



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 6 of 2015

&

I. A. No. 28 of 2015

Dated: 02.03.2020

Present

Sri. T. Sriranga Rao, Chairman
Sri. M.D. Manohar Raju, Member (Technical)
Sri. Bandaru Krishnaiah, Member (Finance)

Between:-

M/s. Rithwik Power Projects Limited
Plot No. 81, Phase – I, Kavuri Hills,
Madhapur, Hyderabad – 500033

.... Petitioner.

AND

Northern Power Distribution Company of Telangana Limited
#. 2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalgutta, Warangal – 506001 (Amended as per order
Dated .02.2020 made in I. A. No. 28 of 2015).

.... Respondent.

This petition came up for hearing on 27.01.2015, 07.04.2015, 22.06.2015, 16.07.2015, 04.08.2015, 08.09.2015, 04.11.2015, 07.12.2015, 23.12.2015, 13.06.2016, 22.06.2016, 05.08.2016, 05.06.2017, 23.10.2017, 02.11.2017, 16.11.2017, 08.12.2017, 30.04.2018, 21.12.2019, 04.01.2020 and 25.01.2020. The appearance of the parties on each date is shown in the table below.

Date	Representation for the petitioner	Representation for the respondent (s)
27.01.2015	Sri. T. Naveen Chowdary,	Sri. P. Shiva Rao, Advocate
07.04.2015	Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. T. Madhusudan, G.M., TSNPDCL alongwith Sri. Y. Rama Rao, Standing Counsel.
22.06.2015	Sri. Challa Gunaranjan,	Sri. J. Aswini Kumar, Advocate

	Advocate alongwith Sri M. K. Viswanath Naidu, Advocate	representing Sri. Y. Rama Rao, Standing Counsel
16.07.2015	Sri. M. K. Viswanth Naidu,	
04.08.2015	Advocate representing	
08.09.2015	Sri. Challa Gunaranjan, Advocate	
04.11.2015	Sri. Challa Gunaranjan, Advocate	Sri. Y. Rama Rao, Standing Counsel
07.12.2015	No representation	Sri. Y. Rama Rao, Standing Counsel
23.12.2015	Sri. Challa Gunaranjan, Advocate	alongwith Sri. P. Venkatesh, Advocate
13.06.2016	Sri. T. Vizhay Babu, Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. Y. Rama Rao, Standing Counsel alongwith Ms. Priya Iyengar, Advocate
22.06.2016	Sri. Challa Gunaranjan, Advocate	
05.08.2016	Sri. T. Vizhay Babu, Advocate representing Sri. Challa Gunaranjan, Advocate alongwith Sri. Kiran Kumar, AGM	
05.06.2017	No representation	Sri. Y. Rama Rao, Standing Counsel
23.10.2017	Sri. Dharma Rao, MD	Sri. Y. Rama Rao, Standing Counsel alongwith Ms. Pravalika, Advocate
02.11.2017	Sri. Challa Gunaranjan, Advocate	Ms. Pravalika, Advocate representing Si. Y. Rama Rao, Standing Counsel
16.11.2017	Sri. T. Vizhay Babu, Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. Y. Rama Rao, Standing Counsel
08.12.2017		Ms. Pravalika, Advocate representing Si. Y. Rama Rao, Standing Counsel
30.04.2018	Sri. Challa Gunaranjan, Advocate	Sri. Y. Rama Rao, Standing Counsel

21.12.2019	Sri. Deepak Chowdary,	
04.01.2020	Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. Y. Rama Rao, Standing Counsel alongwith Sri. K. Vamshi Krishna, Advocate
25.01.2020	Sri. M. Sridhar, Advocate representing Sri. Challa Gunaranjan, Advocate	Sri. Y. Rama Rao, Standing Counsel

This petition having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Rithwik Power Projects Limited (petitioner) has filed a petition under Sec 61, 62 (1) (a), 64 (1) and 86 of the Electricity Act, 2003 (Act, 2003) seeking payment of tariff for the additional capacity of 1.5 MW at the rate being paid to 6 MW power plant by DISCOM.

2. The petitioner stated that it is a company incorporated under the provisions of the Companies Act, 1956, engaged in the business of generation and sale of electricity. It has set up 7.5 MW biomass based power project at Tekulapalli Village, Penuballi Mandal, Khammam District. It approached the nodal agency, Non-Conventional Energy Development Corporation of Andhra Pradesh (NEDCAP) for permission to establish 6 MW biomass power plant, which accordingly sanctioned vide proceedings dated 18.02.1999. Later on power purchase agreement (PPA) was entered between it and Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) on 19.03.2002, as per which the power generated from petitioner's 6 MW power plant was agreed to be sold to APTRANSCO. It declared COD on 22.11.2002. It is stated that though petitioner licensed capacity / sanctioned capacity was 6 MW, it had in fact installed 7.5 MW capacity power plant.

3. The petitioner stated that since COD has been supplying power generated to DISCOM from its power plant. As its power plant was capable of generating 7.5 MW and that only 6 MW was being supplied to the respondents under the PPA, it through the Biomass Energy Developers Association (BEDA) by letter dated 02.04.2011

requested the Andhra Pradesh Power Coordination Committee (APPCC) to purchase the additional capacity from it and other similarly situated developers whose additional capacities are ideal. In this regard, the APPCC by letter dated 06.06.2011 advised the developers to approach the Commission indicating the proposed generation from additional capacity and the tariff to be paid thereon.

4. The petitioner stated that thereafter it requested by letter dated 31.05.2013 NEDCAP for permission to produce and sell the additional capacity of 1.5 MW to Northern Power Distribution Company of Andhra Pradesh Limited (APNPDCL). The said request was considered in view of the power crisis prevailing in the state and accordingly permission has been accorded by proceedings dated 18.06.2013 subject to the condition that it would get clearance from the Commission. Even before that it by letter dated 26.08.2011 requested the Chairman of the Commission to grant approval for purchase of additional capacity of 1.5 MW.

5. The petitioner stated that there was acute shortage of power in the state at the relevant time and also that the DISCOMS have an obligation to purchase minimum % of renewable energy, which is never met, therefore, it is very much in their interest to purchase additional capacity. It is stated that the Commission has issued Regulation No.1 of 2012, making it mandatory to purchase the renewable energy as otherwise the DISCOMS have to purchase energy certificates at much higher cost. Even the BEDA by letter dated 02.04.2011 requested APPCC to purchase the additional capacity from the petitioner and other similarly situated biomass developers whose additional capacities are idle. The total capacities that are available from the members of the Association is about 9 MW. This request was favorably considered by APPCC and by letter dated 06.06.2011 the association was informed that the petitioner and other developers may approach the Commission indicating the proposed generation of extra energy from the additional capacity and tariff thereon. Therefore, it had filed the present petition praying the Commission to allow it to supply the additional capacity to the DISCOM at the tariff as set out in the petition for the following reasons.

- a) Sec. 86(1)(e) of Act, 2003 contemplates promotion of generation of electricity from renewable sources of energy, likewise even the National Electricity Policy also mandates the promotion of these

sources, therefore, the additional capacity which is lying idle should be permitted to be utilized by allowing the respondents purchasing the same.

- b) The provisions of the Act, 2003 and Regulation No. 1 of 2012 issued by the Commission prescribed obligation of procuring minimum 5% of the total purchases from non-conventional sources, therefore the DISCOM since admittedly is not meeting the said obligation, allowing purchase of additional capacity would benefit DISCOM as well as petitioner.
- c) There was acute shortage of power in the state and at the behest of DISCOM the Commission has been imposing restriction and control measures, therefore, allowing purchase of additional capacity on long term basis certainly would benefit consumers at large. Added to this even the cost of service or purchase of electricity procured from petitioner compared with other short term procurements will be much lesser and thereby consumers will not be burdened.
- d) That so far as additional capacity of 1.5 MW that is sought to be now offered for sale is concerned, the DISCOM themselves have already shown interest in procuring the same and even NEDCAP also accorded sanction subject to approval of the Commission, therefore the additional capacity may be permitted to avail and should be allowed to be tapped for the benefit and in the interest of the larger public.

6. The petitioner stated that it has commenced generation on 22.11.2002 and has completed 10 years operation and is now in 11th year of operation. It has also filed an application before the Commission requesting to fix the fixed cost from 11th year onwards till the duration of the agreement. The said fixed cost has been requested to be determined following the parameters laid down by the ATE in its order dated 20.12.2012 passed in Appeal Nos.150, 166, 168, 172, 173 of 2011 and 9, 18, 26, 29 and 38 of 2012. Therefore, even with respect to this additional capacity, it prays that the Commission to adopt a similar analogy and determine the fixed cost in line with that may be fixed for the rest of capacity. As determining the fixed cost of the above said parameters are dependent on the outcome of the OP filed by the petitioner for determination of fixed cost and proceedings those are pending before the Hon'ble Supreme Court, the Commission may pass interim

orders specifying the interim fixed cost pending further orders. In so far as the variable cost is concerned, the same may be determined in terms of the orders of the Hon'ble ATE and the orders those may be passed by the Commission in the proceedings pending before the Commission reviewing the variable cost as fixed by O P 5 of 2009.

7. The petitioner stated that since COD has been supplying electricity to DISCOM from its power plant capable of generating 7.5 MW and that only 6 MW was being supplied to the DISCOM as per the PPA and the auxiliaries associated have also been put up for 7.5 MW, it has been incurring additional auxiliary power consumption to run higher capacity plant leading to higher fixed cost and the relevant data on auxiliary consumption for the last 10 years is submitted and the petitioner prays for considering higher fixed cost towards the additional auxiliary consumption.

8. The petitioner stated that alternatively if the tariff that is proposed above for any reason is not agreeable or workable, the Commission may permit the petitioner to sell the power generated from the additional capacity through open access in the interest of justice.

9. The petitioner has sought the following prayer in the petition.

- a) allow sale of electricity from petitioner's additional capacity of 1.5 MW to the DISCOM in addition to the existing capacity of 6 MW.
- b) determine the tariff for the electricity generated and supplied by petitioner from its additional capacity of 1.5 MW to the DISCOM as prayed in the petition.

10. The petitioner has filed an interlocutory application and stated that they have filed an application seeking amendment of the cause title under Sec 94 (2) of the Act, 2003 and stated as under.

11. The petitioner stated that it filed O P No. 6 of 2015 seeking to allow sale of electricity from the capacity of 1.5 MW to the TSNPDCL in addition to the existing capacity of 6 MW, determine the tariff for the electricity generated and supplied by it from its additional capacity of 1.5 MW to the TSNPDCL and other reliefs.

12. The petitioner stated that as per the Andhra Pradesh Reorganisation Act, 2014, the state of Andhra Pradesh is bifurcated into state of Telangana and state of Andhra Pradesh. APNPDCL has been renamed as Northern Power Distribution Company of Telangana Limited (TSNPDCL), therefore, in view of the above, it is required to substitute the TSNPDCL as respondent in the place of the APNPDCL and if the same is not done, the petitioner will be put to irreparable loss and hardship. The respondent is re-named as follows:

Northern Power Distribution Company of Telangana Ltd.,
H.No. 2-5-31/2, Corporate Office, Vidyut Bhavan,
Nakkalgutta, Hanamkonda, Warangal – 506 001.

13. The petitioner stated that in the facts and circumstances stated above, the applicant herein prays that the Commission may be pleased to permit it to amend the present cause title by substituting the name of the respondent as Northern Power Distribution Company of Telangana Limited represented by its Managing Director in place of Northern Power Distribution Company of AP Limited, represented by its Managing Director in the above OP.

14. The respondent has filed counter affidavit and stated as below.

(i) As per the para 2 of the PPA dated 19.03.2004 the NCE project is set up with 6 MW capacity project as per the approval accorded by NEDCAP. As the approval is accorded for only 6 MW capacity, the project capacity should not be less than 6 MW. Further, in this context it is imperative to mention that as per the PPA, NPDCL has no obligation to provide any incentives to additional installed plant capacity to the said project.

(ii) It is the prime responsibility of the petitioner to supply electricity to respondent from its power plant since COD until the twentieth (20th) anniversary as per the Article 7 i.e., duration of agreement (Page 13 of PPA).

(iii) It is a fact that APPCC has advised the biomass project developers to approach APERC vide their letter dated 06.06.2011 advising the developers to indicate the proposed generation of extra energy and tariff expected for the same (above 80% PLF and up to 100% PLF) and seek necessary orders.

- (iv) Approval was accorded vide NREDCAP / BM / 22 / RPPL / 2013 dated 18.06.2013 to enhance the sanctioned biomass power project capacity from 6.00 MW to 7.50 MW as per the request of the petitioner. In the said approval there was no reference to the prevailing power crisis.
- (v) However, NREDCAP had accorded approval subject to obtaining consent of APERC to sell the power from additional capacity to APTRANSCO / DISCOMs vide above said reference.
- (vi) The petitioner has however not obtained the required consent from APERC which is mandatory for the petitioner to sell power to DISCOMs.
- (vii) The petitioner had not submitted any references regarding the acute shortage of power in the state and simply made a statement that there is acute power shortage in the state.
- (viii) Though the request of the biomass energy developers associations was considered by the APPCC, the approval from the Commission is mandatory, which was also mentioned in the letter dated 06.06.2011 making the consent of the Commission mandatory to sell the power to the DISCOMs which the petitioner did not obtain till to date.
- (ix) The approval of TSPCC is essential but not sufficient to enter into a revised agreement with the petitioner. The consent of the Commission to be obtained by the petitioner is mandatory to purchase extra capacity power from the petitioner.
- a) It is for the Commission to decide the purchase of power by DISCOMs from the petitioner.
 - b) This is true but it is only for the Commission to allow purchase of power by DISCOMs from any power projects.
 - c) The petitioner had already submitted to the Commission to consider their proposal for purchase of additional power and accord permission to the TSPCC for amending the PPA and purchase the power vide their letter dated 26.08.2011. As such instructions were not received from the Commission regarding purchase of additional power from the petitioner's additional capacity of the power plant.
 - d) It is for the Commission to take necessary decision in this matter.
- (x) As per the Article 2.2 of the PPA, "The company shall be paid the tariff for the energy delivered at the interconnection point for sale to

TSNPDCL at Rs. 2.25 paise per unit with an escalation at 5% per annum with 1994-95 as base year and to be revised on 1st April of every year up to the year 2003-2004 subject to the condition that the purchase price so arrived does not exceed 90% of the prevailing H.T. tariff of APTRANSCO present TSNPDCL will be decided by this Commission. There will be further review of purchase price on completion of ten years from the date of commissioning of the project, when the purchase price will be reworked on the basis of return on equity, O and M expenses and the variable cost.”

- (xi) As per the PPA entered, the capacity of the power project is only 6 MW. There is no obligation on the petitioner to run higher capacity power plant. As per the PPA, there is no requirement on the part of the respondent to consider paying higher fixed cost towards the additional auxiliary consumption. Further, payment towards auxiliary consumption itself is not applicable as per the PPA. Hence, the question of considering higher fixed cost towards the additional auxiliary consumption is incongruous as per the PPA.
- (xii) The request of the petitioner to direct the respondent to purchase from petitioner's additional capacity will hold good only on entering into revised PPAs after obtaining orders from the Commission. Consideration of additional auxiliary consumption cannot be accepted as the same is not applicable as per the PPA. If the Commission directs the DISCOMs to purchase power from their additional 1.5 MW capacity of the petitioner's plant, payment will be made as per the tariff, which was fixed by the Commission in respect of purchase of 6 MW in the concluded PPA from the date of purchase of the additional capacity duly amending the PPA.

15. We have heard the submissions of the counsel for the parties and also perused the record. The short point that arises for consideration in this petition is whether the petitioner is entitled to the relief of directing the licensee to purchase the additional capacity of 1.5 MW at the rate being paid for the capacity 6 MW at present.

16. The counsel for the petitioner had on several occasions stated and sought for directions to the licensee for procurement of the additional capacity of 1.5 MW at the same tariff as prayed in the petition. On the contrary the counsel for the respondent was emphatic in his statement that the licensee is not inclined to procure the additional capacity by entering into an agreement. It is his case that the petitioner was inclined to withdraw the petition upon receiving a reply from the licensee. The same had never happened and now argument is made by the petitioner for allowing the petition.

17. It is also his case that renewable sources of energy except municipal solid waste projects all other renewable sources of energy have to be procured through competitive bidding route. At present, the licensee is not in need of additional capacity as it has already contracted the required quantum of energy from other sources of energy.

18. The counsel for the petitioner sought to highlight the fact that the licensee had, in fact, contended in the counter affidavit that upon directions of the Commission it is inclined to procure the additional capacity. This aspect is now stoutly denied by the counsel for the respondent.

19. At this juncture, it is relevant to state that this petition was originally filed by the petitioner in the year 2013 before the erstwhile Andhra Pradesh Electricity Regulatory Commission (APEREC). At the time of bifurcation of the state of Andhra Pradesh, the said petition was pending consideration and stood transferred to this Commission as the project is located within the jurisdiction of this Commission. At the time of filing this petition, we take judicial knowledge of the fact that there was power deficit situation and at that time the licensee was required to procure as much energy as may be required, therefore, the statement is made in the counter affidavit to the effect as recorded above.

20. However, given the present situation a direction to procure additional capacity of 1.5 MW of biomass energy project may not be appropriate, as the licensee is able to meet its demand from various sources already contracted by it. Moreover, as stated earlier by the licensee, the policy of the Government of India envisages the procurement of energy other than the MSW projects under competitive bidding route

only. Thus, no direction can be given at this point of time. This is more so in order to give effect to the policy of the Government of India, as this Commission is guided by such policy under section 61 of the Act, 2003.

21. Accordingly, the petition fails and is dismissed.

22. Before parting with this case, we deem it appropriate to state that the project established by the petitioner is a renewable energy project. Such renewable energy sources should be encouraged. Moreover, the petitioner is already supplying energy and had contract for substantial capacity. The capacity now sought is to the extent of a quarter of the existing capacity contracted, which can be easily absorbed by the licensee and the system. Therefore, we deem it appropriate to observe that the licensee is free to consider the case of the petitioner at an appropriate time in future keeping in mind that the project is a renewable source of energy.

23. Subject to the observations made above, the petition is dismissed but in the circumstances, without any costs.

24. The interlocutory application filed by the petitioner for amending the title stands allowed and office is directed to amend the title accordingly.

This order is corrected and signed on this the 2nd day of March, 2020.

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M.D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

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