

BEFORE THE HON'BLE ANDHRA PRADESH ELECTRICITY REGULATORY  
COMMISSION: HYDERABAD

CASE NO.

FILE NO.

IN THE MATTER OF:

Submission of objections and suggestions on ARR filings of two AP power distribution  
companies for the year 2019-20

BETWEEN

B. TULASI DAS

AND

AP SPDCL AND APEPDCL

I, BENDI TULASIDAS, s/o SRIRAMAMURTY NAIDU, aged 61 years, resident of H.No. S4,  
Devi Towers, Sambamurthy Road, Durgapuram, VIJAYAWADA – 52003, do hereby solemnly  
affirm and confirm that the contents in the affidavit filed by me are true to the best of my  
knowledge and belief.

I request the Hon'ble Commission to provide me an opportunity to make a presentation in person  
during the public hearings on ARR and tariff proposals of the two Discoms.

B. Tulasidas (sd)

DEPONENT

Vijayawada,

20.12.2018.

To  
**The Secretary**  
**A.P. Electricity Regulatory Commission**  
4<sup>th</sup> floor, Singareni Bhavan, Red Hills  
**Hyderabad - 500 004**

December 20, 2018

Respected Sir,

**Sub : Submission of objections and suggestions on the ARR and tariff proposals of APSPDCL and APEPDCL for their retail supply business for the year 2019-20**

With reference to the public notices dated 29.11.2018, inviting suggestions/objections on the ARR and tariff proposals of the two AP Discoms in O.P.Nos. 26 & 27 of 2018, I am submitting the following preliminary points for the consideration of the Hon'ble Commission:

1. APSPDCL and APEPDCL have projected a revenue requirement of Rs.38,204 crore - Rs.24,464 crore for SPDCL and Rs.13,740 crore for EPDCL - for the year 2019-20. They have also projected a total revenue of Rs.29,241 crore, including non-tariff income, at current tariffs applicable - Rs.17,488 crore for SPDCL and Rs.11,754 crore for EPDCL - for the same year. While SPDCL has projected a revenue gap of Rs.6,976 crore, EPDCL has projected a revenue gap of Rs.1,987 crore - a total revenue gap of Rs.8,963 crore for both the Discoms. Projection of such a huge revenue gap calls for a thorough examination of the root causes for the same and the remedial measures required to be taken to the extent possible.
2. The Discoms have not explained or made any proposals as to how they would bridge the huge revenue gap projected, with the implication that they expect the GoAP to provide the subsidy required as per the revenue gap to be determined by the Hon'ble Commission, as is the case for the year 2018-19. Since the Discoms have not made it clear as to how they would propose to bridge the projected revenue gaps for the year 2019-20, we request the Hon'ble Commission to make it clear that no true up claim would be permitted later for the revenue gap, if any, that is going to be determined by it after taking into account the subsidy amount the GoAP is willing to provide. We also request the Hon'ble Commission to make it clear to the Discoms that the remaining revenue gap, if any, to be determined for the year 2019-20 will not be treated as regulatory asset. It is to be noted here that regulatory asset can be considered only when hefty tariff hike is required and only a part of it is permitted by the Commission to avoid tariff shock to the consumers and that such revenue gap treated as regulatory asset can be permitted to be collected from the consumers in later years.
3. The projections of the Discoms, especially relating to availability of energy and surplus energy available, are manipulative, defective and contrary to the submissions made by them on long-term load forecast, etc., and before the Hon'ble Commission during public hearings on different issues. As such, it can be presumed that the Discoms have submitted the subject proposals as prepared by their private consultants, and that seems to be the reason for the kind of dichotomy between the projections in the ARR for 2019-20 and the submissions the Discoms themselves made earlier before the Hon'ble Commission. Even after the experience of more than two decades in preparing and submitting ARR proposals to the Hon'ble Commission, it is unfortunate that the Discoms are forced to continue to depend on private consultants for the purpose, without adequate in-house expertise being developed and utilised in the power utilities of the GoAP. This manipulative dichotomy also indicates that the Discoms are constrained to follow the questionable diktats of the powers-that-be for extraneous considerations.

4. Both the Discoms have shown availability of 68,583.87 mu for the year 2019-20. The Discoms have shown energy requirement of 67,713 mu -and a surplus of 870 mu. These figures are manipulative for the following reasons, among others:
- a) In their latest reports on long-term load forecast, etc., submitted to the Hon'ble Commission, both the Discoms and AP Transco have projected availability of 77,998 mu, input of 66,313 mu and a surplus of 11,685 mu for the year 2019-20.
  - b) As per the interim order issued by APTEL, the Discoms have to purchase power from the project of HNPCL (1040 MW), if it fits into merit order, and the Discoms already started purchasing power from this plant. We had already pointed out that, after public hearing on the PPA, etc., of the project of HNPCL was concluded and reserved for orders by the Commission, the Discoms, obviously, at the behest of the Government of A.P., had withdrawn the PPA with the permission of the Commission, with a view to justifying requirement of power from private projects like Simhapuri, Lanco, Spectrum, Richmond, etc., by avoiding availability of power from HNPCL, and that, if HNPCL gets a favourable order finally, the Discoms can simply claim that in view of such binding orders of APTEL, and the Supreme Court, they will be constrained to purchase power from HNPCL to the extent of 7288.32 mu per annum. This approach of the GoAP is irresponsible, if not downright cunningness. As long as the interim order of the APTEL continues to be in force, the Discoms have to take into account availability of 7288.32 mu from HNPCL and they cannot ignore it on the presumption that final order of APTEL and of the Supreme Court would go against HNPCL.
  - c) APERC has already given its consent to the PPA the Discoms had with Simhapuri project (400 MW) and energy of 2,803.20 MU per annum is available to them from this project.
  - d) Availability of power from HNPCL and Simhapuri are not taken into account by the Discoms both in their reports on long-term load forecast, etc., and in their ARR submissions for the year 2019-20.
  - e) If availability of power from HNPCL and Simhapuri is taken into account for the year 2019-20, the revised availability of power for the same year as per projections in reports of long-term load forecast, etc., would work out to 87,089 mu. As such, against a projected requirement of 66,313 mu, the surplus energy available for the year 2019-20 would be 20,776 mu, i.e., 31.33 per cent!
  - f) If availability of power from HNPCL and Simhapuri (9091.52 mu) is taken into account for the year 2019-20, the revised availability of power for the same year as per projections in the ARR would work out to 77,675.39 mu. As such, against a projected requirement of 67,713 mu, the surplus energy available for the year 2019-20 would be 9962 mu. As per the projections made in the long-term load forecast, availability of power would work out to 87,089 mu (77998+9091) and surplus will be 19,376 mu against projected requirement of 67,713 mu.
  - g) The proposal of the Discoms to get power on swapping basis to the tune of 4121.85 mu, especially from Sembcorp, is made, obviously, at the behest of the powers-that-be, to do undue favour to the private developer by deflating availability of power. In its letter dated 29.5.2018 relating to long-term load forecast submitted to the Commission, APEPDCL has pointed out that with the present generation mix, the Grid demand is being met without any hassles. Power exchanges are fully operational and are offering different products such as Day ahead, Day ahead contingency, intra day, term ahead, etc., and there is a lot of flexibility to the power procurement team to meet the occasional deficits in any time periods/blocks or to manage the surplus by means of sell out through exchange, EPDCL has explained. Therefore, the contention

of the Discoms in their ARR proposals that there will be a gap between demand and availability for the year 2019-20 and that they propose to bridge this gap by short-term procurement from Sembcorp Gayatri Power Limited and through power exchanges keeping in view that PPA signing with SGPL under DBFOO is under process and the tariff of the same is lower than the average cost of power in the Exchanges is untenable. Further, the submission of the Discoms that there is uncertainty on the availability of sufficient power in the exchanges goes contrary to the submission of APEPDCL in its letter dated 29.5.2018 quoted above. The Discoms have also submitted that if there is an alternate source of power cheaper than this (SGPL), the same would be preferred and that this proposed procurement would only be an option but not a compulsion. This position taken by the Discoms has several questionable implications which we can articulate during the public hearings. For the present, suffice it to say that no power is required from SGPL during 2019-20 even under swapping.

- h) The Discoms have shown availability of power from Lanco and Spectrum, although no consent is given by the Commission for purchasing the same for the year 2019-20. On the 1<sup>st</sup> December, 2018, during the public hearing on the PPA of Lanco, the learned counsel for the Discoms has sought time again to determine whether power from Lanco is required and the Hon'ble Commission has directed the Discoms to come before it by the next hearing with their final stand, maintaining that if they do not require power from Lanco, they can withdraw the petition seeking consent of the Commission. The learned counsel has also admitted that several valid objections were raised by the objectors in the petition. The same position holds good in the case of Spectrum also, even though no PPA is submitted to the Commission for its consent.
- i) Even without power from Sembcorp on short-term and swapping basis (4121.85 mu) and from Lanco and Spectrum, the Discoms still will have substantial surplus power available during 2019-20. Without justifying need for power from the projects, in the present context, of Sembcorp, Lanco and Spectrum, without following competitive bidding to ensure competitive tariffs and without getting consents of the Commission, the Discoms are being forced by the powers-that-be to adopt the questionable way of proposing to purchase power from such projects in their ARR submissions, while ignoring, in an equally questionable manner, their binding obligations to purchase power from projects like HNPCL and Simhapuri in view of the interim order of APTEL and the order of APERC, respectively, reflecting their scant respect for meeting regulatory requirements.
- j) Discoms have submitted that gas-based power plants of GVK extension (220 MW), GMR Vemagiri (370 MW), Gautami (464 MW) and Konaseema (444.08 MW) with whom they had long-term power purchase agreements are stranded due to unavailability of gas and hence not considered for future calculations. They could not provide any substantiation or justification for the presumed continuance of unavailability of natural gas to these plants in future. As and when supply of natural gas to these plants re-commences, the AP Discoms will get their share of 46.11% (690 MW) and 4835.52 mu per annum from these plants at 80 per cent PLF. Therefore, presuming unavailability of natural gas to these projects, and the resultant non-generation and non-supply of power from them, it would be imprudent to enter into long-term PPAs with other power plants, because, once the four power plants get supply of natural gas, availability of power to the Discoms from these projects materialises and overall availability of surplus energy would increase, with attendant burdens of paying fixed charges for backing down.
- k) The Discoms have not explained the percentage of PLF they have taken into account while working out availability of thermal power from the projects of AP Genco and the Central Generating Stations. If they have taken the threshold level of PLF much below PLFs shown in the respective PPAs, under the pretexts like presumed continuance of inadequate supply of coal,

then the availability of power from those projects need to be re-worked out based on threshold levels of PLF.

- l) While the Commission had approved availability of thermal power from AP Genco for the year 2018-19 to the tune of 19,937 mu, without taking into account availability of 9,223 mu from SDSTPPS I and II, the Discoms have projected availability of 24,017 mu from thermal projects of AP Genco for the year 2019-20. If availability from SDSTPPS I & II of 9,223 mu is taken into account, on the basis of availability determined for the year 2018-19, the availability of energy for 2019-20 would work out to 29,160 mu. In other words, the Discoms have arbitrarily deflated availability of thermal power from AP Genco, including SDSTPPS, to the tune of 5,143 mu (29160-19937 mu) for the year 2019-20, without any explanation and justification.
  - m) The scope for reduction of demand in view of increasing open access consumption, energy conservation measures, inflated demand for agriculture and some other categories of consumers, and the projected higher rate of demand growth for the year 2019-20, etc., need to be re-examined objectively and demand determined realistically.
5. We request the Hon'ble Commission to direct the Discoms to submit their proposals on what they would do with the available surplus power - to what extent they can sell the surplus power and at what prices. We also request the Hon'ble Commission to direct the Discoms to submit the details of fixed costs to be paid for backing down the surplus energy, if they are not able to sell the same during 2019-20, and also details of backing down and fixed costs paid therefor during 2017-18 and 2018-19.
  6. The Discoms have projected availability of NCE during 2019-20 to the tune of 16,769 mu against availability of 12,622 mu during 2018-19. We request the Hon'ble Commission to direct the Discoms to provide us the information relating to the PPAs under which they propose to purchase the projected NCE and whether they have projected availability, if any, of NCE without PPAs and without getting consent of the Commission to the PPAs, if already signed, and the rates at which they agreed to purchase NCE from different projects.
  7. In view of the above submissions, among others, it is clear that availability of power and surplus energy would exceed the projections made by the Discoms in the ARR and demand would be reduced. Therefore, we request the Hon'ble Commission, to direct the Discoms to re-work out their projections of availability, demand and surplus of energy realistically, especially taking their binding obligations like purchasing power from HNPCL and Simhapuri into account, and the resultant substantial changes in their revenue requirements and revenue gaps for the year 2019-20, submit the same to the Commission and make the same available to us well before the proposed public hearings on the subject issues to enable us to study the same and make further purposeful submissions. Even for the Hon'ble Commission, it is necessary to have such realistic information and data to determine objectively various projections as a part and parcel of its regulatory process.
  8. We propose that the categorisation of LT Domestic be redefined as here under:
    - A. **Annual consumption <1200 kwh** (present <900)
    - B. **Annual consumption >1200 and <3000 kwh** (present >900 and <2700)
    - C. **Annual consumption >3000 kwh**The per capita consumption of Electricity is growing year by year. As per the CEA reports the national per capita in 2015-16 was 1075 and it became 1149 in 2017-18. It further increased in this year.

Energy Statistics of MOSP, GOI, CAGR of the total electricity consumed between 2007-08 and 2015-16 was 7.82 while that of Domestic sector was 7.93.

The Honble' APERC approved this categorisation in 2016-17. Three years have elapsed and this may be revised for 2019-20.

The Govt.of AP under Jagjivan jyoti, is providing free domestic power of 100 kwh per month to all SC/ST families.

The income limits for BPL and for Non creamy layer of OBCs etc. have been revised time to time by the respective governments. The Honble' APERC also is requested to revise the limits of consumption.

9. We request that **free power be provided** to small and marginal farmers availing LT power with a connected load up to 5 HP in (1) **Sugarcane crushing**, (with no Demand charges for Agriculture connections permitted seasonally) (2) **Salt farming**.

(1) Jaggery is known as "poor man's sweetener". Family labour is mainly involved in preparation of jaggery in our state. As there has been commercial cultivation of Sugarcane and preparation of jaggery, to distinguish the small and marginal farmers and also the tenant farmers from others, the connected load of 5 HP, we proposed.

Agriculture connections are permitted to carry out sugarcane crushing and they should not be burdened with ENERGY or DEMAND CHARGES.

(2) Salt is the daily need of everybody and it has a historic role in the National movement. In this sector also there are big corporates. Hence, the connected load condition.

10. The Government of AP wants to make our state as "Aquaculture Hub" and so the Aquaculture has been increasing in a big way. There are many contentions of pollution and other violations. But some small and marginal farmers are involved in Aquaculture and they have to be protected. We request that the Aqua farmers with connected load of 5HP be given power at a tariff of Rs. 1 per unit.

11. We also request the Hon'ble Commission to direct the Discoms to submit their claims under true-up for the year 2017-18, without further delay, as auditing of their accounts for that year must have been completed already.

12. Did the Discoms seek and get consent of the Hon'ble Commission for purchase and sale of swap power for the year 2018-19? What is the arrangement for swapping power? During the second half of 2018-19, the Discoms have shown energy utilised from other utilities under swapping as 3,344.71 mu and energy to be returned to other utilities as 252.16 mu? For the year 2019-20, the Discoms have proposed to avail energy of 666.79 mu from other utilities and return 4,142.85 mu. During which periods of the financial year the Discoms are procuring/proposing to procure power from other utilities under arrangement of swapping and returning the same and what are the tariffs being paid/collected for the same and the market prices of energy prevailing during the same periods? During the period when the Discoms are procuring energy from others under the arrangement of swapping, are they backing down power from other generating units with whom they had power purchase agreements and paying fixed charges therefor? If power is procured and returned under swapping for the same tariff, what is the interest of, and benefit to, private generators like Sembcorp Gayatri Power Limited (SGPL) in such an arrangement? On what basis the Discoms are claiming that "in order to avoid the short-term procurements and thereby save the costs," they have been purchasing power through swapping?

13. The Discoms have informed that they propose to bridge gap in availability of power "by short term procurement from SGPL (Sembcorp Gayatri Power Limited) and through power exchanges keeping in view that PPA signing with SGPL under DBFOO is under process and the

tariff of the same is lower than the average cost of power in the exchanges.” On the face of it, it is a manipulation to sign a PPA with SGPL for short-term procurement of power under DBFOO. Did the Discoms submit any proposal to enter into a short-term PPA with SGPL under DBFOO to the Hon’ble Commission, seeking its consent for the same? The attempt of the Discoms to justify entering into a short-term PPA with SGPL by comparing its tariff with “the average cost of power in the exchanges” of a particular period is, on the face of it, manipulative and impermissible. If at all additional power is required on short-term basis, the Discoms should seek the permission of the Commission to go in for competitive bidding and then select the developer who quotes the lowest tariff. The way the Discoms have proposed it in their ARR submissions, instead of filing a separate petition before the Hon’ble Commission, seeking its consent for the same, without providing any justification for requirement of power from SGPL and relevant data, and the terms and conditions of the draft PPA, is, obviously, intended to circumvent public scrutiny through public hearing. It is high time the Hon’ble Commission rejected outright such manipulative manoeuvres of the Discoms and gave necessary directions to them to adhere to the regulatory requirements.

14. In response to the criticism against the way in which the Commission had given its consent to the PPA of Vishnu Vidyuth India Limited through a letter, in the tariff order for the year 2018-19, the Commission had maintained that “it is only in consequence to this order (dated 8.9.2016), which also considered the views of Sri M. Venugopala Rao, the leading objector herein also, that the request for consent to the Power Purchase Agreement between the parties to O.P.18 of 2016 was accepted by this Commission which hence did not require a second public hearing, more so when what was adopted was the generic tariff for Biomass plants. Thus, there was nothing secret or sinister about it” (page 75). The fact of the matter is that there was no PPA to be considered in O.P.18 of 2016, and that the issue for consideration of the Commission was whether it should direct the Discom to enter into PPAs with Vishnu and Sammera biomass-based power plants with very high tariffs. Moreover, in the said order dated 8.9.2016, the Commission observed that “the objections/suggestions of Sri M.Venugopala Rao in support of the stand taken by distribution companies also referred to the implications of considering the representations of the two generators like the higher cost of such power, the probable imposition of heavy burden on the consumers, the renewable power purchase obligation having been otherwise met by the Discoms, the availability of surplus in 2016-17 as per the ARRs etc. All these factors may be relevant factors which the Distribution Companies may take into consideration while taking an appropriate decision but as it is the licensees who have to take a decision one way or the other, any expression of opinion by the Commission in this order on such aspects may prematurely prejudice the rights and interests of the parties.” In other words, the Commission should have considered the relevant factors by holding a public hearing on the PPA of Vishnu Vidyuth and then decided whether consent was required to be given or not.

15. In the name of encouraging generation and consumption of non-conventional energy, Government of Andhra Pradesh has been directing or permitting its Power Distribution Companies (Discoms) to enter into long-term power purchase agreements (PPAs) with developers of NCE units indiscriminately. APERC has been giving its consents to them, without taking a holistic view of requirement and availability of power and reasonableness of tariffs. Regulation No.1 of 2015 of APERC, relating to determination of generic tariffs for wind power, does not take into account the factors that contribute to achievement of capacity utilization factor (CUF) higher than what is contained in it, i.e., 24.5%. In a letter dated 3.3.2017, submitted to APERC by the Chief General Manager of the APSPDCL, requesting to permit it to withdraw the 41 numbers of wind power project PPAs pending before the Commission for its consideration and consent, it is pointed out that, “*due to advancement in technology, enhancement of capacity rating of individual WTGs and also increased hub height for latest*

*projects, the Capacity Utilisation Factor (CUF) is being achieved higher than as was considered by Hon'ble Commission (APERC) in the regulation 01 of 2015 and also in the tariff orders issued thereafter." Further, it is explained in the said letter that "out of the aforesaid 38 projects commissioned up to 31.12.2015, 14 no. of projects have achieved PLFs of more than 24.5% and the peak PLF achieved is 31.58%." It is further submitted in the letter that "the Discoms have already reached the target as contemplated under the Wind Power Policy, 2015 as well as requirement specified in the orders of GoAP..... it is observed that Discoms have achieved more than capacity specified in existing RPP0 regulation 2012, also considering down trend of wind power generation tariff in the country, it is decided not to purchase power from the wind (power) generators with whom PPAs entered but not got approval of Hon'ble Commission." Later, APERC returned the 41 PPAs.*

16a. After a representation made by developers of wind power projects relating to the said 41 PPAs to the GoAP, APSPDCL has resubmitted the said PPAs to APERC, seeking its consent, subject to certain conditions as incorporated in their letter dated 4.8.2017, and submitted that "keeping in view the above facts, the Prl. Secy. Energy in the meeting held on 04.07.2017 at VidyuthSoudha, Vijayawada, decided (obviously, at the behest of the GoAP) that all the Wind Power PPAs signed, DISCOMs may submit the said PPAs for consent of APERC subject to the condition that the Wind (power) generation is well within the approved quantum of energy mentioned in the APERC Retail Supply Tariff order dated 30.03.2017." Later, APERC has given consents to these PPAs, subject to certain conditions. In its order dated 13.7.2018, in O.P.No.5 of 2017, permitting the Discoms to procure wind power through competitive bidding, APERC has maintained that "the order of the Commission dated 13-12-2017 in the matter of 41 Power Purchase Agreements between Southern Power Distribution Company of Andhra Pradesh Limited and various wind power developers and the order of the Commission in O.P.No.15 of 2017 dated 30-3-2017 (tariff order for 2017-18) shall be subject to this order as already stated in the said two orders respectively."

16b. In seeking consents of the Commission to the said PPAs "subject to the condition that the Wind (power) generation is well within the approved quantum of energy mentioned in the APERC Retail Supply Tariff order dated 30.03.2017," i.e., for the year 2017-18, the implication is that APERC is determining availability of power even from the projects to whose PPAs consent is not given. If availability of power in a financial year is determined by APERC based on PPAs to which it has given consents, the question of giving consents to new PPAs, subject to the condition that wind power generation is well within the approved quantum of energy determined in the tariff order for the financial year concerned, does not arise. Seeking consent of the Commission to new PPAs in this manner shows the ingenious approach of the GoAP. If APERC has determined availability of power in a financial year, taking into consideration proposals of the Discoms on likely availability of power from wind power projects to whose PPAs it has not given consent, it is a questionable approach. The implied approach of APERC is that since the Discoms proposed availability of power from wind power projects, though no consents were given by it to the PPAs relating to them, it included that power in the availability for the financial year concerned. Since power from those wind power projects was included in the availability of power for the financial year concerned, APERC gave its consents to those PPAs. Consideration of requirement and availability of power to the Discoms, reasonableness of tariff, whether the Discoms already fulfilled or exceeded their obligations under RPP0 and scope for getting power, if required, from other sources at relatively cheaper prices are given a go by in this ingenious approach.

16c. With a CUF of 23.5% for a total capacity of 811.4 MW of the 41 PPAs of wind power projects submitted by SPDCL and consents given by APERC, energy available works out to 1670.35 MU per annum. To purchase 1670.35 MU per annum @ Rs.4.84 per kwh, the highest generic tariff determined by the Commission, the Discoms have to pay Rs.808.28 crore. Even if Rs.3.46 per kwh discovered through the first competitive bidding of Solar Energy Corporation

of India (SECI) is taken into account, compared to the generic tariff determined by the Commission, the difference works out to Rs.1.38 per kwh (Rs.4.84 – 3.46). In other words, for purchasing 1670.35 MU per annum, the Discoms have to pay Rs.230.46 crore per annum and Rs.5761.50 crore during the period of 25 years of the PPAs additionally to the wind power generators of the 41 PPAs! Compared to further fall in prices of wind power that has been discovered through competitive bidding in course of time, the additional burden to be borne by the Discoms, i.e., their consumers of power, for purchasing power from the 41 wind power generators would work out to be much more.

17. In view of the higher generic tariffs determined by the Hon'ble Commission for wind power in its orders dated 1.8.2015 and 26.3.2018, the Discoms filed O.P.No.5 of 2017 requesting it in public interest and in the interest of end consumers in the State to get green energy at the lowest possible cost to amend the Regulation No.1 of 2015 curtailing its effect up to 31.3.2017 and allowing them to follow for future period competitive bidding process in consonance with guidelines of the Ministry of Power, Government of India for the valid reasons explained in their petition. The Commission, in its order dated 13.7.2018 permitted the Discoms accordingly, stating that "the petitioners (Discoms) are at liberty to procure power through a transparent process of bidding in accordance with the guidelines for tariff based competitive bidding process for procurement of power from grid connected wind power projects formulated and issued by the Ministry of Power, Government of India, dated 8.12.2017 under Section 63 of the Electricity Act, 2003." At the same time, the Commission also ordered that "the petitioners are also at liberty to procure power from wind power projects in accordance with Sections 61, 62, 64 and 86(1) (b) of the Electricity Act, 2003 and Sections 21 and 26 of the Andhra Pradesh Electricity Reform Act, 1998 and rules, regulations, practice directions and orders issued thereunder until an appropriate regulation in that behalf is made by this Commission and any Power Purchase Agreement or tariff thereunder for such procurement shall be guided by the principles contained in the provisions of the Central Electricity Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations, 2017." When the Discoms were seeking permission of the Commission, in their said petition, to adopt competitive bidding for procurement of wind power, not generic tariffs determined by the Commission, the latter, instead of confining its order to the point for consideration in the said petition, maintained that the Discoms are at liberty to enter into PPAs with wind power projects as per the generic tariffs determined by the CERC in their regulations of 2017 concerned. When the Discoms themselves wanted to adopt competitive bidding to get the benefit of competitive tariffs for procuring wind power, if required, and when they did not want to adopt generic tariffs determined by APERC, it is intriguing that the Commission had given a gratuitous piece of advice to them that they are at liberty to adopt the generic tariffs determined by CERC for procuring wind power. This unsolicited and unwarranted "liberty" would, in practice, would give liberty, as well as an opportunity, to the private developers of wind power projects to manage the powers-that-be in the Government of A.P. to direct the Discoms to enter into long-term PPAs with them for procuring wind power at the generic tariffs determined by the CERC which are higher than the tariffs being discovered through competitive bidding. When the Discoms are permitted by the Commission to adopt competitive bidding process for procurement of wind power under the guidelines of the Ministry of Power, GoI, what is the "appropriate regulation" the Commission wants to make? Is such an "appropriate regulation" required by the Discoms to follow the guidelines of the Ministry of Power, GoI, to adopt competitive bidding? When the Discoms want to adopt competitive bidding, where is the need, as well as justification, to enter into PPAs with wind power projects as per the generic tariffs determined by the CERC?

18. APERC issued its orders dated 1.8.2015 determining tariff for Wind Power Projects @ Rs.4.83 per unit (without AD benefit) and @ Rs.4.25 per unit (with AD benefit), with liability of

taxes as pass through to the DISCOMS. While determining these generic tariffs, APERC did not factor Generation Based Incentive (GBI) into the tariffs. When AP DISCOMS, through their letter dated 30.10.2015, had brought this error of omission to the notice of APERC, with a request to pass on the benefit of GBI to them, which, in effect, means to their consumers of power, as per clause 20 of Regulation No.1, APERC, in its reply dated 15.2.2016, i.e., after a gap of three and a half months, the Commission maintained that “the amendments sought for in Regulation No.1 of 2015 have been noted in the Commission and as the said regulation was notified only on 31<sup>st</sup> July 2015, its efficacy or otherwise needs to be observed for a reasonably sufficient period of time and thereafter the Commission may take necessary action as deemed fit.” By implication, APERC refused to consider the reasonable and legally tenable request of the Discoms seeking rectification of the error of omission committed by the Commission. Whatever be the “efficacy” APERC wanted to observe and whatever be the “reasonably sufficient period of time” required for that, the immediate impact of the error of omission in not factoring GBI into the tariffs is that the consumers of power are deprived of reduction of the burden of higher tariffs to be paid for purchasing power from wind power projects and the developers of those projects getting undue benefit of GBI at the cost of consumers of power. Again, in its order dated 26.3.2016, APERC determined tariff for wind power projects @ Rs.4.84 per unit (without AD benefit) and @ Rs.4.25 per unit (with AD benefit), with liability of taxes as pass through to the DISCOMS. In this order also, APERC did not factor GBI into the tariffs. The DISCOMS, in their letter dated 10.12.2016, requested APERC again to pass on the GBI incentive to the distribution licensees, submitting that they would deduct the GBI amount from the bills. With APERC taking no steps on the request of the DISCOMS, the latter filed O.P.No.1 of 2017 on which APERC held a public hearing and issued its order on 28.7.2018, permitting the DISCOMS to deduct GBI from the monthly bills of those wind power projects from the date of filing of O.P.No.1 of 2017, i.e., 14.2.2017. In other words, APERC corrected the error of omission partly by making its order applicable from 14.2.2017, not from the date from which the Regulation No.1 had come into force. It should have made it applicable from the date from which the Regulation had come into force to undo the injustice done to the DISCOMS and their consumers of power. In an appeal filed by Indian Wind Power Association before the High Court of Hyderabad, challenging the validity of the order of APERC, the issue is pending with a stay order on the order of APERC dated 28.7.2018.

19.The way the PPA with Simhapuri project was proposed and allowed to be signed under DBFOO earlier, ignoring offers of other developers of power projects who quoted relatively lower tariffs, turned out to be manipulative. In its order dated 14.8.2018, while giving its consent to the power supply agreement between the Discoms and Simhapuri Energy Limited for supply of 400 MW under DBFOO, the Hon’ble Commission maintained that “such adoption of tariff (by the Commission) will be subject to any reconsideration or review by the Commission, if found required and permissible under the competitive bidding process governing the procurement, mandatory guidelines of the Government of India and the provisions of the Electricity Act, 2003, the Andhra Pradesh Electricity Reform Act, 1998 and the Rules and Regulations made thereunder either suo-motu or on an appropriate application in accordance with law moved before the Commission from time to time.” If the Commission had satisfied itself, before giving its order, that its consent to the power supply agreement and the tariff related thereto between the Discoms and Simhapuri was in consonance with the relevant laws and rules and regulations, and mandatory guidelines of the Government of India, the question of any reconsideration or review of the same would not arise. The observation of the Commission implies that there may be scope for reconsideration or review. Will the Commission suo motu re-examine its order in the light the said laws, rules and regulations, and mandatory guidelines? If so, when? Since the inception of APERC, during the last two decades, we have never come across any Commission making such observations in any of their orders.

19a. The said order of the Commission ignored several crucial points of objection raised by us during the course of the public hearings held on the issue of Simhapuri. The need for procurement of power from Simhapuri project, as well as competitiveness of its tariff, was not established conclusively. We had made it clear repeatedly, in our detailed submissions to the Commission, that in view of availability of substantial surplus power from the time of DBFOO in which Simhapuri participated, permission was given by the Commission to the Discoms to procure power from Simhapuri and signing of the PSA, there had been no need for procurement of power from the project. The Commission had considered the order of the Appellate Tribunal for Electricity in appeal Nos.235 and 191 of 2015 dated 2.2.2018 and another order of the Supreme Court in civil appeal Nos.2502-2503 of 2018, civil appeal Nos. 2784-2785 of 2018 and civil appeal Nos.3481-3482 of 2018 dated 25.4.2018, upholding the order of APTEL, while giving its consent to the PSA between Simhapuri and the Discoms. At the same time, the Commission had ignored the crucial objections raised by us relating to non-fulfilment conditions mentioned in the order of APTEL, in the case of Simhapuri.

19b. APTEL, in its said order, observed that “the State Commission is mandated to ensure transparency while exercising its power and discharging its functions under Section 86(3) of the Act. The concept of transparency and principle of natural justice mandates that the State Commission should grant opportunity to other party and take into account their logical concerns before passing any order detrimental to the said party.” In the Simhapuri issue, both the Discoms and Simhapuri stand on the same side of the fence, expressing no conflict of interest. It is obvious that the “other party” in the subject issue, i.e., the party that is going to be affected, if procurement of power from Simhapuri (and other bidders) is approved by the Commission, are the consumers of power at large. No transparency was maintained by the Hon’ble Commission at the time of examining the proposals of the Discoms for going in for bidding under DBFOO for 2400 MW and 1000 MW and load forecast for a period of five years submitted by them and giving its approvals for the same and no public hearing was held. It was only after we had written a letter dated September 28, 2016 to the Commission, explaining the adverse consequences that would arise as a result of the approvals given by it and requesting it to hold a public hearing that the Commission had decided to hold a public hearing. But by then enough damage has been done to larger consumer interest with the Discoms completing the bidding processes and issuing LoI to Simhapuri.

19c. In its letter dated 29.7.2018 to the GoAP, A P Power Coordination Committee explained that after obtaining approval of GoAP to procure power through bidding process, “during the course of time emerged facts are found to be different as much as Demand-Supply position is provided to be at variance. Presently, the projections of Demand-Supply position reflect that there is no need of such procurement of power. As part of the said bidding process, only 600 MW with a fuel of 100% imported coal has been finalized and PSA with M/s Simhapuri Energy Limited has been initialled and submitted to APERC for approval including adoption of tariff which is still pending. As far as bidding process with fuel as domestic coal is concerned there is no approval by APERC for procurement of such power and therefore bidding process though finalized has been deferred.

“Considering the aforesaid Demand-Supply position, it is found that there is no necessity of procurement of power through either of the aforesaid methods of bidding process.”

19d. After explaining relevant factors relating to availability of surplus power, APPCC further informed that “*despite the above surplus power position of the state in the ensuing years, if APDISCOMs decide to procure power of 400 MW from M/s Simhapuri Energy Ltd., APDISCOMs (are) bound to pay the fixed charges to the tune of Rs.651 Crs. per annum to M/s*

*Simhapuri Energy Ltd., as per the terms of the PSA without availing any generation. In the light of the huge surplus power position projected in the ensuing years, it is no longer required to procure the said power and would necessarily required to annul the current DBFOO bidding process.” APPCC requested GoAP to issue necessary instruction to PCC/APDISCOMs “1. to withdraw the Power Supply Agreement (PSA) initialled with M/s Simhapuri Energy Limited from APERC duly cancelling the 1000 MW bidding process with 100% imported coal. 2. To cancel the bidding process in respect of procurement of 2400 MW power with domestic coal supplemented by imported coal.”*

19e. On 22.8.2018 itself, the Principal Secretary, department of Energy, GoAP, in a letter, informed the CMDs of both the AP Discoms, with a copy to the chairman of APPCC, pointing out that “certain developments have taken place in the power sector in the last 3-4 months which include the following: 1. APGENCO has stopped supply of power to TS DISCOMS due to non-payment of their dues. As a result, around 350 MW of power, which was flowing to TS DISCOMS, is now being given to APDISCOMs by APGENCO. 2. As a part of bundling of Thermal Power with Solar Power, NTPC has started supplying around 330 MW of Thermal power along with 1000 MW Solar park commissioned in Kurnool. 3. Lot of renewable energy capacity addition, particularly Wind and Solar has taken place. As a result, the earlier projections and assumption for energy demand and supply will have to be critically analyzed and reviewed before approval of PPA with M/s Simhapuri. 4. Government is taking a holistic view of the entire power demand supply scenario and will be taking a decision at the earliest in the best interest of the State keeping in view the requirement of energy and also the financial viability of purchase of power from these projects. Therefore, till the time Government takes a final decision on the above, DISCOMS are directed to request the Commission not to decide the PPA directing the Discoms to request the Commission not to decide the PPA with M/s Simhapuri till the time a holistic and comprehensive decision is taken by the Government in consultation with AP Genco, AP Transco and Discoms. Therefore, the Discoms are directed to seek time from Hon’ble Commission till October end for taking further action in the above cases.” Obviously, till the end of October last, no decision has been taken by the Government. As pointed out in the letter of the Principal Secretary, department of Energy, whether the GoAP had consultation with AP Genco, AP Transco and the Discoms and had taken a holistic and comprehensive decision is not known. What are the considerations and responses, if any, of GoAP to the points raised in the said two letters of APPCC and of the Principal Secretary, when it conveyed its direction to the Discoms belatedly to purchase power from Simhapuri and seek consent of the Hon’ble Commission? On this aspect also the Hon’ble Commission was silent, without giving any direction to the Discoms to submit the information, if any. The learned counsel for the Discoms informed the Commission orally that they were directed by the Government to seek consent of the Commission to purchase power from Simhapuri.

19f. In the said order of APTEL, it was pointed out that “rejecting all the bids upon finding that bids were not aligned to prevailing market conditions” is one of the conditions. Both the Discoms and the Hon’ble Commission failed to examine this aspect while finalising the bids and giving permission for purchasing power accordingly. That the Discoms ignored the lowest tariff of Rs.4.213 quoted in the bids for 2400 MW and opted for purchasing power from Simhapuri at a higher tariff of Rs.4.439 under bidding for 1000 MW and that the Hon’ble Commission also gave its permissions accordingly confirm their failure to examine whether the bids under DBFOO for 1000 MW were aligned to the prevailing market conditions.

19g. In its order, APTEL observed that “the Government of India guidelines contain the mandate to safeguard consumer interest as well as to encourage competition, efficiency, economical use of the resources. The stated objectives of the Government of India guidelines are

to strike a balance between transparency, fairness, consumer interest and viability” (page 33). Notwithstanding platitudes for consumer interest, the entire thrust and end result in the entire process is that interests of generators/suppliers of power concerned are protected and larger consumer interest simply ignored.

19h. The Hon’ble Commission, in its order on Simhapuri, did not respond to all these relevant objections raised by us, among others. When such is the case, the observation of the Commission on reviewing its order on “an appropriate application in accordance with law moved before the Commission from time to time” looks like a mockery. Should one file an application before the Commission for review of its order on the grounds already raised during the course of public hearings earlier to which it did not respond at all in its order? The course of filing an application for review of the order of the Commission or filing an appeal before the appropriate appellate authority challenging the order of the Commission is always open to any interested party or person and for that no gratuitous advice is required.

20. In the Commission’s order dated 13.7.2018 in O.P.No.5 of 2017, it is observed : “ Even if PPAs were entered into by the DISCOMs with wind generators they are not enforceable under law unless they are specifically approved by the Commission u/s 86(1)(b). As seen from the ARR proposals for FY 2017-18 & 2018-19 submitted by the DISCOMs the State achieved surplus power generation, met and even exceeded the RPPO obligation and unless and until there is a need to purchase power the Commission is not obliged to approve the Power Purchase Agreements.” (para 8.22 and page 42). In the tariff order for 2018-19, the Hon’ble Commission has directed that *“the distribution licensees shall avoid entering into any power purchase agreements which may burden them with unwarranted power”* (page 79). This direction has come in response to the objections raised by us, that, too, after giving consents to the proposals of the Discoms to purchase NCE on a larger scale indiscriminately far exceeding the minimum percentage of NCE the Discoms have to purchase under RPPO and leading to increase in availability of surplus power which is not required. The Commission has also rightly pointed out that “the estimated increase in power purchase cost and average cost of service should be avoided by taking recourse to all possible measures” (page 23). The returning by the Hon’ble Commission, incidentally, for the first time, of the proposal of the Discoms seeking its consent for initiating tender process for purchasing 1000 MW distributed solar power, pointing out, in its letter dated 15.5.2018 addressed to the CMDs of APEPDCL and APSPDCL, that *“justification for need for power purchase is conspicuously missing and it appears as though without regard to any need for power purchase, the plants are being sought to be established, which is not in the interest of the State, if plants are established indiscriminately without first establishing the need for power”* is in the right direction, eminently justifiable and lends added credibility to our valid objections on this ground raised from time to time in our submissions on various petitions filed by the Discoms, RPPO proposals made by the Hon’ble Commission and in our letters addressed to the latter over the years. It is precisely these eminently justifiable and imperative yardsticks that the Commission failed to apply, while giving its consents to several proposals of the Discoms for purchase of power, as explained above.

21. For purchasing power from Lanco and Spectrum after expiry of their PPAs and from GGPP after taking over the same from GVK, the fixed charges proposed by the Discoms and permitted by the Commission for the current financial year and a part of 2017-18 have been much higher than the fixed charges applicable at the time of expiry of their PPAs and taking over of the plant from GVK, as the case may be. Despite our valid objections, the permissibility of the presumed capital costs and basis for such higher fixed charges ensuring undue benefit to the developers of the plants at the cost of consumers of power was not explained by the Discoms in their proposals and responses and by the Commission in its orders permitting the same.

22. We would like to remind once again that in its order dated 29.11.2017, in I.A.No.8 of 2017 in O.P.Nos.28&29 of 2016, the Hon'ble Commission observed, "the Commission only wishes to place on record that all its actions and orders or expressions are in bona fide, honest and neutral belief of their correctness, reasonableness and justification in fact and law and hopefully the credibility of the Commission, on that count is not in doubt. The Commission might have gone wrong in its conclusions and its actions but never knowingly or designedly. However, the Commission does not claim to be infallible and will continue to make every effort to improve itself without giving any scope for repetition of its mistakes, if any" (para 53). Our hope that the Hon'ble Commission would endeavour in all its earnestness to live up to such graceful and laudable intentions in discharging its regulatory obligations and functions and set an exemplary record in protecting larger consumer interest within the limitations of its jurisdiction is remaining as hoping against hope, as experience has confirmed.

23. The Discoms have projected variable costs of thermal plants for the year 2019-20 with an escalation of 3% over the variable rates approved by the Commission in the tariff order for 2018-19. The Discoms have not explained any reasons for such enhancement of variable charges to justify the same. If any variation takes place in variable charges during 2019-20, after issuance of tariff order by the Commission, the difference can be claimed under true-up or true-down at appropriate time. Therefore, we request the Hon'ble Commission not to allow escalation of variable costs by 3% as proposed by the Discoms.

24. We also request the Commission not to take into account proposals of the Discoms for purchase of power from power plants, without submitting PPAs with them to the Commission for its consideration, and without holding public hearings on the same and issuing its orders. For the year, the proposals of the Discoms for purchase of power from Lanco, Spectrum, GGPP, Sembcorp, a substantial part of NCE, etc., should not be permitted by the Commission.

25. For the last four years, the actual requirement of power has been turned out to be less than what has been projected by the Discoms in their ARR proposals and what has been determined by the Commission in the annual tariff orders. Therefore, we request the Commission to assess availability of power to purchase which the Discoms have binding obligations under PPAs approved by it, demand growth and requirement of power for the year 2019-20 realistically, as also the transmission and distribution capacities required and the expenditure and tariffs related thereto.

26. We request the Hon'ble Commission to provide us an opportunity to make further submissions in person after receiving and studying the responses of the Discoms to the points raised by us during the public hearings on the subject issue.

Thanking you,

Yours sincerely,

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