



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

R. P. (SR) No. 38 of 2021

in

O. P. No. 29 of 2020

Dated 03.02.2022

Present

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

Between:

Northern Power Distribution Company of Telangana Limited,
H.No.2-5-31 / 2, Corporate Office, Vidyut Bhavan,
Nakkalagutta, Hanamkonda, Warangal-506 001. ... Review Petitioner / Respondent.

AND

M/s Gayatri Sugars Limited,
B2, 2nd Floor, TSR Towers, Somajiguda,
Rajbhavan Road, Hyderabad – 500 082. ... Respondent / Petitioner.

This review petition has come up for hearing on 23.09.2021. Sri Mohammad Bande Ali, Law Attaché for review petitioner / respondent has appeared through video conference on 23.09.2021. The review petition having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

The review petitioner / respondent has filed a review petition under section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003), seeking the review of the order dated 02.06.2021 in O. P. No. 29 of 2020 passed by the Commission in the petition filed by M/s Gayatri Sugars Limited (original petitioner). The pleadings in the review petition are as below:

- a. It is stated that the review petition is preferred against orders dated 02.06.2021 in O.P.No.29 of 2020 and I. A. No. 15 of 2020 on the file of

the Commission in the matter of petition filed by original petitioner for determination of tariff towards fixed cost to take effect on completion of the 10 years of the 16.5 MW bagasse based cogeneration project from the commercial operation date.

- b. It is stated that original petitioner filed a petition O. P. No. 29 of 2020 under section 62 read with section 86 (1) (b) of the Act, 2003 for determination of tariff towards fixed cost to take effect on completion of the 10 years of their 16.5 MW bagasse based cogeneration project located at Maagi village, Nizamsagar mandal, Nizamabad district.
- c. It is stated that original petitioner in the petition had prayed for determination of fixed cost to their project for the period from 11th to 20th years of operation in terms of PPA dated 12.05.2006 either by fixing project specific tariff or alternatively extending the generic tariff as fixed by order dated 05.08.2014 issued by erstwhile APERC in O. P. Nos. 8 of 2011, 9 of 2012, 12 of 2012, 22 of 2014 and 25 of 2014 and consequently to direct TSNPDCL to pay the differential tariff from the 10th year onwards.
- d. It is stated that the developer also filed I. A. No. 15 of 2020 seeking interim relief for payment of generic tariff as fixed by order dated 05.08.2014.
- e. It is stated that this Commission vide orders dated 02.06.2021 disposed of O. P. No. 29 of 2020 and I. A. No.15 of 2020. The relevant portion of the orders is reproduced below:

“... ..

8. Inasmuch as the parties were in consensus and ad idem as far as tariff is concerned subsequent to the directions of the Commission to the licensee when it sought consent for amendment to the PPA which the Commission refused and required filing of petition by the licensee for determination of tariff.

9. In view of the concession made by them in the counter affidavit that they are agreeable for the tariff as determined by the Commission, there remains little scope for the Commission

to traverse beyond the agreement impliedly reached by the parties.

10. In this context it has to be stated as per the PPA the petitioner would have been entitled to Rs.0.90 per unit of fixed cost. However, the petitioner has agreed with the licensee to avail fixed cost as determined by the erstwhile APERC in order dated 05.08.2014 and has now claimed the same to be fixed as an alternative prayer which has been conceded by the respondent.

11. As such the Commission is not inclined to dwell into the other contentions and accordingly allows licensee to negotiate the tariff between themselves considering the tariff specified in the order dated 05.08.2014 which has been adopted by this Commission in Regulation No.1 of 2014 as the ceiling tariff. Such negotiated tariff would come to effect from the 11th year from the commercial operation date i.e., 16.05.2017 onwards. Therefore, the issue is answered accordingly.

12. The licensee is directed to submit the revised PPA negotiated with the petitioner based on the ruling in the above paragraph at the earliest.

13. Any arrears of the amount in difference of tariff shall be settled and payment made within a period of eight (8) weeks from the date of approval of the PPA. Accordingly, the present petition is allowed to the extent indicated. No costs. As a sequel and in view of the disposal of the main petition, the interlocutory application is closed.”

- f. It is stated that the observation of this Commission at para (10) of the order under review is a mistake apparent on the face of record and the same leads to erroneous interpretation that respondent/petitioner was entitled to Rs. 0.90 per unit of fixed cost even after completion of 10th year and hence the petitioner herein prefers to file this review petition on the following and among other grounds which will be urged at the time of arguments with the permission of the Commission.

GROUND:

i. For convenience

6) Schedule–IA of the PPA dated 12.05.2006 entered between M/s Gayatri Sugars Limited and NPDCL, which is extracted below:

SCHEDULE – 1A

Two Tier Tariff for Bagasse based Cogeneration plants

(i)

Year of operation (nth year)	Fixed Cost Rs. Per unit	Financial Year	Variable Cost Rs. Per Unit
1 st	1.57	2005-2006	1.06
2 nd	1.52	2006-2007	1.10
3 rd	1.48	2007-2008	1.14
4 th	1.44	2008-2009	1.19
5 th	1.39		
6 th	1.35		
7 th	1.31		
8 th	1.27		
9 th	1.23		
10 th	0.90		

(ii) The project shall be entitled to a tariff with the component of fixed charges based on the year of operation (nth year) and variable charges corresponding to the financial year of operation. The fixed charges from the 11th year onwards shall be negotiated but shall not exceed the fixed charges determined by the Commission for bagasse based cogeneration plants from time to time for the corresponding years.

(iii) The variable charges for the period from 2009-2010 onwards will be negotiated but shall not be higher than the variable charges fixed by the Commission for bagasse based cogeneration plants from time to time for the corresponding years.

(iv) Settlement period is one year from the date of commercial operation for calculation of fixed charges.

(v) Fixed charges are payable for a PLF of 55% of energy for export to grid for sale to APNPDCL as indicated in Schedule–I.

- (vi) Where PLF during a settlement period exceeds 55% only variable cost as indicated above and an incentive of 25 paise per unit shall be paid for every unit delivered in excess of the above PLF upto 100% PLF.
- (vii) Notwithstanding the above, the tariff comprising both fixed cost and variable cost shall not exceed Rs.2.63 per kWh.
- g. It is stated that the Commission vide order dated 18.09.2015 in O. P. No. 4 of 2015 allowed to modify the PPA adopting variable cost from the generic tariff orders in accordance with the directions of the APTEL to modify the PPA to promote the renewable energy and to apply generic tariff orders to the developer. However, the fixed cost (for first 10 years of operation) was continued as contained in the PPA.
- h. Accordingly, the amendment dated 03.09.2016 to the PPA dated 12.05.2006 was amended duly incorporating the orders dated 18.09.2015 of the Commission.
- i. It is stated that as per PPA the fixed charges from the 11th year onwards shall have to be negotiated but the same shall not exceed the fixed charges determined by the Commission for bagasse based cogeneration plants from time to time for the corresponding years.
- j. It is stated that in the light of the provisions of the PPA, negotiations were held with M/s Gayatri Sugars Limited and the generator requested to allow the fixed cost from 11th to 20th year of operation as per the generic tariff order dated 05.08.2014 issued by APERC (and adopted by TSERC vide Regulation No.1 of 2014) on par with other bagasse based cogeneration developers.
- k. The request was examined and the proposal of the Generator was accepted for allowing the fixed cost from 11th to 20th year of operation as per the generic tariff order dated 05.08.2014.
- l. However, provisionally the petitioner is being paid fixed cost @ Rs.0.90 per kWh (the 10th year FC as per PPA) for the energy being supplied from 11th year onwards and the variable cost as per the Commission orders from time to time on par with the other bagasse developers.
- m. It is evident from the PPA, the developer was entitled for payment of fixed cost @ Rs.0.90 per kWh for the 10th year of operation alone and

from 11th year onwards, the fixed cost charges shall have to be negotiated and the same shall not exceed the fixed charges determined by the Commission in respect of bagasse based cogeneration projects from time to time for the corresponding years.

n. It is stated that in view of the submissions made in paragraphs above, the observation of the Commission at para (10) of the order under review is a mistake apparent on the face of record and the same needs to be deleted by reviewing the order.

o. It is stated that as per para (5) of the counter filed by this petitioner / TSNPDCL in O. P. No. 29 of 2020, negotiations have been held with the developer and a mutually consented conclusion is arrived at to allow the fixed cost as per the generic tariff determined by the Commission by order dated 05.08.2014.

p. In the circumstances mentioned above, the review petitioner herein has prayed for the following relief from the Commission:

- i. to admit this review petition;
- ii. to allow this review petition and to delete para (10) of the order under review.

2. The Commission has heard the review petitioner and considered the material on record along with the order passed by it. The submission on the date of hearing by the representative of the review petitioner are as below.

Record of proceedings for 23.09.2021.

"... .. The representative of the review petitioner stated that the Commission passed orders on 02.06.2021 allowing the original petition and granted the relief to the petitioner. He explained the contents of the order and the background related to the matter. He stated that the Commission had inserted paragraph 10 in the order, which runs contrary to the submissions made by the licensee that the fixed cost for the 10th year is on the basis of the order of the Commission. It is his case that the said paragraph is detrimental to the interest of the licensee and would attract audit comments. Therefore, he pleaded for modification of the order by deleting the said comments of the Commission under paragraph 10 of the order dated 02.06.2021."

3. The contention of the review petitioner is that para (10) in the order dated 02.06.2021 in O. P. No. 29 of 2020 and I. A. No. 15 of 2020 is contrary to the submissions made by the licensee, which appears to be a mistake / error and is apparent from the material facts available on record i.e., from the contents of PPA, the petitioner in O.P.No.29 of 2020 is entitled for payment of fixed cost @ Rs.0.90 per unit for the 10th year of operation alone and from 11th year onwards the fixed charges shall be negotiated but shall not exceed the fixed charges determined by the Commission for bagasse based cogeneration plants from time to time for the corresponding years. The para (10) of the order may lead to erroneous interpretation that the developer / petitioner is entitled to Rs. 0.90 per unit of fixed cost even after completion of 10th year operation. Therefore, the para (10) needs to be deleted.

4. Section 94 (1) (f) of the Electricity Act, 2003 empowers the Commission to review its decisions, directions and orders and such review power is similar as vested in a Civil Court under the Civil Procedure Code, 1908. Under Section 114 of CPC a person aggrieved either by decree or by an order of Court from which appeal is allowed but no appeal is preferred or where there is no provision of appeal against an order and decree, may apply for review of the decree or order as the case may be in the Court, which passed the order. Section 114 of CPC does not provide any limitation over the power of the court for review, but Order 47 Rule 1 of CPC contains such limitations. According to Order 47 Rule 1 of CPC that a review of judgement or an order could be sought –

- a) from the discover of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant/ petitioner;
- b) such important matter or evidence could not be produced by the applicant / petitioner at that time when the decree was passed or order made;
- c) on account of some mistake or error apparent on the face of the record or any other sufficient reason;
- d) where there is a typographical mistake that has crept up in the order; and
- e) where there is an arithmetical mistake that has crept in which effecting calculation or otherwise;

5. The review petition is satisfying one of the parameters laid down in the Order 47 Rule 1 of CPC i.e., cropping of a mistake or error which is apparent on the face of the record i.e., from the contents of the PPA. As rightly pointed by the representative of the review petitioner that the observation made in the para (10) of the order giving an indication that the entitlement of the petitioner for the fixed cost is @ Rs.0.90 per unit even after 10th year operation and the same would be inconsonance to the contents of PPA. The mistake/error which is cropped up in para (10) of the order due to oversight is liable for rectification if not for deletion.

6. In view of the conclusion arrived above, the Commission is inclined to take on file this review petition for making required review of the order dated 02.06.2021 in O. P. No. 29 of 2020. The office is directed to register the review petition and issue notice to the respondent.

This order is corrected and signed on this the 03rd day of February, 2022.

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