

**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
Hyderabad**

Dated: 28-04-2009

Present

Sri A.Raghotham Rao, Chairman
Sri. R.Radha Kishen, Member
Sri C.R.Sekhar Reddy, Member

I.A.No. 5 of 2009
in
O.P. No.11 of 2009

Between

M/s. Konaseema Gas Power Ltd.,
6-2-913/914, 2nd Floor, Progressive Towers,
Khairatabad, Hyderabad – 500 004

.... First Party

and

1. Central Power Distribution Company of A.P.Ltd.
2. Southern Power Distribution Company of A.P.Ltd.
3. Northern Power Distribution Company of A.P.Ltd
4. Eastern Power Distribution Company of A.P.Ltd.

.... Second Party

(Parties are referred to as they are arrayed in the Interlocutory Application)

This Interlocutory Application (IA) coming on for hearing on 28.04.2009 in the presence of Sri N.C.Sen, for the First Party; Sri P.Shiva Rao, Advocate for the Second Party; Sri M.Venugopala Rao, Special Correspondent, Prajasakti Telugu Daily; Sri K.Raghu and Sri Kommidi Narasimha Reddy, Ex.MLA, the Commission passed the following:

ORDER

The First Party filed the above mentioned application under Section 94 of the Electricity Act, 2003 read with clauses 55 and 56 of APERC Business

Regulations 1999. The averments mentioned in the IA filed by the First Party are extracted hereunder:

QUOTE

(a) The first and second party have submitted amendments to PPA initiated by them seeking approval of the Hon'ble Commission. The matter was partly heard in the public hearing held earlier, and stands posted on 28.04.2009 for further hearing.

(b) In the said proposed amendments, the parties inter-alia sought for amendment to the clause 3.3 of PPA. The existing Article 3.3 under Case-II states that:

“In the event of purchase of Natural Gas from sources other than GAIL the cost C shall be the cost as per Gail price or the cost of alternative fuel supplier whichever is less”.

(c) During the course of time, it is evident that there is absolutely no possibility of supply of gas by GAIL. This could be seen from the submissions of M/s.GAIL made earlier before the Hon'ble Commission, that they are unable to supply gas even to the existing four projects, and that the gas wells from which GAIL is sourcing their supply are getting dried up and the gas availability is depleted gradually, and that they can not supply the gas to the new projects including 1st party. M/s. GAIL has entered into Fuel Supply Agreements with existing 4 IPPs for supply of 4.85 MMSCMD of natural gas. Further M/s. GAIL also entered Fuel Supply Agreements with 4 new IPPs including the 1st party for supply of 6.70 MMSCMD of natural gas. At present GAIL is able to supply only 3.0 MMSCMD of natural gas to existing 4 IPPs and supply of natural gas to 4 new IPPs could not commence at all.

(d) It is further submitted that, since January 2006 the First party's Power Plant could not be operated at all as GAIL has not been able to supply Natural Gas. In these circumstances the GoAP directed both the parties to amend several clauses of the existing PPA including the clause 3.3, as the GAIL is unable to supply the assured gas. The proposed amendment in clause 3.3 under Case-II is “In the event of purchase of fuel from Fuel Suppliers other than GAIL, the cost of Fuel delivered at the metering point, inclusive of cost of Fuel and transportation charges, and other taxes as per the invoice(s) given by the respective Fuel Suppliers”.

“Fuel Suppliers” shall mean GAIL or any other fuel supplier with whom a Fuel Supply Agreement has been entered into in accordance with this Agreement”.

(e) It is to further submit that in pursuance of said direction of GoAP, both the parties initiated amendments to PPA and submitted the same for the approval of the Hon'ble Commission, which is under consideration as aforesaid.

(f) During the course of time, having considered the fact that GAIL has been unable to supply the gas, at the request of GoAP, the MOP&NG, GoI has allocated RIL gas to different consumers including the First Party. The GoI having undertaken several exercises about the fixation of the price of Natural Gas from RIL and finally fixed the price at US\$ 4.205 per MMBTU (on NCV Basis) plus other costs as per the Fuel Supply & Transportation Agreements. It may please be noted that the GAIL has been supplying gas now partly to the existing projects, sourcing from ONGC gas wells as well as from Ravva Fields, at two different rates viz., 80% gas supplied at APM price works out to Rs. 3200/1000 SCM and the remaining 20% gas from Ravva field source @ 4.3 US\$ /MMBtu.

(g) As per the existing Article 3.3 of PPA, though getting the gas from alternative supplier is contemplated, but the price of the gas is pegged to GAIL supply price. The fact of the matter is that there is no supply by GAIL and as a result the clause cannot be operationalized.

(h) It is to further submit that the demand of electrical energy has increased steeply due to various factors, and has reached a value of 232 MU/day. Some of the existing projects have been supporting AP Grid by using Naphtha in their Plants.

(i) The GoAP issued direction to the 1st party under section 11 Electricity Act 2003 to produce energy by getting high cost gas from Hazira (R-LNG) Gujarat State undertaking long distance transportation of the Gas through East-West pipeline System of RGTIL. The said directions are complied and all the four new projects including 1st party have been using the said high cost gas from 14.4.2009. The new projects are permitted to use the said gas only for 45 days i.e upto 31.5.2009.

(j) RIL has now indicated that in response to the GoI direction, they are in a position to commence supply of gas from D-6 well in KG basin from 21.4.2009. Since the proposed amendments including the Clause 3.3 of the PPA, to make use of other source of gas which is at higher price (as fixed by E-GoM) is pending consideration for approval of Hon'ble Commission, to avoid the financial burden in using the high cost R-LNG, an interim order is necessary enabling the IPPs to make use of the RIL gas from D-6 from KG basin.

(k) It is further submitted that the Parties undertook through their letter dt.08-04-2009 made before the Commission that the prices of the gas from other sources other than GAIL shall be, as may be decided by MOP&NG, GoI or in any other case as approved by Regulator or any Competent Authority from time to time.

(l) It is submitted that in consultation with APDISCOMs / APPCC any gas supply by GAIL given a lower price will be accepted first and the balance will be taken from alternate fuel supplier at higher price to maintain the merit order of the fuel in generation.

(m) It is further submitted under NELP guidelines for any gas supplier, the price discovery will be made by GoI only and thus the acceptance of gas from RIL is strictly in accordance with national policy in this regard and dire public interest, since no cheaper fuel is available.

(n) We are advised that Hon'ble Commission has inherent powers under section 94 of the Electricity Act, 2003 read with Regulation 55 of APERC Conduct of Business Rules, 99 to pass such orders as may be necessary for meeting the ends of justice, without complying the regular procedure contemplated.

(o) In view of the above facts, it is prayed that the Hon'ble Commission may be pleased to pass urgent interim orders today to approve permitting the parties to use RIL gas from KG basin, overriding the effect of the ceiling of gas price in clause 3.3 of existing PPA

UNQUOTE

2. The Second Party filed a common reply, reiterating the averments mentioned by the First Party. In addition, the Second Party submitted that after continuous persuasion from GoAP / APTRANSCO, the Ministry of Power, GoI had allocated natural gas to the IPPs in AP from Reliance D-6 as per the recommendations of EGoM. The Second Party also submitted that the demand of electrical energy had increased steeply due to various factors, and had reached a value of 232 MU per day and that some of the existing projects had been supporting AP Grid by using Naphtha in their plants. In view of the averments contained in the reply filed by it, the Second Party prayed that the Interim Application as prayed by the First Party may be allowed by the Commission.

3. The application was taken on record and notices were issued to the parties concerned.

4. Heard the parties concerned, including the objectors, on 28.04.2009.

5. During the hearing, the counsel for First Party reiterated the averments mentioned in the application and further stated that while gas from RIL covered by the present allocation was costlier than the gas from GAIL, gas from GAIL was not available and gas from other sources was even more expensive than the RIL gas allocated by GoI vide its letter dated 26.04.2009, at price fixed by EGoM. The counsel submitted that the Commission had inherent powers under section 94 of the Electricity Act, 2003 read with Regulation 55 of APERC Conduct of Business Rules, 99 to pass interim orders for meeting the ends of justice, and therefore, prayed that the application may be allowed.

6. The counsel for Second Party stated that gas supply scenario in the State is well known to the Commission and that GAIL had come on record and admitted that it was not in a position to supply gas to the existing IPPs and there was absolutely no chance of GAIL supplying gas to any new IPP, including the First Party herein. The counsel stated that as far as these new projects are concerned, GAIL had ceased to be a supplier of gas and Gas Supply Agreements entered by it become redundant. He filed a copy of PIB Press Release issued by Ministry of Petroleum and Natural gas on 12.09.2007 wherein *inter-alia* it is mentioned that the decision of the Empowered Group of Ministers (EGoM) will lead to gas price US\$ 4.20 per MMBTU at the prevailing INR - USD exchange rate and the approved price 8.32% lower than the price proposed by the contractors. The counsel also filed a copy of GOI, MoP&NG dated 26.04.2009 wherein it is mentioned that supply of natural gas to certain gas based projects (19 in all), including to the First Party, herein to the extent of 1.66 MMSCMD should be made from KG-D6 field till September 2009 in accordance with the approved guidelines for sale of natural gas. The counsel submitted that in view of the above scenario, the application may be allowed.

7. Sri M.Venugopala Rao submitted that the price indicated in the press release is manipulated price and lot of correspondence is made questioning fixing the said price and that moreover, the price of indigenous gas is fixed in USD, which is subject to change with foreign exchange variations. He stated that whatever it may be, the First Party may be permitted to avail gas from RIL. Similarly, Sri K.Raghu and Sri K.Narasimha Reddy expressed some concerns, but conceded that the interlocutory application may be allowed.

8. The matter has been examined in the light of the above averments and submissions. Presently, the state of Andhra Pradesh is facing acute shortage of power and is consequently buying power at exorbitant price in open market on short-term basis in order to alleviate the power shortage. At times, power is not even available in the open market for the licensees to purchase. The severe power shortage is also acknowledged by the Government of Andhra Pradesh. In view of the circumstances and keeping in mind the public interest, in exercise of powers vested in it u/s 11 of the Electricity Act, 2003, GoAP has issued directions vide Lr.No.2043/Pr.(1)/2009-1 dated 09.04.2009 to the effect that the First Party herein and others viz., M/s. Gautami Power Limited, M/s. Vemagiri Power Generation Ltd, M/s. GVK Industries Limited shall operate their projects using R-LNG round the clock from 10.04.2009 or from the date R-LNG is made available. This option is undoubtedly a higher cost option, resorted to in the difficult scenario being faced by the State on the power front.

9. The Commission is also aware that GAIL is unable to supply fully the allocated quantities of natural gas to the existing four Gas Based Projects and therefore the possibility of GAIL supplying any quantum of gas to new projects including the First Party herein is an unlikely possibility even though such project developers have entered into Gas Supply Agreements. Whatever it may be, the First Party in its Interlocutory Application categorically stated that any gas supply given by GAIL at a lower price will be accepted first and balance requirement

only will be taken from alternative gas supplier from whom gas is allocated by Gol.

10. In the light of the above, the notification dated 26.04.2009 issued by GOI, MoP&NG assumes paramount significance and unless the upcoming four Gas Based Projects, including the First Party herein, are permitted to fully utilise the allocated gas from RIL, the State would stand to lose the allocated gas when it is much needed and the public interest also would be jeopardised.

11. Further, the First Party as well as Second Party submitted in writing in their application and the reply respectively that the price of gas from sources other than GAIL will be as decided by MoP&NG, GOI or as approved by regulator in this regard or any competent authority from time to time. Moreover, in the notification dated 26.04.2009 issued by MoP&NG, GOI it is categorically mentioned that the supply of KG-D6 gas to the Gas Based Power Projects mentioned therein should be made at the price approved by EGoM.

12. In view of the above, the Commission is of the opinion that public interest will be met, if the applicant is permitted to avail gas from RIL to the extent of allocation made in Letter No. L-12013/9/08-GP, MoP&NG, GOI dated 26.04.2009 at the price approved by EGoM mentioned therein. Accordingly, pending decision on approval of proposed amendments, including clause 3.3 of the existing PPA, sought by the Second Party in O.P.No. 11 of 2009, and in supersession of clause 3.3 (case-II) of the existing PPA entered by First Party with Second Party, the First Party is hereby permitted to avail 1.66 MMSCMD gas from RIL at the price approved by EGoM as mentioned above.

13. The above permission shall also be applicable to any further allocation that may be made by Gol from time to time allocating gas at the EGoM approved price.

14. With the result, the Interlocutory Application filed by the First Party is allowed as mentioned supra.

The order is corrected and signed on this 28th day of April, 2009

Sd/-
(C.R.SEKHAR REDDY)
MEMBER

Sd/-
(R.RADHA KISHEN)
MEMBER

Sd/-
(A. RAGHOTHAM RAO)
CHAIRMAN

CERTIFIED COPY