



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

FRIDAY, THE TWENTIETH DAY OF DECEMBER TWO THOUSAND AND  
NINETEEN

:Present:

**Sri Justice C.V. Nagarjuna Reddy, Chairman**  
**Dr. P. Raghu, Member**

O.P.No.36 of 2019

**Between:**

M/s. Ramagiri Renewable Energy Limited

... **Petitioner**

**A N D**

1. Chief Engineer (IPC & PS), Andhra Pradesh Power Coordination Committee
2. Chairman & Managing Director,  
Southern Power Distribution Company of Andhra Pradesh Ltd.
3. Chief General Manager, Projects & IPC  
Southern Power Distribution Company of Andhra Pradesh Ltd.

... **Respondents**

This Original petition has come up for hearing finally on 09-12-2019 in the presence of Sri M. Sridhar, learned counsel representing Sri Challa Gunaranjan, learned counsel for the Petitioner and Sri P. Shiva Rao, learned Standing Counsel for the Respondents. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

**ORDER**

This petition has been filed by M/s Ramagiri Renewable Energy Limited, (Previously IL&FS Wind Farms Limited) under Section 86 (1) (b) of Electricity Act

2003 (for short “the Act”) r/w the APERC (Conduct of Business) Regulations, 1999.

2. In this petition the Petitioner averred that it entered into a Power Purchase Agreement (for short “the PPA”) with Transmission Corporation of Andhra Pradesh Ltd (APTRANSCO) on 24-08-2001 for sale of energy delivered from their 6.5 MW wind power project in Anantapur District. That, PPA was revised on 08-09-2003 in view of change of name of the Petitioner from Infrastructure Leasing & Financial Services Limited to IL&FS Wind Farms Ltd. That, on 07-06-2005 the Government of Andhra Pradesh vide G.O.Ms.No. 58 ordered the transfer of supply undertaking and PPAs to the distribution licensees in terms of the Act, and accordingly the said PPA stood transferred to Respondent No.2. The Petitioner further averred that the Tariff applicable for this project was Rs. 3.37 Ps per unit as on the date of expiry of the PPA on 06-11-2015, and that Respondent No. 1 had accordingly applied to this Commission for its approval of the extension of the PPA for a period of 2 years from the date of expiry of the existing PPA vide letter dated 04-11-2015, and that the tariff was revised downward to Rs. 2.23 Ps per unit for the period between 06-11-2015 and 06-11-2017. That, after the expiry of the said PPA, the agreement period was extended for a further period of 2 years at the same tariff of Rs. 2.23 Ps per unit by entering into an amended PPA dated 26-10-2017 with Respondent No.2, the consent for which was received from this Commission vide Letter dated 15-11-2017, that the Petitioner vide letter dated 23-10-2017 requested for a further extension of the PPA, that the same was not considered by the time of expiry of PPA on 26-10-2017, and that the Petitioner’s project was disconnected on the same day. That, Respondent No. 2 vide reply letter dated 06-02-2018 had directed the Petitioner to submit an undertaking which was accordingly done as suggested, vide letter dated 27-02-2018.

3. Petitioner further averred that Respondent No.3 ordered reconnection vide memo dated 08-05-2018 directed S.E. (Operations), Anantapuram to arrange for the reconnection of the Petitioner's project. That, the application dated 08-05-2018 made by Respondent No. 3 for approval of the procurement of power from the Petitioner's project was approved by this Commission vide proceedings dated 19-06-2018 and that in the said proceedings, the Commission noted that the power procurement from the Petitioner's project was factored in the ARR for FY 2018-19 which was approved by this Commission in the Retail Supply Order for FY 2018-19. The Commission accordingly directed the parties to enter into an agreement after 19-06-2018 as the project stood disconnected with effect from 06-11-2017 till date. That the Petitioner and Respondent No. 2 eventually executed an amendment dated 08-08-2018 to the PPA dated 08-09-2003, extending the date of PPA to 31-03-2019 at the tariff of Rs. 2.23 Ps per unit. That due to an inadvertent miscommunication, this Commission was not apprised of the fact that the Petitioner's project had already been reconnected on 14-05-2018 and that vide letter dated 21-08-2018 the fact of reconnection on 14-05-2018 was brought to the notice of the Commission and it was also requested that the effective date of the PPA be the date of reconnection i.e., 14-05-2018 instead of the date of the execution of the PPA, i.e., 08-08-2018. That, this Commission vide its reply letter dated 25-09-2018 informed that it would be up to the parties to come up with an appropriate amendment if so desired and that accordingly the Petitioner submitted a letter dated 19-10-2018 to Respondent No.2 requesting to communicate to this Commission its willingness to purchase power from the Petitioner at Rs. 2.23 Ps per unit from the date of reconnection. That Respondent No. 1 vide letter dated 08-01-2018 informed that in view of clause 2 of the undertaking and this Commission's approval in which it was stated that the

Petitioner's project "stood disconnected from 06-11-2017 till date", i.e., till 19-06-2018, there could not be any purchase of power till the date of entering into the PPA. That this Commission granted approval on 19-06-2018 based on the letter dated 08-05-2018 submitted by Respondent No.3 wherein it was stated that the project was under disconnection and that no intimation was given later to this Commission that the project had already been reconnected on 14-05-2018 and the Petitioner had been exporting power to Respondent No.2. The Petitioner further averred that as cost of wind energy supplied by it was already factored in the ARR for FY 2018-19 and approved by this Commission, no prejudice will be caused to the Respondent if they purchase power from the Petitioner from the date of reconnection. With these averments, the Petitioner prayed for the following reliefs:

4. "In these circumstances and for the facts and reasons stated above it is therefore prayed that the Hon'ble Commission may be pleased to:

a) Revise the date of approval to be the date of reconnection, i.e., 14/05/2018, for procuring the power generated from the Petitioner's 6.5 MW power project by amending the approval granted on 19-06-2018 vide proceedings in Lr.No.APERC/JD(PPP)DD(PPP)F.No.E1144/D.No506/2018.

b) Declare the Respondents to have been purchasing power from the Petitioner's Wind Power Project situated at Ramagiri, Anantapur, from the date of the Reconnection of the Project to the Grid, i.e., 14-05-2018, and consequently direct the Respondents to pay an amount of Rs. 68,49,222/- (30,71,400 units @ Rs 2.23 Ps per unit) in lieu of the energy charges from 14-05-2018 to 08-08-2018 after deducting transmission losses/charges as stipulated in the PPA. The Details are provided in Annexure-1."

5. After their appearance, a counter was filed on behalf of the Respondents.

While denying that the fact of reconnection to the Grid on 14-05-2018 was not brought to the notice of this Commission at the time of according approval of the extension of the PPA, the Counter Affidavit has however admitted the fact that the Petitioner has furnished undertaking as suggested by the Respondents and reconnection to the Grid was made based on this undertaking on 14-05-2018. The Respondents have also admitted that in response to the information sought by this Commission, they have informed that the cost of energy for FY 2018-19 in respect of the existing wind projects is arrived by considering the energy supplied during FY 2017-18 and that the tariff for wind power projects of M/s. Nile limited and M/s. IL&FS Ltd (Petitioner) is considered as per the extended PPAs @ Rs. 2.23 Ps per unit, that the Petitioner's power project was disconnected on 06-11-2017 as the PPA expired on that date. It is further averred that in view of the undertaking given by the Petitioner on 05-03-2018, the power exported to the Grid is free of cost and only upon the considering the same Respondent No. 3 vide letter dated 08-05-2018 issued directions to the concerned field official for arranging reconnection of the Petitioner's project and that accordingly project was reconnected to the Grid on 14-05-2018. That this Commission vide letter dated 19-06-2018 approved extension of PPA from the date of entering into the agreement upto 31-03-2019 and that Respondent No. 3 has entered into the amended PPA from 08-08-2018 to 31-03-2019 at a tariff of Rs. 2.23 Ps per unit.

6. The Petitioner has filed a Rejoinder wherein it has reiterated its stand that this Commission was not apprised of the fact that the project was reconnected on 14-05-2018 itself i.e., after the Respondent filed their memo on 08-05-2018 and that based on the premise that the project stood disconnected "till date" i.e., till 19-06-2018 this Commission passed its order of approval from the date of entering in to

agreement.

7. From the respective Pleadings of the parties it is clear that the parties are not at issue on the material facts that the PPA which was amended on 24-01-2001 was extended from time to time, that the last of such amended PPAs expired on 26-10-2017 and that on the same day the Petitioner was disconnected and after the direction was issued by Respondent No.2, restoration to the Grid was made on 14-05-2018. During the hearing on 16-07-2019, this Commission has directed Mr. P. Shiva Rao, Standing Counsel for the Respondents to obtain instruction as to whether the fact that the Petitioner's unit was reconnected to the Grid was brought to the notice of this Commission by the time of approval of the Power Purchase Amendment. Accordingly, he reported on 19-12-2019 that neither party brought to the notice of this Commission about reconnection made as far back as 14-05-2018. It is also relevant to note that the aspect of the date of commencement of amended PPA was evidently not the specific subject matter before this Commission. In this connection, it is relevant to reproduce the understanding between the parties as reflected from the undertaking given by the Petitioner, based on which reconnection was made herein below:

“1) If APERC accords approval for procurement of power and extension of agreement period for further 2 years, then APSPDCL will pay the tariff @ Rs.2.23 per kWh for power being supplied to the Grid i.e., from 07-11-2017 onwards. (Emphasis added)

2) If APERC does not accept for extension, then APSPDCL will not regularize entire power being supplied to the Grid after expiry of the amended PPA dated 26-10-2017, i.e., from 07-11-2017 onwards.”

8. On a close reading of the undertaking extracted above, it could be gathered

that both parties have agreed that if this Commission approves the amendment to the PPA for a further period of two years, Respondent No. 2 will pay tariff of Rs. 2.23 Ps per kWh for power supplied to the Grid "from 07-11-2017 onwards." Conversely, if this Commission declines its approval for the amended PPA, Respondent No. 2 will not regularize power supplied from 07-11-2017 onwards. Thus, there is an unequivocal understanding between the parties that Respondent No. 2 will pay for the power supplied after 07-11-2017 by the Petitioner at Rs. 2.23 Ps per kWh if this Commission approves the amended PPA. Admittedly, connection was restored to the Petitioner from the Grid on 14-05-2018 and since then the Petitioner has been supplying power to Respondent No. 2. Consequent on this Commission approving the draft amended PPA, Respondent No. 2 has no choice except to pay for the power received by it from the Petitioner after 07-11-2017 and before the date on which formal amended PPA was entered into. The plea of the Respondents that Petitioner has been supplying power free of cost does not hold water as this militates against the specific understanding of the parties as reflected from the undertaking referred to above. We also find the denial by the Respondents that the fact of reconnection of the Petitioner to the Grid on 14-05-2018 was not in the knowledge of this Commission has no basis. As noted above Mr. P. Shiva Rao on oral instructions reported during hearing that the said fact of reconnection was not in the knowledge of this Commission when the draft PPA was approved. In the absence of knowledge of reconnection of power supply, approval of the draft amendment of PPA was made from the date of entering into the PPA instead of from 14-05-2018, the date on which reconnection was made. We have no doubt in our minds that had the fact of reconnection been brought to its notice, the Commission would have approved the draft amendment of PPA w.e.f. 14-05-2018, so as to regularize the

power supply as agreed between the parties. The Respondents cannot be allowed to take advantage of the communication gap between them and this Commission and deny payment legitimately due to the Petitioner for the power supplied by it.

9. In the light of the above discussion, the O.P is allowed by granting the following reliefs:

1. The draft amended PPA is approved w.e.f. 14-05-2018 instead of from the date of entering into agreement, up to 31-03-2019;
2. Respondent No. 2 is directed to enter into an amended PPA with the Petitioner w.e.f. 14-05-2018 within two weeks; and
3. Respondent No. 2 shall pay all the arrears of power purchase bills to the Petitioner for the power supplied from 14-05-2018 within 4 weeks from the date of entering into amended PPA as per the direction in (1) supra.

10. The said OP is allowed in the above terms.

This common order is corrected and signed on this the **20<sup>th</sup> day of December, 2019**

**Sd/-**  
**Justice C.V. Nagarjuna Reddy**  
**Chairman**

**Sd/-**  
**Dr. P. Raghu**  
**Member**