

Sub: In the matter of petition for review of Commission's order dated 12.02.2015 in petition no. 26/2014 for determination of generation tariff from 6 MW biomass power plant situated at village Sarandi, Tehsil Waraseoni of District Balaghat

ORDER

(Date of hearing: 28th April, 2015)

(Date of order: 6th May, 2015)

M/s Ramnik Power & Alloys Pvt. Ltd., - Petitioner
C/o M/s A.P. Trivedi Sons,
Main Road, Balaghat- 481 001

M.P. Poorv Kshetra Vidyut Vitran Co. Ltd., - Respondent
Shakti Bhawan, Rampur,
Jabalpur- 482 008

Shri S.C.Sood, Consultant and Shri Harsh Trivedi, Director of the company appeared on behalf of the petitioner.

2. The petitioner, M/s Ramnik Power & Alloys Pvt. Ltd., Balaghat has filed this petition seeking review of the Commission's order dated 12.02.2015 passed in Petition No. 26/2014 for determination of tariff for sale of power to the respondent on long term basis from its 6 MW biomass based power plant.

3. The petitioner has broadly submitted that:

- (i) By order dated 12.02.2015, the Commission has determined the tariff for procurement of power from the biomass based power plant of the petitioner for the period from FY 2014-15 to FY 2029-30 i.e. for the remaining useful life of the plant. The tariff allowed is only towards the variable cost component of the tariff as per biomass fuel price mentioned in the Commission's tariff order dated 03.05.2013 for the FY 2014-15 and escalated @ 5% per annum on year to year basis.
- (ii) The variable cost allowed is just sufficient to take care of only actual fuel cost and all other fixed expenses shall have to be incurred by the petitioner on its own. The tariff allowed is, therefore, not sufficient to run the plant.
- (iii) The petitioner is aggrieved by the Commission's order dated 12.02.2015. Hence, this petition.

4. In its petition, the petitioner prayed the Commission to admit this review petition and to order admissibility of same tariff as has been allowed to M/s ASN Industries, Hyderabad.

5. The matter was heard on 28.04.2015. During the motion hearing, the petitioner submitted copies of the orders issued by the Hon'ble APTEL and the Electricity Ombudsman and other documents and reiterated the contents of the petition. The petitioner also stated that:

- (a) The concept of admitting only variable cost for sale of 100% power, by treating the same

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as 'surplus power' as per clause 8.22 of tariff order dated 02.03.2012 is not valid and, therefore, does not apply to the petitioner. The omission is an error apparent on the face of record and is alone sufficient for admissibility of the present review petition and for review of the impugned order dated 12.02.2015.

- (b) With the sale of 100% power and no captive consumption, the petitioner cannot be said to be a CPP and, therefore, the impugned order is against the well settled position.
- (c) The matter of status of the plant of the petitioner whether captive or not was not challenged by the respondent and was not deliberated upon during the hearings held before the Commission in petition no. 26/2014. This is an additional reason for admissibility of this review petition.
- (d) The clause 8.22 of the tariff order dated 02.03.2012 is not applicable to the petitioner and, therefore, the admissibility of only variable price to it in accordance with clause 8.22 of the order dated 02.03.2012 is also an error apparent on the face of record and this also forms one of the grounds for review of the impugned order.
- (e) There is no relevance of past period and, therefore, no distinction between M/s ASN Industries and the petitioner can be made on this issue.
- (f) The stable and smooth running of its alloy plant is the chief consideration for not permitting use of the captive power. The per unit cost to the licensee has been Rs. 5.64 per unit for the period from June, 2014 to October, 2014 and Rs. 5.45 per unit for the period from November, 2014 to January, 2015. Thus, the petitioner is not making commercial gains by selling power at a higher rate and taking the same from the licensee at relatively lesser rates.

6. During the hearing, the written submissions of the petitioner were also considered. The issue under consideration to this review petition is whether both the fixed and variable cost are payable to the petitioner or not and the petitioner is required to substantiate its contention. In this connection, the Commission has noted that:

- (a) The Commission had issued tariff order on 07.08.2007 for procurement of power from biomass based power projects. The plant of the petitioner was commissioned on 30.12.2009 and at that time the tariff order dated 07.08.2007 was applicable, the control period of which was to be closed on 31.03.2012. Subsequently, another tariff order was issued on 02.03.2012, which was revised vide order dated 03.05.2013. As per clause 5.1 of the tariff order dated 02.03.2012, the control period started from the date of issue of tariff order i.e. 02.03.2012, which means that the control period of the tariff order dated 07.08.2007 would have been expired on 01.03.2012 i.e. before the date of issue of the tariff order dated 02.03.2012. The clause 10.20 of the tariff order dated 07.08.2007 provides as under:

" 10.20 Where the developer has an existing arrangement for third party supply or for captive consumption and in case the developer desires to terminate the agreement with third party and to supply to the utility, the utility with the prior permission of the Commission may purchase the power at the rate as would be determined by the Commission in which case the developers are required to execute the Power Purchase Agreement with the licensee for the remaining period of plant life of 20 years."

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From bare reading of the aforesaid para, it may be noted that the situation of the petitioner i.e. if the developer desires to stop the captive use is not covered specifically but could have been considered under the clause 10.20 of the tariff order dated 07.08.2007 if any such situation arose within the control period i.e. up to 01.03.2012.

- (b) The control period of the tariff order dated 02.03.2012 was started w.e.f. 02.03.2012 and would have been ended on 31.03.2014, but due to non-issuance of the tariff order for the control period beyond 31.03.2014, the same tariff as per tariff order dated 02.03.2012 is still applicable in terms of the provisions of clause 5.1 of the tariff order dated 02.03.2012. The petitioner is now decided to stop the captive use of its 6 MW biomass based power plant and to supply 100% generated power to the licensee. Therefore, the tariff order dated 02.03.2012 as revised vide order dated 03.05.2013 shall be applicable. Accordingly, the Commission shall determine the tariff in such cases also.
- (c) The clause 9.1 of the tariff order dated 02.03.2012 provides tariff for the projects which have their date of commissioning before 02.03.2012 and which were selling power to the distribution licensee. Though the project of the petitioner was commissioned before 02.03.2012 but instead of selling the power to the distribution licensee, the generated power was being used for its captive use. As such, the tariff indicated under clause 9.1 shall not be applicable to the petitioner.
- (d) In the tariff order dated 02.03.2012, there is only one clause viz. 8.22 under which tariff could be determined in case the developer having captive plant and after some time starts supplying power to the utility whether it is 100% or surplus, irrespective of the fact whether it would remain as captive generating plant or an Independent Power Producer.

The clause 8.22 of the tariff order dated 02.03.2012 provides:

*“ 8.22 Where the developer has an existing arrangement for third party supply or for captive use and in case the developer desires to terminate the agreement with third party or stop captive use and to supply to the utility, the utility with the prior permission of the Commission will purchase such power. Also, the developer having arrangement for third party supply or for captive use, may desire to supply part of the energy (surplus energy) to the utility. **In all such cases**, the licensee shall pay to the developer for the energy received at variable tariff determined in this order (Rs. 2.45 per unit up to 31st March, 2013).”*

From bare reading of the aforesaid clause, it is clear that there are two categories of the plants namely:

- (i) Such plants which have stop third party sale or captive use and now intended to supply to the licensee.
- (ii) Such plants which are continuing third party sale or captive use and now intended to supply surplus energy to the licensee.

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However, there is no difference in determination of tariff for both the categories and the licensee shall pay only the variable charges. In this review petition, the petitioner is pleading that since its units did not remain a captive generating plant and is intending to sell 100% generated power to the respondent, the fixed and variable charges are allowable. The Commission noted that the contention of the petitioner is ill-conceived because as per clause 8.22, only variable charges are allowed in all such cases.

- (e) M/s ASN Industries was supplying power to the distribution licensee and, therefore, clause 9.1 of the tariff order dated 02.03.2012 would be applicable, whereas the petitioner was earlier using the plant for captive use. Thus, there is no similarity between the petitioner and M/s ASN Industries and, therefore, same tariff cannot be made applicable to the petitioner.
- (f) While working out the per unit charges towards units sold to the petitioner by the licensee, the petitioner has considered the fixed charges and related charges also, which is not in order because these charges are dependent on the contract demand/maximum demand of the petitioner, which are not related to the units sold. Therefore, the average per unit charges towards units sold to the petitioner works out to Rs. 4.00 per unit as against the rate for sale of biomass power @ Rs. 5.14 per unit for the period from June,2014 to January,2015. As such, the contention of the petitioner is misconceived.

7. The Commission further noted that for filing a review petition, the following conditions are to be fulfilled by the petitioner:

- (a) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or;
- (b) on account of some mistake or error apparent on the face of the record or;
- (c) any other sufficient reason.

As already discussed in para-6 of this order, the petitioner could not produce any new and important matter or evidence for consideration of the Commission. Also, the petitioner could not establish either any error apparent on the face of the record or any other sufficient reason on the basis of which the review of the tariff order dated 12.02.2015 could be considered. As such, this review petition is not admissible and is dismissed.

Ordered accordingly.

(Alok Gupta)
Member

(A.B.Bajpai)
Member

(Dr. Dev Raj Birdi)
Chairman