



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

I. A. No. 30 of 2017

In

O. P. No. 1 of 2014

Dated 31.01.2018

Present

Sri. Ismail Ali Khan, Chairman

Sri. H. Srinivasulu, Member

Between:

M/s. Shalivahana (MSWi) Green Energy Limited,

7th Floor, Minerva Complex, 94, S. D. Road,

Secunderabad – 500 003.

....Applicant / Petitioner.

And

M/s. Northern Power Distribution Company of

Telangana Limited, H. No. 2-5-3 ½, Corporate Office,

Vidhyth Bhavan, Nakkalgutta, Hanamkonda,

Warangal – 506 001.

... Respondent.

This application came up for hearing on 19.12.2017 and 08.01.2018. Sri. Challa Gunaranjan, Counsel for applicant / petitioner was present on 19.12.2017 and Sri. T. Vizhay Babu, Advocate representing Sri. Challa Gunaranjan, Counsel for applicant / petitioner was present on 08.01.2018. Sri. Y. Rama Rao, standing counsel for the respondent along with Ms. Pravalika, Advocate was present on 19.12.2017 and Sri. T. Madhusudhan, Chief General Manager (IPC & RAC) was present on 08.01.2018. The application having stood for consideration to this day, the Commission passed the following:

ORDER

The original petitioner has filed the present application seeking modification of the order dated 23.12.2016 insofar as conditions set out therein for demonstration of the project at 75% RDF and 25% biomass by achieving 80% PLF.

2. The applicant stated that it is a public limited company registered under the Companies Act, 1956 (Act, 1956) having its registered office at 7th Floor Minerva Complex, 94, S. D. Road, Secunderabad and is engaged in the business of generation of electricity from the Refuse Derived Fuel (RDF) produced from the processing of Municipal Solid Waste (MSW). The erstwhile Government of Andhra Pradesh (GoAP) vide G. O. Ms. No. 613 dated 27.11.2006 had permitted the applicant to setup of a power project of 7.6 MW capacity based on MSW and biomass at Rebladevipalli Village, Sultanabad Mandal, Karimnagar District. Later on the capacity was enhanced to 10 MW vide G. O. Ms. No. 236 dated 02.03.2009. It was further enhanced to 12 MW vide G. O. Ms. No. 514 dated 20.11.2010.

3. The applicant stated that the respondent Northern Power Distribution Company of Telangana Limited (TSNPDCL) is incorporated under Act, 1956, having its registered office at H. No. 2-5-3 – 1 / 2, Corporate Office, Vidyuth Bhavan, Nakkalgutta, Hanamkonda, Warangal and engaged in the business of distribution and supply of electricity in the area of supply mentioned in its license.

4. The applicant stated that erstwhile GoAP vide G. O. Ms. No. 168 MA dated 15.04.2006 had allotted 11 municipalities to the petitioner in the then districts of Adilabad, Medak and Karimnagar and permitted the applicant for utilizing the MSW in the respective municipal dump yards for processing of MSW to generate RDF which in turn to be utilized fuel for the power generation and additional two Municipalities viz., Kamareddy and Armoor and five Urban Local Bodies (ULBs). The power plant of the petitioner had achieved COD on 14.04.2010. The applicant filed a petition under section 62 (1) (a) read with 86 (1) (a) of the Act, 2003 for determination of tariff for its power project of 12 MW capacity before the erstwhile Andhra Pradesh Electricity Regulatory Commission on 19.05.2011 and the same was transferred to this Commission after the bifurcation of the State and renumbered as O. P. No. 1 of 2014.

5. The applicant stated that being so, the Commission after initiating appropriate proceedings passed a suo moto order vide O. P. No. 18 of 2016 dated 13.06.2016 determining the generic tariff for MSW / RDF based power plants for the control period 2016-17 to 2018-19 and the order is made applicable for the projects which have achieved COD on or after 13.06.2016. Further, the Commission has disallowed the utilization of any other supporting fuels other than RDF / MSW for those projects which are to be newly commissioned. The petitioner has commissioned its power plant in the year 2010-11 and therefore, the above said order did not apply to the petitioner.

6. The applicant stated that later the Commission by order dated 23.12.2016 in O. P. No. 1 of 2014 determined the tariff applicable to the petitioner (using indicative 5% fuel price escalation) for the 3rd control period that is from FY 2016-17 to FY 2018-19. It is stated that the Commission had directed the petitioner to fulfill the following conditions before entering into a PPA with the respondent that is,

“(i) Make operational the MSW processing plants located at Karimnagar and Ramagundam and they must process 75% of RDF as fuel required for the generation of power in the power plant.

(ii) The power plant has been closed by the petitioner and the same should be made operational. The power plant should be inspected by the respondent and should ensure that out of the total fuel required for generation of power from the plant, at least 75% of the total quantum of fuel required should be from the RDF and the balance can be from biomass as stipulated in SEIAA order dated 09.01.2009. The petitioner has to demonstrate in the presence of the representatives of the respondent through continuous operation of the power plant at 80% PLF using 75% RDF and 25% biomass and other fuels.

(iii) After conducting the inspection, if the respondent is satisfied that the power is being generated from the RDF, then a PPA can be entered into at a tariff determined in this order by following due procedure as is being followed in the cases of other power generators.”

7. The applicant stated that it is facing the following difficulties in complying with the conditions imposed by the Commission for entering into a PPA with the respondent.

(a) The petitioner project has been synchronized to State Grid in 2010 as per the norms by conducting 72 hours initial test in the presence of SE / TL & SS, Karimnagar, SE / Operations, Karimnagar, DE / MRT / TL & SS, Karimnagar, DE / Operations, Peddapalli, DE / M&P, Karimnagar, DE (FAC) / MRT Vigilance / VS / Hyderabad and ADE / MRT Vigilance / VS / Hyderabad and started its commercial operations. Subsequently, the Chief Electrical Inspector has permitted the generation capacity of the project capacity to 12 MW vide Lr. No. CEIG / TS / EHV & IPP / KMNR-1 / D. No. 1016 / 2011 dated 01.03.2011.

(b) Whereas, in the absence of an applicable tariff for RDF / MSW based power projects, the petitioner has exported power to the then Andhra Pradesh Power Coordination Committee (APPCC) under short term Letter of Intent (LoI) / open access till May, 2016 and monthly bills raised from time to time followed by the realization of amounts as per the terms of LoI. Later the LoI was not renewed as the determination of tariff is in the process by the Commission.

(c) Subsequently, the Commission has determined a tariff for the petitioner's RDF based power project in O. P. No. 1 of 2014 & I. A. Nos. 7 and 8 of 2016 on 23.12.2016. The Commission has stipulated condition of demonstrating the plant operations at 80% PLF by utilizing 75% RDF and 25% of biomass and other supporting fuels before the officials of NPDCL.

(d) Since the plant is under shut down from the past 17 months, the petitioner has relieved the employees and labour from the services. Further, due to long shut down now the plant condition is also attracting huge investments which is estimated around Rs. 2.55 cr towards refurbishment of equipment besides fuel cost of 15 days etc. to restart the operations. The applicant is also in arrears of CC charges to the tune of Rs. 39.64 lakhs to the respondent and for restarting of the plant, it has to clear the same as the service connection is under disconnection.

(e) After making all the bona fide efforts by mobilizing staff, investing amounts for refurbishment without a long term PPA, will affect the applicant severely for restart and stopping the plant till the time of execution of long term PPA after successful demonstration.

(f) Since the closure of the plant on 01.06.2016, there is no revenue generation, besides applicant is incurring expenditure towards maintenance of the assets and minimum salaries. The applicant independent auditor's report and

provisional balance sheet as on 30.09.2017 shows that the company is reeling under huge losses. The applicant now has to raise funds through short term unsecured loan to meet the expenditure for restarting the plant and operating it successfully. Therefore, unless the Commission allows the respondent to enter PPA, with the very same conditions however as prerequisite, the petitioner will not be able to secure short term loans to restart the plant.

8. The applicant stated that in view of the above mentioned circumstances, the Commission may allow the applicant and DISCOM to sign a provisional long term PPA subject to the conditions that the said PPA would be given effect only upon successful demonstration of the plant as per the stipulated condition of achieving 80% PLF by utilizing 75% RDF and 25% of biomass and other fuels in the presence of the representatives of the DISCOM. The applicant will endeavor to take up the necessary measures to restart the plant and demonstrate the operations as per the said conditions. Upon the operations of the plant to the satisfaction of the DISCOM, then the PPA would be given effect. At any rate, even after the proposed amendment, still the applicant will have to first meet the conditions and after successful compliance only the PPA would come into force, so in effect there is no change in substance.

9. The applicant, therefore, in the said circumstances is constrained to involve the inherent powers of the Commission by filing the petition. The Commission has ample power to amend / modify the conditions by exercising powers under section 86 (1) (b) of the Act, 2003 along with inherent powers to do justice. By amending the conditions, no prejudice would be caused to either respondent or any one as the same does not affect the tariff already determined.

10. In view of the above, the applicant prayed as follows in the present application. "To amend / modify the condition stipulated in the order dated 23.12.2016 passed in O. P. No. 1 of 2014 allowing the applicant / petitioner and the respondent DISCOM to execute the PPA, which shall be operative and enforceable only after compliance of the conditions that the applicant / petitioner successfully demonstrates the continuous operation of the plant at 80% PLF using 75% RDF and 25% Biomass and other fuels in the presence of the representatives of respondent DISCOM."

11. The respondent has filed counter stating that the prayer of the petitioner in the subject petition is to amend / modify the condition stipulated in the order dated 23.12.2016 passed in O. P. No. 1 of 2014 allowing the applicant / petitioner and the respondent DISCOM to execute the PPA, which shall be operative and enforceable only after compliance of the conditions that the applicant / petitioner successfully demonstrates the continuous operation of the plant at 80% PLF using 75% RDF and 25% biomass and other fuels. The petitioner is seeking for the said amendment so as to enable them to secure short term loans for restarting the operations of the plant, closed since 01.06.2016. The respondent in its submissions stated the following:

- i) The Commission issued order dated 13.06.2016 in O. P. No. 18 of 2016 determining generic tariff for energy generated from Municipal Solid Waste (MSW) and Refuse Derived Fuel (RDF) based power projects in the State of Telangana achieving CoD during the period from 13.06.2016 to 31.03.2019.
- ii) The petitioner filed a petition for determination of tariff for their project before the erstwhile APERC in 2011 and the same was transferred to this Commission after bifurcation of the State as O. P. No. 1 of 2014.
- iii) The primary contention of the petitioner was that their project is based on the Refuse Derived Fuel (RDF) and not MSW. Since the project is commissioned in the year 2010, there is no tariff for the project and hence prayed the Commission to determine the tariff considering it to be a RDF based project.
- iv) The respondent herein contested that the petitioner's project as MSW and not RDF based on the TNREDCL's sanction.
- v) Having heard the rival contentions, this Commission concluded the petitioner's plant as RDF based power plant and determined a levelized fixed cost for the complete life of the project as Rs. 2.39 per unit and the variable cost was allowed same as determined in the generic tariff order for RDF based projects.
- vi) However, this Commission directed to fulfil the following conditions before entering into PPA:
 - a) The petitioner shall make the existing MSW processing plants located at Karimnagar and Ramagundam operational and they must process 75% of RDF as fuel as required for the generation of power in the power plant.

- b) The closed power plant should be made operational and should be inspected by the representatives of TSNPDCL to ensure that out of the total fuel required for generation of power from the plant, at least 75% of the total quantum of fuel required should be from the RDF and the balance can be from biomass as stipulated in State Level Environment Impact Assessment Authority (SEIAA) order dated 09.01.2009. The Developer has to demonstrate in the presence of the representatives of the TSNPDCL through continuous operation of the power plant at 80% PLF using 75% RDF and 25% biomass and other fuels.
- c) After conducting the inspection, if the DISCOM is satisfied that the power is being generated from the RDF, then a PPA can be entered into at a tariff determined in the TSERC order by following the due procedure as is being followed in the cases of other similarly placed power generators.

12. In the light of the Commission's orders, the petitioner will be permitted to enter into PPA with TSNPDCL only after demonstrating the capacity of the RDF project at 80% PLF with 75% RDF fuel and 25% biomass and other fuels. However, the petitioner has expressed difficulty in borrowing short term loan to restart the operations of the plant without a regular PPA. Hence the petitioner is seeking for amendment of the orders dated 23.12.2016 in O. P. No. 1 of 2014 to enable TSNPDCL to sign a provisional PPA subject to the condition that the said PPA would be given effect only upon successful demonstration of the plant as per the stipulated conditions.

13. We heard the counsel for the applicant and the counsel for the respondent at first instance and the representative of the respondent in the second instance. We have also perused the order passed by us and the pleadings now set before us. At the time of hearing, the following arguments and submissions were advanced on the application. For appreciation of the case, the proceedings as recorded by us are extracted below.

19.12.2017

"The counsel for the respondent has sought adjournment of the matter as the notice has been received only few days ago. The counsel for the petitioner

sought orders of the Commission to run the plant. The representative of the licensee, who is present in the Court Hall, stated that the petitioner was informed and required him to demonstrate the plant operation in terms of the order of the Commission several times, however, the petitioner did not come forward to do so.

At this stage, the Commission expressed the view that there will be no harm in directing the petitioner to synchronize the plant and run the same for few months to demonstrate the requirement made in the order of the Commission and in the event of such demonstration being unsatisfactory, the licensee has the right of refusal to enter into PPA as directed by the Commission in the order. The Commission required the licensee to state clearly about the allowing of the petitioner to run the plant. The counsel for the respondent sought some time to make up the mind of the licensee on the subject matter and convey its views, so that the Commission may pass appropriate orders. The Commission wanted expeditious filing of counter affidavit in the interlocutory application and adjourned the matter.”

08-01.2018

The counsel for the applicant stated that it is a RDF project. The Commission had passed an order on 23.12.2016 imposing the condition of 80% PLF with 75% of solid waste and 25% of other fuels. The plant is under shutdown and the company wishes to start operations. For starting operations, the condition imposed in the order that PPA will take effect only upon demonstration of the plant as above is hindering the operations. Therefore, the licensee may be directed to sign the PPA and allow the operations so as to enable the company to start working and demonstrate the condition imposed by the Commission. The representative of the licensee stated that they are inclined to allow the plant to start and sign the PPA. To that effect a counter affidavit is filed by the licensee.

The Commission observed that usage of fuel in rainy and winter seasons is difficult as it is wet though it is solid waste. To demonstrate 80% PLF this type of plants need more time. This plant has to be allowed to operationalize as it is must run station and is being encouraged by the Government of India.

The representative of the licensee stated that the raw material processing plants are established at three places that is at Ramagundam, Karimnagar and

Nizamabad. The plant at Karimnagar is only working and Nizamabad plant is yet to start operation. At this stage, the counsel for the applicant pointed out that the Ramagundam unit has been shut down at the request of the Commissioner of the Municipality, Ramagundam due to certain local issues and efforts are being made to revise the same. The representative of the licensee stated that the plant requires stabilization period and it may take longer time for the plant to operationalize and demonstrate 80% PLF.

The Commission pointed out that for coal plants, the stabilization period is about 6 months and the same yardstick may be applied to this plant also. The licensee can pay fixed charges to the unit in the event of the company not achieving 80% PLF at proportionate rate per unit instead of lump sum payable in the case of coal unit for the tariff year. These observations are made by the Commission in the light of the fact that there are no guidelines from CERC or government on technical aspects.

The Commission required the applicant and the licensee to discuss and come to a conclusion regarding operationalization of the raw material processing units as also the running of the power plant. The applicant should file a statement immediately about bringing into operation the raw material units and the time taken for the same. Upon receipt of such information, the Commission will pass necessary orders.”

14. Upon hearing the arguments of the parties as noted above, we directed the petitioner to file a memo as required by us during the hearing. The petitioner filed a memo explaining the following position.

“The applicant has filed memo stating that the Commission during the hearing held on 08.01.2018 directed the petitioner to submit the written commitment with the tentative dates for restart of the power plant. Operationalizing of processing plants and successful demonstration of the plant before the representatives of NPDCL as per the conditions stipulated in the original order in O. P. No. 1 of 2014. Accordingly, after having evaluating all the possibilities to refurbish the plant by mobilizing short term loans to restart the plant and procurement of raw materials etc., it is further stated that the plant can be restarted within 90 days from the date of signing of the conditional power purchase agreement with NPDCL and with regard to operationalization of the

processing plants and successful demonstration of the plant by achieving 80% PLF by utilizing 75% RDF and 25% biomass and other fuels to get the regularization of the PPA, the petitioner request to grant time of at least 9-12 months.

It is submitted that the reasons forcing the company for the requested time for demonstration are –

As per G. O. Ms. No. 514, the company has been allotted 18 Municipalities for collection of processed MSW generated in the respective ULBs. Further, Karimnagar, Ramagundam and Nizamabad Municipalities were allotted to the petitioner for setting up of processing plants.

Processing Plant at Karimnagar:

The company has established and operated the processing plant at Karimnagar by collecting Municipal Garbage from Korutla, Jagtial, Metpally, Sircilla and Siddipet. During the plant operations, the company has utilized about 50-55% of RDF in its power project. The processing plant at Karimnagar alone was operated reasonably to generate 35-40% of the RDF during its operations even when the most portion of the Garbage being made available to petitioner company was consisting of silt / debris which includes bio-medical waste, tyres, rubber, polythine, plastics, dead animals, stones, glasses, toxic, corrosive and flammables etc., which are non-combustible, non-decomposable and not suitable for processing. Rest of the RDF has been procured from various ULBs by manual segregations to get the combustible materials. It is further stated that the respective Municipalities are keen to implement and improve source segregation with which the quantum of dry materials will increase and the company shall ensure to improve the generation of RDF.

Processing Plant at Nizamabad:

The company has entered an agreement with Nizamabad Municipal Corporation in the month of February, 2012 and has constructed sheds and mobilized tro mill and shredders in the processing plant. Once the plant is re-started the petitioner company shall ensure to develop the processing plant completely to generate adequate RDF for the plant operations.

Processing Plant at Ramagundam:

With regard to Ramagundam processing plant, the petitioner company has established processing plant in the year 2010 by investing a countable amount

of over Rs.4.00 Crores by entering into a lease deed with a purpose of processing municipal solid waste into RDF and Compost. However, the petitioner company has experienced frequent disturbances by some multitude people from adjoin colonies, expressing their disinterest in not only processing the garbage but even restricting corporation employees in dumping activities at the site. Due to which, the municipal garbage is not being dumped in the respective dumping yard. The issue was brought to the notice of the District Collector. Accordingly, the District Collector has released proceedings advising M/s. Singareni Collieries to lease out about 10 acres of land to Ramagundam Municipal Corporation to develop a new dump yard. Now, the company needs to pursue with the concerned Municipal Corporation and Singareni Authorities to complete the process of allocation of suitable land for dump yard. Once the land is allotted by the department, the company has to invest about Rs.2-3 Crores to establish a processing plant in Ramagundam to generate the combustible materials for the power project. The company shall ensure in implement the manual segregation of the Municipal Garbage in Mancherial, Bellampally, Mandamarry and Kagaznagar ULBs which are falling in the vicinity and the combustible materials will be transported to the power project for direct feeding.

It is submitted that the grievances in the successful operation of processing plant is due to the mixed municipal garbage is being dumped in all the municipal dump yards, the petitioner company is finding it difficult to segregate and process the materials as also the quantum of combustible materials are also less. Thus, the petitioner company has requested the department of municipal administration to take immediate initiatives to implement of source segregation program as being implemented in the Warangal Municipality. The petitioner company is also requested the department of MA and UD for grant of VGF and to utilize the same for development of infrastructure facilities in all the allotted 15 ULBs and 3 Municipal Corporations under SBM grant on which the Hon'ble Minister, Government of Telangana during his review meetings with the promoters have opined and advised the concern to verify the chances to invest through equity for the survival of the RDF power plant.

Therefore, the petitioner company prays before this Commission to allow the petitioner company to sign the conditional PPA with the tariff as determined by

the Commission in its order vide O. P. No. 1 of 2014 so as to enable us to restart the plant within 90 days and 9-12 months from the date of execution of the conditional PPA for demonstrate the plant to get the regularization of the conditional PPA.”

15. The detailed examination of the pleadings and the memo filed by the applicant would drive home the point that the petitioner is at pains to put the plant in operation as required by us while disposing of the original petition. While on one hand, the applicant is required to demonstrate the conditions stipulated by us while entering into PPA, on the other hand, the applicant is in a juxtaposed situation whereby unless and until it signs PPA no funding will be made, no PPA will be signed unless the same is demonstrate by it regarding the operation of the plant.

16. While determining the tariff, we had allowed the petition for the sole reason that it is environmentally benign project catering to disposal of municipal solid waste accumulated by the municipalities. Also, power generator plants based on municipal solid waste are must run plants in the merit order dispatch as per the GoI Policy. However, running of plant and purchase of energy by the DISCOM would only happen after a PPA is signed and is consented by the Commission. Inasmuch as from the pleadings available on record, it appears that no such exercise was done by the parties to this case.

17. Absence a proper agreement would entail difficulty to the developer in mobilizing finances as well as operating the plant itself and supplying energy if the plant is run to the DISCOM. In the given circumstances though we still hold the view that unless the project is demonstrated properly, there is no case of DISCOM entering into PPA, but as stated above in order to not to delay the benefits of environmental protection, greater responsibility thrust on us to ensure running of the plant and at the same time comply with the requirement of law of having an agreement.

18. Therefore, in order to facilitate both the parties to benefit out of the orders of the Commission, we allow the parties to enter into the provisional PPA with the condition that the plant will be started within 90 days and the condition imposed in the original order regarding 80% PLF to be demonstrated within a period of 9 months without fail. Failing to start the plant within 90 days would result in this order being

worked out and the original order dated 23.12.2016 gets restored and consequently the original time period for demonstration of the condition also gets restored. Subject to these observations, the application is disposed of. In the circumstances, the parties shall bear their own costs.

This order is corrected and signed on this the 31st day of January, 2018.

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

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

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