



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 3 of 2018

Dated: 07.01.2019

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Siemens Gamesa Power Private Limited,
Block – B, 8th Floor, No. 334, Rajiv Gandhi Salai,
Sholinganallur, Chennai – 600 119.

... Petitioner

AND

1. Telangana New and Renewable Energy Development
Corporation Limited, # 5-8-207 / 2, Pishgah Complex,
Nampally, Hyderabad – 500 001.

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

3. Southern Power Distribution Company of Telangana Ltd.,
Mint Compound, Hyderabad – 500 034.

4. Transmission Corporation of Telangana Limited,
Vidyut Soudha, Khairthabad, Hyderabad – 500 082.

.... Respondents.

This petition came up for hearing on 02.05.2018 and 04.08.2018. Sri. Deepak Chowdhary, Induslaw Advocates for the petitioner and Sri Y. Rama Rao, Standing Counsel for the respondents along with Ms. Pravalika, Advocate appeared on 02.05.2018 and 04.08.2018. The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Siemens Gamesa Renewable Power Private Limited (petitioner) has filed a petition under sec 62 read 86 (1) (a) and (b) of the Electricity Act, 2003 seeking determination of the project specific tariff by notifying the regulation for renewable energy projects in the state of Telangana.

2. The petitioner stated that it is incorporated under the Companies Act, 1956 with corporate identification number bearing CIN no. U74991TN2006PTC079179 having its registered office at Chennai. It is a corporate entity engaged in the development of the renewable energy project for generating power using wind resources and has been set up with the intention of developing specific wind projects also in the state of Telangana. It was originally incorporated with the name of Gamesa Wind Turbines Private Limited again it was changed to M/s. Siemens Gamesa Renewable Power Private Limited.

3. The petitioner stated that the petitioner's ultimate parent company is Siemens Gamesa Renewable Energy, S. A. The parent company of the petitioner is in the business of manufacturing wind turbines since 1995 and is now one of the leading manufacturers of wind turbines. The parent company's operations have expanded in many folds with production centres in the U.S., China, India and Brazil. The parent entity of the petitioner grew into the global market leader for onshore wind turbines, earning a reputation for technological leadership, strong customer service and for offering fully integrated end-to-end energy solutions. It stated that by virtue of the experience and expertise of its parent company it brings these many qualities together under one roof, an innovative spirit, dedication to technological excellence and a determination to provide real and lasting value to all stakeholders and customers. It is also stated that the parent company of the petitioner in the year 2017 merged with the wind business of another global major Siemens A. G. and post the merger the merged entity is one of the largest wind power developers in the world.

4. The petitioner stated that respondent No. 1 is state owned government company. The respondents No. 2 and 3 are the DISCOMs for the state of Telangana and regulated through Telangana State Electricity Regulatory Commission (Distribution Licence) Regulation, 2016. Respondent No. 4 is a transmission licensee and regulated through license conditions regulation.

5. The petitioner stated that as per the guidelines issued by the Ministry of New and Renewable Energy (MNRE), Government of India (GoI) and the guidelines issued by the government vide G. O. Ms. No. 48 dated Energy (RES) Department dated 11.04.2008 the respondent No. 1 that is Telangana New and Renewable Energy Development Corporation Limited (TNREDCL) was authorized to grant sanction for projects within the capacity of 20 MW. It filed a proposal dated 25.06.2015 for allotment and sanction to set up a wind power project of 20 MW capacity in Jidipalli, Mahabubnagar District of Telangana (Project). Accordingly, the respondent No.1 granted its sanction for setting up of the project vide proceedings ref: T / WE / GWTPL / 899 / 2015 dated 06.10.2015. Pursuant to the sanction order from respondent No. 1 it has executed an agreement dated 06.10.2015 with respondent (agreement). In terms of the said agreement, the petitioner is obligated to execute power purchase agreement (PPA) with the distribution companies in the state of Telangana as per the requirement under the policy framed by the government in this regard. The relevant provision in the agreement is reproduced below for reference.

Article 6 – Obligation of the Developer:

“In addition to and not in derogation or substitution of any of the obligations set out elsewhere in this agreement, the developer shall as mandatory obligation

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(i) The company shall enter into power purchase agreement with DISCOMs in respect of government and forest areas, as per the policy of the government in regard from time to time. In case of wind power capacities set up in private land, the developer shall enter into power purchase agreement or open access agreement or wheeling agreement with DISCOMs as per policy by the government.”

6. The petitioner stated that in the past couple of years there has been a significant growth in capacity addition from wind based generating sources across the country and in many states wind is not considered miniature in the realm of electricity generating stations. In fact, in states like Andhra Pradesh, Tamil Nadu, Gujarat, Karnataka wind has become the major contributor to the energy requirement of these states. The GoI acting through MNRE has set a target of achieving generation of power from renewable sources at 175 GW, being 60 GW to

be achieved through wind projects and the remainder from solar, biomass and small hydro projects. The Govt having set this target has launched various initiatives which includes RE-INVEST.

7. The petitioner stated that according to recent reports during FY 2016-17, the leading states in the wind power capacity addition were Andhra Pradesh at 2,190 MW, followed by Gujarat at 1,275 MW and Karnataka at 882 MW. The states such as Madhya Pradesh, Rajasthan, Tamil Nadu, Maharashtra, Telangana and Kerala reported 357 MW, 288 MW, 262 MW, 118 MW, 23 MW and 8 MW wind power capacity addition respectively. It may be observed that the state of Telangana saw a minuscule development of wind projects primarily because of the absence of a certain regulatory regime.

8. The petitioner stated that the prime reason for this slow response from investors in the state is the lack of a dependable yet reflexive regulatory regime. The states which are doing well in terms of wind capacity addition, have regulations for wind based generating stations based on or similar to multiyear tariff principles. In the regulations the principle for the determination of wind tariff are well defined. There is also an indexation formula for automatic annual updation of the tariff which makes tariff more reflexive to the prevailing market conditions. It is stated that aggrieved by the same and having no other efficacious remedy to seek redress of the same, it has approached the Commission by way of the petition.

9 The petitioner stated that in terms of the Act, 2003 as per sec 61 requires the Commission to specify terms and conditions for determination of tariff, which is generally issued as tariff regulations by various regulatory commission such as the Central Electricity Regulatory Commission (CERC), Karnataka Commission, Tamil Nadu Commission etc. The said provision of the Act is reproduced in the petition. The CERC recently issued the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 dated 17.04.2017 (CERC tariff regulations). The regulation is comprehensive in nature and among others includes various aspects of tariff determination of wind based energy sources.

10. The petitioner stated that pursuant to the issuance of tariff regulations under sec 61, the Commission to fix the tariff for supply of electricity by generators as per

sec 62 of the Act, 2003. The said provision of the Act, 2003 is reproduced below of reference.

Section 62. (Determination of tariff):-

“(1) The Appropriate Commission shall determine the tariff in accordance with provisions of this Act for –

- (a) supply of electricity by a generating company to a distribution licensee:”

.....”

It is stated further that as per section 86 (1) (a) and (b) of the act, one of the functions of the Commission is to fix the tariff according to which the licensees shall procure power for the generating companies. The said provision of the Act is reproduced below of reference:

Section 86. (Functions of State Commission):-

“(1) The state Commission shall discharge the following functions, namely: -

- (a) determine the tariff for generation, supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Providing that where open access has been permitted to a category of consumers under section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

- (b) regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through 46 agreements for purchase of power for distribution and supply within the State;

.....”

11. The petitioner stated that the CERC tariff regulation is also in line with the NTP 2016 issued on 28.01.2016. As per clause 6.4 (3) the NTP.

“The Central Commission should lay down guidelines within three months for pricing non-firm, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding”

Therefore, CERC tariff regulation is therefore issued by the CERC in pursuance to the prevailing NTP 2016 and as per sec 61 of the Act, 2003 needs to be taken as guiding principles for the Commission to lay down tariff regulations for renewable energy projects being set up in the state of Telangana. It is stated that through the above mentioned provisions, the Act, 2003 mandates that State Electricity Regulatory Commission (SERC) has to provide a firm regulatory framework by framing tariff regulations and while doing so it shall be guided by the CERC tariff regulation. It is stated that the Maharashtra Electricity Regulatory Commission (MERC) has issued comprehensive regulation in 2015 that is MERC (Terms and Conditions for Determination of Renewable Energy Tariff) Regulations, 2015 which are in accordance with CERC RE tariff regulation.

12. The petitioner stated that it has developed the project which is in final stages of completion and is expected to achieve commissioning by September, 2018 and is desirous of executing PPAs with the respondents. As the Commission has not issued any regulation on tariff determination for wind based generating sources, it is unable to execute any PPAs.

13. The petitioner stated that even though it had commenced execution of the project immediately after the execution of the agreement, it did not approach the Commission for the determination of tariff in anticipation for the generic tariff to be determined and announced by the Commission post formation of the new state of Telangana in 2014. However, contrary to the expectation of the petitioner the same has not happened even though other SERCs of states such as Karnataka, Maharashtra and residual state of Andhra Pradesh have issued tariff regulations and generic preferential tariff for wind power projects. It has no other option but to approach the Commission by way of the present petition seeking determination of tariff. It is also pertinent to state that due to the above mentioned reason it has approached TNREDCL seeking extension of the time period for completion of the project.

14. The petitioner stated that it is filing this petition before the Commission for determination of project specific tariff for wind based generating station of it in the state of Telangana on the cost components mentioned below.

(a) Capital cost: It is stated that the capital cost of the wind power project developed by the petitioner is Rs. 600 Lakhs / MW including the evacuation cost.

(b) Debt Equity Ratio: It is stated that the debt to equity ratio shall be considered 70:30.

(c) Loan and Finance Charges: Loan tenure: It is stated that the tenure of the loan facility be considered at 10 years and the interest rate on such loan at the rate of 11.5% per annum.

(d) Depreciation: The depreciation for the first 10 years be considered at 7% per annum and for the remaining life of the project the depreciation be considered at 1.33% per annum.

(e) Return on equity: The return on equity at the rate of 16% with MAT / income tax as pass through be considered.

(f) Interest on Working Capital: Interest on working capital shall be computed at 12.0% per annum.

(g) Operation and Maintenance Expenses: It is stated that for round the clock maintenance of the project, the cost of maintenance of each plant in the project sums up to Rs. 9.58 lakhs / MW per annum and an escalation of 5.72% per annum be considered.

(h) Discount Rate: It is stated that this Commission may allow the same at 11.04, worked out notionally with income tax of 25% and a surcharge of 7% and education cess of 3% of the total of income tax and surcharge.

(i) Taxes and Duties: This Commission while determining the tariff for the project is requested to –

(i) consider that the tariff determined for the project shall be exclusive of taxes and duties as may be levied by the GoTS or the Gol.

(ii) consider income tax / MAT as pass through and be paid by the respondents 2 and 3 herein to the petitioner over and above the tariff determined by the Commission for the project upon receipt of claim from the petitioner.

(iii) consider electricity duty as pass through to be paid by the respondents 2 and 3 upon receipt of claim from it over and shall be over and above the tariff determined by the Commission for the project.

(j) Capacity Utilization Factor: It is stated that this Commission may consider the capacity utilization factor (CUF) for the project to be 23%.

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

(a) to issue tariff regulations for renewable energy projects being developed in Telangana; and

(b) fix project specific tariff for the project developed by the petitioner of capacity 20 MW capacity at Jidipalli, Mahabubnagar District of Telangana.

16. The Southern Power Distribution Company of Telangana Limited (TSSPDCL) being respondent No. 3 has filed a counter affidavit on behalf of respondents 2 and 3, which is stated as below.

a) The petitioner submitted that they have executed an agreement dated 06.10.2015 with TNREDCL, pursuant to sanction accorded for setting up 20 MW wind power project at Bommarajapalli, Mahaboobnagar District, vide proceedings dated 06.10.2015. The erstwhile APERC had issued orders dated 15.11.2012 in OP No. 13 of 2012 determining the tariff payable to the wind power projects which would enter into PPA between the date of issue of order till 31.03.2015. Subsequent to bifurcation of state and formation of Electricity Regulatory Commission for the state of Telangana, The Commission adopted the directions / orders / regulations issued by erstwhile APERC vide Regulation No. 1 of 2014.

b) There is no generic tariff prevailing for wind power projects after 31.03.2015.

In the context of petitioner's request for determination of specific tariff for their project in terms of sections 61 (h), 62 (1) (a) and 86 (1) (a), the attention of the Commission is drawn to the sections which are extracted below.

Section 61 (Tariff Regulations):

The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, in doing so, shall be guided by the following namely:

.....

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

.....

Section 62 (Determination of tariff):

(1) "The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for

(a) supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity, fix the minimum in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

(b) transmission of electricity;

(c) wheeling of electricity;

....."

Section 86 (1)

"The State Commission shall discharge the following functions, namely:

(a) Determine the tariff for generation supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under Section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

.....

(c) As stated above, section 61 of the Act, 2003 confers powers to the Commission to specify terms and conditions for determination of tariff, guided by several factors. However, the condition precedent under section 62 (1) and also sections 86 (1) (a) and (b) mandating the Commission to

determine the tariff for supply of electricity by a generating company to a distribution licensee is that there shall be a PPA subsisting between the parties for determination of tariff. Since the respondents have no subsisting agreement with the petitioner, the prayer of the petitioner seeking determination project specific tariff is not justified.

(d) Further, in compliance with section 3 of the Act, 2003, the Ministry of Power (MoP) notified the revised NTP resolution dated 28.01.2016. The revised tariff policy mandates State DISCOMs to procure power from renewable energy sources through competitive bidding only except from waste – to – energy projects. In pursuance of section 63 of Act, 2003 and in terms of provisions of NTP 2016 for encouraging procurement of renewable power through competitive bidding to reduce tariff, MoP through gazette dated 08.12.2017, notified guidelines for tariff based competitive bidding process for procurement of power from grid connected wind power projects.

(e) It is also pertinent to state before the Commission that other State Regulatory Commissions, such as Karnataka Commission issued orders mandating the DISCOMs to make all future power procurement from grid connected wind power projects only through transparent process of bidding, in accordance with the guidelines dated 08.12.2017 issued by MoP.

(f) Further it is stated that under section 86 (1) (e) the Commission is conferred with the powers to specify percentage of purchase of power from renewable sources. Accordingly, the Commission issued RPPO Regulation No. 2 of 2018 mandating TSDISCOMs for purchase from renewable energy sources a minimum quantity (in Kwh) of electricity expressed as a percentage of its total consumption of energy, during FY 2018 – 19 as solar at the rate of 5.33% and non – solar at the rate of 0.67%. As per the approved projections in retail supply tariff order for FY 2018 – 19, TSDISCOMs would be meeting the non – solar RPPO purchases with 1.01% as against prescribed 0.67%. The Commission is empowered to pass appropriate directions to the DISCOMs in case of non-

fulfilment of such obligation and DISCOMs cannot be thrust by any party to enter into long term PPA with cost plus methodology under the pretext of RPO fulfilment. The tariff regime has changed for procurement of RE power from cost plus methodology to competitive bidding route and it is the DISCOMs prerogative to procure RE power as per their requirement, duly considering cost optimization.

(g) It is stated that the agreement dated 06.10.2015 executed by the petitioner with Telangana New and Renewable Energy Development Corporation Limited, pursuant to the sanction accorded for setting up wind power project of 20 MW capacity in Bommarajapalli, Mahaboobnagar (Dist), does not bind the DISCOMs to enter into PPA with the petitioner. As already stated the NTP 2016 mandates the procurement for power from RE sources except waste to energy projects on competitive bidding route. As such, the petitioner is at liberty to participate in the future tenders to be called by TSDISCOMs and bid for the capacity available with it; but, cannot compel the DISCOMs to purchase energy from their project under long term PPA with cost plus methodology in view of the mandatory competitive bidding process stipulated in the NTP 2016 and hence there are no valid grounds for the Commission to consider the prayer of the petitioner to determine project specific tariff.

17. The other respondents have not filed any counter affidavit in the matter. The TSREDCO on its part sent a letter informing that the power has been conferred on it vide orders of the government to give approvals for establishment of the renewable energy projects more particularly wind.

18. The matter was listed for hearing on the above said dates and arguments were advanced in the matter. Later the arguments were concluded and I have perused the record and the material available therefor.

19. While the matter stood thus for consideration and passage of orders, this Commission noticing that there is a need for determining the generic tariff in respect wind based power plants initiated the necessary process. After undertaking thorough exercise by following the due procedure, this Commission had passed an order on

06.10.2018 determining the generic tariff for wind based power projects, which is applicable for the period 2018 -2020. In the conclusion the Commission observed as below.

6. SUMMARY OF TARIFF COMPONENTS:

The Commission has considered all the parameters and submissions brought before it with reference to its discussion paper and it is of the view that the submissions made in respect of certain issues do not satisfy the normative conditions nor can they be factored while determining the tariff. Therefore, the Commission has arrived at the tariff based on the normatives that are taken into consideration and discussed thoroughly in this order. Based on the discussion, the final tariff is arrived at, which is applicable in the State of Telangana for wind generation projects for the period FY 2018-2020 (FY 2018-19 and 2019-20) in terms of the applicability stated at clause 4 of this order. Normatives parameter adopted for determination of tariff are given at Table – 5.”

20. In view of the determination made in the above said order, there is no necessity of undertaking a separate exercise of determination of tariff with reference to the petitioner’s project specifically. Suffice it to state that the determination would equally apply to the petitioner also. It is also appropriate to state that the Commission is not required to go into the rival contentions in view the order passed in the above said proceeding. That all the other contentions are left open except tariff determination which is covered by the said order and the same is being applied to this case.

21. Accordingly, having considered the rival contentions and relevant material including the discussion in the preceding paragraphs, the present petition is disposed in terms of the above said order. However, in the circumstances without any costs.

This order is corrected and signed on this the 07th day of January, 2019.

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

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