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

R.P.(SR)No.20 of 2020
in
O.P.No.14 of 2020

Dated 14.09.2020

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

Between:-

1. Southern Power Distribution Company of Telangana Ltd.,
   # 6-1-50, Mint Compound, Hyderabad - 500 063.

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

AND

-Nil-… ... Respondent

This revision petition has come up for hearing through video conference on 28.08.2020. Sri Y.Rama Rao, Advocate for the review petitioners along with Sri K.Sathish Kumar, DE(RAC) TSSPDCL appeared. This revision petition having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Southern Power Distribution Company of Telangana Limited (TSSPDCL) and M/s Northern Power Distribution Company of Telangana Limited (TSNPDCL) being TSDISCOMs (review petitioners) have filed a review under sec 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking review of the order dated 18.04.2020 determining the generic tariff for the refuse derived fuel (RDF) based municipal solid waste (MSW) projects in O.P.No.14 of 2020 applicable for the period FY 2020-21 to FY 2023-24.

2. The review petitioners stated that the review petition is preferred against the Commission orders dated 18.04.2020 in O.P.No.14 of 2020 in the matter of Suo-moto determination of generic tariff for electricity generated from RDF based power projects in the state of Telangana achieving commercial operation date (COD) during the period from FY 2020-21 to FY 2023-24.

3. The review petitioners stated that the Commission issued public notice dated 20.03.2020, in the matter of determination of generic tariff for electricity generated from RDF based power projects in the state of Telangana achieving COD during the period from 01.04.2020 to 31.03.2024 and invited suggestions/comments from all the stakeholders on the proposed technical and financial parameters. In obedience of the same, TSSPDCL being the lead procurer of TSDISCOMS submitted suggestions/ comments on the proposed parameters for determination of generic tariff for the RDF based power projects.

4. The review petitioners stated that the Commission did not take into consideration their suggestions / comments on various parameters and issued the impugned order determining generic levelised tariff for the RDF based power projects achieving COD from FY 2020-21 to FY 2023-24 at the rate of Rs.7.84/kWh, comprising of levelised fixed cost of Rs.3.42/kWh and variable cost of Rs.4.42/kWh. The Commission approved the following parameters:

Parameter	**Unit**	**Fixed by TSERC in generic tariff order dated 18.04.2020**
Capital cost	Rs.Crs/MW	9
Plant load factor (PLF)	%	1st year-65, 2nd year-75, 3rd year onwards-80
O&M expenses/MW		5% of capital cost
Annual escalation on O&M expenses	%	5.72
Plant life	Years	20
Land value	Rs.Lakh/MW	5
Salvage Value	%	10
Depreciation	%	5.83% for first 12 years and 2.5% for following 8 years
Rate of return on equity (Post-tax)	%	16
Income Tax	-	Income Tax paid by the generator on the income derived from the power project shall be reimbursed by the

Parameter	Unit	Fixed by TSERC in generic tariff order dated 18.04.2020
		distribution licensees on submission of challans of payment of tax to the Income Tax Department
Interest on long term loan	%	12
Loan tenure	Years	12
Debt-Equity Ratio	-	70:30
Working Capital Components	-	O&M expenses-1 month maintenance spares @ 1% of capital cost escalated at 5% per annum Receivables-1 month for sale of electricity calculated on normative PLF fuel cost-1 month equivalent to normative PLF
Rate of interest on working capital	%	12.5
Discount Rate	%	13.20
Auxiliary consumption	%	11
Station Heat Rate	kcal/kWh	4000
Gross Calorific Value	kcal/kg	2500
Base Fuel price	Rs/MT	1800
Annual Fuel Price escalation	%	5
Incentives	-	Any incentives, State or Central and not limiting to tipping fee, received by the generator to be passed on to the distribution licensees(s) procuring power from the generator
Levelised Tariff	Rs./kWh	7.84

5. The review petitioners stated that it is pertinent to submit that earlier Commission issued order dated 13.06.2016 in O.P.No.18 of 2016 in the matter of Suo moto determination of generic tariff for the energy generated from MSW and RDF based power projects in the state of Telangana achieving COD during the period from 13.06.2016 to 31.03.2019, as below:

For MSW projects:

Levelised tariff of Rs.5.90/kWh for entire project life of 20 years.

For RDF based projects:			
	FY 2016-17	**FY 2017-18**	**FY 2018-19**
Fixed cost Rs./kWh	3.83	3.83	3.83
Variable cost Rs./kWh	3.24	3.40	3.57
Total cost Rs./kWh	7.07	7.23*	7.40*

* Provisional variable cost determined taking indicative fuel price escalation at the rate of 5%

6. The review petitioners stated that the technical and financial parameters adopted by this Commission in the said order are as submitted below:

Capital Cost	**Value**
Capital Cost	Rs.9 cr/MW-RDF Rs.14 cr/MW-MSW
PLF	For RDF first year-65% Second year onwards-80% For MSW first year-65% Second year onwards-75%
O&M first year	6% of CAPEX
O&M Escalation	5.72%
Plant life	20 years
Land value	Rs.5 lakh/MW
Salvage value	10%
Depreciation	5.83% for first 12 years & 2.50% for following 8 years
Return on equity (RoE) post tax	16%
Interest on debt	12%
Loan tenure	12 years
Debt-equity ratio	70:30
Working capital components	Operation & Maintenance expense for 1 month maintenance spares @ 15% of O&M expenses Receivables equivalent to 2 months for sale of electricity calculated on target PLF Fuel cost for 4 months equivalent to normative PLF (only for RDF)
Interest on working capital	12.5%
Auxiliary Consumption	11% for RDF 12% for MSW
Station heat rate	4000 kcal/kWh-RDF
Gross calorific value	2500 kcal/kg-RDF
Secondary fuels	Not allowed
Fuel Cost	Rs.1800/tonne-RDF
Fuel cost escalation	As per escalation formula
Discount Rate	13.20%

7. The review petitioners stated that the Commission not considered the following facts while issuing the impugned order:

i) <u>Return on Equity (RoE)</u>:

a. Commission proposed RoE of 14% (post tax) in the notification.

b. TSDISCOMs accepted the RoE of 14% as the said norm was in line with the CERC RE tariff regulations.

c. However, the Commission increased the RoE from 14% to 16% in the final order stating that the rate of 15.50% is stipulated for thermal generating stations as per Regulation No. 1 of 2019. Also, the Income Tax paid by the generators is made pass through and is to be reimbursed by the DISCOMs on submission of proofs.

d. The RDF based power projects have no comparison with the thermal generating stations and are placed on a different footing; hence the RoE recommended for the thermal generating stations cannot form basis for fixing of RoE for RDF based power projects.

e. CERC RE tariff regulations issued from time to time are the guiding principles for determination of tariff for the renewable energy projects. CERC (Terms and Conditions for Tariff determination from renewable energy sources) Regulations, 2017 applicable for the period from 01.04.2017 to 31.03.2020, prescribe RoE at the rate of 14% (post-tax). By notification No.1/21/2017-Reg.Aff/(RE-Tariff-2017-20)/CERC dated 24.03.2020, the Commission has extended the period of applicability of the said regulations till 30th June 2020 or such other date as may be notified by the Commission.

f. Also, the other state Commissions (viz., Gujarat and Kerala) adopted RoE at the rate of 14%.

g. As such, the Commission ought to have fixed the RoE @ 14% in line with the CERC norms.

ii) <u>Interest on Term Loan</u>:

a) Commission proposed for interest rate of 12% on loan for the debt component of the capital cost.

b) As furnished in the petitioner's comments on the notification, it is stated that CERC RE Tariff Regulation 2017 recommends for interest on term loan equivalent to average SBI MCLR rates for past six months plus 200 points. This works out to 9.91%

c) The interest rate on term loan adopted by this Commission at the rate of 12% is much higher than the rate prescribed by CERC.

d) It is a known fact that the interest rates have been witnessing a downward trend and DISCOMs shall be passed on such benefit.

e) As such, the Commission may review the interest on term loan and fix it as 9.91% inline with the CERC norms.

iii) Interest on Working Capital:

a) Commission proposed for interest rate of 12.5% on working capital.

b) As furnished in the petitioner's comments on the notification, it is stated that CERC RE Tariff Regulation 2017 recommends for interest on working capital equivalent to one year average SBI MCLR rates for past six months plus 300 points. This works out to 11.1375%

c) The interest rate on working capital adopted by this Commission at the rate of 12.5% is higher than the rate prescribed by CERC.

d) It is a known fact that the interest rates have been witnessing a downward trend and DISCOMs shall be passed on such benefit.

e) As such, the Commission may review the interest on working capital and fix it as 11.13% in line with the CERC norms.

iv) Discount Rate:

a) Commission proposed for discount rate of 12.6.

b) As furnished in the petitioner's comments on the notification, it is stated that taking into consideration the interest rate on term loan at the rate of 9.91% and RoE at the rate of 14% in line with the CERC prescribed norms, the discount rate works out to 9.1%/

c) As such, the Commission may review the discount rate and fix it as 9.1% in line with the CERC norms.

v) Fuel Cost escalation:

a) Commission proposed for 5% annual fuel price escalation.

b) As stated in the review petitioner's comments on the notification, it is prayed to adopt fuel price escalation at the rate of 3% as was adopted by the Gujarat State Commission.

vi) Tipping Fee:

a) Commission in the notification proposed for reimbursement of tipping fee to the distribution licensees on receipt of the same by the generator under the provisions of concession agreement. The levelised impact of tipping fee was proposed as Rs.3.54 / kWh.

b) The petitioners requested the Commission to deduct the tipping fee directly from the tariff to be paid by DISCOMs to the generators.

c) However, the Commission did not consider the DISCOM submission for deduction of tipping fee upfront from the tariff payable stating that there may be a time gap between the authorities and the generator should not be subjected to financial stress during the period. It was further held that it is the responsibility of the DISCOMs to verify the facts and make claims for the implementation of the Commission's directions regarding the reimbursement of tipping fee.

d) Accordingly, the Commission in the final order dated 18.04.2020 approved that the tipping fee shall be reimbursed to the distribution licensees on receipt of the same by the generator under the provisions of its concession agreement and did not quantify the fee.

e) To avoid financial stress on the generators, the Commission did not approve for deduction of tipping fee from the tariff to be paid by the DISCOM. But this would result in alarming financial stress on the DISCOMs, who are obligated to purchase comparatively higher tariff power from these RDF based projects (as per National Tariff Policy through MoU route).

8. The review petitioners stated that as detailed above, the adoption of parameter value higher than the CERC prescribed regulation norms are mistakes apparent on the face of record. Though the Act, 2003 mandates the Commission to promote generation of electricity from non-conventional energy sources, but such encouragement within the parameters of permitted in law. The said mistakes prejudicially effects the legitimate interest of review petitioners and thus deserves to be reviewed.

9. The review petitioners stated it is pertinent to state that the National Tariff Policy (NTP) mandates for procurement of power from MSW / RDF based projects through MoU route at the tariff determined by the Commission. As such, the DISCOMs are mandated and burdened with higher tariff RE power from these MSW/RDF based power projects in comparison with other RE projects such as solar

and wind power projects in which case DISCOMs are procuring power through competitive bidding route at a very competitive prices of less than Rs.3/kWh.

10. The review petitioners have sought the following reliefs in the petition.

i. That the said review petition may be taken on recorded admitted; and

ii. That the impugned order may be reviewed accordingly;

11. The Commission have heard the arguments of the counsel for the petitioners, the submissions made during the hearing are extracted below:

"The counsel for the review petitioners stated that the review petition is filed to raise certain aspects of the tariff determined by the Commission without considering the submissions of the petitioners. The counsel for the petitioners has laid thrust on the contentions raised in the review petition itself, more particularly on the following aspects - (i) Return on Enquiry, (ii) Interest on Term Loan, (iii) Interest on Working Capital, (iv) Discount Rate, (v) Fuel Cost Escalation and (vi) Tipping Fee. The counsel for the petitioners submitted that the Commission had notified certain parameters at a lessor rate but concluded at a higher rate, which may be a burden to the petitioners and they have no other way except pass on the same to the end consumers. Any percentage fixed higher than the draft notification would entail additional expenditure to the petitioners while discharging the functions under the Electricity Act, 2003. The Commission directed purchase of the RDF based power which in fact is must run and must be procured energy as per tariff policy.

The counsel for the petitioners strenuously pointed out that certain submissions which were made by the petitioners were considered, but to the detriment of them and few others have not at all been considered. These aspects would have commercial impact on the petitioners. It is also his case that interest rates have not been taken into account in accordance with the notifications of the financial institutions including SBI.

The counsel for the petitioners stated that the review petition is maintainable under section 94(1)(f) of the Act, 2003 duly applying the principles of review under the Code of Civil Procedure, 1908. Undertaking the review of the order includes tariff order also and the Commission is empowered to take a view both on procedural and also substantial issues. He sought the admission of the review petition and issuance of notice to the objectors so that a comprehensive hearing on the issues raised by the review petitioners can take place.

The counsel for the petitioners sought to place before the Commission the order passed by the Hon'ble Supreme Court on 23.03.2020 regarding maintainability of the petition even if there is delay in filing the review petition due to pandemic situation. He also relied on a judgment in the matter of M/s.Reliance Infrastructure Limited against Maharashtra Electricity Regulatory Commission about the determination of tariff for MSW projects. He sought to stress that the Commission is required to consider section 61 (a), (b) and (d) of the Act, 2003 while undertaking the determination of tariff. ….”

12. The Commission in the hearing observed out that all the material aspects with regard to the issues raised by the review petitioners have been considered while passing the order and also took into consideration the orders passed by several other coordinate Commissions. The reasons mentioned for several parameters according to the Commission are substantial and elaborate.

13. For entertaining the review petition, the following should be satisfied. The review of an order passed by a Commission is dependent on the following aspects under the Code of Civil Procedure, 1908.

a. Where there is a typographical mistake that has crept in the order;

b. When there is an arithmetical mistake that has crept in while effecting calculation or otherwise;

c. When there is a mistake committed by Commission, which is apparent from the material facts available on record and / or in respect of application of Law;

d. When the Commission omitted to take into consideration certain material facts on record and ‘law on the subject’ and that if on taking into consideration those aspects, there is a possibility of Commission coming to a different conclusion contrary to the findings given;

e. If the aggrieved party produced new material which he could not produce during the enquiry in spite of his best efforts and had that material or evidence been available, the Commission could have come to a different conclusion;

The review petitioners have sought only the relief of review of the order passed in O.P.No.14 of 2020 in the present petition raising the plea of reviewing the order dated 18.04.2020. They gave no proper reason / submission which would fit into any of the above principles on which review petition is to be entertained.

14. The Commission notices the aspect of review and the view expressed on the issue of review. The ratio decided by the Hon'ble Supreme Court in its various decisions for invoking the power of review, has been culled out by the Hon'ble Appellate Tribunal for Electricity (ATE) in its judgement dated 17.04.2013 in Review Petition No.12 of 2012 in Appeal No.17 of 2012.

15. Reliance is placed by the petitioners on the order passed by the Hon'ble Supreme Court in Suo moto Writ Petition No.3 of 2020, wherein the Hon'ble Supreme Court extended the period of limitation for filing petitions/applications or expiry of interim orders due to then prevailing situation of COVID-19 putting restriction on movement of people. In the instant case, the review petitioners have filed the review petition on 23.06.2020 against the order dated 18.04.2020. Hence, the said order of the Hon'ble Supreme Court is of no benefit to the petitioners, as the review petition has been filed well within the time of 75 days from the date of receipt of the order as stipulated in the Conduct of Business Regulation, 2015.

16. Insofar as maintainability of the petition the counsel for the petitioners sought to emphasize that the Commission has ample power to undertake the review by entertaining the petition under section 94(1)(f) of the Act, 2003. The Commission notices that the statute did provide for undertaking the reviewing of its decisions, directions and orders in the above said provision, however, the enabling provision makes it clear that the Commission has same powers as are vested in a Civil Court under Code of Civil Procedure, 1908. Suffice it to state that the present petition filed by the petitioners should satisfy the provisions of Order XLVII Rule 1 of the above said code. Nothing is placed on record as stated earlier insofar as the conditions for the review as enumerated above. Maintainability of the review petition per-se does

not merely involve the authority to entertain but also to look into whether any error has crept into the order that is passed by the authority.

17. The Commission also notices that the petitioners have contended that the draft notification while inviting comments provided certain factors and the final order did not reflect the same factors that the adoption of parameter values higher than CERC norms are mistakes apparent on the face of record, specifically, for Return on Equity (RoE) which has been approved as 16% as against 14% proposed in the public notice and as well as notified by the CERC. It is axiomatic to state that what is stated in the draft notification would constitute an information for the purpose of comments/ objections/ suggestions and cannot be termed as conclusion. In terms of section 61(a) of the Act, 2003, the principles and methodologies specified by CERC shall be guiding purpose and are not mandatory. The Commission had considered what is appropriate in the interest of all the stakeholders also reliance is placed on figures of various states in the order, to highlight the facts. Relying on the Hon'ble ATE order dated 17.04.2013 in R.P.No.12 of 2012 in Appeal No.17 of 2012 [para 17(e] "*The party is not entitled to seek a Review of a judgment delivered by the Court merely for the purpose of rehearing a fresh decision of the case. The principle is that the judgement pronounced by the court is final. Departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so."* the Commission opines that the petitioner has simply sought for the fresh decision of the case on rehearing the entire matter. This is not permissible under the Review jurisdiction and. there is no mistake apparent on the face of the record as contended by the review petitioners and therefore, the review sought is not maintainable.

18. In the result, the Commission is of the view that the review petition is devoid of merits and the same is liable to be rejected. Accordingly, the petition is disposed.

This order is corrected and signed on this the 14th day of September, 2020.

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