footing and contrary to the Act, 2003 as well as the policy notified under the provisions.

The Commission sought to know the process of heat generation and consequential energy production to satisfy itself about the petitioner falling into the definition of cogeneration. The counsel for the petitioner stated the same by drawing attention to the chart placed in the petition regarding the generation of power. He also sought to

emphasize the conclusions arrived at by the Hon'ble ATE in the recent judgment arising from Rajasthan.

The Commission observed that it will undertake public consultation with regard to the enforcement of the regulation on RPPO and while doing so, will consider all these aspects including classification of petitioner like consumers as renewable sources of energy. The counsel for the petitioner stated that the initiation proceedings with reference to SLDC enquiring about compliance or otherwise of the RPPO regulation may not be appropriate to tag this petition. This petition may be considered independently and whatever decision is taken in the public consultation will apply therein only. Having regard to the submissions, the matter is adjourned for consideration of the issue in a public hearing mode, without any date.

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman

O. P. (SR) No. 24 of 2020
&
I. A. (SR) No. 30 of 2020

M/s. L & T Metro Rail (Hyderabad) Ltd. Vs. TSSPDCL

Petition filed Seeking directions for deration of the CMD for the power supply availed in respect of its operations.

I. A. filed seeking directions to the respondents to enter into the tri-partite agreement dated 18.07.2018 for approval placed before them pending disposal of the petition.

Sri. Avinash Desai, Advocate for the petitioner and Sri. Mohammad Bande Ali, Law Attachee TSSPDCL for the respondent have appeared through video conference. The counsel for the petitioner stated that the petitioner has filed a rejoinder to the counter affidavit of the respondent. The representative of the respondent stated that they are not in receipt of the rejoinder filed by the petitioner. Therefore, he sought adjournment of the matter. The counsel for the petitioner has agreed to forward a copy of the rejoinder to the respondent and both parties sought adjournment. Accordingly the matter is adjourned.

Call on 25.09.2020 at 11.00 A. M

Sd/-
Member (F)

Sd/-
Member (T)

Sd/-
Chairman