



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
**4<sup>th</sup> & 5<sup>th</sup> Floors, Singareni Bhavan, Red Hills, Hyderabad - 500004**

I.A. No.7 of 2006  
in  
O.P. No.16 of 2006

Dated 19.11.2012

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

Between:

M/s. Central Power Distribution Company of A.P. Ltd

... Petitioner

AND

M/s. Veeramani Biscuit Industries Limited

....Respondent

This petition is coming up for hearing on 06.09.2011 in the presence of Sri. P.Shiva Rao, Advocate for the petitioner. No representation on behalf of the respondent, though filed the counter by the respondent, the Commission passed the following:

**ORDER**

The petitioner filed the above said petition u/s 62 of the Electricity Act, 2003 and u/s 94(2) of EA 2003. The case of the petitioner is briefly as follows:

a) The respondent, M/s. Veeramani Biscuit Industries Limited after obtaining sanction from Non-conventional Energy Development Corporation of AP Limited (NEDCAP) commissioned 1 MW wind power project at Ramagiri, Anantapur District on 10.01.1996. The respondent entered into Wheeling Agreement with erstwhile APSEB on 20.10.1995 for wheeling of energy delivered from the wind power project as per the provisions of Government orders prevailing at that time.

b) The Andhra Pradesh Electricity Regulatory Commission (APERC) came into existence under the provisions of AP Electricity Reform Act, 1998 (APER Act 1998) 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 up to 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 up to 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 Commissions 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c) The PPA superseded in its entirety the earlier wheeling agreement and is for duration of 20 years from the commercial operation date of the project i.e, PPA will be in force up to 09.01.2006. The PPA under Art.2.2 also provides that there will be review of tariff by the Commission on completion of 10 years from the date of commissioning of the respondent’s project, when the purchase price will be reworked on the basis of Return on Equity, O&M expenses and Variable cost. The tariff to the respondent was paid up to 31.03.2004 as per the Commission order dated 20.06.2001 in OP 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. The Commission vide orders dated 20.03.2004 in RP No. 84 /2003 in OP No. 1075/2000 issued orders fixing tariff for NCE projects to take effect from 01.04.2004. The Commission fixed tariff for wind power projects at Rs.3.37 per unit, freezed for next 5 years. 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 and variable cost and residual depreciation, if any. The respondent is being paid the tariff at Rs.3.37 per unit from 01.04.2004 as per the Commission order dated 20.03.2004 in RP No. 84/2003 in OP No. 1075/2000.

e) The respondent's project has completed 10 years of operation by 09.01.2006. As such, the tariff for respondent's project to take effect from 10.01.2006 is to be reviewed and re-fixed. Section 62 of the EA 2003 empowers the Commission to determine the tariff for supply of electricity by a generating company to a distribution licensee.

f) The petitioner has formulated the tariff proposals and based on the detailed calculations made, the petitioner proposes a tariff of Rs.1.43 per unit, excluding income tax to be paid at actuals, if any, for the energy purchases from the respondent's wind power project during the period from 10.01.2006 to 09.01.2016.

g) The petitioner, therefore, prays that the Commission may be pleased to  
(i) Approve tariff as Rs.1.43 per unit excluding income tax to be paid at actuals, if any, for the energy purchases from the respondent's wind power project during the period from 10.01.2006 to 09.01.2016.  
(ii) And/or pass such other order/ orders as the Hon'ble Commission may deem fit.

h) Pending disposal of main petition it is prayed that the Commission be pleased to pass directions permitting the petitioner to pay tariff to the respondent for energy delivered at the tariff of Rs.1.43 per unit, subject to final orders in the main petitioner and/or pass such other order as the Commission deem fit and appropriate in facts and circumstances of the case.

2. On 27.05.2006, the counter is filed on behalf of the respondents. The case of the respondent is briefly as follows:

a) The respondent is having 1MW wind mill at Ramagiri, Anantapur Dist since 1996 and generation was captively consumed through Wheeling agreement with the petitioner. At that time the respondent having facility to consume the entire power generated by it. In the meanwhile, the respondent removed one biscuit manufacturing oven and the consumption of power by it was reduced. The respondent therefore entered into PPA with the petitioner from 01.04.2002 and has been selling the power generated. Now, the respondent has recommissioned the oven and in addition, it has installed, bread manufacturing division during the month of Feb. 2006. Due to this respondent's power consumption has gone up. Therefore, respondent requests the Commission to convert the PPA to wheeling agreement.

b) In the petition filed by the petitioner for revision of price per unit, power generation was estimated by it at 17.50 lakhs units per year, whereas the average power generation was only 6.50 lakhs units for the last 10 years. This calculation was taken under ideal conditions for a generation of 8 to 10 months. Whereas the petitioner themselves have admitted in their petition for interim orders that the season is only for 4 months i.e June to September. In this period of 4 months generation of 17.50 lakhs units is absolutely not possible. Net and effective average generation was only 6.50 lakh units i.e., approximately 1/3<sup>rd</sup> of the estimated generation.

c) Rate of interest was 15.5% charged by IREDA which was very high and could not be absorbed by the income generated by wind mill whereas 14% was reckoned by the petitioner. Insurance premium against fire, theft and burglary of Rs.2.80 lakhs p.a. was not considered by the petitioner while calculating the operating cost. Annual maintenance cost was not considered by the petitioner, which is around Rs.4 lakhs p.a. Only O&M @1% was taken whereas it covers only general administration expenses.

d) All the above taken into account for the last 10 year, the income generated was far below the expenses incurred. The respondent has submitted statement which shows accumulated losses for the last 10 years which amounts to Rs.96 lakhs. Only now onwards after repayment of loan the

respondent may cross break even, and the loss accumulated will remain unabsorbed in the period to come.

e) Out of the four towers installed, one has become already defunct and was dismantled and scrapped as the maintenance cost is more than the income generated. As a result the net capacity available is only 0.75MW. With the present rate of generation, the power generated will be required by the respondent Biscuit manufacturing unit. Therefore respondent requests that it may be allowed to use the power generation at its windmill for its captive consumption.

f) Respondent considers that it is not economically feasible to sell power generated by the respondent at Rs.1.43 per unit to the petitioner as per petitioner's proposal and buy the same power from the petitioner at Rs.3.40 per unit. Hence, the respondent requested for converting the PPA to wheeling agreement.

3. The learned advocate for the petitioner argued that the Commission has to decide the interim tariff pending disposal of the main petition filed for fixation of tariff by way of review on completion of 10 years and this is abnormally delayed due to the continuous litigation ran by the NCE developers right from the Commission up to Apex Court. If the interim tariff is not fixed, untold hardship is going to be caused for the petitioner since they are now paying more than Rs.1.43 on adhoc arrangement.

4. Though the respondent filed their counter, but no representation is made through out. The Commission after hearing the petitioner and reserved its orders with a view to pass an order on merits on the material available on record.

5. In view of the contentions of the two parties, the points arise for consideration:

(i) whether the respondent's request for converting the PPA to wheeling agreement on the ground that it is not economically feasible for the respondent to sell power generated by them to the petitioner at Rs.1.43 per unit as per petitioner's proposal and buy the same from the petitioner at Rs.3.40 per unit, can be granted?

(ii) the determination of the tariff in the interim petition pending disposal of the main petition.

6. On point No (i), it is to be appreciated that there is no direct link between the rate at which the respondent herein sells the power to the petitioner and the rate at which the respondent buys power from the petitioner, since the former is governed by a Power Purchase Agreement and the latter by the supply agreement, the respondent had with the petitioner. Further, the respondent also erred in relying on Rs.1.43 per unit proposed by the petitioner as the final tariff, in as much as, it is the Commission which has a final say, in the matters of tariff determination under section 62 and 94 (2) of the Electricity Act 2003. Therefore, the request of the petitioner to convert the PPA into a wheeling agreement on the erroneous assumption as narrated supra cannot be entertained. Further, if the respondent is aggrieved by the tariff determination made by this Commission, he can contest the same in the relevant judicial forums until the final tariff gets fixed. Apart from the above remedy, the respondent has no option to convert the Power Purchase Agreement during its tenure into a wheeling agreement. Hence, for all the above said reasons, the request of the respondent to convert the PPA into a wheeling agreement cannot be granted. This point is answered against the respondent.

7. As far as point No. (ii) is concerned, there is no dispute that, upon completion of 10 years from the date of commissioning of the project, the tariff of the same is to further reviewed, basing on the factors like O & M expenditure, Return on Equity, Variable Cost and residual depreciation if any. The rationale for further reviewing the tariff after completion of 10 years

basing on the factors like O & M expenditure, Return on Equity, Variable Cost and residual depreciation is that, by the end of 10 years the developer would have substantially repaid the loan. It is therefore, abundantly clear that, once the loan corresponding to 70% of the project cost is substantially repaid (through interest and depreciation components of the tariff), the tariff after 10 years would substantially come-down, since, it would include O & M expenditure, Return on Equity and residual depreciation, if any. The variable costs are any way, not applicable to the Wind Power Projects. It is a matter of fact, that the DISCOMs are presently paying an ad-hoc tariff of 50% of Rs.3.37 per unit (the tariff determined in 20-03-2004 order) working out to around Rs.1.69 per unit. The prayer of the petitioner, to fix an interim rate of Rs.1.43 per unit is not reasonable since it is lesser than the rate of Rs.1.69 per unit, which is 50% of the rate paid for the 10<sup>th</sup> year (Rs.1.69 per unit is being presently paid on ad-hoc basis by the petitioner). The petitioner is therefore directed to pay Rs.1.69 per unit for the power supplied to them by the developer, beyond 10<sup>th</sup> year, pending fixation of final tariff applicable beyond 10<sup>th</sup> year.

This order is corrected and signed on this 19<sup>th</sup> day of November, 2012.

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

**Sd/-**  
**(A.RAGHOTHAM RAO)**  
**CHAIRMAN**