



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P. Nos. 6 & 7 of 2009

Dated 22.04.2013

Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member
Sri R.Ashoka Chari, Member

Between:

M/s. Guttaseema Wind Energy Company Pvt. Ltd.
Plot No.1112/A, Road No.56, Jubilee Hills, Hyderabad – 33.

....Petitioner

AND

1. Transmission Corporation of Andhra Pradesh Limited
2. Andhra Pradesh Central Power Distribution Company Limited
3. Andhra Pradesh Southern Power Distribution Company Limited
4. Andhra Pradesh Northern Power Distribution Company Limited
5. Andhra Pradesh Eastern Power Distribution Company Limited
6. Andhra Pradesh Power Coordination Committee

....Respondents

This petition coming up for hearing on 04.08.2012 in the presence of Sri. Challa Kodandaram, Senior Advocate for the petitioner and Sri. P.Shiva Rao Advocate for the respondents, the Commission passed the following:

ORDER

In O.P.No. 6/2009 (limited to wind projects only) and O.P. No.7/2009, the Commission passed an order on 01.05.2009 as hereunder:

“The tariff stream with the above key elements has been worked out by the Commission, for arriving at levelised cost using discount rate at weighted average cost of capital i.e., 13.05 % which works out to a fixed tariff for 20 years at Rs. 3.43 per unit. However, in view of the urgent need to exploit the available potential of about 2100 MWs, out of which only about 100 MWs has been harnessed as on date, the Commission has decided to fix the Single

Part tariff for the first ten years at Rs 3.50 Per unit and the tariff for the next ten year period will be decided thereafter.

2. The above tariff has been determined in exercise of the powers conferred on the Commission under Section 62, 86 (1) (a) and 86(1) (b) of the Electricity Act 2003, subject to the following terms and conditions:

- “(i) The above tariff is applicable in respect of Wind Power Projects, which have entered into PPAs between 01-05-2009 and 31-03-2014.*
- (ii) The tariff for the first ten (10) years shall be firm at Rs. 3.50/unit from the Commercial Operation Date (COD) and the tariff for the next 10 years will be determined thereafter.*
- (iii) The DISCOMS shall have the first right of refusal on Power Purchase, if the Plant continues to operate after the 20th year of operation from the COD. The tariff beyond 20th year shall be as mutually agreed by both the parties and consented by the Commission.*
- (iv) The eligible developer shall bear the entire cost of power evacuation facilities for interconnecting the Wind firms with the Grid and delivery of power.*
- (v) Developers will be entitled to dispatch 100% of the available capacity without reference to the Merit Order Dispatch subject, however, to any system constraints.*
- (vi) The eligible developer shall abide by the orders, rules, regulations and terms and conditions as approved by the Commission from time to time.*
- (vii) The CDM benefits shall be shared in the ratio of 90:10 between the developer and the DISCOM.*

- (viii) *The WEGs installed should be new and match the specifications issued by C-WET from time to time.*
- (ix) *Minimum Turbine capacity of WEGs proposed for installation should not be less than 225 KW.*
- (x) *The licensees and the developers shall enter into PPAs as per the provisions of this Order and the relevant Regulations of the APERC and obtain the consent of the Commission in terms of Section 21 (4) (b) of the A.P.E.R. Act 1998 and 86 (1) (b) of Electricity Act 2003.*
- (xi) *As regards the terms and conditions governing Open access of Wind Power Projects (third party/captive), the existing provisions contained in relevant orders / regulations / codes issued by the Commission shall be applicable.”*

3. Aggrieved by the said order, the petitioner filed an appeal No. 194/2009 to the Hon'ble ATE and the Hon'ble ATE passed its order on 03.05.2011. The summary of the order of the Hon'ble ATE is extracted as hereunder:

“12. Summary of our findings:

- i). *Return on Equity (ROE) allowed by the State Commission to the Wind Energy Projects is inferior to that provided to thermal and other Conventional Power Projects by the State Commission. This is not in consonance with the provisions of the 2003 Act, National Electricity Policy and Tariff Policy. Accordingly, we direct the State Commission to re-determine ROE for wind energy projects after considering its own Regulations for conventional energy sources and Central Commission's Regulations for Wind Energy Projects. However, in no case ROE to Wind Energy Projects shall be less than that admissible to conventional energy projects according to its own Regulations.*
- ii). *The second issue is regarding the Capital Cost. In our opinion, the State Commission has not adopted a correct approach in relying on the capital cost determined by some State Commissions where capital cost was determined*

in years 2006/2007. The State Commission has not given a reasoned order in this regard. The State Commission has also not provided any price indexation mechanism for capital cost for projects to be commissioned subsequently during the period for which the tariff is applicable i.e. May, 2009 to March, 2014. Accordingly, the State Commission is directed to re-determine the capital cost with appropriate Capital Cost Indexation Mechanism, after considering the Central Commission's Regulations and give a reasoned order.

iii). The State Commission has not considered the Wind Power density map of the State and has not given a reasoned order regarding Capacity Utilisation Factor. Accordingly, the State Commission is directed to determine the Capacity Utilisation Factor (CUF) after considering the Wind Power density map provided by C-WET/ Ministry of New & Renewable Energy and give a reasoned order.

iv). The State Commission has not included Interest on Working Capital which is an important element of the Tariff. We notice that the Interest on Working Capital is permissible according to the State Commission's Tariff Regulations applicable to conventional energy sources. The Central Commission has also provided Interest on Working Capital for Wind Energy Projects in its Tariff Regulations. Accordingly, the State Commission is directed to include Interest on Working Capital in the tariff applicable to Wind Energy Projects.

v). Regarding open access and third party sale, the State Commission in the impugned order has recorded that the relevant provisions in existing orders/regulations/codes shall also apply to open access in case of wind energy projects. These orders are not part of the Appeal. Thus, the submission on this issue is without any substance and the same is rejected.

13. In view of above, we allow the Appeal partly and set aside the order to the extent as indicated above and direct the State Commission to re-determine the tariff for wind energy projects taking note of our findings referred to above and to

give a reasoned order at the earliest, preferably within a period of four months from the date of this order.”

4. In pursuance of the order dated 03.05.2011, the petitioner filed a letter addressed to the Secretary / APERC along with copy of the order of Hon'ble ATE for implementation of the order.

5. Again, the petitioner filed RP No. 5/2011 before the Hon'ble ATE. The Hon'ble ATE modified the order in Appeal No. 194/2009 as hereunder:

“9. Keeping all the above in view, we deem it fit to direct the Commission to consider with respect to wheeling and transmission charges and banking arrangements in open access/third party sale applicable to the wind energy generators. The State Commission while carrying out the exercise to re-determine the tariff for wind energy projects may also consider the submissions of the Review Petitioner/Appellant in the matter of open access/third party sale and decide the issue according to law. We do not express any view on this issue. The same may be disposed of as expeditiously as possible.

10. Accordingly, the Review Petition is ordered and the judgment dated 3.5.2011 in Appeal no. 194 of 2009 is modified to the extent as indicated above.”

6. As per the order dated 03-05-2011 & 11-01-2012, the Commission initiated the further course of action on the Review petition on the issue of fixation of tariff to the wind projects and on the issues connected with Wheeling and Transmission charges and banking arrangements in open access/third party sale applicable to the Wind Energy generators and accordingly issued notice to all DISCOMs, APTRANSCO on the above matter to appear before the Commission.

7. The reply submitted by Respondents on this is as under:

i). Besides these proceedings, M/s. Indian Wind Energy Association has filed O.P.No. 13 of 2012 before the Commission seeking relief under

section 94(1)(f) of Electricity Act, 2003 to the extent of limiting the control period of Wind Tariff Order 2009 and for determination of tariff, only for future Wind Energy Projects in Andhra Pradesh as per Section 61(h) and Section 86(1)(e) of Electricity Act, 2003, Clause 5.12.1 & 5.12.2 of National Electricity Policy and Clause 6.4 of National Tariff Policy for promotion of renewable energy generation by harnessing RE potential within the state.

- ii). The contention of M/s. Guttaseema Wind Energy Company Private Limited is also to re-determination of the tariff for wind power projects revisiting the parameters RoE, Capital Cost, and CUF which are similar, and are covered in O.P.No. 13 of 2012 filed by M/s. Indian Wind Energy Association. APCPDCL has submitted certain normative parameters for future Wind Power Projects. Therefore the tariff may be revised for future coming projects considering the above said parameters.
- iii). In respect of revisiting the issues of wheeling and transmission charges, banking arrangement etc., in the process of determination of tariff for wind generators, APERC has issued Regulation No. 2 of 2005 on terms & conditions of open access and Regulation No.2 of 2006 on interim balancing & settlement code for open access transaction. The issues related to banking and scheduling of energy to wind & mini hydel, has been decided therein. Therefore, the same shall apply and there is no necessity of any modifications.
- iv). As per clause 17.1(iii), 2nd para of Regulation No. 2 of 2005, no (cross-subsidy) surcharge shall be payable if the open access is provided to a person who has established a captive generating plant for carrying the electricity to the destination of his own use.
- v). As per APERC order dated 21-09-2005 in O.P.No. 16/2005, clause No. 12(3), to encourage renewable energy sources, a relief of 50 percent on surcharge shall be provided to consumers availing of open access from non-conventional energy projects located within the state of

Andhra Pradesh. Based on the above facts, APCPDCL feel that the present incentives of APERC in respect of open access generators/consumers are sufficient to encourage the NCE Projects.

- vi). In view of the above facts, the decision of Commission on the issue of tariff, by revisiting the normatives, that may be passed in O.P.No. 13 of 2012 may be adopted in this case also. As far as other issues viz., open access, banking and wheeling charges is concerned, since the same are already covered by Regulation No.2 of 2005 and Regulation No. 2 of 2006 except the wheeling charges, the same may be adopted. As far as wheeling charges are concerned, it was specified in the said Regulation the same shall be as per the orders passed time to time by the Commission, which has already been determined in the Retail Supply Tariff and Wheeling and Transmission charges order for the Control period 2009-10 and 2013-14. Therefore, the same may be adopted by rejecting the prayer of the petitioner.

8. During the hearing scheduled on 04-08-2012, the petitioner herein, has categorically stated that, they are not seeking for review of the earlier order dated 01-05-2009 determining the tariffs for wind power projects, but, are only seeking orders for determination of tariff for future wind power projects duly addressing the concerns expressed by Hon'ble ATE vide their order dated 03-05-2011 pursuant to their appeal. The petitioner has further confirmed that, they do not have any projects falling within the ambit of order dated 01-05-2009, but they are only looking forward for an improved Wind Tariff Order applicable for future wind projects so that they can plan their future investments.

9. On the issues related to, wheeling and transmission charges, banking arrangement etc., the petitioner's request is to revisit the relevant existing provisions which in their opinion are restrictive for the growth of wind projects. The various issues raised by them relevant to these aspects are as hereunder:

- i). **Transmission, Wheeling Charges & Losses:**

On this they submitted that, in Andhra Pradesh, there is no concession on transmission & wheeling charges and losses for wind energy. They

further stated that, with the present open access charges of Rs.2.98 per kWh, it is un-viable for wind developers to sell to a captive / third party consumers. They, having drawn the attention of the Commission to the fact that various Commission's like Tamil Nadu, Karnataka, Rajasthan and Gujarat have given concessions on transmission and wheeling charges for renewable energy, had requested the Commission to set the transmission and wheeling charges and losses for wind open access as 5% of energy input.

ii). **Cross subsidy surcharge (CSS):**

On this issue, the petitioner having stated that, Andhra Pradesh has one of the highest CSS (0.83 per unit) for wind among all states requested the Commission to give waiver to wind projects from CSS in order to encourage the investor interest in the wind energy.

iii). **Banking of energy:**

On this issue, the petitioner having referred to the existing banking provisions, viz., (1). Banking is allowed through out the year, drawal is allowed only for 6 months i.e., from July to December, (2). Entire un-utilized energy will be lapsed after 31st December, (3). Drawal of banked energy during the peak hours not permitted even though banked energy generated is during the peak period, requested the Commission for allowing drawal of banked energy for the entire year, allowing drawal of energy generated during peak hours at peak hours itself and to consider un-utilised banked energy as sale to DISCOMs at lowest slab of HT (TOD) tariff applicable. In support of their request, they have also referred to the liberal banking provisions available in other states like Tamil Nadu, Karnataka and Rajasthan.

iv). **Interim Balancing and Settlement Code (IB&SC)**

On this issue, the petitioner stated that, as per the existing IB & SC, the actual generation during the month shall be deemed as scheduled energy in case of wind and mini hydel Open Access (OA) generators. However, there is no differentiation between OA consumer for getting

supply from renewable generator or the conventional generator. The consumer is subjected to scheduling and the deviations are to be penalized. This obviates, the advantages received on the generator end. Accordingly, they requested the Commission to allow OA renewable consumer to avail the benefit extended to generator by amending the existing IB & SC. They also further stated that, even IEGC allows, 30% deviations from the schedule on the lines of IEGC code 2010, which exempted wind from UI regime with in a variance band of ($\pm 30\%$).

10. During the course of hearing, the respondent on the other hand, having reiterated their earlier stand as indicated in para 7 supra, vehemently, argued that, the provisions of the Regulations cannot be changed by way of an order.

11. That apart, what needs to be noted is that, the Commission has, inter alia, taken note of directions of Hon'ble ATE as relates to Return on Equity (RoE), Capital Cost, Capacity Utilization Factor (CUF) and Interest on Working Capital (WC) and issued an order dated 15-11-2012 in O.P.No. 13 of 2012, determining the tariff for future wind power projects, simultaneously curtailing the control period of the earlier order dated 01-05-2009 in O.P.No.6 & 7 of 2009 to 14-11-2012. The said order stands uncontested by the petitioner herein, and has, as such; attained finality as far as the petitioner is concerned. Thus, the orders of the Hon'ble ATE dated 03-05-2011 as it relates to the factors to be taken into consideration while determining the wind tariff have been complied with.

12. Further to the foregoing, the issues that arise for consideration of the Commission are as hereunder:

- i). Whether, the Regulations can be amended by an order?
- ii). If not, what are the issues that do not fall under the category of amending Regulations?
- iii). What orders can be passed on such issues?

13. The above issues are addressed as hereunder:

- i). **Whether, the Regulations can be amended by way of an order.**

As rightly pointed out by the respondent herein, the Commission is of the view, that, the regulations cannot be amended by way of an order since, the same procedure adopted while making the original regulation only need to be followed for amending the said regulation. In view of the above position of law and also complying with the directions of the Hon'ble ATE vide its order dated 11-01-2012, the office is directed to initiate further necessary action on the directions of the Hon'ble ATE, as per law.

ii). **If not, what are the issues that do not fall under the category of amending Regulations?**

The issues that do not fall under the category of amending Regulations are:

- (a). Transmission and Wheeling charges
- (b). Cross subsidy surcharge

iii). **What orders can be passed on such issues?**

The above two issues are dealt with as hereunder:

(a). Transmission and Wheeling charges:

The Transmission and Wheeling Charges to be borne by wind energy developers are as given in Transmission Tariff Order dated 20-03-2009 and Wheeling Tariffs Order dated 20-03-2009, which are applicable till 2013-14. The charges are to be paid and losses are to be borne in kind as mentioned therein.

The petitioner herein has requested for concession on wheeling and transmission charges and losses for renewable energy sources and to limit the same to 5% of energy input.

The Commission has examined the matter. The Commission further notes that the Government of Andhra Pradesh (GoAP) in G.O.Ms.No.48 dated 11-04-2008 has also provided for concessional wheeling and transmission charges. According to the provision of this G.O., the concessional wheeling and transmission charges for captive

use or 3rd party sale shall be in kind at 5% of energy delivered into the grid (which includes transmission and distribution losses).

The Commission has decided to adopt the above mentioned pattern for charging for wheeling and transmission of wind energy in view of the need to promote wind open access transactions by giving preferential benefit to wind energy developers, since wind is a non-scheduled source of energy and it operates at a lower Capacity Utilization Factor and the transmission and wheeling losses would put wind energy sources at a greater disadvantage as compared to conventional sources of energy, on a per unit basis.

(b). Cross subsidy surcharge:

The Commission has provided a concession of 50% for cross subsidy surcharge for renewable energy projects located within the state of Andhra Pradesh in O.P.No. 16 of 2005 dated 21st September, 2005.

The petitioner has requested for removal of cross subsidy surcharge for wind energy sources to promote investments in the wind energy sector in Andhra Pradesh.

In this context, the Commission notes that the status of cross subsidy surcharge for wind energy projects in the other states is as follows:

State	Cross subsidy surcharge for wind energy projects
Tamil Nadu	50% of normal cross subsidy surcharge
Gujarat	No cross subsidy surcharge
Maharashtra	25% of normal cross subsidy surcharge
Rajasthan	No cross subsidy surcharge

The Commission further notes that the state of Tamil Nadu has witnessed the maximum addition of installed capacity in wind energy even with 50% of normal cross subsidy surcharge, similar to the provision being currently invogue in Andhra Pradesh.

As such the Commission sees no reason to change the existing pattern of giving 50% discount on cross subsidy surcharge for open access obtained for wind projects within the state as was stipulated in O.P.No. 16 of 2005 dated 21st September, 2005 of the Commission.

14. Accordingly, the petition is allowed partly as above.

This order is corrected and signed on this 22nd day of April, 2013.

Sd/-
(R.Ashoka Chari)
Member

Sd/-
(C.R.Sekhar Reddy)
Member

Sd/-
(A.Raghotham Rao)
Chairman