



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

I.A. No.9 of 2006  
in  
O.P. No.18 of 2006

Dated 17.11.2012

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. Bharat Heavy Electricals 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, although except on 17.06.2006. He reported that they are adopting the arguments of respondent in O.P.No.14 / 2006, the Commission passed the following:

**ORDER**

The petitioner filed the above said petition u/s 62 of the Electricity Act, 2003 for determination of tariff after completion of 10 years. The material averments of the petition is briefly as follows:

a) The respondent entered into Wheeling Power Purchase Agreement with erstwhile APSEB on 18.07.1995 for wheeling of energy delivered from the wind power project as per the provisions of Government orders prevailing at that time. The Government of AP issued policies for Non-Conventional Energy (NCE) projects from time to time, which were in force up to November 2000 and subject to review thereafter.

b) The 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 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 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 Limited (APTRANSCO) on 25.07.2002 for sale of energy delivered from their 3 MW wind power project in Anantapur District.

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 tariff for respondent is 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 05.09.2005. As such, the tariff for respondent's project to take effect from 06.09.2005 is to be reviewed and re-fixed. Under 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, which are enclosed as Annexure hereto. 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 06.09.2005 to 05.09.2015. The petitioner submits that the Annexure may please be read as integral part of this petition.

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 06.09.2005 to 05.09.2015.

(ii) And/or pass such other order/ orders as the 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 petition and/or pass such other order as the Commission deem fit and appropriate in facts and circumstances of the case.

2. On 12.06.2006, the respondent filed a letter opposing the petition filed by the petitioner narrating the grounds as hereunder:

a) Bharat Heavy Electricals Limited, Ranipet owns a 3 MW wind farm project (the wind farm). The wind farm is situated at Ramagiri, Anantapur District of A.P.

- b) The wind farm was established in 1995 by BHEL as a initiative for power generation through renewable energy sources
- c) The wind farm was set up at Ramagiri after ascertaining that the average capacity utilization of wind farm would be 20% and above (on deliverable basis) for the financial viability of project taking into account the fiscal benefits provided by the State & Central governments. But on actual, the average capacity utilisation factor of wind farm projects in the region of Ramagiri is just around 12%, which is far below expectation. The average capacity utilization of our wind farm on delivered energy basis of last ten years (from 95-96 to 05-06) is only 12% as against projected 20%, which was estimated based on the wind data of Ramagiri made available by Ministry of Non-conventional energy sources, New Delhi (MNES).
- d) The lower capacity utilisation of the wind farm is solely attributable to poor wind availability. The average monthly / yearly availability of wind electric generators and grid was always more than 95% and these are the benchmark parameters to work out the capacity utilisation & the financial viability of the wind farm. The lower capacity utilisation is not at all due to poor maintenance practices as contemplated by APCPDCL but due to poor wind availability only.
- e) After constitution of APERC the power purchase rate was determined based on MNES guidelines vide order no. 432/2001, dated 20.06.2001 for NCE based power projects.
- f) The Commission based on the application made by APTRANSCO for the fixation of tariff for the year 2004-05 had taken a suo motu review of the order dated 20.06.2001 to determine the power purchase rate from various NCE based power projects. Taking into account all the aspects of the operations of wind farm projects in AP, the Commission had determined the power purchase rate for wind farm projects as Rs.3.37 per unit for a period of five years from the year 2004-05. The extract of APERC order RP No.

84/2003 in OP 1075/2000, dated 20.03.2004 is produced as under for your reference

*“Energy purchase rate: The Commission likes to retain the base unit price of Rs. 2.25 as on 1.4.1994 and the escalation index of 5% p.a. But, the escalation would be simple and not compounded every year. In other words, the base price as on 01-04-2004 will be Rs. 3.37/kwh. As these projects have no variable expenses and negligible increase in maintenance cost, the tariff will be frozen for a period of five years, to be reviewed however, thereafter.”*

g) On account of lower capacity utilisation factor of our 3MW wind farm even with more than 95% availability (since its commissioning) we could not generate sufficient revenue to fulfil the financial commitments taking into account the tariff determined by the Commission. Now any change in power purchase rate would jeopardise our efforts to meet the financial commitments.

h) APCPDCL had filed a petition under section 62 of the EA 2003 for determination of power purchase rate for our project to take effect from 07.11.2005 and proposes to fix the tariff of Rs.1.43 per unit excluding income tax to be paid on actual based on assumptions which are not based on the facts.

i) Hence, the commission may be pleased to retain power purchase rate at Rs.3.37 per unit as per the order dated 20.03.2004 and further extend it for another five years.

3. But respondent has not filed any counter and failed to attend before this authority on all the adjournments in respect of 17.06.2006. On that day one Sri K.S.Krithivasan, SDGM for the respondent present and submitted that the arguments made on behalf of the respondent in O.P.14/2006 may be treated as their arguments.

4. 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.

5. Where as the respondent took a stand that the relief sought for interim petition and the main petition is one and the same and Commission can not pass an order in the interim petition as it may affect the relief sought in the main petition itself. He has relied upon a ruling reported in 2004 AIR SCW 6955 (State of UP Vs. Ram Sukh Devi).

6. Now the point for consideration is, whether the petitioner is entitled for fixation of interim tariff as prayed?

7. It is not a hard and fast rule that the Commission is going to fix the tariff as sought by the petitioner either in the main petition or in the interlocutory application. It may fix the tariff at one rate in the interlocutory application and the same may be altered or modified depending up on the circumstances placed before the Commission at the time of final hearing.

8. In the ruling relied upon by the counsel for the respondent, the appointment of an individual is made on compassionate appointment, ignoring the Government order on humanitarian grounds and held that it is improper as it amounts to granting of final relief at interim stage and it is impermissible. The relief sought cannot be modified as it has to give appointment or reject the same. So the facts of this case are different than the facts of the case on hand. Hence it is not applicable.

9. Now the point before the Commission is about the determination of the tariff in the interim petition pending disposal of the main petition.

10. As can be seen from the above, 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 17<sup>th</sup> day of November, 2012.

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

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