

**BEFORE THE TELANGANA STATE ELECTRICITY REGULATORY
COMMISSION AT HYDERABAD.**

O.P.93/2015.

Sub: Objections and suggestions on the P.P.A by T.S.S.P.D.C.L
with Chatisgarh State power Distribution Company.

**OBJECTIONS SUBMITTED BY PONNALA LAXMAIAH
FORMER MINISTER AND FORMER T.S.P.C.C PRESIDENT.**

- 1) At the very outset, the request of T.S.Discoms, seeking consent to P.P.A entered with Chatisgarh State power Distribution Company is premature, and ought to have been rejected without initiating the process for approval for the reasons stated hereunder.
- 2) As per section 86(1) (b) of Electricity Act 2003, the Discoms are obliged to seek for approval of their plan of power purchase agreement with details required to consider the said plan. As held by Hon'ble Supreme Court in Tata Power case in the year 2009, until the required approval is granted, the P.P.A remains only mere document of plan for power purchase.
- 3) To initiate the process for approval by the Hon'ble Commission, in respect of any plan of power purchase under section 86(1)(b) of E.Act, it is condition precedent that P.P.A should contain the tariff that is agreed by parties, ancillary liabilities of payment for deemed generation, Income tax liabilities, incentives, Electricity duty liabilities and Liability of cess that may be levied besides other liabilities like Transmission charges, transmission losses, and liabilities arising out of operative parameters of generating station.
- 4) The said information is compulsory particularly when the supplier is outside the territorial jurisdiction of Hon'ble Commission. If the supplier is within territorial jurisdiction, the tariff will be decided by the Hon'ble Commission and at

that time either under section 62 or 63 it would examine the same. But in this case, it is agreed by T.S.Discoms that the tariff is, as may be decided by Chattisgarh E.R.C for the generator which is Chattisgarh State generating company. Therefore this P.P.A need to be considered under section 86(1) (b), but not under section 62 or 63 of Electricity Act 2003.

- 5) Therefore in view of non-submission of required details for the plan of Discoms, as required under law, the P.P.A is liable to be returned with a direction to Discoms to approach with complete information after tariff is ascertained, to examine the same.
- 6) When the matter is considered under section 86(1)(b) of the Electricity Act, unlike the matter to be examined under section 62 of Electricity Act, inevitably tariff need to be specified in the plan.
- 7) Without prejudice to the above objection, the following is submitted on merits of the matter.
- 8) Competency of Chattisgarh Discom for inter State Trading.
Party supplying power is Chattisgarh state Discom. There is no information as to how it is entitled to sell power involving more than one State. As per section 14 of Electricity Act, the State Discom can be deemed to be trading licensee, but then the same is only intra state, but not interstate. As could be seen, from the available information, the said Discom has no inter state Trading license. As such it is not competent to enter into agreement for inter state trading of power.
- 9) Appropriate Commission to determine tariff.

Be, that as it may in the given set of fact, section 64(5) of Electricity Act governs the issue. The said section reads as under.

64 (5). *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 there for:*

- 9.a) As per said section, notwithstanding anything contained in the part X of the Act i.e from section 76 to 109 of the Electricity Act it is the State Commission in respect of licensee who intends to distribute the power and make payment therefore is the appropriate commission to determine the tariff. Thus, since T.S.Discoms are going to distribute power in Telangana State and to pay for the same, the T.S.E.R.C alone is competent to determine the tariff, but not Chattisgarh E.R.C. On that ground also the P.P.A liable to be returned.
- 10) Although, the Chattisgarh State generating Company with which the Chattisgarh State Discom, has back to back P.P.A of the year 2011, and the generating company reported to be ready to supply, no information as to the completed capital cost of the project, is stated, so as to know the tentative tariff.
- 10.a) The T.S State Govt. and T.S.Discoms deliberately suppressed the said information to avoid public rebuke at the time of the exercise of proceedings for approval
- 11) Apart from the tariff that may be decided by the Chattisgarh E.R.C for the Chattisgarh State generating company, as per clause 3.2.1 of P.P.A with T.S.Discoms and Clause 5.3 of P.P.A had by Chattisgarh Discom with generator the T.S Discoms agreed to pay all tax liabilities, Electricity duty liability, cess liability, on generation and also agreed to pay all the tax liabilities of Discom/supplier,

together with Electricity duty and cess liabilities of it. As per section 3 of Chattisgarh Electricity duty Act, the generator, and the supplier are liable to pay Electricity duty, which may works out 0.25 paise per unit. Further, as per section 115 J.B of Income tax Act, the generating Company and the supplier company are liable to Minimum Alternative tax. The same may also works but to another 0.25 paise per unit. As per Clause 3.2.1 of P.P.A, both these liabilities, apart from other, are agreed to pay by T.S.Discoms.

- 12) As per Clause 3.3 of P.P.A the transmission charges and losses would also works out approximately to one rupee per unit. Aside of the same, the T.S Discoms also agreed to pay open access charges.
- 13) As per said 5.1.3 of P.P.A, all taxes shall be reimbursed by as such process entire agreement liabilities are on the side of T.S.Discoms, and benefits are to the side Chattisgarh State power utilities. Thus it is violation of doctrine of *business efficacy*. There need to be equal share of liabilities. Further, as stated above, the liabilities of both organizations are pass through to T.S.Discoms which has cascading effect.
- 14) Above all, as per Clause 5.1.4 now that Discoms have agreed to pay adhoc tariff, which amount will be informed by the supplier. By this the Discoms right to bargain the tariff has been completely shut. This clause results detrimental to public interest.
- 15) Clause 6.1.1 and 6.1.2 6.4.1 obligates T.S.Discoms to ensure availability of Transmission corridor from C.T.U/S.TU, and depending on such availability schedule delivery date will be decided and T.S.Discoms shall ensure evacuation of power from inter connection point.

- 16) Another important Clause is 6.7.3 and Clause 7.5.3 whereby, as and when T.S.Discoms are not ready to take power, the supplier is at liberty to sell such power to third parties and continue to get capacity charges from T.S.Discoms besides getting revenue from third parties. This is giving double benefit to supplier.
- 17) As per Clause 13, the governing law and jurisdiction, the Raipur Court is competent Court. This also runs contrary to law.
- 18) Even for dispute resolution also, as per 13.3 Chattisgarh E.R.C is specified as Authority. The same is contrary to law and detrimental to interest of T.S.Discoms.
- 19) Under Clause 13.3.2 it is agreed to go for private arbitration for resolution of certain disputes. But law settled by Supreme Court is that all disputes shall be resolved by concerned E.R.C.
- 20) Under Clause 15.15, the T.S.Discoms shall bear and pay all statutory taxes, duties, levies and cess levied on procurer that are required by law in relation to execution of this agreement.
- 21) As such the terms of agreement, going to result in unjustified burden on the end consumers, due to irresponsible and un prudent acts of Discoms and T.S.State Govt.
- 22) The Hon'ble Commission has wide powers under section 86(1) (b) of the electricity Act either to refuse grant approval, considering the merits of the plan submitted to it by Discoms.

In view of above facts, either the P.P.A may be returned for want of information required under section 86(1)(b) and even otherwise, on merits approval may be rejected on the ground the terms of the plan are detrimental to public interest.

Dt. 19-10-2015.

(PONNALA LAXMAIAH)