



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

TUESDAY, THE FOURTEENTH DAY OF AUGUST
TWO THOUSAND EIGHTEEN

:Present:

Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

Public Hearing for procurement of 400 MW Power from M/s. Simhapuri Energy Limited for a period of 12 years against 1000 MW Bids using imported coal from captive mines as fuel under long term by APSPDCL under DBFOO bidding - Approval for tariff adoption under Section 63 of the Electricity Act, 2003

This Public Hearing has come up for hearing finally on 10-08-2018 in the presence of Sri K. Gopal Choudary, learned counsel for M/s. Simhapuri Energy Limited, Sri P. Shiva Rao, learned Standing Counsel for Southern Power Distribution Company of Andhra Pradesh Limited and Sri M. Venugopala Rao, learned objector. After carefully considering the material available on record and after hearing the arguments of the learned counsel for M/s. Simhapuri Energy Limited, learned Standing Counsel for Southern Power Distribution Company of Andhra Pradesh Limited and the learned objector, the Commission passed the following:

ORDER

Proceedings arising out of Lr.No.1070/CGM/IPC/APSPDCL dated 13-12-2016 from the Chief General Manager (P & MM & IPC), Southern Power Distribution Company of Andhra Pradesh Limited requesting for appropriate orders as per Section 86 (1) (b) and Section 63 of the Electricity Act, 2003 for approval of price.

2. The factual background for the said communication is that the Government of Andhra Pradesh by a letter dated 06-02-2015 permitted the Andhra Pradesh Power Coordination Committee and the distribution companies of Andhra Pradesh to procure 1000 MW power with 100% imported coal on long term basis for 12 years from FY 2015-16 with the approval of the Commission for the quantum and price of

the power procured. The Southern Power Distribution Company of Andhra Pradesh Limited conducted bidding process as the lead procurer duly following the Design, Build, Finance, Own and Operate (hereinafter referred to as “**DBFOO**”) guidelines of the Ministry of Power, Government of India with the assistance of M/s. KPMG Consultants for bid evaluation. A Bid Evaluation Committee was also constituted and nine applicants purchased the documents for the first stage bidding i.e., Request for Qualification (hereinafter referred to as “**RFQ**”). Pre-application and pre-bid conferences were held and the amendment of DBFOO guidelines and the standard bidding documents by the Government of India was carried out in RFQ documents and the queries of the applicants were replied. The Commission was requested for approval of the procurement and the deviations to RFQ were later requested to be approved by the Commission on 08-06-2015. 7 prospective bidders submitted the RFQ document on 10-06-2015. The Commission by a letter dated 20-08-2015 approved the deviations in RFQ documents and also to carve out this capacity of 1000 MW within 2400 MW earlier approved by the Commission. 4 bidders were qualified at RFQ stage, who purchased Request for Proposals (hereinafter referred to as “**RFP**”) and Power Supply Agreement (hereinafter referred to as “**PSA**”) documents as directed by the Southern Power Distribution Company of Andhra Pradesh Limited. A pre-bid meeting was conducted after the last date for receiving queries from the bidders and additional queries were also received subsequently. The deviations in RFP were requested to be approved. A public notice was given for hearing on 13-11-2015 and 6 objectors submitted their objections on 20-11-2015. The replies to the objections were given on 27-11-2015. The amended RFP and PSA which included the deviations to be permitted were issued to the bidders and 4 successful bidders submitted their bids. The final tariff was evaluated at Rs.4.439 /

kWh for L1 bidder i.e., M/s. Meenakshi Energy Private Limited, which was accepted by it through a letter dated 16-05-2016. The Bid Evaluation Committee approved the bid evaluation report of M/s. KPMG Consultants and the bidders of L2 to L4 were requested to match the L1 tariff on 25-05-2016. Except M/s. JSW Energy Limited, the other two i.e., L2 and L3 bidders, M/s. Simhapuri Energy Limited and IL & FS Tamilnadu Power Company Limited matched the lowest bid. The Bid Evaluation Committee decided on 17-06-2016 to procure 600 MW power for immediate requirement from FY 2016-17 from the bidders who matched L1 tariff in a progression order till the approved capacity is met as per REP and Letters of Award (hereinafter referred to as “**LOA**”) were decided to be issued to successful bidders after approval by the Government. The Government of Andhra Pradesh communicated the approval by a letter dated 28-07-2016 in response to the letter from the Bid Evaluation Committee, while directing the AP Discoms / APPCC to approach the Commission for approval of the price and quantum of power. A letter was submitted to the Commission on 06-08-2016 for orders on procurement of power from the successful bidders of the two bids of 2400 MW with domestic coal and 1000 MW with imported coal. On the directions of the Commission, the Joint Managing Director, AP Transco made a detailed presentation on 09-08-2016 about the demand supply position and status of two bids. The Commission directed AP Discoms / APPCC to reply to the clarifications sought for at the time of presentation on 09-08-2016. A reply with replies to the queries was submitted as furnished by M/s. KPMG Consultants and by a letter dated 16-09-2016, the Commission approved procurement of power through 2400 MW bidding CIL linkage and coal supplemented by imported coal and 1000 MW bidding with 100% imported coal on long term basis. The Bid Evaluation Committee on 17-09-2016 decided to issue LOA

to the first two bidders in the order for 600 MW and within 30 days PSA has to be entered into with the said two bidders along with the tariff agreed. The capacity and the financial bid of L1 and L2 (after matching with L1 tariff) is placed before the Commission and LOAs were issued to the two successful bidders. M/s. Meenakshi Energy Private Limited (200 MW) and M/s. Simhapuri Energy Limited (400 MW). Both the generators have unconditionally accepted the LOA and the Commission approved the deviations in RFP and PSA on 12-01-2016. Accordingly, amended RFP and PSA were issued to the bidders on 21-01-2016. Minor deviations to the APERC proposal are required as shown in the letter. The AP Discoms and M/s. Simhapuri Energy Limited initialled the PSA on 23-11-2016 duly incorporating the said changes and matching the tariff with L1 bidder. The initialled PSA was submitted to the Commission for adoption of tariff. The guidelines of the Government of India, Ministry of Power on the bidding process on DBFOO model specifically directed that the tariff determined through the bidding process based on the guidelines comprising of Standard Bidding Documents shall be adopted by the appropriate Commission in pursuance of Section 63 of the Electricity Act, 2003. Therefore, the tariff of Rs.4.439 kWh for 400 MW power for 12 years with 100% imported coal through DBFOO bidding may be adopted as per Section 63 of the Electricity Act, 2003.

3. This request for approval of price and adoption of tariff under Section 86 (1) (b) and Section 63 of the Electricity Act, 2003 led to a preliminary hearing on 07-01-2017 as three letters were received from Sri M. Venugopala Rao, Sri Ch. Narasingarao and Sri Penumalli Madhu requesting for public hearing on the subject issue and a public notice was placed on the web site of the Commission for conducting a public hearing on 21-01-2017 and calling for the views / objections /

suggestions from any stakeholder or interested person on the subject. Notices were issued to persons who already communicated their views to the Commission and a number of objections were received which will be referred to in due course. In the meanwhile, an impleadment application was filed by M/s. Meenakshi Energy Private Limited, who also filed later W.P.No.6143 of 2017 before the Hon'ble High Court. The Hon'ble High Court ordered on 27-04-2017 that the Commission may go on with the process of hearing the objections and arguments, but no final decision shall be taken. Later, the Hon'ble High Court dismissed W.P.No.6143 of 2017 on 13-06-2017 and M/s. Meenakshi Energy Limited subsequently reported that they filed W.A.No.835 of 2017 against that order. Later, the Hon'ble High Court passed orders on 24-07-2017 withdrawing M/s. Simhapuri Energy Limited as a respondent in the Writ Appeal, with M/s. Meenakshi Energy Private Limited confining itself to the failure of AP Discoms to enter into a PSA with them and revoking the LOA. Thus, M/s. Simhapuri Energy Limited was relieved from the proceedings in the Writ Appeal.

4. Subsequently, on 26-08-2017, the Standing Counsel for AP Discoms filed a Memo stating that the Government of Andhra Pradesh has decided to take a holistic view on the subject matter and addressed a letter to the Discoms on the ground that a policy decision and final stand have to be taken. The matter was being adjourned from time to time. Ultimately on 21-07-2018, 28-07-2018, 02-08-2018 and 10-08-2018, the matter was heard and at request of Sri M. Venugopala Rao, he was permitted to file his further submissions which he filed.

5. Among the objectors, APSEB Engineers' Association in its objections dated 20-01-2017 stated that the additional demand considered by the AP Discoms to

procure 400 MW power from M/s. Simhapuri Energy Limited is arising out of the increase of supply to agriculture sector for two hours per day, the proposed distribution of about 2 lakh energy efficient pump sets getting delayed because of stay by the Hon'ble High Court and 1200 MW of power required for maintaining spinning reserve. As the stay was vacated and if the State Government is going ahead with the implementation of agriculture DSM programme, the expected savings of 200 MW will materialize and this illogical additional demand projecting a deficit of 893 MW for FY 2017-18 led to the irrational power purchase proposed from M/s. Simhapuri Energy Limited and M/s. Meenakshi Energy Limited to a tune of 600 MW power for a period of 12 years. The excess capacity is making the AP Genco plants shut down and the backing down makes the consumers liable for additional excess charges to a tune of Rs.1308 crores / Rs.1639.5 crores. If ONGC supplies natural gas to the gas based IPPs, about 1500 MW will be added and the power utilities having Long Term Power Purchase Obligations, suffer a further burden of Rs.725.2 crores. If railways opt for Open Access, there will be a further surplus of 1229.76 MU worth Rs.184.4 crores. If the State of Telangana becomes further power surplus, the surplus in Andhra Pradesh aggravates. The price of imported coal is highly volatile and the exchange value based on US dollar is always increasing. There is no need to procure power from M/s. Simhapuri Energy Limited and closing down public sector AP Genco plants and entering into Power Purchase Agreements with costly private IPPs will aggravate the financial sickness of the AP power sector and hence it requested not to approve the PSA.

6. M/s. GVK Industries Limited filed an affidavit dated 21-01-2017 stating that it owns and operates 228 MW Jegurupadu Phase-II gas based combined cycle power plant with Long Term Power Purchase Agreements with the distribution companies

of Andhra Pradesh and Telangana. It can supply 5 million units power per day to the grid and the company has a Gas Supply Agreement with Gas Authority of India Limited (hereinafter referred to as “GAIL”). When the company invested more than Rs.1000 crores to make the plant ready for operation in 2006, ONGC / GAIL did not supply the gas and the plant was forced to be kept idle. The project could commence commercial operation only in 2009 on gas allocation from KG D-6 for 75% PLF and the gas supply became NIL from March, 2013 making the project being again put under preservation. The company has extreme difficulty in managing the finances and their commitment to their lenders, apart from expenditure for man power and contractors. The project became an NPA and again Jegurupadu Phase-II project became operative from 01-10-2016 to 31-03-2017 at 60% PLF under e-bid RLNG and though the State Government gave its consent for the scheme of the Government of India, AP Discoms informed that they were not intending to procure any power under e-bid RLNG Phase-IV. GAIL projected availability of gas for power generation but the AP Discoms did not respond to the approaches by GVK Industries. It therefore prayed that the generation from this gas based project based on the domestic gas supplies shall be given priority by the Discoms and while conducting the present public hearing, the interests of gas based energy be protected.

7. M/s. GVK Gautami Power Limited filed an affidavit stating that it operates a 469 MW Gautami gas based combined cycle power plant which had a Long Term Power Purchase Agreement with the distribution companies of Andhra Pradesh and Telangana and which can supply about 10 million units per day to the grid. The gas allocation of 1.96 mmscmd by the Ministry of Power and Natural Gas in the year 2000 led to the building of the plant. The allocation was converted to a Gas Supply

Agreement with GAIL and it invested Rs.1758 crores on the project. When the plant was ready for operation in 2006, ONGC / GAIL did not supply gas, forcing the plant to be idle for more than 3 years. The company suffered tremendous financial strain and preservation of the plant involved a very high cost. Project commenced commercial operation only in June, 2009 on allocation of 1.86 mmscmd gas from RIL's KGD-6 by Empowered Group of Ministers of the GOI (hereinafter referred to as "EGoM") for 75% PLF. When the gas production of the RIL KG Basin gas started declining in the year 2012-13, gas supply to the project was decreased and supply became NIL from March, 2013, since when the plant again was put under preservation. GAIL informed on 04-05-2016 regarding availability of gas from ONGC from their deep water wells, price of which will be in accordance with Ministry of Power and Natural Gas guidelines. On 18-01-2017, ONGC issued a press statement about generation of gas from Vashista and S1 fields of ONGC and though the company took up the matter with the distribution companies of Andhra Pradesh and Telangana, they did not receive any response. As the domestic gas is now available at a reasonable price decided by the Government of India, it is prudent to off-take power from this plant for reliable and consistent power supplies. The price is much cheaper than imported RLNG and if the gas is not availed, both States will lose the resource permanently. Hence, directions to the distribution companies to off-take energy from the gas based power projects were requested to be issued.

8. Sri M. Thimma Reddy, Convenor, People's Monitoring Group on Electricity Regulation in his objections stated that the proposed Power Purchase Agreement for 12 years should have been placed in the Load Forecast, Resource Plan and Power Procurement Plan. While procurement was meant for immediate requirement, the Power Purchase Agreement was expected to start from FY 2017-18. In both the

years, the State is in power surplus and if natural gas is available to the full capacity, additional energy to a tune of 7200 MU per annum will be available. If Hinduja National Power Corporation Limited (hereinafter referred to as “HNPCL”) starts generation in two units at 80% PLF, additional energy of 3389.26 MU will be available. Further, AP Discoms have a Power Purchase Agreement with NTPC for purchasing power from 2400 MW thermal power project at Kudigi in Karnataka and the AP Discoms will get 200.62 MW from that project from January, 2017. The Discoms have requested for cancellation of allocation or to defer the CoD, which leaves no justification for procuring power from private generators. The proposed mega power plant of NTPC at Pudimadaka in Visakhapatnam District may add a further capacity of 2000 MW to AP Discoms. The A.P. Government also took up an ambitious capacity addition of more than 10000 MW from renewable sources under which 5000 MW was already allotted to Suzlon. Even if the projected purchase of 4467 MU under DBFOO in FY 2017-18 as projected in the ARR is deducted from the surplus of 10930 MU, still there will be a surplus of 6463 MU. The various energy efficient programmes are under way taken up on a large scale with LED bulbs, fans and motors and PAT scheme in industrial sector will lead to reduction in total power consumption, apart from Open Access consumers. Procurement of 400 MW from Simhapuri thus serves no purpose, except imposing the burden of paying fixed costs, for backing down. The entire process of initiating bids for procurement of this power is bristling with manipulations to show undue favour to a private generating company at the cost of consumers of power. The approvals given by the Commission need to be reviewed *suo-motu*. The State Government forced the Discoms to accept the procurement of 600 MW, which is found wanting in observing diligence, prudence and effective regulatory requirements. After prolonged

correspondence from 14-07-2014, the Commission by its letter dated 20-12-2014 cautioned the Discoms to review the power position from time to time and regulate the purchases accordingly keeping in view the load generation balance within the (+/- 20%) cushion provided. If the bid continued for 2000 MW, the other bidders would have matched the tariff of Rs.4.23 per kWh. Without finalizing them, permission was sought for to purchase 1000 MW on long term basis. The Commission by a letter dated 20-08-2015 approved deviations in bid documents and granted flexibility to the AP Discoms to curtail the requisite capacity of 1000 MW within 2400 MW already approved by it. As capacity addition would have taken place in renewable sector and other sectors in one year three months that elapsed in the meanwhile, the Commission directed the AP Discoms to give a detailed presentation. The Commission was informed on 06-08-2016 about the decision to procure only 600 MW from FY 2016-17 from the bids of 1000 MW / 2400 MW and after a presentation on 09-08-2016 etc., the Commission conveyed its approval on 16-09-2016 for procurement of 600 MW power from the bidders who matched L1 tariff in a progression order. The subsequent proposals for 1000 MW, changes in terms and conditions and the manner of approvals by the Commission did undue favour to a private generator by purchasing unwarranted power at the cost of the consumers of power for the detailed reasons stated by the objector. Meeting immediate requirement and leverage to enter into Power Purchase Agreements for 5 to 12 years are mutually contradictory. The Commission has no justification to ignore the lowest price of Rs.4.23 per kWh quoted in 2400 MW and giving approval for purchase of power at a higher price of Rs.4.439 per kWh. Thus, procurement of 600 MW power is also not required on long term basis and immediate requirements can be met through IEX or short term purchases. Dr. E.A.S. Sarma, I.A.S., Former

Secretary, Government of India in a letter dated 22-09-2016 to the Chief Secretary, Government of Andhra Pradesh questioned some of the provisions proposed to be included in the Power Purchase Agreement and the inflation of the price of the imported coal. Therefore, it was requested that the AP Discoms be directed to submit long term load forecast and resource plan which may be heard publicly and any further capacity additions be examined as per such approved long term load forecast and resource plan.

9. Sri M. Venugopala Rao, Senior Journalist & Convener, Centre for Power Studies, Sri Penumalli Madhu, State Secretary, Communist Party of India (Marxist) and Sri Ch. Narasingarao, State Secretariat Member, Communist Party of India (Marxist) in identical objections stated that the process of initiating bids for procurement of power of 2400 MW / 1000 MW is bristling with manipulations to show undue favour to a private generating company at the cost of consumers of power. The approvals given by the Commission need to be reviewed and reconsidered. The letter dated 28-09-2016 from the objector may also be considered. The energy availability from GVK Extension (220 MW), GMR Vemagiri (370 MW), Gautami (464 MW) and Konaseema (444.08 MW) is shown as zero, in spite of AP Discoms having a share of 46.11% (690 MW) in the installed capacities of these four projects, which is not correct and when supply of natural gas is resumed as per allocations, additional energy to a tune of 4835.52 MU would be available per annum at 80% PLF, if the Ministry of Power & Natural Gas or any court directs that power has to be off-taken. Godavari Gas Power Plant (216 MW), Spectrum (205 MW), Lanco Kondapalli (362 MW) and Reliance BSES (220 MW) were considered only at 40% due to short supply of gas but as and when supply is restored as per allocations made, the additional energy of 2414.25 MU per annum at 80% PLF will be available.

HNPCL on starting generation from two units at 80% PLF may make an additional energy of 3389.26 MU available. If the Discoms thus get an additional energy of 10639.03 MU from their share in the installed capacity, avoidable additional burdens on the consumers of power are imposed due to the questionable decisions of the State Government and the successive Electricity Regulatory Commissions and the Discoms will be forced to enter into Long Term Power Purchase Agreements with Non-Conventional Energy developers also indiscriminately and to back down a large quantum and sell the surplus at a lower rate leading to disastrous consequences. If TS Discoms opt for backing down their share of the capacities, AP Genco projects will be adversely affected, increasing the availability of surplus power in Andhra Pradesh. If the AP Discoms are seeking cancellation of allotment from Kudigi plant of NTPC for the same reason, no power should be procured from Simhapuri and Meenakshi. The procurement under DBFOO is unwarranted both for immediate and long term requirements. The prolonged correspondence between the Commission and the Utilities led to presentation to the Commission on 09-08-2016 after which procurement of 600 MW was permitted on 16-09-2016. The objectors gave detailed reasons to contend that the permission for procurement led to doing undue favour to a private generator, the reasons being similar to those raised by Sri M. Thimma Reddy. The learned objectors, therefore, desired a hearing on Long Term Load Forecast and Resource Plan in the first instance and an opportunity to make further detailed submissions on the voluminous Power Supply Agreement. The adoption of tariff and giving consent to the Power Supply Agreement with the proposed amendments will lead to adverse imposition of additional fixed costs on the consumers.

10. The AP Discoms in their response to various objections gave detailed reasons to counter the calculations of the APSEB Engineers' Association, Sri M. Venugopala Rao & others. No gas allocations were made in favour of the IPPs and earlier power was availed from them on such gas allocation at the price of domestic natural gas. In their point-wise replies to the objections of Sri M. Thimma Reddy, Sri M. Venugopala Rao & others, the Discoms attempted to contradict the assertions of the objectors.

11. Meenakshi Energy Limited had a prolonged correspondence with the AP Discoms and ultimately the Discoms rejected the bid by Meenakshi Energy Limited for the reasons stated in their letter dated 23-02-2017 and as the disputes between Meenakshi Energy Limited and the AP Discoms are the subject of consideration by the Hon'ble High Court, neither the said correspondence nor the pleadings in the Interlocutory Application filed by Meenakshi Energy Limited should be referred to as a matter of propriety.

12. One Sri M. Prakash filed his objections to the procurement of 400 MW power from M/s. Simhapuri Energy Limited stating that procurement of power from imported coal based power projects is fraught with risks and uncertainties and is not in the interests of consumers. He claimed that APSPDCL should consider procurement of power from generating plants based on domestic coal, which have distinct advantages over any other source of supply. When APSPDCL has already qualified bidders for supply from domestic coal source based plants at a lower tariff, this proposal has no rationale and justification. The regulator in fact is obliged to ensure that power demand is met by prudent long term planning of power procurement, keeping the consumer interest in mind. He gave detailed reasons for

his submissions and desired the hearing to be deferred, till a decision is taken on procurement of power from the already qualified bidders for 2400 MW power supply from domestic coal based power plants or in the alternative, to reject the proposal of procurement of 400 MW power.

13. Sri M. Thimma Reddy, Convenor, People's Monitoring Group on Electricity Regulation filed his supplementary submission stating that the data showed the projected peak demand to be inflated. When the AP Discoms are surrendering NTPC's Kudigi plant, which is more cheaper, interests of Discoms and the consumers are not served by purchasing from a private generator at a higher cost. The AP Discoms in their reply contradicted the assertion claiming the tariff discovered to be very competitive.

14. Sri M. Venugopala Rao in his further submissions dated 09-06-2017, with enclosures, again referred to the availability of surplus energy, dangers of backing down, generation from gas based IPPs and HNPCL, excessive purchase of renewable power, the consequences of TS Discoms not off-taking power, the facts leading to conferring undue favour to the private generators and the right of the Discoms to cancel the bids at any time etc.

15. APSEB Engineers' Association in their continuing submissions dated 16-06-2017 referred to the TS Genco not scheduling power to Andhra Pradesh, the surplus capacities already available, burden of increasing fixed charges, consequences of four gas based projects being allocated gas and generating power and the huge stranded capacity in Andhra Pradesh etc. The PSA and the bidding process can be rescinded and recalled and the consent already given by the Commission may be cancelled.

16. In W.P.No.6143 of 2017, the Hon'ble High Court in the order dated 13-06-2017 did not find any merits in the request of Meenakshi Energy Limited against the PSA between Simhapuri Energy Limited and the APSPDCL and dismissed the said Writ Petition. Meenakshi Energy Limited filed W.A.No.835 of 2017 against the same before the Hon'ble High Court.

17. Simhapuri Energy Limited filed a letter dated 01-07-2017 before the Commission stating that all the objections are beyond the scope of the proceedings and requested the Commission to adopt the tariff under Section 63 of the Electricity Act, 2003 and approve the deviations in the Power Sale Agreement.

18. AP Spinning Mills Association in its objections gave the chronology of events and contended that the claims based on spinning reserve are untenable and power purchase from imported coal plants rather than linkage / captive plants is not prudent decision. The price of the imported coal is very exorbitant and hence it sought for rejection of the request for procurement of power.

19. In W.A.M.P.Nos.1952 and 1953 of 2017 in W.A.No.835 of 2017, the Hon'ble High Court permitted withdrawal of Simhapuri Energy Limited from the array of respondents in the Writ Appeal, limiting itself to the failure to enter into a Power Purchase Agreement by the 2nd respondent therein, but not with regard to the Power Purchase Agreement entered into with Simhapuri Energy Limited, which filed a letter dated 05-08-2017 requesting for proceeding with the adoption of tariff under Section 63 of the Electricity Act, 2003, as it was relieved from the proceedings in W.A.No.835 of 2017.

20. During the hearing on 21-07-2018, Sri K. Gopal Choudary, learned counsel for M/s. Simhapuri Energy Limited filed copies of the Judgment of the Hon'ble Appellate Tribunal for Electricity in Appeal Nos.235 & 191 of 2015 dated 02-02-2018

and the Order of the Hon'ble Supreme Court of India in Civil Appeals arising out of the same dated 25-04-2018 to contend that on the admitted facts the Commission is bound to adopt the tariff under Section 63 of the Electricity Act, 2003 and issue appropriate orders under Section 86 (1) (b) and Section 63 accordingly.

21. During the hearing on 28-07-2018, Sri P. Shiva Rao, learned Standing Counsel for APSPDCL submitted on instructions that the request in the letter dated 13-12-2016 may be allowed.

22. Sri M. Venugopala Rao filed his further written submissions dated 03-08-2018 claiming that in view of availability of substantial surplus power and additional power from other sources, which were not considered in the tariff orders, the proposed procurement of 600 MW under DBFOO is unwarranted. It imposes burden of fixed charges. The public hearing got postponed from time to time for 1½ years and on 21-07-2018, the decisions of the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court were filed. The said decisions make public hearing on the subject issue a hollow formality, leaving no scope for consideration of the concerns of consumers of power. The Commission did not maintain any transparency at the time of examining the proposals and no public hearing was held. Only subsequent to his letter dated 28-09-2016 explaining the adverse consequences, it was decided to hold a public hearing by which time, enough damage was done to larger consumer interest with the Discoms completing the bidding process and issuing Lol to Simhapuri. In the letter of Andhra Pradesh Power Coordination Committee dated 29-07-2017 to the State Government, it was clearly stated that there was no necessity for procurement of power through either method of bidding process. The State was stated to be in power surplus position for next five years also and they

informed that if AP Discoms decided to procure power of 400 MW from M/s. Simhapuri Energy Limited, they are bound to pay the fixed charges to a tune of Rs.651 crores per annum as per the terms of the PSA without availing any generation and hence it necessarily requires to annul the current DBFOO bidding process, as such a right was reserved in the RFP documents. The PSA may be withdrawn and the bid process may be revoked. Andhra Pradesh Power Coordination Committee wrote another letter dated 22-08-2017 for urgent instructions to the AP Discoms for withdrawal of the PSA and to cancel the bidding process. There was no communication from the Government of Andhra Pradesh placed before the Commission in support of the submission of the learned Standing Counsel on 28-07-2018 that the State Government directed the Discoms to purchase power from Simhapuri. No reasons were stated and the Discoms may be directed to submit any such written communication to the Commission. The Commission did not respond to the request of the objector in this regard. According to the earlier letter of the Principal Secretary, Department of Energy, the issue referred to by him in his letter requires a final decision by the Government only after a holistic and comprehensive decision is taken by the Government in consultation with the AP Genco, AP Transco and AP Discoms. No decision may be taken about the PPA with M/s. Simhapuri. The Commission is also silent on asking the Discoms to submit the information about the consideration and response of the State Government about the issues raised in the two letters of APPCC and the letter of Principal Secretary. The proposals are unrelated to the demand supply position. The change of terms and conditions under DBFOO was manipulated and the power requirement was artificially inflated. The entire process lacked transparency and accountability and participation of interested public due to the failure to hold public

hearing. The entire process smacks manipulation with a view to do undue favour to the private generators of choice at the cost of the consumers. During the peak hours during summer there may be some shortage of power and the additional purchases made through IEX from April to July, 2018 at an average cost of Rs.3.94 to Rs.5.04 per unit are more or less the same in respect of the sales made by the Discoms also and any additional demand can be met through IEX and other sources. Simhapuri would not fit into the merit order with provision for adjustment upto 4% escalation and fixed cost payable to Simhapuri for backing down is Rs.651 crores per annum or Rs.7812 crores for 12 years. The Commission did not respond to the request of the objector on the issue and appears to concur with the untenable view of the Discoms that there is no surplus power. The questionable approach and reluctance of the Commission to submit data relating to backing down and fixed charges give a go-bye to transparency and accountability in the regulatory process. The escalation of 4% of variable cost imposes a further burden of Rs.1322.4 crores in 12 years. Whether bids were aligned to prevailing market conditions was not examined by the Discoms and the Commission. As observed by the Hon'ble Supreme Court in Civil Appeal Nos.5399-5400 of 2016 in the order dated 11-04-2017, the appropriate Commission does not act as a mere post office. Under Section 63, the appropriate Commission certainly has the jurisdiction to look into whether the tariff determined through the process of bidding accords with Clause 4. The orders of the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court leave no remedy for the unorganized consumers against the failure of the Commission and omission of the authorities at various levels and those responsible for no accountability or responsibility for such disastrous consequences and what kind of natural justice is it? Crucial questions are not responded to by the authorities

concerned. Negation of principles of natural justice leads to miscarriage of justice and notwithstanding the platitudes for consumer interest, the entire thrust and end result in the entire process is protection of interest of generators. The very purpose of existence of the Electricity Regulatory Commissions is to regulate the decisions and proposals, when they come up for consideration before them rationally and lawfully with a fair opportunity to the public at large to agitate their concerns. The learned objector desired that earlier permissions and approvals may be reconsidered and revoked. If for any reason the Commission decides to give consent, a condition may be imposed that fixed cost to be paid to Simhapuri or others will have to be borne by the Discoms or the State Government. The Commission may also give time to submit on the terms and conditions and the amendments proposed.

23. The point for consideration is whether the request of the AP Discoms for appropriate orders as per Section 86 (1) (b) and Section 63 of the Electricity Act, 2003 for approval of price and adoption of tariff as prayed for deserves to be considered in law and on fact ?

24. A perusal of the entire record available with the Commission on the subject shows that the origin of the whole episode commences with the letter from the Chairman & Managing Director of AP Transco to the State Government dated 30-06-2014 on which the State Government issued G.O.Rt.No.7 Energy (Power.I) Department dated 07-07-2014 permitting procurement of 2000 MW +/- 20% of power on long term basis based on the fresh guidelines of the Government of India on DBFOO basis to meet the future power requirement of the State with APSPDCL as the lead procurer and with the approval of the Commission. APPCC addressed the

Commission on 14-07-2014 for permission for such procurement within competitive bidding route. The Commission required the APPCC by a letter dated 22-07-2014 to also make available the detailed projection of the demand / generating capacity of committed and expected sources, availability of capacity of gas based generating stations etc and a detailed reply was received from APPCC dated 17-11-2014. On examination of the entire material, the Commission convened a meeting on 02-12-2014 and 08-12-2014 to explain the justification of the plans and after the meeting, further information was submitted through a letter dated 17-12-2014 on which the Commission took into account the selection of the State for implementation of power for all, the flagship programme of the Government of India, the consent to supply 9 hours power to the agriculture sector, the requirement of upcoming Capital, new lift irrigation schemes etc., and granted permission by a letter dated 20-12-2014. However, the Commission desired that the Discoms may review the power position from time to time and regulate their purchases accordingly. On receipt of the subsequent two letters from APPCC dated 08-06-2015 in pursuance of the State Government's letter dated 06-02-2015 and further correspondence and meetings, the Commission approved the deviations in the model RFP / model PSA documents after inviting views / suggestions / objections of interested persons / stakeholders through a public notice and after holding a public hearing and after conducting series of meetings with the stakeholders. After this permission dated 12-01-2016, further requests for extension of time lines were received from the Discoms from time to time and on the instructions of the Commission, a presentation was made on the status of DBFOO tenders on 09-08-2016. The Commission sought for appropriate clarifications on the subject and in the meantime, on 06-08-2016 and 09-09-2016, the Discoms requested for appropriate orders under Section 86 (1) (b)

and Section 63 of the Electricity Act, 2003 for approval of the price and quantum of power to be procured. On 16-09-2016, the Commission while granting extension of time lines, approved 600 MW power for immediate requirement from FY 2016-17 from bidders of 1000 MW bids, who matched L1 tariff in progression order till 600 MW is met as per the provision of the RFP. The Commission at the same time brought to notice various facts and circumstances which should make the possibility of entering into PPA only for reasonable periods of 5 to 12 years instead of the existing practice of 20 to 25 years. It was clearly informed that the said approval is based on the detailed reworking of the projection of the supply and demand by the Discoms themselves. At that stage, Sri M. Venugopala Rao, Sri Ch. Narasingarao and Sri Penumalli Madhu, the learned objectors addressed the Commission to hold public hearings on the subject issues before considering adoption of tariff and consent to Power Purchase Agreements and also to make relevant information available to interested public to study the same and make their submissions. They gave details of the various facts and circumstances that require a thorough examination before any decision and the Commission immediately reacted positively by its letter dated 05-10-2016 appreciating the keen interest the learned objectors have taken in safe guarding the interests of the power sector and the consumers at large in the State and intimated that all the correspondence and file are open for scrutiny by any stakeholder at the office of the Commission. After LoAs were issued to two successful bidders, Meenakshi Energy Limited and Simhapuri Energy Limited and PSAs were initialled by M/s. Simhapuri, the letter dated 13-12-2016 was addressed to the Commission on which noticing the earlier requests from the learned objectors for public hearing and in line with the practice of transparency and accountability invariably followed by the Commission, it was ordered to hold a public

hearing which was fixed on 07-01-2017. A public notice was hosted on the website of the Commission inviting views / suggestions / objections from any stakeholder and hearing went on commencing from 21-01-2017. Further objections were received and further objectors were heard during the course of the proceedings. The intervention of M/s. Meenakshi Energy Limited herein and before the Hon'ble High Court, the time taken by the AP Discoms on the premise of a decision by the Government of Andhra Pradesh to take a holistic view on the subject matter etc., resulted in pendency of the matter since then and it was only on 28-07-2018 that the learned Standing Counsel for the Discoms requested that their request in the letter dated 13-12-2016 be accepted. The Commission had given every opportunity to every stakeholder to have his say which has resulted in some prolongation of the proceedings, but a close look at the chronology of events would show that there was nothing secret or sinister in the entire process of consideration by the Commission in discharge of its statutory and administrative obligations and in exercise of its legitimate functions. There was a public notice while finalizing the contents of RFP and PSA at the inception and again before finally considering this request for appropriate orders under Section 86 (1) (b) and Section 63 of the Electricity Act, 2003.

25. While various issues were raised for and against justification and reasonableness of the power procurement in question, two precedents have been placed before the Commission by the learned counsel for M/s. Simhapuri Energy Limited, which are directly on the point. In Appeal Nos.235 & 191 of 2015, the Hon'ble Appellate Tribunal for Electricity was dealing in its Judgment dated 02-02-2018 with the restriction on procurement of power imposed by the Rajasthan Electricity Regulatory Commission after bidding conducted earlier resulted in Power

Purchase Agreements and filing of tariff adoption petitions under Section 63 of the Electricity Act, 2003. The guidelines for determination of tariff by bidding process for procurement of power by the distribution licensees issued by the Ministry of Power, Government of India were the basis for selection of bidders for procurement of power by the distribution licensees of Rajasthan State with the permission of their Transmission Corporation and approval of the State Electricity Regulatory Commission. The Commission in its order dated 23-03-2011 allowed the procurement of 1000 MW \pm 10% under Case-2 or Case-1 as the case may be and in furtherance of the said permission, the Request For Proposal (RFP) was issued inviting sellers to participate in the competitive bidding for procurement of power under Case-1 route in terms of the Government of India guidelines. The bids from the participants in the bidding process were the subject of preliminary evaluation by the Bids Evaluation Committee and after negotiations with the qualified bidders left after two bidders withdrew, the Bids Evaluation Committee formulated the reasons leading to negotiations and after Lols were issued, the Bids Evaluation Committee certified the conformity of the bid evaluation process with RFP documents and guidelines. After signing of the Power Purchase Agreements, the petition was filed before the State Commission for adoption of tariff. In the meantime, Energy Assessment Committee constituted by the Government of Rajasthan found that there is no requirement for long term procurement of this quantum of power and a demand of only 600 MW ought to be considered, on account of availability of power from various sources and to meet further contingencies. Government of Rajasthan accordingly approved a purchase of only quantum of 500 MW power on long term basis as against the quantum of 1000 MW for which PPAs were executed. The Rajasthan Electricity Regulatory Commission in its orders after an application was

filed before it for approval of reduced quantum only, firstly held that it cannot ignore the assessment made by the Energy Assessment Committee and cannot reject the application for reduction of quantity as not maintainable. The Commission in its final orders found that the function to regulate electricity purchase under Section 86 (1) (b) is to see that a consumer is not burdened with purchase of un-required power and its function to adopt tariff obtained through bidding process under Section 63 makes the Commission have the power to consider decrease / increase in the quantity of power to be purchased. The Hon'ble Appellate Tribunal for Electricity was hearing the appeals against the said order, extensively referred to the contentions of the parties before it and on an analysis of various issues involved, concluded that the adoption of tariff discovered by competitive bidding governed by Section 63 is statutory duty of the appropriate Commission with no discretion in the matter. It also held that the Government of India guidelines under Section 63 framed in compliance with the principles specified under Section 61 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. The Hon'ble Appellate Tribunal for Electricity in the cases before it found that the RFP and PPA documents filed before the Commission adopted the Government of India guidelines on which the State Commission approved bidding process. Bidder quoting the lowest levelled tariff was declared as successful bidder and the Letter of Intent was issued to the said bidder. The Hon'ble Appellate Tribunal for Electricity hence concluded that the attempt for approval of deviation regarding Case-1 in the matter of a petition filed for adoption of tariff from the State Commission will subvert the entire competitive bidding process under Section 63 ignoring the various

procedures contemplated in the Government of India's guidelines and Request for Proposal. Hence it concluded that the Commission ought not to have allowed or entertained such deviation contained in the petition. The Hon'ble Appellate Tribunal for Electricity also observed that the rate / tariff was quoted for supply of 1000 MW power and cannot be assumed for lesser quantity at the same terms and conditions. The Hon'ble Appellate Tribunal also held that consumer interest alone cannot be the sole criteria for competitive bidding under Section 63 and if that was so, there was no need of Government of India guidelines. The Hon'ble Appellate Tribunal for Electricity felt that the guidelines framed by the Central Government are so detailed and elaborate so as to take care of the interest of all the stakeholders of the Sector including consumers' interest. If the consumer's interest alone is taken as the criteria, then the guidelines become entirely redundant. The Hon'ble Appellate Tribunal for Electricity was emphatic that once the statutory power was exercised by the Commission under the Act, it cannot be scrapped or revisited resulting into sole disadvantage to the generators / suppliers in utter violation of justice and equity. The Hon'ble Appellate Tribunal for Electricity noted that the draft PPA was already approved by the State Commission only after which bidding process had begun and tariff was discovered in a transparent manner by the guidelines of the Government of India. The mandatory guidelines are binding on the procurer and the procurer decided to accept the offer and file a petition for approval of tariff under Section 63. Once such a petition is filed for adoption of tariff, the bid process got concluded and the jurisdiction of the State Commission under Section 63 is limited to find out two aspects (a) to verify as to whether the tariff has been adopted through transparent bidding process & (b) whether the bidding process has been in accordance with the guidelines issued by the Central Government. If it is satisfied on the aspects, it has

to mandatorily adopt the tariff so determined. In that process, the Commission cannot entertain any fresh deviation to the bidding documents viz., reduction in capacity etc., which stand approved by it before the beginning of the bid process. Otherwise the approval of the Commission prior to initiating the bidding process will be rendered meaningless. This decision of the Hon'ble Appellate Tribunal for Electricity is a subject of consideration before the Hon'ble Supreme Court in Civil Appeal Nos.2502-2503 of 2018 & Batch and the Hon'ble Supreme Court by its order dated 25-04-2018 concurred with the Hon'ble Appellate Tribunal for Electricity and specifically approved the finding that once the petition has been filed on the recommendation of the Evaluation Committee seeking for adoption of tariff after it was discovered, it is not open for the procurer and the State Commission to reduce procurement of power stipulated in the bidding documents and the PPA already executed between the parties.

26. The binding decisions of the Hon'ble Supreme Court and the Hon'ble Appellate Tribunal for Electricity mandatorily make the jurisdiction of the Commission to adjudicate in this matter specifically restricted to those aspects on which a State Commission was held to have jurisdiction in a determination under Section 63 of the Electricity Act, 2003. The detailed sequence of events as described in the letter dated 13-12-2016 from APPCC or as seen from a close perusal of the entire material on record or as extracted hereinabove shows that the mandatory guidelines of the Government of India were faithfully observed in letter and there was a public hearing in which six objectors participated before the Commission approved deviations in the model RFP and PSA documents. The evaluation of the bidding process involved expert consultation and consideration on merits by the Bid Evaluation Committee. There was close scrutiny of the process by the Commission

on the administrative side whenever the procurers have come up with different requests and ultimately M/s. Simhapuri Energy Limited and the procurers initialled the PSA and enclosing the same, procurers sought for adoption of tariff in these proceedings. The factual matrix is substantially similar, if not identical, to the scenario under consideration of the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court. As held by the Hon'ble Appellate Tribunal for Electricity if consideration of the State Commission under Section 63 is limited to find out only two aspects viz., whether the tariff has been adopted through transparent bidding process and whether the bidding process is in accordance with the guidelines issued by the Central Government, the answer clearly appears to be in the affirmative and in view of the law laid down by the Hon'ble Supreme Court of India in agreement with the conclusions of the Hon'ble Appellate Tribunal for Electricity, it is obligatory not to take into consideration any other aspects concerning this procurement of power.

27. Any inaccuracy in the projections made by the procurers, any power surplus scenario, any probability of gas based IPPs generating power, any need for finding Long Term Load Forecast plan before any procurement, the *inter se* priority to be arrived at between Meenakshi Energy Limited and Simhapuri Energy Limited, comparative study of generation of power with imported coal or domestic coal, any cancellation or recall of consent for this procurement process, the reasons or motives behind the earlier requests for time to take a holistic view and the present decision to proceed with the procurement, whether the decisions of the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court take the content out of the public hearing making it hollow, the relevance of the earlier letters of APPCC and Principal Secretary, Energy against procurement, any unreasonableness in the

permitted escalation in variable cost, any adverse impact on the larger consumer interest etc., raised in the various objections, consequently become matters which are not within the scope of the present inquiry before this Commission. No opinion can be expressed in the light of the binding precedents from the Hon'ble Appellate Tribunal for Electricity and the Hon'ble Supreme Court on the claim that the principles of natural justice stood negatived in the process leading to miscarriage of justice. When on the undisputed facts and circumstances apparent from the record, there can be no negative finding on whether the tariff has been adopted through transparent bidding process and whether the bidding process has been in accordance with the guidelines issued by the Central Government, this Commission has mandatorily to adopt the tariff determined through competitive bidding accepted by the procurer, without entertaining any fresh deviation to the bidding documents which stood approved by it before the beginning of the bid process.

28. The learned objector, Sri M. Venugopala Rao desired that in the event of giving consent, any fixed costs paid to Simhapuri or any other generator be directed to be borne by the Discoms or the State Government, but no material can be considered to be available on record to justify such a direction even if it were to be considered normal or abnormal. Similarly, if in future proceedings, the terms and conditions of the Power Supply Agreement / Power Purchase Agreement become an issue before the Commission, the learned objector or for that matter, any stakeholder will be free to make their submissions before the Commission.

29. Under the circumstances, the request of the distribution licensees of Andhra Pradesh through the Andhra Pradesh Power Coordination Committee in their letter dated 13-12-2016 for adoption of tariff on the strength of the copy of the Power

Supply Agreement submitted to the Commission has to be accepted in exercise of the powers and jurisdiction conferred under Section 86 (1) (b) and Section 63 of the Electricity Act, 2003.

30. Therefore, the Commission adopts the tariff determined through a transparent competitive bidding process in accordance with the guidelines issued by the Government of India and accepted by the procurer leading to the Power Supply Agreement initialled by the procurer and the supplier under Section 63 of the Electricity Act, 2003 read with Section 86 (1) (b) thereof, without any fresh deviation to the bidding documents, which already stood approved by the Commission before the beginning of the bidding process. However, such adoption of tariff 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 there-under either *suo-motu* or on an appropriate application in accordance with law moved before the Commission from time to time. The adoption of the tariff hereunder will not disable the supplier from voluntarily reducing such tariff payable by the utility under the Power Supply Agreement in the larger interests of the State, Power Sector and the Consumers.

31. The proceedings are ordered accordingly. No costs.

This order is corrected and signed on this the **14th day of August, 2018.**

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P. Raghu
Member

Sd/-
Justice G. Bhavani Prasad
Chairman