



Suo-Motu Petition No. 20 of 2017 (D)

In the matter of petition under section 86 (1) (f) of the Electricity Act, 2003, to challenge the reduction in sale Invoice for the month of November 2016 and to recover such payments due thereof.

- 1. M/s KVK Bio Energy Pvt. Ltd. Petitioner**
V/s
2. Chhattisgarh State Power Distribution Co. Ltd. Respondent

PRESENT : Narayan Singh, Chairman
Arun Kumar Sharma, Member

APPEARANCE : Shri D.L. Rathore, Advocate for petitioner.
Shri A.V. Deshmukh, Advocate for petitioner.
Shri Saurabh Jain, Advocate for respondent.
Shri Arvind Banerjee, EE for respondent .

ORDER
(passed on 17.11.2017)

The petitioner M/s KVK Bio Energy Pvt. Ltd., a company registered under the Companies Act 1956, has filed this petition against the Chhattisgarh State Power Distribution Company Ltd. (CSPDCL), under section 86 (1) (f) of the Electricity Act, 2003, in the matter of reduction in sale Invoice, in the month of November 2016 and to recover such payments due thereof.

The respondent CSPDCL is a successor company of the Chhattisgarh State Electricity Board (CSEB) and is responsible for distribution of electricity as deemed licensee within its license area. The respondent procure power from various sources in accordance with the Power Purchase Agreements (PPAs) approved by the Commission.

A PPA was executed between the petitioner and the respondent on 16.10.2006 to sell power from the petitioner's 15 MW Biomass fuel based power plant at Village- Amartal, District- Janjgir Champa on the terms and conditions as mentioned in the PPA. The period of the PPA was extended upto 20 years vide supplementary PPA dated 26.04.2013. Pursuant to the second amendment made in 2016 in Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by the plants based renewable energy sources) Regulation, 2012, it become necessary for every biomass

power generation station and co-generation projects with installed capacity 10 MW and above to schedule monthly the power to be injected into grid, because of categorization of firm and non-firm power.

The petitioner had given monthly schedule for supply of 70,00,000 KWH for the month of November 2016. The schedule was revised from 70,00,000 KWH to 42,00,000 KWH for the month of November 2016 as per term of Regulation 11.2. The respondent had accepted the revision from 24.11.2016. Actually the petitioner supplied 46,27,320 KWH energy during the month of November 2016.

The petitioner raised bill of Rs. 2,67,92,183/- for the month of November 2016 through bill dated 01.12.2016, but the respondent paid a sum of Rs. 2,12,90,737/- applying the rescheduling with effect from 24.11.2016 on pro-rata basis.

Petitioner's Prayer:-

(i) To order that as per the terms of Regulation 11.2 of the Regulation by the Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by the plants based renewable energy sources) (Second amendment), 2016 the effective rate of revision must be calculated for the month as a whole and not on pro-rata basis.

(ii) To direct the respondent to make balance payment of Rs. 55,01,446/- on the sale invoice/supply for the month of November 2016 together with interest @ 18% per annum from December 2016 till date of repayment.

Respondent Comments :-

Respondent submitted that admittedly the petitioner initially had given advance schedule of 70,00,000 Kwh for the month of November 2016. Clause 11.2 of Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by the plants based renewable energy sources) (Second amendment) 2016, provides that a biomass generator shall give a monthly schedule of their power supply to take place in the next month by 23rd of the current month. It also provides that monthly schedule given by the generator may be revised after giving an application to the nodal agency.

Thus consequently, the petitioner revised its monthly schedule vide letter dated 21.11.2016 to 42,00,000 Kwh. However, the first proviso clearly stipulates that ***such revision of the schedule shall not be effective before the expiry of minimum period of two days***. The clause 11.2 further ***provided that the day on which notice for revision of the schedule is served to the distribution licensee and the day from***

which such revision is to be implemented shall be excluded for computing the period of two days.

From the bare perusal of the above provision it is amply clear that the advance schedule of 70,00,000 Kwh given by the petitioner before the revision of such schedule to 42,00,000 Kwh shall continue till the date the revised schedule is to be implemented i.e. unrevised advance schedule of 70,00,000 Kwh will continue from the day one of the month till the date of receipt of the notice for revision to 42,00,000 Kwh adding the next two days as provided under the clause. Thus the revised schedule shall be applicable for the remaining days in that month.

It is submitted that the Regulation provides that monthly schedule for the next month shall be given by the generator only once by 23rd of the current month. The petitioner had earlier given schedule of 70,00,000 Kwh for the entire month of November, 2016. However while revising the schedule on 21.11.2016, it had again given monthly schedule of 42,00,000 kwh which was not permissible as per Regulations. The petitioner itself was very well aware of the fact that the revision in schedule shall be applicable for the remaining days of the month and not from the starting day of the month. Therefore, the answering respondent rightly converted the advance monthly schedule of 70,00,000 Kwh into schedule for 23 day (1st Nov, 2016 to 23rd Nov., 2016) and worked out the load factor for 23 days. Similarly, the petitioner while revising the schedule on 21.11.2016 had again given monthly schedule of 42,00,000 Kwh. As per the proviso to clause 11.2, it is unambiguous that revision of schedule shall be effective for the remaining days of the month after expiry of minimum period of two days from the date of receipt of application for revision. Accordingly, revised schedule was effective from 24.11.2016 and up to 30.11.2016. Since the revised schedule given by the petitioner was on monthly basis, the answering respondent has worked out the schedule for the remaining days i.e. for the period 24.11.2016 to 30.11.2016 and accordingly calculated the load factor for this period separately. The load factor for the period 01.11.2016 to 23.11.2016 has been worked out as 50.02% which is less than 80%. Thus effective rate as per formulae provided under clause 11.4 was made applicable. The formulae on the basis of which the effective rate is calculated is reproduced below:-

$$\text{Effective rate (Rs.)} = \frac{(\text{fixed charges} + \text{energy charges}) \times \% \text{ load factor}}{80\%}$$

$$\text{Effective Rate} = \text{Rs. } (1.55 + 4.24) \times 50.02/80\%$$

$$\text{Hence Effective Rate} = \text{Rs. } 3.62$$

Since the effective rate so worked out was found to be less than the minimum rate i.e. energy charges as stipulated in the proviso of the Clause

11.4, the petitioner has been paid only the energy charge i.e. Rs.4.24/Kwh for the energy supplied to this respondent during the period 01.11.2016 to 23.11.2016. However, for the period from 24.11.2016 to 30.11.2016, load factor found to be 198.25% which happens to be more than 110%, hence as per clause 11.4, base rate of fixed charge (Rs. 1.55/Kwh) and energy charges (Rs. 4.24/Kwh) has been allowed for energy between load factor 80% to 110% and above 110% load factor, only energy charges has been allowed. The total amount for energy supplied during the whole month has been calculated as Rs. 2,12,90,737/- which has been allowed to the petitioner.

The petitioner had to give the revise schedule for the balance remaining days of the month and not for the whole month while revising the same. The statute intends for revision of schedule for balance days. Thus the answering respondent has worked out schedule for period 01.11.2016 to 23.11.2016 and 24.11.2016 to 30.11.2016 on pro-rata basis from the two monthly schedules in following manner –

$$\begin{aligned}
 \text{Schedule for the period 1}^{\text{st}} \text{ Nov. to 23}^{\text{rd}} \text{ Nov., 2016} &= \frac{70,00,000 \times 23}{30} \\
 &= \mathbf{53,66,667 \text{ Kwh}} \\
 \\
 \text{And schedule for the period 24}^{\text{th}} \text{ Nov. to 30}^{\text{th}} \text{ Nov. 2016} &= \frac{42,00,000 \times 7}{30} \\
 &= 980,000 \text{ Kwh}
 \end{aligned}$$

It is submitted that the petitioner has wrongly understood that Rs. 2,12,90,737/- paid to the petitioner is the effective rate. As already submitted in foregoing paras that as per clause 11.4 & 11.5, the effective rate for power supply is calculated for load factor below 80%. Whereas for load factor at 80% to 110%, base rate of fixed charges and energy charges are allowed and power supply at above 110% load factor, only energy charges are payable. Thus, Rs. 2,12,90,737/- paid to petitioner is the total amount of the bill towards supply of power by petitioner during the month of November, 2016 and not the effective rate.

It is submitted that the petitioner had wrongly calculated the bill amount, considering the revised schedule of 42,00,000 Kwh for the entire month. The answering respondent has correctly calculated the schedule on pro-rata basis for the period 1st Nov. To 23rd Nov, 2016 and 24th Nov., to 30th Nov., 2016 in following manner, **because the petitioner had not revised the schedule for the 01.11.2016 to 23.11.2016 and also not given schedule for the remaining days i.e. from 24.11.2016 to 30.11.2016 while revising the schedule**, instead submitted revised schedule for the entire month which is not permissible as per Regulations.

As already submitted, for calculation of load factor for the period 01.11.2016 to 23.11.2016, clause 11.4 is applicable as the load factor worked out has been found to be less than 80%. However, for the period from 24.11.2016 to 30.11.2016 clause 11.4 and 11.5 both are applicable and not only 11.5 as claimed by the petitioner.

Commission's views:-

The provision of clause 11.2 to 11.5 of the regulations of Chhattisgarh State Electricity Regulatory Commission (Terms and conditions for determination of generation tariff and related matters for electricity generated by the plants based renewable energy sources) (Second amendment) 2016, are as under :-

11.2 Biomass generating plants shall give a monthly schedule of their power supply to take place in next month to distribution licensees by 23⁰⁰ of the month. If the monthly schedule for the next month is not submitted by biomass generating plants up to 23⁰⁰ of the current month, the current month schedule shall be considered for all calculation purposes. Monthly schedules accepted by the distribution licensee may be revised on an application to that effect made to the nodal agency by biomass generators. Provided that such revision of the schedule shall not be effective before the expiry of minimum period of two days.

Provided further that the day on which notice for revision of the schedule is served to the distribution licensee and the day from which such revision is to be implemented shall be excluded for computing the period of two days. Provided further that only two revision in the monthly schedule shall be permitted which should not be for successive months.

11.3 Load factor for the power supplied by the biomass power generating plant to the distribution licensees shall be calculated on the basis of scheduled quantum. Load factor will be calculated as follows:

11.3 Load factor = number of actual units supplied during the month (MU)

Scheduled quantum (MU)

11.4 Rates (fixed charges plus energy charges) determined for the biomass power generating station will be base rate for power supply at 80% and above load factor. Effective rate for power supply below 80% load factor will be calculated as follows;

**Effective rate (Rs.)= (fixed charges + energy charges) X % load factor
80%**

However minimum effective charge shall be energy charges as decided by the Commission.

11.5 Rates for over injection, over and above 110% of the monthly scheduled energy, shall be energy charges only.

From the above it is very clear that revised monthly schedule cannot be given retrospective effect in view of clause 11.2 and the respondent has correctly calculated the schedule on the pro-rata basis for the period from 01.11.2016 to 23.11.2016 and 24.11.2016 to 30.11.2016 and made the payment to the petitioner and petitioner is not entitled for any relief claim in the instant petition.

Therefore, the petition is dismissed.

**Sd/-
(ARUN KUMAR SHARMA)
MEMBER**

**Sd/-
(NARAYAN SINGH)
CHAIRMAN**