

ORDER

1. Prayer in P.P.A.P. No. 2 of 2011 :-

The prayer in P.P.A.P No. 2 of 2011 is to fix the tariff for the respondent's Captive Generating Plant M/s. Sun Paper Mills Ltd for the year 2011-12 upto 2014–2015 for around 1 MW as per petitioner's rate of realization i.e. Rs.3.11 per unit for further years.

2. Facts of the case :-

- a. In PPAP No 3 of 2009 the Commission fixed the tariff for 3 years from 01-04-2008 to 31-03-2011 with an escalation of 5% every year.
- b. In the said Tariff Order the Commission further directed the petitioner to file a petition for determination of tariff for the period from 01-04-2011 to 31-03-2014, well ahead of 31-03-2011.
- c. In view of the above direction of the Commission, this petition has been filed by the Petitioner.

3. Contentions of the Petitioner

- a. The quantum of energy offered by the respondent's company for sale to the petitioner's company TANGEDCO for 2011-2012 is very meagre (i.e.) around 80,00,000 units per annum which roughly works out to 1 MW.
- b. ABT rate is in the range of 2.10 (floor rate) to 4.08 (maximum rate) as per the TNERC approved rate for power purchase from the fossil fuel based

captive generating plant and co-gen plant in Order No.4 dated 15-05-2006 and subsequent amendment therein.

- c. The petitioner has been purchasing power from the respondent's company at the rate of Rs.4.04 per unit during the period 2010-11 as per the tariff fixed by Hon'ble TNERC. However the petitioner's average rate of realization is 311.08 paisa per unit for the year 2009-10 (Preliminary). Hence the rate of Power purchase from the petitioner company is already in higher side. Also the quantum of power is very meagre (925 Units per hour).

4. Contentions of the Respondents in Counter Affidavit filed on 25-5-2011

- a. The Petitioner, by way of the present petition, without setting out any reasons in this regard has sought for a rate of Rs.3.11 per unit, which is much less than the rates fixed by the Hon'ble Commission for the years 2008 – 2011. The only reason that is attempted to be made out by the Petitioner is the fact that the amount of power that is committed by the Respondent is only 80,00,000 units, which is approximately 1 MW. However under the PPA, in terms of clause 3.7, the Respondent was only required to inform the Petitioner about the 'Firm Power' commitment for the billing year, which has been duly informed to the Petitioner by the Respondent through its letter dated February 12, 2011.
- b. In the present petition, the Petitioner has made the same plea made in PPAP 3 of 2009 for the reason of the reduction of the tariff, even though

as per the letter of the Respondent dated February 12, 2011, the Respondent has given a "Firm Commitment" that it would supply 80,00,000 units.

- c. By subsequent correspondences the Petitioner has reversed its earlier directions and had agreed to purchase the power on an adhoc basis at Rs.4.04 per unit until such time as this Hon'ble Commission fixes the tariff for the forthcoming years.
- d. The quantum of energy offered by the Respondent's company for sale to the petitioner company is irrelevant. The requirement under the PPA is for the Respondent to indicate to the Petitioner the "Firm Power" commitment a month before the beginning of the annual billing cycle.
- e. While it is not denied that the Availability Based Tariff ("**ABT**") rate for the purchase of power ranges from Rs. 2.10 to Rs.4.08, the respondent submit that the said rates are not inflexible and that this Hon'ble Commission has the power to fix the rates which are in keeping with the costs incurred by the Respondent. Even the Commission in its earlier order dated February 25, 2010 fixed the tariff of Rs.3.66, Rs.3.85 and Rs.4.04 for the years 2008 -09, 2009-10 and 2010-2011 respectively giving an increase of 5% every year which was based on the increasing cost of all the materials that are used in the generation of power.
- f. The rate being paid by the Petitioner is based on the tariff fixed by the Hon'ble Commission by its order dated February 25, 2010. The average

rate of realization of the Petitioner cannot and ought not to be the concern of the Respondent while claiming to fix the tariff. The Hon'ble Commission has the power to decide and fix the rates considering the present cost of generation with a nominal increase in the rates for the future years in line with the inflationary trend in the prices of all the fuels.

- g. The Hon'ble Commission in its order dated February 25, 2009 in the case of TCP Ltd. v. TNEB had fixed the tariff rates for the period upto 2013 – 2014 wherein the rate for the years 2011- 2012, 2012 – 2013 and 2013 – 2014 are fixed as Rs. 4.24, Rs. 4.45 and Rs.4.67 respectively. As can be seen, this Hon'ble Commission provided for a 5% increase over the rates fixed for the previous years. Hence it would be unreasonable, by the petitioner, to request the Hon'ble Commission to fix the rate at Rs.3.11, as prayed for in the present petition, since there is precedent to fix the rate based on the cost of operation by the respective units and not to adopt the ABT tariff range.
- h. Even as on the date of petition, the Petitioner is paying the Respondent Rs.4.04 per unit, in terms of the correspondence, which has been submitted along with this counter. With a further increase in the fuel cost in the current year further increases expected in the coming years, the cost of fuel and the total cost of generation per unit will definitely go up and therefore, there is no economic basis for fixing the tariff at Rs.3.11 as prayed for by the Petitioner.

5. Contentions of Petitioner in the Additional Counter dated 6-9-2011

- a. As the petitioner's financial condition is very precarious and also the quantum of power supplied is very meagre i.e. less than 1 MW, it was informed to the respondent that TANGEDCO can offer only Rs.3.11 per unit for the FY 2011 – 12 and requested the respondent to accept the same, and the company did not accept the same and requested for Rs.4.04 per unit.
- b. The respondent company was requested to stop pumping power into the grid, if the rate offered by TANGEDCO is not acceptable to them.
- c. The rate offered by the petitioner i.e. Rs. 3.11 per unit (which is the rate of realization of the petitioner for the year 2009 – 2010) for purchase of power for the year 2011 – 2012 is reasonable.

6. Contentions in the Rejoinder filed by the Petitioner on 9-8-2011

- a. The allegation of the Respondent that the cost of production of power has been steadily increasing is denied. If at all the allegation is to be substantiated, the respondent ought to have come with working sheet. A mere allegation that the cost of fuel has gone upto Rs.4.36 is a bald statement which cannot be accepted and the petitioners deny the same.
- b. The claim of the respondent that fixation of the tariff should be in the same lines of the rates as fixed in the earlier PPA has not been substantiated by facts and figures. Citing cost of fuel @ Rs.4.36 alone cannot be a criteria to deny the claim of the petitioners.

- c. The fixation of tariff for TCP Ltd in PPAP No.3 of 2009 cannot be compared to that of the respondent, because TCP Ltd has committed supply upto 53 MW, whereas the petitioners' supply is @ 80,00,000 units, working about 1 MW only.

7. Contentions of the Respondent in the additional affidavit filed on

15-9-2011

7.1 Pursuant to the directions given by Hon'ble Commission on 12-8-2011 for examining by the Respondent the possibility of switching over to the ABT regime or in the alternative arriving at conclusion on the tariff that is agreed upon by both the petitioner and Respondent, the Respondent made the following contentions in the additional affidavit namely:-

- a. In keeping with the suggestion that fell from this Hon'ble Commission, the Respondent is willing to switch over to the ABT mechanism. However to develop the requisite infrastructure for the same, it will take at the minimum 3 to 4 months. Therefore the Respondent would be in a position to switch over to the ABT Mechanism only by December 2011 or even January 2012.
- b. Therefore the Respondent suggested that from the supply which would commence from April 2012 it would switch over to the ABT mechanism. Till such time as the switch is not complete, the Respondent requested that it may be permitted to operate under present existing arrangement and at the rate of Rs.4.04 per unit, which was the rate fixed by this Hon'ble

Commission by its order dated February 25, 2010 for the year 2010 – 2011.

- c. However, the Petitioner has refused to accept the rate of Rs.4.04 per unit and have insisted upon the rate of Rs.3.11 per unit, which rate will not even cover the fuel cost of the Respondent.
- d. The Petitioner informed the Respondent that their purchase rates had come down drastically and their tender / short term purchase rates had come down to approximately between Rs.3.51 to Rs.3.81 per unit and hence will not be able to pay a rate of Rs.4.04 per unit. Any rate lesser than Rs.4.04 per unit will not even cover the fuel cost of the Respondent.
- e. The Petitioner in a shocking manner has unilaterally, arbitrarily and in complete contravention of the letter dated April 19, 2011, wherein it had agreed to purchase power from the Respondent at the rate of Rs.4.04 per unit until the fixation of the tariff by this Hon'ble Commission, directed the Respondent to stop pumping power to the Petitioner if the rate offered by it was not acceptable.
- f. The Respondent is willing to shift to the ABT mechanism for the year 2012–13 onwards. However for the present year, since the installation of the system itself would take nearly till December 2011 or January 2012, by which time the accounting year would be almost completed, the shifting to the ABT mechanism would be counterproductive for the Respondent.

7.2 In the said additional counter the Respondent have requested for permitting them to switch over to the ABT mechanism from the financial year 2012 – 2013.

8. Finding of the Commission:-

8.1. In the order dated 25.2.2010 in PPAP No. 3 of 2009, the Commission had directed that :

“As regards the tariff for the period from 1.4.2011 to 31.3.2014, we direct the TNEB to come up before the Commission well ahead of 31.3.2011 for determination of tariff for the period from 1.4.2011 to 31.3.2014 duly taking into account the applicable regulations and orders of the Commission. The parties may indicate a reasonable figure consistent with the cost of operation”.

8.2. The parties have failed to reach an agreement and filed a petition before the Tamil Nadu Electricity Regulatory Commission. Hence the Commission takes into account, the following facts to arrive at a reasonable tariff consistent with cost of operation.

8.3. The Sun Paper Mills Ltd., had made a firm commitment in Feb 2011 that it would supply 80,00,000 units for 2011-12 as per clause 3.7 of PPA.

8.4. Clause 22 of PPA provides that in case the Board is not able to purchase the committed power, either in part or full from the CPP, then it can be sold to third party, at a rate not less than the HT Industrial tariff rate, which gives the

option to TANGEDCO to purchase the power or not depending upon the tariff rate/ requirement.

8.5. But in response to letter dated 23.3.2011 of the CGP, the TANGEDCO in letter dt.19.7.2011 has permitted M/s Sun Paper Mills Ltd., to inject power into grid agreeing to pay at an adhoc rate of Rs.4.04-/ till such time TNERC fixed the tariff.

8.6. But the TANGEDCO in their petition dt. 28.3.2011 cited the average rate of realization at Rs.3.11 for 2009-10 and wanted the Commission to fix it as tariff for the year 2011-12 to 2014-15. Apart from this TANGEDCO has not given any reason to adopt Rs.3.11 per unit. But they continue to take power from CGP.

8.7. The TANGEDCO has taken a unilateral stand that it will pay only Rs.3.11 i.e. the average rate of realization in 2009 -10.

8.8. Having entered into a PPA which provided for escalation at 5 % per year right from 1999-2000 upto 2007-08, they have not justified the reasons to reduce the rates now from Rs.4.04 to Rs.3.11 per unit from 2011-2012 onwards. The parties should have suggested a reasonable figure consistent with the cost of operation, as directed earlier, and obtained the approval of this Commission before authorising the respondent to pump power into grid of TANGEDCO.

8.9. Had the ABT mechanism been brought in, the tariff order no.4, could be applied. But this has not happened and the respondent have stated that they will switch over to ABT mechanism latest by April 2012. Hence the respondent has

prayed that upto 31.3.2012, the present arrangement of tariff rate at Rs.4.04 determined by the Commission in PPAP No.3 of 2009 may continue.

9. Direction

The ABT meters were to be installed by 31.12.2011 as already directed by the Commission during the hearing held on 12-10-2011 and tariff shall be frequency based as per the orders of the Commission from 1-1-2012. The Commission believes that the direction regarding installation of ABT meters by 31-12-2011 would have been complied with and the relevant order of the Commission would be applicable for cost of power w.e.f. 1-1-2012. The Commission directs that the tariff from 1.4.2011 to 31.12.2011 shall be Rs.4.04 /- unit, which has been the tariff in the preceding year.

10. Appeal:-

An appeal under section 111 of the Electricity Act, 2003 against this order shall lie to the Appellate Tribunal for Electricity within a period of 45 days.

(Sd.....)
(S.Nagalsamy)
Member

(Sd.....)
(K.Venugopal)
Member

/ True Copy /

Secretary
Tamil Nadu Electricity
Regulatory Commission