

**Record of Proceedings dated 08.06.2018**

O. P. No. 2 of 2017

M/s. NSL Krishnaveni Sugars Ltd. Vs. TSDISCOMs

Petition filed seeking for determination of tariff for 28.2 MW bagasse based cogeneration project consequent to the directions to purchase power under long term PPA

Sri. K. Gopal Chowdary, Advocate representing Sri. Challa Gunaranjan, counsel for the petitioner alongwith Sri. N. Phani, Advocate and Sri. Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate are present. The counsel for the petitioner stated that the project has been established in the year 2011. The present petition is filed seeking determination of tariff of the power project established in the sugar plant. The present determination of tariff is limited to fixed cost of the power plant. The variable cost is being determined by the Commission from time to time and the same is applicable to the petitioner's project also as and when the fixed cost is determined.

The determination of fixed cost can be undertaken in two fold method choosing either of the ways as is prevalent in the sector at the time. The CERC had adopted the method of levelized tariff for the complete plant life. Whereas the erstwhile APERC adopted the  $n^{\text{th}}$  year tariff. Since the project had already completed 7 years of operation, the tariff determined in the  $n^{\text{th}}$  year model, if adopted, the 7<sup>th</sup> year tariff would be applicable. On the other hand, if the levelized tariff is fixed for the plant life, from the zero date itself the levelized tariff will be applicable and it has no reference to the year of operation or the year of tariff determination.

The counsel for the petitioner stated that the tariff for bagasse plants has not been determined on or after 2009. The tariff determination of bagasse plants took place only in the year 2004 and was valid upto 2009 only. This project is of the year 2011 and hence, the tariff determination of the project has to be specifically done. The tariff determination for the period 2004-2009 cannot be applied to the petitioner's project. It is also relevant to state that the said tariff was subject matter of appeals before the Hon'ble ATE and later the Hon'ble Supreme Court, was remanded back to the then Commission for redetermination, again became subject matter of appeal, again determination of normatives had been done by the Hon'ble ATE and remanded

back to the Commission for final tariff figures and such direction is also before the Hon'ble Supreme Court. Therefore, the same need not be applied to the present case.

The counsel for the petitioner stated that the regulations issued by the Central Commission provided for different parameters on several aspects of determination, however, the same stands to be of guidance to the Commission only. The counsel for the petitioner also pointed out the details of fixed cost and the capital costs involved thereof by the CERC. It is the case of the counsel for the petitioner that the project is part and parcel of the sugar plant and normally there will not be any separate accounting statement for the power generation equipment. These have to be figured out from the audited balance sheets and profit and loss account of the sugar plant. The petitioner has filed the statement of the auditor to the effect that the expenditure is with regard to sugar plant and the items regarding power project has been identified from the books of accounts of the sugar plant.

The counsel for the petitioner stated that as early as in the year 2013 the tariff was at Rs.4.49 per unit actually, whereas the CERC took it at Rs.3.87 per unit based on a capital cost of Rs.4.22 crores per MW. It is not correct on the part of the DISCOMs to contend that the tariff is not viable and as such they are not inclined to procure power even before the Commission has actually determined the tariff. The DISCOMs cannot presume the economic aspect of power generation hypothetically and beforehand. The DISCOMs ought to have understood that there is economics in procuring power from 28.5 MW cogeneration plant and they would have benefited by obviating need for falling short term procurement of upto 50 MW. In crushing season the sugar plant will utilize around 11 MW of power and the rest of the capacity is supplied to the grid, whereas in half season the utilization by the sugar plant is only upto 3.5 MW and the rest of the 25 MW of power will be pumped into the grid, if agreed to be procured by the DISCOMs. Therefore, economics of tariff and capacity cannot be judged beforehand.

The counsel for the petitioner stated that the basis for provisions in the Electricity Act, 2003 regarding promotion of cogeneration plants dates back to the year 1991 when the reforms in electricity industry were being considered. Over the years the country has acquiescence to international agreement on developing

renewable sources and adhered to reduction of carbon emissions. Under the Constitution of India, it is the Parliament and the Central Government, which are competent to look into the agreements and issue directions in the country for implementation of such agreements and covenants of such treaties. The entries at 13 and 14 of the list I of Schedule 7 of the Constitution of India empower the government as stated above. To give effect to such treaties only, Section 86 (1) (e) of the Act, 2003 has been inserted. Moreover, the National Tariff Policy notified under section 3 of the Act, 2003 requires encouragement of renewable energy and it has been held to be law by the Hon'ble Supreme Court. Thus, the Act and the policy mandate the Commission to encourage renewable sources more particularly projects like that of the petitioner.

The other aspect that requires consideration is that the Commission has several functions to discharge including regulation of the licensee. Such regulation is figured out in section 86 (1) (b) of the Act, 2003, which stipulates that the Commission will regulate the power purchase of the licensee including the price at which it is procured. Simultaneously the Commission is also cast with the duty of promoting generation from cogeneration plants and other renewable sources of energy by providing connectivity with the grid and specifying the percentage to be procured in the area of licensee under section 86 (1) (e) of the Act, 2003. Therefore, a combined reading of the above provisions would entail that both provisions have to be invoked by the Commission to ensure procurement of renewable sources by reading the said provisions together. It is relevant to state here that the respondent in this case is a regulated entity being the licensee of the Commission.

Therefore, the Commission may consider determining the fixed costs and direct the licensee to enter into the agreement for procurement of power on long term basis or else determine the tariff and give liberty to the petitioner to approach the licensee for such procurement.

The counsel for the respondent stated that the respondents have already filed counter affidavit clearly stating that they are not inclined to procure the power in the absence of tariff and that as per the tariff policy, the petitioner is required to come through competitive bidding route only. Even if the tariff is determined by the Commission, the DISCOMs may not be inclined to procure the power from the

petitioner's plant. One other reason for refusing to procure is that they have procured sufficient capacity as required by the Commission in the recent regulation.

The counsel for the respondents would endeavor to argue that section 61 of the Act, 2003 provides for guidance and does not create any binding force on the Commission. The provisions of the section 61 also explain that the licensee interest as well as consumer interest have to be protected by the Commission, which also act as guidance to the Commission. Therefore, section 86 (1) (e) of the Act, 2003 though postulates a function on the Commission to encourage renewable sources, such encouragement cannot go beyond the capacity of the licensee or the requirement stipulated in the regulations. It is stated that no direction would be issued for procurement of power, even though, tariff may be determined by the Commission.

The counsel for the respondents stated that for determination of tariff, the Commission has to invoke sections 61 and 62 and ensure compliance of section 64 wherein the procedure for determination of tariff has been explained. Absence of such action would demonstrate that the present petition is not maintainable and liable to be dismissed. The other contention raised by the counsel for the petitioner regarding advice to the government about the policy and stated that it is prerogative of the Commission to give advice to the government on the topics mentioned in section 86 (2) of the Act, 2003, but the present issue cannot be a topic of advice to the government.

The counsel for the respondents stated that the present petition cannot be entertained by the Commission for determination of the tariff under section 86 (1) (b) in the guise of regulating the licensee and procurement of power including the tariff. The Commission may be pleased to refuse the prayers of the petitioner, as it is in the know of the actions of the licensee and to safeguard the interest of the consumer.

Having heard the detail argument of the counsel for the parties in the matter, the Commission directed the parties to file their respective written submissions on or before 15.07.2018. Accordingly, the matter is reserved for orders.

Sd/-  
Chairman

O. P. No. 5 of 2018

M/s. Transform Sun Energy Private Ltd. Vs. TSSPDCL

Petition filed seeking orders granting extension of time for SCOD for one month.

Ms. Sangeeta Bhaskar, Advocate along with Sri. Ashish Indarapu, Senior Managar of the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Ms. Pravalika, Advocate are present. The counsel for the petitioner stated that the petitioner is seeking extension of SCOD by one month. The PPA was signed by the petitioner on 22.02.2016 and scheduled date under the PPA for commissioning is 22.05.2017. However, the petitioner commissioned the project in June, 2017. There was a delay of one month, as this is a project to be connected to 220 KV, the time given is 15 months. Upon extension of SCOD, the penalty amount would be reduced.

The standing counsel for the DISCOM on the other hand pointed out that there is a delay in SCOD and the petitioner is liable to pay penalty for such delay under the PPA. The reasons attributed by the petitioner for delay do not fall into force majeure condition that is the situation of not being able to perform, which is not so in this case. However, he stated that the Commission had required them to seek extension of SCOD of all the projects, which are delayed and DISCOMs have filed separate petition for consideration of the Commission. Therefore, this may be tagged to the said petition. He also stated that the Commission itself had considered extension of the time up to 30.06.2017.

Having heard the arguments of the counsel for the parties, the matter is reserved for orders. The parties are at liberty to file additional information or submission by 30.06.2018.

Sd/-  
Chairman.

O. P. No. 6 of 2018

M/s. Suryoday Energy Private Limited Vs TSNPDCL

Petition filed seeking orders granting extension of time for SCOD for 9 days.

Ms. Sangeeta Bhaskar, Advocate along with Sri. Ashish Indarapu, Senior Manager of the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Mr. Pravalika, Advocate are present. The counsel for the petitioner stated that the petitioner is seeking extension of SCOD by 9 days. The PPA was signed by the petitioner on 22.02.2016 and scheduled date under the PPA for commissioning is 22.05.2017. However, the petitioner commissioned the project 01.06. 2017. There was a delay of 9 days, as this is a project to be connected to 220 KV, the time given is 15 months. Upon extension of SCOD, the penalty amount would be reduced.

The standing counsel for the DISCOM on the other hand pointed out that there is a delay in SCOD and the petitioner is liable to pay penalty for such delay under the PPA. The reasons attributed by the petitioner for delay do not fall into force majeure condition that is the situation of not being able to perform, which is not so in this case. However, he stated that the Commission had required them to seek extension of SCOD of all the projects, which are delayed and DISCOMs have filed separate petition for consideration of the Commission. Therefore, this may be tagged to the said petition. He also stated that the Commission itself had considered extension of the time up to 30.06.2017.

Having heard the arguments of the counsel for the parties, the matter is reserved for orders. The parties are at liberty to file additional information or submission by 30.06.2018.

Sd/-  
Chairman.

O. P. No. 7 of 2018

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I. A. No. 2 of 2018

M/s. Divine Solren Private Limited Vs TSNPDCL

Petition filed seeking orders granting extension of time for SCOD for 59 days.

I. A. filed for restraining the respondent from encashing the financial instruments given as security to the respondent in accordance with the terms of PPA dt. 24.02.2016.

Sri. Raghavendar Rao, Advocate Sri. D. Madhava Rao, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Ms. Pravalika, Advocate are present. The counsel for the petitioner stated that the PPA was entered on 23.02.2016. The scheduled date of synchronization is 23.05.2017, however, it was actually synchronized on 22.07.2017. The delay for synchronization and now seeking extension of SCOD is because of several issues including but not limited to right of way and terminal tower completion.

As regards right of way the issue arose with the formers objecting the laying of lines, as total distance of transmission line is 14.2 K.Ms. comprising of 52 towers. The application for line was made on 20.07.2016, however, permission was granted on 01.09.2016. Then the issue of terminal tower arose as the TSTRANSCO in its letter dated 03.02.2017 informed the petitioner that there is no space available in the existing location of the feeder. The TSTRANSCO advised the developer to obtain necessary permission afresh for locating the terminal tower by extending the existing feeder to suit the needs of the petitioner as well as another generator. In this process, there is a delay of 15 days. However including the right of way issue a total delay of 60 days has occurred.

The counsel for the respondent while confirming the dates has stated that the recently held decision of the Hon'ble Supreme Court is that when an act is required to be performed by an authority, it has to be performed in that manner as provided in the Act and Regulations and cannot be deviated upon. In this case, nothing is shown that the action of the petitioner was beyond its control to apply force majeure.

The Commission required all the relevant information and submissions to be filed by 30.06.2018. While doing so, it was pointed out that if transmission facility was not available then why the same was not intimated at first instance and why extension of the existing feeder facility was directed to be done by the petitioner itself that too after the petitioner has asked for permission to install its terminal tower at the location. The said information is also to be ascertained and filed by the DISCOM. The matter is reserved for orders.

Sd/-  
Chairman.

O. P. No. 8 of 2018

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I. A. No. 3 of 2018

M/s. Neo Solren Private Limited Vs TSNPDCL

Petition filed seeking orders granting extension of time for SCOD for 166 days.

I. A. filed for restraining the respondent from encashing the financial instruments given as security to the respondent in accordance with the terms of PPA dt. 24.02.2016.

Sri. Raghavendar Rao, Advocate Sri. D. Madhava Rao, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Ms. Pravalika, Advocate are present. The counsel for the petitioner stated that the project is of 42 MW and a group II project. The PPA was signed on 24.02.2016 and SCOD under PPA should be 24.05.2017. However, the actual synchronization took place on 06.11.2017. There are several issues including the right of way. Upon requiring the counsel to explain the delay of 162 days and details reasons thereof, he sought adjournment. The counsel for the respondent has no objection. According, the matter is adjourned.

Call on 02.07.2018 at 11.00 A.M.

Sd/-  
Chairman.

O. P. No. 9 of 2018

M/s. Vayudoot Solar Farms Ltd. Vs. TSNPDCL

Petition filed seeking orders granting extension of time for SCOD for 122 days.

Sri. S. Subba Reddy, Advocate for the petitioner and Sri. Y. Rama Rao, Standing Counsel for the respondent along with Ms. Pravalika, Advocate are present. The counsel for the petitioner stated that PPA was signed on 28.02.2016 and the period

in the PPA for SCOD is 12 months. Thus the SCOD should have been on 28.02.2017, however, it was synchronized on 01.08.2017, resulting in a delay of 119 days. In the petitioner's case, it was required to approach the District Country and Town Planning authority for permission to lay lines. The application was made on 03.01.2017 and permission was accorded on 31.01.2017. The application for transmission line was made 20.09.2016 and permission was accorded by the TSTRANSCO on 31.01.2017. Though there is a delay of 119 days, the Commission itself extended the SCOD time up to 30.06.2017. If at all there is a delay, it may be for a period of one month. The delay in according permission for laying lines was with reference to another generator also connected to the same substation, whose delay has to be taken into consideration also.

He stated that he is filing additional information and would do all the submissions as directed by the Commission on or before 30.06.2018. The counsel for the respondent stated that the issues raised in the petition do not support the case of the petitioner as they relate to demonetization and laying of lines, which are not force majeure conditions. As the Commission has already extended the SCOD up to 30.06.2017, the Commission may consider the case of the petitioner.

Having heard the arguments of the counsel for the parties, the matter is reserved for orders.

Sd/-  
Chairman.