



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

I. A. No. 21 of 2017
in
O. P. No.6 of 2017

Dated 29.06.2017

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member

Between:

M/s. Mytrah Vayu (Godavari) Private Limited,
Registered Office: 8001, Q – City, S. No. 109,
Nanakramguda, Gachibowli,
Hyderabad – 500 032

... Applicant /
Petitioner in O. P. No. 6 of 2017.

And

1. M/s. Southern Power Distribution Company of
Telangana Limited, 6-1-50, Mint Compound,
Hyderabad – 500 063.

2. M/s. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairatabad, Hyderabad – 500 082.

... Respondents.

This petition came up for hearing on 17.06.2017 and 20.06.2017. Sri. Challa Gunaranjan, Advocate for the applicant and Sri. Y. Rama Rao, Counsel for the respondents along with Sri. B. Vijay Bhaskar, Advocate are present on both days. The application having stood for consideration to this day, the Commission passed the following:

ORDER

The petitioner has originally filed O. P. No. 5 of 2017 seeking the relief as prayed therein. As the petitioner is not in respect of the amount towards power supplied, it filed the present petition.

2. The petitioner stated that the above said O. P. has been filed by the petitioner under Sec 86 (1) (f) of the Act, 2003 read with Conduct of Business Regulation, 2 of 2015, for declaring the terms of the PPA dated 26.03.2015 (and subsequent "First Amendment Agreement", dated 03.12.2016) entered between petitioner and 1st respondent, in so far as clauses 1.6,1.11, 1.13 and 4.1 dealing with evacuation and metering arrangement to be void as being contrary to CEA (Installation and operation of meters) Regulation, 2006 and proceedings No. TSERC / Secy / 13 / 2015 dated 02.02.2015 of the Commission by holding that the 33 / 132 KV pooling sub-station at Nazeerabad village to be the interface point that is the outgoing feeder of the petitioner's wind power project for the purpose of providing metering arrangement and consequently direct the 1st respondent to enter into amended PPA by suitably amending clauses 1.6,1.11, 1.13 and 4.1 of PPA dated 26.03.2015 and subsequent "First Amendment Agreement", dated 03.12.2016.

3. The petitioner stated that the Commission has the requisite powers and jurisdiction to grant interim reliefs during the pendency of the present proceedings and plenary inherent powers in accordance with Sec 94 (2) of the Act, 2003 read with Conduct of Business Regulation, 2 of 2015, which has been reproduced hereunder:

"94 Powers of Appropriate Commission:

(2) The Appropriate Commission shall have the powers to pass such interim order in any proceeding, hearing or matter before the Appropriate Commission, as that Commission may consider appropriate."

4. The petitioner further stated that the main plea in O.P. is installation of meters for evacuating the power generated from it's wind power project. As per the CEA (Installation & Operation of Meters) Regulation, 2006 read with proceedings No. TSERC / Secy / 1 / 2015 dated 02.02.2015 issued by the Commission and proceedings of 2nd respondent in T.O.O (CE / Plg, Comml & / Coord) Ms. No. 5 dated 23.03.2015, the generating station should install all interface meters on outgoing feeders of generating station. In its case the outgoing feeder of generating station is the 33 / 132 KV, Nazeerabad, pooling sub-station. However, the model PPA specified the metering to be installed at 132 / 33 KV sub-station at Parigi, which is about 3.5 km from pooling sub-station. Though it has informed to 1st respondent that the proposed metering arrangement in the model PPA was not as per the CEA Regulations and proceedings

of the Commission, it was made to sign PPA informing that the matter would be taken up with the Commission for appropriate clarification.

5. The petitioner stated that it in the meanwhile it completed the project and also installed the meters at pooling sub-station and when petitioner approached Respondent No. 1 for getting synchronization approval of project with the state grid then Respondent No. 1 has insisted it to give an undertaking on 22.03.2016 that it would shift the metering from pooling sub-station to Parigi sub-station within 3 months upon clarification from the Commission, failing which the 1st respondent can withhold power purchase payment till such installation.

6. The petitioner further stated that the Commission has provided clarification stating that metering has to be provided in accordance with CEA metering principles by its letter dated 29.04.2016. The CEA metering principles categorically specify that interface meters shall be on outgoing feeders of generating station. Though the clarification is very much clear still the 1st respondent insisted for changing meter as otherwise threatened to withhold the power purchase payments which necessitated petitioner to approach the Commission.

7. The petitioner stated that the 1st respondent through Chief General Manager (Commil & RAC) by letter dated 31.01.2017 informed that unless interface meters are shifted from pooling sub-station to Parigi sub-station in terms of PPA and further that in terms of undertaking dated 22.03.2016 the power purchase payments are kept on hold till installation of meters at Parigi sub-station. The 1st respondent under the terms of PPA has no power or authority to withhold the power purchase bills without any reason and withholding of payments is totally arbitrary and illegal. The instructions of Chief General Manager (Commil & RAC) dated 31.01.2017, the Dy. CCA (PP&S) has illegally withheld the payments of the petitioner to the tune of Rs. 21.75 crores for the generation period from Jan'17 to March'17.

8. The petitioner stated that the petitioner / applicant herein not only has a good prima facie case but also balance of convenience lies in its favour. Moreover, the petitioner / applicant herein would suffer irreparable injury, if the Commission does not grant any interim protection to the petitioner / applicant.

9. The petitioner has sought the following prayer in this application.

“In light of the averments made under the present application read with the petition, it is most humbly prayed that this Hon’ble Commission be pleased to: ‘Direct the respondents to release the withheld payments to the tune of Rs. 21.75 crores immediately and to pay the monthly power purchase bills regularly in terms of PPA dated 26.03.2015 as amended on 03.12.2016 till the Hon’ble Commission gives suitable directions to the Respondent No. 1 on the O. P. No. 06 of 2017 filed by petitioner’.”

10. The respondents have filed their counter-affidavit, advertng to the contentions raised in the original petition and relied on the same for arguments in this application.

11. The petitioner in the original petition has filed a memo giving detailed submissions for filing additional documents and requesting for considering the interim application. The contents are as follows.

a) The Commission in exercise of powers under section 181 of Electricity Act, 2003, Andhra Pradesh Electricity Reforms Act, 1998 and Andhra Pradesh Reorganization Act, 2014 issued Telangana State Regulatory Commission (Adoption) Regulation, 2014 i.e., Regulation No. 1 of 2014 published in the State gazette on 10.12.2014, specifying that all the regulations, decisions, directions or orders, all the licenses and the practice directions issued by the erstwhile Andhra Pradesh Electricity Regulatory Commission (Regulatory Commission for states of Andhra Pradesh and Telangana) as in existence as on the date of the constitution of the Telangana State Electricity Regulatory Commission and in force, shall mutatis-mutandis apply in relation to the stakeholders in the State of Telangana including this Commission and shall continue to have effect until duly altered, repealed or amended.

b) The erstwhile APERC exercising powers under section 61 (h), 62, 86 (1) (a) and 86 (1) (e) of Electricity Act, 2003 has determined the preferential generic levelised tariff for Wind Power Producers which enter into PPA’s between 15.11.2012 and 31.03.2015 as Rs. 4.70 ps per unit vide its orders dated 15.11.2012 in O. P. No. 13 / 2012. Further the then APERC also approved model Power Purchase Agreement format in respect of Wind Power Producers coming under cluster scheme and as well as Wind Power Producers for single developer connected to Designated Sub-Station vide its orders dated 30.03.2010 in O. P. No. 40 of 2010.

c) As the then Joint Commission i.e., APERC (Regulatory Commission for the States of Andhra Pradesh and Telangana) was receiving number of proposals for approval of individual Power Purchase Agreements executed between Wind Power Producers and DISCOM's, having regard to earlier orders dated 15.11.2012 in O. P. No. 13 of 2012, whereby preferential generic levelised tariff over 25 years was determined and orders dated 03.03.2010 in O. P. No. 40 of 2010, which approved the format of model Power Purchase Agreement, practice directions were issued vide Lr. No. E – 801 (K) / Dir – Engg / JD (PPP) / D. No. 771 / 2014 – 01 dated 01.08.2014, that Power Purchase Agreements executed between DISCOM's and Wind Power Producers in the approved model format upto 31.03.2015 shall be deemed to have been regulated by the Commission and no separate consent from the Commission shall be required, however the DISCOM's were required to file copy of signed Power Purchase Agreement to Commission for record only. Accordingly, the petitioner and 1st respondent signed PPA dated 26.03.2015 for its 100 MW wind power project at Nazeerabad (V), Parigi (M), Ranga Reddy District which is in accordance with approved model format. In terms of the directions of APERC (Regulatory Commission for the States of Andhra Pradesh and Telangana) as ratified by this Commission, it is learnt that 1st respondent forwarded the aforesaid signed Power Purchase Agreement copy dated 26.03.2015 to this Commission vide its letter dated 08.04.2015, which fact was brought to the notice of the Commission in the hearing held on 20.06.2017. Therefore, by virtue of the letter dated 01.08.2014 issued by the APERC (Regulatory Commission for the States of Andhra Pradesh and Telangana) which has been adopted by this Commission under Regulation 1 of 2014, the petitioner's project and the consequent Power Purchase Agreement dated 26.03.2015 is deemed to have been regulated and consented by this Commission.

d) It is also pertinent to mention that the capacity of the aforesaid project was enhanced from 100 to 100.8 MW and draft amendment agreement was forwarded for consent of this Commission vide Lr. No. CGM (Comml.) / SE (IPC-1) / F. Mytrah 100 / D. No. 1599 / 16, dated 03.12.2016. The Commission granted the consent vide Lr. No. L45 / 2 / DD (LAW) – 1 / D. No. 792 dated 03.01.2017 and accordingly the amendment to the PPA was carried out.

Therefore, the petitioner deems it necessary to bring the above facts to the notice of this Commission and place the above referred documents on record in interest of justice.

12. We have heard the counsel for the parties and perused the material on record. The arguments as set out at the time of hearing are recapitulated below.

The counsel for the petitioner stated that the petition is filed questioning the provisions in the PPA with regard to metering arrangements as being contrary to the regulation relating to the metering issued by the CEA. The petitioner also sought interim directions to the DISCOM for the release of amounts payable to it towards power purchases.

It is stated that the issue arose because provisions made in the PPA are contrary to the regulation issued by the CEA which has been clarified by the Commission in its proceedings. It is also stated that the petitioner has made metering arrangements at the pooling sub-station of its generation and the DISCOM is insisting on fixing meters in the transmission sub-station, as the same is not shifted, the amount towards the energy bills from January, 2017 is withheld. The amount is not paid to the petitioner and therefore it is in financial constraint. The petitioner is inclined to receive amount pending disposal of the main issue to the extent of 96% as accepted by the licensee after deducting the alleged transmission losses.

The counsel for the petitioner also stated that the licensee after correspondence and informing it that a petition is filed before the Commission, has agreed to release the amount but insisted in writing that the petitioner should give an undertaking to the effect that it will undertake shifting of metering arrangements from pooling sub-station to 132 KV transmission sub-station. In order to facilitate itself for payment of the amount, the petitioner has furnished an undertaking.

The counsel for the respondent stated that the power purchase agreement was entered in the year 2015 and the petitioner is seeking amendment of clause 1.6 in the PPA to bring it line with CEA regulation. The petitioner itself has agreed and established the metering arrangements as approved by the Commission in terms of the proceedings of the licensee as approved by the transmission and distribution

licensee. The amount has been withheld as the petitioner has itself agreed to shift the metering arrangements. The licensees have also required the generator to give an undertaking and forego amount towards line losses and they were prepared to release the amount due to the petitioner.

The Commission sought to know from the petitioner whether the PPA has been consented by the Commission. The licensee stated that as per the directions of erstwhile APERC which had directed that the PPA entered with the wind projects may be treated as deemed approval once it had been entered in accordance with the model PPA notified by it at the relevant time.

The Commission sought to know from the respondent as to what is the time required for undertaking the metering at the transmission sub-station. The counsel for the petitioner replied that the petition would complete the process within two months. The representative of the licensee replied to the said statement, that the DISCOM would require two months time from the date of approval by TSTRANSCO, whose representative was not present in the hearing. He also stated that he would contact and appraise his senior management and also obtain instructions from TSTRANSCO on the issue and report back to the Commission. However, he stated that the TSTRANSCO has to approve the metering and from thereon at least two months is required for completion of the works.

The counsel for the petitioner stated that the petitioner has got the losses assessed by a third party, whose findings show that there will be a loss of 0.1916 compared to the claim of the DISCOM. He stated that for the present, the Commission may consider allowing the interim application and direct the licensee to pay about Rs. 28 crores. It is his case that the petitioner has spent about Rs. 30 crores towards line and metering which the licensees ought to have done, instead collected supervision charges of Rs. 2.5 crores and left the matter to be executed by the developer.

The Commission observed that the licensee should immediately make payment and also report to the Commission the period required for undertaking metering of the project as per the PPA. The matter was adjourned for reporting payment period and also time required for erection of metering.

In the continued hearing the counsel for the petitioner stated that the matter was adjourned on the earlier occasion at the behest of the counsel for the respondent, who sought to report to the Commission with regard to the time that is required for installing meters at the choice of the place identified by the licensee. He also stated that pending adjudication with regard to location of meters in the main petition, the Commission may direct the licensee to release the payments due towards power supplied for the period January, 2017 to May, 2017. He sought to rely on the arguments made in the earlier date of hearing.

The counsel for the respondent sought further time with regard to clarifying the issue of the time required for shifting of the meters as there are several administrative procedures, which need to be followed between transmission and distribution licensees. It is also imperative on the respondents to undertake the shifting of the meters in accordance with the agreement as per directions of the Commission and regulations in vogue. He also stated that though approximately two months time is required, unless the transmission licensee clears the same and decision is taken by the management of the DISCOM then only actual period starts.

To a particular question as regards obtaining consent to the power purchase agreement with the petitioner, the counsel for the respondent stated that the erstwhile Joint Regulatory Commission for A. P. and Telangana had by letter dated 01.08.2014 required licensees to enter into agreement in line with the model PPA provided by them and no further action is required from the Commission, Pursuant thereto, the licensee entered into PPA with the applicant and forwarded it to the Commission in April, 2015 for favour of record. At this stage, it was observed by the Commission that PPA provisions on interface metering have to be required to be examined in respect of the consideration set out between the parties. Hence, the respondent is directed to submit the PPA for consent of the Commission. Since, the tariff is the prime component of the PPA, it had directed each PPA signed by the licensee to be sent for the Commission's approval. The PPA in the present case is not consented by the Commission and therefore, the payment of amounts or cognizance of the dispute cannot be entertained, however, as power had already been drawn by the licensee and payments were effected for some time, the same is not fair on the part of the licensee to withhold further amounts.

Considering the submissions of the rival parties, the licensee is directed to release the payment of 75% of the amounts due to the applicant from January, 2017 to May, 2017 subject to the PPA to be scrutinized and consented by the Commission as well as the issue pending in this petition.

From the arguments, it is clear that while the core issue in the original petition requires detailed hearing, the interests of the applicant can be safely protected upon directing the licensee to disburse part of the amount due to keep the project going. It is in this situation that we are inclined to direct the licensee to release payment of 75% amount due towards the power drawn from the project for the period from January, 2017 to May, 2017. However, the payment by the licensee pursuant to the above directions is subject to the condition that the petitioner is willing to undertake shifting of the meters from 33 /132 KV Nazeerabad sub-station to 132 /33 Parigi sub-station. The order is also subject to final outcome of the issue raised in the original petition.

13. This order shall be complied with within a period of two weeks as the licensee itself had agreed to release the amounts as early as 22.05.2017. Office is directed to obtain fresh date of hearing as and when the other matters are likely to be listed for hearing.

This order is corrected and signed on this the 29th day of June, 2017.

**Sd/-
(H. SRINIVASULU)
MEMBER**

**Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN**

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