

To, The Secretary, T.S.. Electricity Regulatory Commission, 5 th Floor, Singareni Bhavan, Red Hills, Lakdi ka pool, Hyderabad – 500 008	From, M. Thimma Reddy, Convenor, People’s Monitoring Group on Electricity Regulation, 139, Kakatiyanagar, Hyderabad – 500 008
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Date: 11-02-2016

Dear Sir;

Sub:- Supplementary submission on PPA with Chhattisgarh State Power Distribution Company Ltd.,

Ref:- O.P. No. 93 of 2015 and Relies submitted by TSDISCOMs

1.1 Below we submit our responses to some of the replies provided by TSDISCOMs.

Jurisdiction:

2.1 According to Clause E (p.4) of the draft PPA “The Procurers agree, as per the terms and subject to the conditions of this Agreement and as per Section 86 (1) (b) of Electricity Act 2003, to procure power up to the Aggregate Contracted Capacity and pay the Supplier the Tariff as determined by the Hon’ble Chhattisgarh State Electricity Regulatory Commission (CSERC), along with the Trading Margin, as approved by the Hon’ble State Electricity Regulatory Commission (TSERC);

According to Section 5.1.1 of the draft PPA “ The Tariff for the Aggregate Contracted Capacity supplied from the Power Station would be as determined by the Hon’ble Chhattisgarh State Electricity Regulatory Commission (CSERC) from time to time as per the provisions of the Electricity Act 2003, and the terms of the power purchase agreement between CSPGCL and CSPDCL dated 03 January 2011, as appended at Schedule-2 of this PPA.”

According to Section 5.1.2 of the draft PPA “The Tariff shall comprise of Capacity/Fixed Charges and, Energy / Variable Charges, as indicated in Schedule-4 and, shall be borne by the Procurers. In addition to the Tariff, a Trading Margin as approved by the TSERC, shall also be payable by the Procurers to the Supplier. ..”

2.2 From the above extracts from the draft PPA it is clear that while Chhattisgarh State Electricity Regulatory Commission (CSERC) will decide the tariff at which power will be purchased from the power plant in question the Telangana State Electricity Regulatory Commission (TSERC) will decide only the Trading Margin.

2.3 According to Section 86 (1) (b) of Electricity Act 2003 mentioned in the draft PPA at Clause E (p.4) the State Commission shall “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 agreements for purchase of power for distribution and supply within the State.” From this it is clear that the State Commission in the present case TSERC shall regulate the price at which electricity shall be procured for distribution and supply within the state of Telangana. The CSERC cannot regulate the price at which electricity shall be procured for distribution and supply within the state of Telangana.

2.4 Further according to Section 64 (5) of Electricity Act 2003, “Notwithstanding anything contained in Part X, the tariff for any inter-state supply, transmission or wheeling of electricity, as the case may be, involving the territories of two States may, upon application made to it by the parties intending to undertake such supply, transmission or wheeling, be determined under this section by the State Commission having jurisdiction in respect of the licensee who intends to distribute electricity and make payment therefor”.

The TSDISCOMs are going to distribute the electricity purchased from the power plant located in Chhattisgarh state in the state of Telangana and are going to pay for it and TSERC has the jurisdiction over the TSDISCOMs and according to this Section 64(5) TSERC alone shall have powers to determine tariff for the power procured through the inter-state supply. CSERC does not have any jurisdiction in determining the tariff in the present case.

Added to this, the expression “Notwithstanding anything contained in Part X” of the Section 64(5) indicates that it has overriding impact on the contents of Part X.

2.5 In sum. TSERC alone has jurisdiction for determination of tariff including trading margin if any in the present case and CSERC does not have any jurisdiction.

Determination of tariff

3.1 Following the above the TSERC has to decide the tariff for procurement of power under the PPA in question. The Commission has to decide the tariff according to Regulations framed under the Electricity Act 2003. The Commission through the Regulation 1 of 2014 dated 10-12-2014 adopted the previously subsisting regulations as formulated by its predecessor Regulator APERC.

3.2 Regulation 1 Of 2008 (Terms and conditions for determination of tariff for supply of electricity by a generating company to a distribution licensee and purchase of electricity by distribution licensees) of APERC deals with determination of tariff for purchase of electricity by a distribution licensee. Under this Regulations following Forms and Documents along with PPA need to be submitted to the Commission for determination of tariff of power generated from thermal power plants:

Form 1: Summary Sheet

Form 2: Plant Characteristics

Form 3: Normative parameters considered for tariff computations

Form 4: Details of foreign loans

Form 5: Abstract of admitted capital cost for the existing projects

Form 5A: Abstract of capital cost estimates and schedule of commissioning for the new projects
Form 5B: Break-up of capital cost for coal/lignite based projects
Form 5C: Break-up of capital cost for gas/liquid fuel based projects
Form 5D: Break-up of construction/supply/service packages
Form 6: Financial package up to COD
Form 7: Details of project specific loans
Form 8: Details of allocation of corporate loans to various projects
Form 11: Statement of depreciation
Form 12: Calculation of depreciation rate
Form 13: Calculation of weighted average rate of interest on actual loans
Form 13A: Calculation of return on capital employed
Form 14: Working capital
Form 15: Draw down schedule for calculation of IDC & financing charges
Form 16: Calculation of operation and maintenance expenses
Form 17: Details of operation and maintenance expenses
Form 18: Details /information to be submitted in respect of fuel for computation of energy charges

Other information/documents:

1. Certificate of incorporation, Certificate for commencement of business, Memorandum of Association & Articles of Association
2. Stationwise and Corporate audited balance sheet and Profit & loss accounts with all Schedules & Annexures on COD of station for the new station & for the relevant years
3. Copies of relevant agreements
4. Copies of approval of Competent Authority for the capital cost and financial packages
5. Copies of equity participation agreements and necessary approvals for foreign equity
7. Copies of the BPSA/PAA with the beneficiaries
8. detailed note giving reasons for time and cost over run, if applicable
9. Any other relevant information.

3.3 The present petition before the Commission on approval for PPA does not include any of the Forms mentioned above and without these forms it will not be possible to determine tariff. And as such this is an incomplete application for approval of PPA and determination of tariff. The same shall be rejected.

4.1 To our argument that in the background of massive additional power generation capacity addition within the state by 2017 power from CSPDCL will not be needed TSDISCOMs replied “Government has decided to give 9 hrs day time supply to agriculture sector. In addition to the supply to domestic consumers, increasing industrial loads in the new State of Telangana, lift irrigation projects planned by the Government require additional power procurement.” Here we would like to mention that the TS government planned to procure 2000 MW of solar power to meet 9 hour power supply to agriculture and already tenders were floated and some bidders were selected for some capacity addition as a part of

this plan. Besides this capacities from KTHP-II(600 WM), Singareni (1200 MW), BTHP-1(800MW), KTHP-VII (800 MW), Damaracharla (4000MW) and dedicated NTPC –Ph-1 (1600MW) will be available to Telangana by 2018-19. Power from CSPDCL will be available from 2018 only due to transmission constraints. With these capacity additions there will be no need for the power CSPDCL.

MoU route

5.1 To our questioning of MoU route TSDISCOMs replied, “APTEL, in its order, dated: 31-03-2010, between in Appeal No 106 & 107 of 2009 (between M/s BSES Rajadhani Power Vs DERC, NDPL and others), held that it is purely a decision of the State Commission to decide whether to approve a negotiated tariff for the NDPL (R-2) under Section 62 or to direct the licensee to adopt the Competitive Bidding Process under Section 63 read with clause 5.1 of the NTP.”

We would like to submit that the case related to the above issue is pending before the Supreme Court and Order of Appellate Tribunal cannot be taken as final. Ministry of Power of GoI itself challenged the Appellate Tribunal order in the Supreme Court. And as such this Order of Appellate Tribunal cannot be taken as a benchmark.

5.2 Though the National tariff policy is of advisory nature only and is not binding on the Commission it is well recognised that transparent, open competitive bidding is an important route for efficient and economical procurement of power. Over the period experience has shown that power tariff under competitive bidding is lower than the one from MoU route. Declining solar tariff is an important indication of efficacy of competitive bidding route. Otherwise total power could have been procured through MoU/ nomination route only.

5.3 “As per the terms of Long Term Open Access Agreement, Long Term PPA is a mandatory for applying for the Transmission Corridor in the upcoming 765 KV Wardha-Dichpally”

We would like to submit that it took more than 4 months to complete the process of entering MOU with Chhattisgarh. This time would have been sufficient for completing Competitive Bidding Process.

6.1 In a reply TSDISCOMs clarified that CSPDCL and CSPGCL has not yet received any specific approval from CSERC. If at all it is for the CSERC to determine tariff why Chhattisgarh utilities failed in obtaining approval from CSERC and why TSDICOMs have filed this petition before TSERC whose role according to their application is only to determine trading margin.

7.1 To our query on TSDISCOMs did not enter PPA with the Generator, but with another DISCOM the reply says “It is not mandatory to enter PPA with Generator only”. While it is

true that it is not mandatory to purchase from generator directly it is noted that when total capacity of the said power plant is being procured it makes sense to enter PPA with the generator but not with another intermediary.

8.1 To our argument that PPA term of 12 years will be disadvantageous to the Telangana state TSDISCOMs replied that they pay the tariff determined by CSERC, as they have been paying the tariffs determined by TSERC and CERC in respect of the plants under TSGENCO and NTPC. Here CSERC determining tariff for the present power plant in question shall be distinguished from TSERC determining tariff for TSGENCO plants and CERC determining tariff for NTPC plants. In these cases the power plants continue to be available to Telangana even after expiry of PPA period. In the case of Chsattigarh plant the PPA period is only 12 years and after that it would be returned to Chsattigarh utilities. Incidentally the back to back PPA between CSPGCL and CSPDCL is for period of 25 years. This implies that after 12 years period by which time fixed charges were recovered Chattisgarh utilities will have access to cheaper power, to the disadvantage of Telangana utilities and consumers.

9.1 To our query that the exact details of the parameters and procedure that would be adopted for determination of tariff is not available anywhere in the draft PPA TSDISCOMs replied, “Even in the PPAs of State GENCO and NTPC too, Tariff was not mentioned while filing the PPAs for the consent of the Hon’ble SERC.” This is far from truth. In this context we would like to draw attention to APERC Order in O.P. No. 14 to 25 of 2012 dated 11-08-2014. At para 47 of the Order it was mentioned Appendix-I to the Regulation (Regulation 1 of 2008) provides a check list of documents to be submitted along with the tariff application. Without this vital information it would not be possible to determine tariff. In fact, APERC rejected some PPAs with APGENCO as they did not contain important information.

We request the Commission to take our supplementary submission on record and reject the draft PPA with CSPDCL.

Thanking you.

Sincerely yours,

M. Thimma Reddy