



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**4<sup>th</sup> & 5<sup>th</sup> Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004**

I.A. No.18 of 2010  
in  
O.P. No.11 of 2010

Dated: 28-02-2013

**Present**

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

Between

Eastern Power Distribution Company of A.P. Ltd.,  
P&T Colony, Seethammadhara, Visakhapatnam ...Petitioner

AND

M/s Gowthami Solvent Oils Ltd.,  
Pydiparru (V), Tanuku (M) W.G. District. ...Respondent

The petition coming up for hearing on 01.12.2012. Sri P.Shiva Rao, Advocate for the petitioner and Sri M.K.Viswanath, Advocate on behalf of Sri Challa Gunaranjan, Advocate for the respondent present. The Commission passed the following:

**ORDER**

This is a petition filed by APEPDCL against M/s Gowthami Solvent Oils Private Limited under Section 62 of the Electricity Act, 2003 for determination of tariff to take effect on completion of 10 years from date of commissioning of the project.

2. The material averments of the petition are briefly as follows:
  - a) The respondent, M/s Gowthami Solvent Oils (Pvt.) Ltd after obtaining sanction from Non-conventional Energy Development Corporation of AP (NEDCAP) commissioned

2.75 MW Biomass based co-generation power project at Pydiparru, W.G. District on 31.03.1996. The respondent entered into revised Power Wheeling and Purchase Agreement with erstwhile AP State Electricity Board on 03.7.1998 for wheeling of energy delivered from their Biomass based power project as per the provisions of Government orders prevailing at that time. Government of AP issued policies for Non-Conventional Energy (NCE) projects from time to time which were in force upto November 2000 and subject to review thereafter.

- b) The Andhra Pradesh Electricity Regulatory Commission has taken up the review of NCE policy as per the powers vested in terms of APER Act, 1998. The Commission extended the Government of AP orders upto June 2001 and in the orders dated 20.06.2001 in OP No. 1075 of 2000 issued orders on NCE policy. The Commission in the order fixed uniform tariff for NCE projects at Rs. 2.25 per unit with 5% escalation per annum with 1994-95 as base year. The Commission in the order informed that the tariff fixed will apply upto 31.03.2004 and fixation of tariff to take effect from 01.04.2004 will be undertaken by the Commission after discussions with all the concerned parties. Further, the Commission stipulated that "there will also be a review of the purchase price with specific reference to each developer on completion of ten years from the date of the commissioning of the project (by which time the loans from financial institutions would have been repaid) when the purchase price will be reworked on the basis of Return on Equity, O & M expenses and the variable cost".
- c) The respondent, in compliance with the Commission orders dated 20.06.2001 in O.P. No.1075 of 2000, entered into Power Purchase Agreement (PPA) with Transmission

Corporation of Andhra Pradesh Ltd (APTRANSCO) on 22.03.2002 for sale of energy delivered from their 2.75 MW Biomass based power project in W.G District with a proposal to export 1.85 MW to the grid for sale to APTRANSCO. The PPA superceded in its entirety the earlier wheeling agreement and is for duration of 20 years from the commercial operation date of the project i.e., PPA will be in force upto 31.03.2016. The subject PPA stood transferred to APEPDCL pursuant to the draft third transfer scheme. The PPA under Article 2.2 also provides that there will be review of tariff by the Commission on competition of ten years from the date of the commissioning of the respondent's project, when the purchase price will be reworked on the basis of Return on Equity, O&M expenses and the variable cost. The tariff to the respondent was paid upto 31.03.2006 as per the Commission order dated 20.03.2004 in R.P. No.84 of 2003 in O.P. No.1075 of 2000.

- d) The Commission initiated suo-motu proceedings for determination of tariff applicable to NCE projects to take effect from 01.04.2004 onwards and the Commission vide orders dated 20.03.2004 in R.P. No.84 of 2003 in O.P. No. 1075 of 2000 issued orders fixing tariff for NCE projects to take effect from 01.04.2004. The Commission in the order reiterated that review of tariff for individual projects will be undertaken on completion of 10 years from the date of the commissioning of the project, by which time the loan is expected to have been substantially repaid and the purchase price will be based on Return on Equity, O&M expenses, variable cost and residual depreciation, if any.
- e) The respondent's project has completed 10 years of operation by 31.03.2006. As such, the tariff for the respondent's project to take effect from 01.04.2006 is to be

reviewed and re-fixed. The Section 62 of the Electricity Act 2003 empowers the Commission to determine the tariff for supply of electricity by a generating company to a distribution licensee.

*"The Section 86 (1) (b) of the Electricity Act, 2003 enumerates functions of the State Regulatory Commission to regulate the licensees power purchases, including tariff from generating companies and others through agreements. All contracts between generating companies and licensees are within the domain of regulatory power. The most important element in such contracts is the price. It therefore follows that the Commission is entitled to modify the contracts including the price structure".*

- f) The petitioner is filing this petition under Section 62 and Section 86 (1) (b) of the Electricity Act, 2003 for determination of tariff by the Commission for the respondent's Biomass based Co-generation project to take effect from 01.04.2006.

3. The petitioner, therefore, prays that the Commission may be pleased to:

- a) Approve fixed and variable charges payable as per the proposal of the petitioner for the energy purchases from the respondent's Biomass power project during the period from 01.04.2006 to 31.03.2016.
- b) And / or pass such other order / orders as the Commission may deem fit.

4. The respondent though represented in the proceedings of the Commission in the beginning but failed to attend before the Commission for the subsequent adjournments. They have not filed any counter but submitted additional information as hereunder:

- (i) The respondent has commissioned the first NCE (Biomass based co-generation power plant) project on 31.03.1996 in the state successfully.
- (ii) The project was selected by MNES as pilot project
- (iii) Taking the success into consideration, so may new entrepreneurs entered into this line and started producing power.
- (iv) They are being the pioneers in the State, due to lack of proper understanding of the rules and regulations, APTRANSCO could not enter into PPA for about 8 to 10 months though the plant was ready for generation of power. Due to lack of relevant permissions, we have suffered financial loss duly keeping the plant idle.
- (v) With due respect to the APTRANSCO decision that NCE projects should deliver the power to APTRANSCO, we have switched over from third party sale to APTRANSCO, though some of the developers protested that decision and got stay from High Court. Of course, presently they are enjoying the benefits of third party sale.
- (vi) The petitioner in OP 11/2010 has filed the petition for determination of tariff to take effect on completion of 10 years from the date of commissioning of the project of our company on 20.06.2006. It is already five years completed since 31.03.2006, being the date of completion of 10<sup>th</sup> year. We are being paid only variable charges (existing rate). Pending disposal of the main petition, EPDCL have filed interim application IA 18/2010 in OP 11/2010 as mutually agreed.
- (vii) In the present circumstances where the raw material i.e., Husk is not available due to lack of rice milling activity, even otherwise small quantities are available but at exorbitant rates which are not viable to run the plant, we

are forced to close down the plant and not able to operate to its full capacity.

- (viii) Taking the above facts into consideration we request you to pass interim directions to APTRANSCO to release the fixed cost from 01.04.2006 onwards pending disposal of the main petition and come to our rescue to resume the operation of power plant with immediate effect.

5. When no representation is made on behalf of the respondent at the time of hearing we are constrained to hear the counsel for the petitioner to pass appropriate order.

6. The counsel for the petitioner reiterated the grounds mentioned in the petition filed by him while addressing arguments before the Commission.

7. Now the point for consideration is what fixed charges can be allowed to be paid from 1.04.2006 onwards as an interim measure pending disposal of main O.P.

8. While addressing this issue, it is to be noted that the respondents have requested for passing interim directions to APTRANSCO to release the fixed cost from 1.4.2006 onwards pending disposal of the main petition and come to their rescue to resume the operation of power plant with immediate effect.

9. The main petition can only be disposed after passing of the final order by this Commission, pursuant to order dated 20.12.2012 of the Hon'ble ATE in Appeal No.166 of 2011.

10. As per Para 39(vii) of the order of Hon'ble ATE dated 20.12.2012 in appeal No.166 of 2011, till the passing of the final order by this Commission, the Tariff as per the order of Chairman Dated 19.8.2011 is

to be continued subject to adjustment after determination of the Tariff by the State Commission.

11. As such, till such time the final orders are passed by the Commission pursuant to Hon'ble ATE order dated 20.12.2012 in Appeal No.166 of 2011, reliance has to be placed on the Chairman's order dated 19.8.2011. The same, is therefore adopted for purpose of fixation of fixed Costs in the interim period.

12. For this purpose it is necessary to extract the Fixed Cost stream determined by Chairman's order dated 19.08.2011 which is as follows:

<b>Year of operation</b>	<b>Fixed Cost (Rs / Unit)</b>
1 <sup>st</sup>	1.71
2 <sup>nd</sup>	1.68
3 <sup>rd</sup>	1.65
4 <sup>th</sup>	1.62
5 <sup>th</sup>	1.59
6 <sup>th</sup>	1.58
7 <sup>th</sup>	1.56
8 <sup>th</sup>	1.53
9 <sup>th</sup>	1.48
10 <sup>th</sup>	1.11

13. As can be seen from the above table, the fixed cost reduction year-on-year is in the range of 1 paise to 37 paise and the average works out to 6 paise per unit. That being the case and in as much as the fixed tariffs get reduced with aging of project, the fixed cost for 11<sup>th</sup> year can be fixed at Rs.1.05 per unit i.e., (Rs.1.11 – Rs.0.06) and the fixed costs for subsequent years can be arrived at by reducing the previous year, figure by an amount of 6 paise per unit. In view of the above, the respondents are directed to make payments in accordance with the above fixation of fixed costs, in the interim period effective

from 01.04.2006. The variable cost payable shall be any way as per the Commission's orders dated 31.03.2009. The determination made herein is provisional and will be revised after the orders are passed by the Commission in pursuance of the 20.12.2012 order of the Hon'ble A.T.E. in appeal No.166 of 2011.

***This order is corrected and signed on this 28<sup>th</sup> day of February, 2013.***

**Sd/-  
(R.Ashoka Chari)  
Member**

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

**Sd/-  
(A.Raghotham Rao)  
Chairman**