



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad - 500004

O.P. No.27 of 2012

Dated 22.11.2012

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

Between
M/s SLS Power Limited
Navalak Gardens, Ashok Nagar, Nellore

.....Petitioner

AND

Southern Power Distribution Company of Andhra Pradesh Ltd.,
Represented by its Managing Director
Upstairs, Hero Honda Showroom,
Renigunta Road, Tirupati- 517501.

.....Respondents

This Petition coming up for hearing on 18.08.2012 in the presence of Ms.Swapna Seshadri, Advocate for the petitioner and Sri P.Shiva Rao, Advocate for the respondents, the Commission passed the following:

ORDER

1. This petition is filed by the above said petitioner under section 86, 61 (1) (h) and 62 of Electricity Act, 2003. The case of the petitioner is briefly as follows:-
 - (i) The petitioner has established a 6 MW Biomass based Power Project (Non-conventional Source) at Nellore Village, District Nellore, Andhra Pradesh. For sale of power from the above power plant, the Petitioner entered into a Power Purchase Agreement dated 13.08.2001 (hereinafter referred to as 'PPA') with the Respondent No. 2 – APTRANSCO for generation, sale and purchase of electricity on the terms and conditions contained in the said PPA.

(ii) The Biomass plant started commercial operation on 13.08.2001 and has completed 10 years of operation on 12.08.2011. The PPA between the parties envisages re-determination of tariff by the Commission after completion of 10 years of COD under Article 2.2.

(iii) The Commission in its order dated 20.06.2001 at Para 30 had also directed as under-

“30. A suo moto review of the incentives to take effect from 1 April, 2004, will be undertaken by the Commission after discussions with all the concerned parties. There will also be a review of the purchase price with specific reference to each developer on completion of 10 years from the date of commissioning of the project (by which time the loans from financial institutions would have been repaid) when the purchase price will be reworked on the basis of return on equity, O&M expenses and variable cost.”

Since no suo-motu proceedings have been initiated, the Petitioner has filed the present petition.

(iv) While the matter relating to the tariff for the first ten years of the NCE projects including that of the Petitioner has been going on for several years, in the second appeal before the Hon'ble Supreme Court, by its Judgment dated 08.07.2010.

(v) The Hon'ble Supreme Court remanded the matter to the Commission for fresh disposal. While disposing the same after remand the Technical Member in his Order dated 13.06.2011 also held as under.

- (a) Developers are not permitted for sale to third parties.
- (b) NCE developers shall supply power to APTRANSCO / DISCOMS only
- (c) Price applicable for all electrical energy delivered by the NCE develops is Rs. 2.25 per unit with 5% escalation per annum with 1994-95 as base year, for a period of 10 years from date of commissioning of the project.

- (d) The amounts payable to NCE developers as per this order have to be paid with interest of 9% per annum.
- (e) Discoms shall open revolving letter of credit in favour of suppliers of power.
- (f) The present prices hold good for a period of 10 years from COD later both parties are at liberty to (1) continue to supply by mutual agreement for further period of 10 years at mutually agreed prices / or (2) "by approaching the Commission for fixation of the price or by selling the same to third parties if points 1 & 2 are not satisfied / complies; since the apex court has also observed at para 52(d) directing the Commission to look into also observed at para 52(d) directing the Commission to look into "Whether it would be in the larger interest of the public and state to permit sale of generated electricity to third parties, if otherwise feasible."

(vi) The Andhra Pradesh Power Coordination Committee, representing the Respondents by letter dated 06.09.2011 stated to the Petitioner as under

"It is to inform that APPCC has decided to pay 90% of 10th year fixed cost prospectively from current billing month for the Biomass, Baggasse and Biomass Cogen power projects who have completed 10 years of operation.

You are therefore requested to furnish an undertaking to the extent that the difference in payment of the fixed cost shall be adjusted as per the orders that would be passed by APERC for such projects, so as to enable to admit the bills from August 2011 onwards accordingly.

(vii) Since the Petitioner has no other alternative, the Petitioner accepted the above without prejudice to the rights and contentions of the Petitioner to approach this Commission. By letter dated 19.09.2011, the Petitioner stated as under -

“We hereby give an undertaking that we will abide by the APERC ORDER OR ANY OTHER AUTHORITY ON APPEAL OR OTHERWISE.

We also agree for the said payment of 90% of 10th year of Fixed Cost and ready to receive / pay balance as per orders as provided by the above said authorities.

(viii) Therefore, since September 2011, the Respondents have only been paying 90% of the fixed cost as at the end of the 10th year to the Petitioner which is a highly reduced and adhoc tariff and even without the approval of the Commission. In the circumstances also, the Petitioner has been constrained to file the present petition.

(ix) As stated earlier, the Petitioner is praying for determination of tariff as in terms of the Order dated 20.06.2001 of the Hon'ble Commission and per Article **2.2** of the PPA.

(x) Capital Cost / Return on Equity:

To arrive at the capital cost relevant for determination of tariff, the effect of the original capital cost along with all further additional capitalization incurred by the Petitioner over the last 10 years needs to be gone into. The Petitioner states that the Petitioner had to incur various expenses including the cost of replacement of the damaged Turbine etc.

(xi) A calculation of the return on equity on the above capital cost as per Regulation 16 has been carried out by the Petitioner.

(xii) Income Tax as paid had to be borne additionally over and above the tariff and ought to be allowed as a pass through.

(xiii) On the normative debt of Rs. 1894.95 Lacs, the Petitioner is praying for interest on loan as per Regulation **14** of the CERC Regulation, 2009 as under.

(xiv) A calculation of the interest on loan on the above capital cost as per Regulation 14 has been carried out by the Petitioner.

(xv) O & M Expenditure and O & M Escalation:

The Petitioner states that the plant is now more than 10 year old and naturally the maintenance cost is on the higher side. The Petitioner has been constrained to change the turbine atleast twice in the last four years because of various factors. Further there is constant problem with respect to the Boiler tubes which need to be repaired constantly apart from nozzles etc. these get damaged whenever the fuel contains contamination also. The age factor also plays a major role.

(xvi) The Petitioner has to employ about 300 contract employees for fuel handling alone. Further, the cost of inflation and the overall increase in various prices have direct impact on the employees' salaries. Further the cost of each employee is added with the additional costs such as PF, ESI, Gratuity etc. copies of the statements showing the year on year O & M expenses being incurred by the Petitioner from the COD is attached hereto and marked.

(xvii) Considering all of the above, the Petitioner is praying for O & M expenses at 12% of the gross capital cost. Further, as per the present inflationary trend, the O & M escalation of at least 10% should be allowed.

(xviii) Interest on Working Capital Regulation 17 of the CERC Regulations, 2009 for interest on working capital to be calculated.

(xix) The generating units are not considered as Priority sector and the Interest rate applied is the highest. Further, the Petitioner is having its working capital arrangements with Andhra Bank and the Charges by them is about 17% PA considering the Monthly rests and the other charges that are debited by them (Processing charges, Inspection Charges etc).

(xx) The Petitioner is praying for a deviation and fixation of interest on working capital on actual basis.

(xxi) Fuel Cost and Escalation

(xxii) Auxiliary Consumption:

(xxiii) The following table showing the actual data is relevant -

Year	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Capacity in MW	6	6	6	6	6	6	6	6	6	6
PLF	31%	75%	87%	75%	73%	72%	55%	80%	74%	72%
Gross Gen. in MU	15.93	38.99	45.05	39.11	38.04	37.52	28.48	41.62	38.11	37.52
Less Aux Consum	2.57	5.13	6.11	5.2	4.63	4.49	3.55	5.22	5.04	5.03
Auxiliary %	16.13%	13.16%	13.56%	13.30%	12.16%	11.97%	12.45%	12.54%	13.21%	13.41%

Depreciation:

The Petitioner states that on the above capital cost so determined / fixed, the actual depreciation needs to be allowed.

(xxiv) The petitioner states that the biomass unit is already reeling under pressure and considering the fact this Commission is requested to allow the Electricity duty of Rs. 0.06 as additional reimbursement over and above the tariff to be determined, along with Income Tax.

(xxv) The Petitioner's factory directly employees about 70 People apart from contract labour running up to 300. Unless the Petitioner is provided with a reasonable pricing, it will be difficult to operate a plant and the continuous employment at the above said 370 people will also be in question.

(xxvi) In the present crises of power shortage closure of the factory may further effect adversely and will only worsen the present precarious power situation.

(xxvii) The Petitioner is not able to pay the creditors and the present outstanding is only mounting or the Financial institution, IREDA, where the Petitioner is continuously receiving Section 138 Notice.

(xxviii) Under the circumstances, the Petitioner prays that the Commission may be pleased to:

- a. Take up the process of tariff determination for the Petitioner's biomass based power plant as expeditiously as possible;
- b. Determine the tariff as per the information and details provided for in the petition and in the present submissions;
- c. In the alternate allow third party sale with benefits of REC.

2. The material averments of the counter filed by the respondent are briefly as follows:

- (i) The Member / Technical in the APERC order dated 12.09.2011 was totally erred in analyzing the Hon'ble Supreme Court Order dated 08.07.2010. As such the Member / Technical orders cannot be taken into consideration while fixing the tariff to the projects who have completed 10 years of operation.
- (ii) Number of NCE developers who have completed 10 years of operation have approached APDISCOMs to pay the 10th year of operation Fixed Cost till APERC finalizes the Fixed Cost payable to them from 11th year

of operation. Accordingly APDISCOMs have taken decision to pay 90% of 10th year of operation Fixed Cost till APERC finalizes, and Variable Cost as per APERC order dated 31.03.2009 for smooth running of the power projects. Further it is to submit that the decision of APDISCOMs was informed to the APERC during the hearings of the other cases.

- (iii) The Hon'ble Supreme Court has set aside the Hon'ble Tribunal orders dated 02.06.2006 & 14.05.2007. As such the said orders cannot be referred to while fixing the tariff payable to these projects.
- (iv) The determination of tariff payable should be done as in terms of the Article 2.2 of the PPA and 20.03.2004 order of APERC. Further the fixed cost payable from 11th year of operation arrived by the Petitioner is on very high side. Also the Variable cost payable was already been fixed by APERC for FY 2009-14 for the NCE projects. As such there is no necessity of again considering of the Variable Cost fixation.
- (v) The APERC vide its order dated 20.03.2004 & 12.09.2011 fixed Benchmark capital cost for Biomass Power Project at Rs 4 Cr/MW, which was not disputed by the developers before any forum. As such, the developers capital cost cannot revisit at this juncture for tariff fixation after completion of 10 years of operation. Further the developer's replacement of the damaged turbine etc cannot be clubbed with the capital cost as the capital cost means only the amount required to establish and Commission, the power project but not to add the O&M expenses during the operation of the power project.
- (vi) The CERC/APERC fixed benchmark parameters of debt equity ratio along with capital cost. As mentioned above, the additional cost met by the developer cannot be considered as capital cost of the project and the same cannot be used for arriving the debt equity ratio. It is requested to consider 16% Return on equity including MAT for arriving fixed cost.
- (vii) The petitioner proposed a loan repayment for another 10 years in the proposal, which cannot be acceptable by APSPDCL. The Commission while fixing the tariff from 01.04.2004 vide its order dated. 20.03.2004 it

has been clearly mentioned that by completion of 10 years of operation of project, there will not be any debt obligations to the developer as the tariff is being worked out to repay the loans by 10 years of the project.

- (viii) Hence the petitioners proposal for interest on loan cannot be accepted.
- (ix) The petitioners request for 12% O&M cost of the gross capital cost with 10% escalation is on high side. The petitioners submission of contract employees for fuel handling, problem with respect to the boiler tubes etc are not reflecting the ground realities. The CEA report 2005, Staff report of Hon'ble APERC 2004 pointed out that the Biomass developers are not maintaining boilers and handling the biomass fuel to the satisfactory level though there is lot of scope to improve. As such Biomass projects inefficiency cannot be transferred to general public who have to bear the high tariffs. Further the APERC vide its order dated 20.03.2004 fixed O&M cost at 4% of capital cost with 4% escalation (inflation trend prevailing) and also duly verifying the records of the biomass projects which reflected the market prices. As such the same can be retained for arriving fixed cost for this project also.
- (x) The petitioners proposal along with interest on working capital for arriving working capital requirement is on very high side and cannot be accepted by APDISCOMs. The Hon'ble APERC while arriving Working capital in 20.03.2004 has considered the following
 - a) Fuel Cost for 1 Month.
 - b) O&M expenses for 1 Month
 - c) Receivables equivalent to 2 (Two) months.
 - d) Spares for 1 month @ of project cost.
 - e) 12% interest rate.
- (xi) Further, the same was accepted by the APDISCOMs and Biomass developers during 2010 proceedings wherein APERC fixed tariff payable to NCE developers from 01.04.2004. As such the same may be considered for arriving fixed cost also.

- (xii) Fuel cost fixation and escalation is not necessary as the same was fixed by APERC vide its order dated 31.03.2009 which is valid till 2014. Also the APSPDCL considered the aforesaid order for arriving the fixed cost payable.
- (xiii) The petitioners request for Specific Fuel Consumption (SFC) of 1.64 kg/kWh cannot be acceptable. It is to inform that the staff report of APERC clearly recommended SFC of 0.99 kg/kWh for Biomass power projects duly stating that the Biomass power projects are being operated at lower efficiency though there is lot of scope to improve the efficiency. Further, it is requested that the inefficiency of the biomass power projects cannot be transferred to general public. The Chairman/APERC has categorically rejected the developer's request of SFC of 1.64 kg/kWh stating that it is not the finding of the Commission. Further Hon'ble APERC vide its order dated 31.03.2009 has fixed the SFC of 1.16 kg/kWh and the same was accepted by the developers without challenging. Further APERC had gone into expert committee report, Staff report while arriving SFC of 1.16 kg/kWh. Even CERC vide its regulations dated 16.09.2009 and some other state ERCs fixed SFC at 1.16 kg/kWh. As such now the petitioner cannot request to fix higher SFC. Finally, it is requested to fix SFC at 1.16 kg/kWh.
- (xiv) The petitioner's request for higher auxiliary consumption cannot be accepted. The APERC while fixing tariff vide its order dated 20.03.2004 gone through the records of Biomass developers and fixed 9%. While fixing the auxiliary consumption during 2004 the following was stated by APERC.
- (xv) The developers during the hearing accepted for consideration of Auxiliary Consumption at 9%. Hence it is requested to consider 9% auxiliary for arriving fixed cost payable. Further the developer is trying to club the book value depreciation and the accelerated depreciation allowed by APERC in 2004 for arriving the tariff, which is not correct and acceptable.

- (xvi) Hence it is requested to consider remaining 20% of the project cost which will be allowed every year equally for the balance period of the PPA as mentioned in the order dated 20.03.2004.
- (xvii) The petitioners request of limiting the control period for three years is not justifiable as this fixed cost tariff is applicable from 11th year of operation to 20th year of operation. As such fixation of control period will not arise.
- (xviii) The petitioner is trying to impress the Commission with irrelevant information, which cannot be taken on record by APERC for fixation of tariff.
- (xix) The petitioner request for taking up of process of tariff determination is inline with the APERC order dated 20.03.2004.
- (xx) The petitioners information and details provided cannot be accepted for the reasons provided in the aforesaid paras.
- (xxi) The petitioners request to allow third party sale with benefits of REC is not inline with the Hon'ble Supreme Court Judgment dated 08.07.2010, APERC order dated 02.06.2001 & 20.03.2004 and PPA terms & Conditions. The APERC vide its order dated 20.03.2004 indicated the following while fixing the depreciation to be allowed while fixing the tariff payable.
- (xxii) The Biomass developers have not challenged the stand of APERC with regard to the no third party sale at the deprecation allowed. As such after availing higher depreciation now the petitioner cannot request for 3rd party sales which is against to the Supreme Court judgment dated 08.07.2010, wherein apex court directed APERC to shall also re-examine whether it would be in the larger interest of the public and the State, to permit sale of generated electricity to third parties, if otherwise feasible. Infact there is a concluded contract between the parties. Therefore going to third party sale / Open Access is permitted in law.
- (xxiii) The Respondent, therefore, prays that the Commission may be pleased to:

- a) Approve fixed charges payable as per the proposal of the Respondent for the energy purchases from the Petitioner's Biomass based power project during the period from 13.08.2011 to 12.08.2021. (i.e., 11th year of operation of project to 20th year of operation of project)
- b) and/or pass such other order/orders as the Hon'ble Commission may deem fit.

(xxiv) Pending disposal of main Petition it is prayed that the Hon'ble Commission be pleased to pass directions permitting the Petitioner to pay tariff as proposed in the Counter, subject to final orders in the main Petition and/or pass such other orders as the Hon'ble Commission deem fit and appropriate in facts and circumstances of the case.

3. The petitioner filed rejoinder to the respondents counter and the main grounds are as hereunder.

- (i) The Order dated 13.06.2011 clearly lays down that in the event the parties are unable to reach a mutual agreement, the Petitioners should be allowed to sell to third party. It is in this context that the Petitioner has made this (alternative) prayer with respect to sale to third party in terms of its Prayer.
- (ii) The A.P. Coordination Committee has unilaterally taken into account only the fixed cost and on the basis of the 10th year fixed price, the Committee has decided to pay 90% of the said amount. The Petitioner has accepted this position under protest, without closing their right to appeal against the said order.
- (iii) The orders relied upon by the Petitioner in Para 10(f) and (g) of the Petition have not been set aside and continue to bind qua the Respondents.
- (iv) The PPA clearly specifies that the purchase price will be reworked upon the expiry of 10 years on the basis of:

- 1) Return of equity
- 2) O&M Expenses
- 3) Variable cost

A perusal of the power purchase agreement makes it clear that it was clearly the intention of the parties that upon the expiry of the 10 year period, there shall be a completely fresh re-fixing of prices on principles different than those applicable to the price fixed for the initial 10 year period.

- (v) The said capital expense was essential for the running of the plant. Thus, the Hon'ble Commission ought to consider the prayer made in paras 15, 16 and 17 of the Petition.
- (vi) The Respondents are trying to paint every project with the same brush without verifying the position on the ground. The Petitioner's project is highly efficient and cannot be labeled as inefficient by any stretch of imagination. It is reiterated that the purchase price is to be determined on actual basis and the factors which play a role in determination of price cannot be brushed aside by taking an academic approach or by simple application of formulas/benchmarks.
- (vii) The rate of interest charged these scheduled banks is in the range of 15% to 17%. The Petitioner's proposal is based solely on the expenses actually incurred, **with supporting documents/proof.**
- (viii) The re-fixing of pricing of the fuel is crucial as the present price of raw material is about Rs 3000/- compared to Rs 2600/- (approx). When Petitioner submitted its petition.
- (ix) The proposal of the Petitioner is based on the report of a committee.
- (x) Thus, it is clear that the proposal of the Petition in respect to SFC is in line with the prevalent average of plants in Andhra Pradesh and may kindly be accepted.

- (xi) So far auxiliary consumption, is concerned the suggestion of the M/s. APTRANSCO fails to take into account the operating environment in which the project of the Petitioner operates.
- (xii) The request for the control period is aimed at ensuring that the excessive inflation and change in scenario resulting from fuel pricing etc is given due consideration and weightage.
- (xiii) The prayer of the Petitioner is threefold i.e. (i) take up the process of tariff determination for the petitioner's biomass based power plant as expeditiously as possible; (2) determine the tariff as per the information and details provided for in the petition and the submissions made in the petition; and in the alternative (3) allow the third party sale with benefits of REC.
- (xiv) Hence, the Commission allow the Petition and grant the prayers stated in the prayer clause thereof.

4. The learned advocate for the petitioner addressed his arguments and also submitted written submissions reiterating the grounds mentioned in the grounds of appeal and rejoinder. The main grounds urged by the petitioner are as hereunder:

- (i) Article 2.2 of PPA itself contemplates a further review of purchase price when each plant completes 10 years of commissioning / commercial operation.
- (ii) This review is of both fixed including Return on Equity, O&M expenses etc and variable cost and the details of all costs are mentioned in the Annexure C to the petition where each and every parameter of tariff namely Capital Cost / Return on Equity are mentioned and various expenses including replacement of damaged Turbine, etc.
- (iii) The Gross Plant and Machinery stands at Rs.2705.94 lakhs and the Net Plant and Machinery after adjustment of depreciation stands at Rs.1621.12 lakhs as per the Balance Sheet as on 31.03.2011.
- (iv) The equity and the reserves stand at Rs.822 lakhs and Rs.840.51 lakhs.

- (v) It is also pertinent to note that even though a 16% IRR is allowed on an annual basis still from inception, no dividend is declared due to inadequate returns.
- (vi) If considered as normative capital along with the initial capital of Rs.4 crores per MW (and 30% being 120 crs as promoters equity) this will alone works out to be about Rs.530 crs/MW making it to about Rs.32 crs as deemed equity.
- (vii) The Return on Equity as per Regulation 16 of CERC Regulations, 2009.
- (viii) On the normative debt of Rs.1894.95 lakhs, the petitioner prays that interest on loan as per Regulation 14 of CERC Regulations, 2009.
- (ix) Regulation 17 of the CERC Regulations, 2009 provides Interest on Working Capital.
- (x) The plant is more than 10 years old and the maintenance cost is on high side and the petitioner is constrained to change the turbine atleast twice in the last four years because of various factors.
- (xi) He has to employ about 300 contract employees for fuel handling alone. Considering all the above factors, the petitioner prays O&M expenses at 12% of the gross capital cost.
- (xii) Further, as per present inflationary trend the O&M escalation of 10% should be allowed and the fuel cost and escalation is also on the high side as it is continuously rising.
- (xiii) The agricultural waste contains moisture ranging from 50 to 60% on as received basis and the fuel cost of Rs.3000 per ton needs to be allowed by the Commission.
- (xiv) The Committee of CEA visited the various power plants and also actual data collected the average specific fuel consumption comes to 1.64 kg/kWh for Andhra Pradesh plants and it is prayed specific fuel consumption of 1.64 kg/kWh.
- (xv) The respondent has labeled the petitioner's project as inefficient ignoring the fact that the petitioner's project is highly efficient and cannot be labeled as inefficient.

- (xvi) The Auxiliary consumption data is already mentioned in the petition itself including table showing actual data and the CERC Regulations provide auxiliary consumption of 10% and that the petitioner suggests that the average auxiliary consumption for the last 10 years as 13% and above. Hence, it may be allowed at 13.41%.
- (xvii) Most of the Commissions in the country are fixing the control period of 3 years and the plant having completed 10 years and the control period may be fixed as 3 years and therefore, the proposal made by the petitioner may be considered by the Commission in fixing the tariff.

5. The learned advocate for the respondents argued and projected the following points:

- (i) Review of capital cost cannot be possible at this stage, ROE cannot be changed now or it cannot be reviewed.
- (ii) So far as interest on term loans is considered, the CERC guidelines are not binding.
- (iii) O&M costs, escalation of O&M expenses has to be considered by the Commission by looking into the material placed.
- (iv) Interest on working capital cannot be reviewed now as it was not agitated at the time of hearing in the year 2010.
- (v) The variable cost cannot be reviewed now as it was fixed in the year 2009 up to 2014 by the Commission.
- (vi) The specific fuel consumption and auxiliary consumption were also considered in 2004 order and the same was accepted by the developers.
- (vii) So far as depreciation is concerned, it can be reviewed by the Commission by looking into the material placed and when the boilers damage only is spoken, but not about insurance, etc in the very petition itself.
- (viii) The control period of 3 years has no meaning as the very agreement itself is for 20 years.

- (ix) So far as third party sales, the Commission has already ordered now, it cannot be gone into.
- (x) The loans might have been repaid within the period of 10 years and the first 10 years tariff cannot be given.
- (xi) Hence, it is prayed that the Commission may be pleased to permit the respondents to pay the tariff as proposed in the counter subject to the final orders in the main petition.

6. Now the two points that arise for the consideration of the Commission are:

- (i) Whether Commission can embark on the final determination of tariff applicable beyond 10th year keeping in view the recent orders of Hon'ble ATE dated 20.07.2012?
- (ii) If not, what tariff can be allowed in the interregnum period?

7. The above two issues are as examined here under:-

While considering issue at (i) above, it is necessary to cognize the observations of the Hon'ble ATE vide its order dated 20.07.2012. For that purpose the same is extracted as here under:

"We feel that, the interim tariff of the mini-hydro generators from 11th year onwards should be decided by the State Commission, as it would not be appropriate for the Tribunal to usurp the powers of the State Commission to determine tariff. However, we feel there is difficulty for the State Commission to give an interim order without specific directions from this tribunal in view of the pendency of the appeal before the tribunal, as the tariff for the 11th year onwards will depend on the final outcome of this appeal".

8. As can be seen from the above, there is difficulty for the State Commission, even to give an interim order, in view of the pending of the appeal before the Tribunal, as the tariff for the 11th year onwards will depend on the final outcome of this appeal. That being the case, the Commission feels that final determination of tariff for the period beyond 10 years cannot be embarked upon now. Accordingly, this exercise is

not being done in the present order, with liberty granted to the petitioner to file for the same after the final outcome of the appeals pending before the Hon'ble ATE.

9. The issue no. (ii) on which the Commission needs to give its finding is, what tariff can be allowed in the interregnum period. In this context and before going any further, it is apt to note the submissions of the petitioner in their petition, stating that the respondent has only been paying 90% of the fixed cost as at the end of the 10th year to the petitioner, which according to the petitioner is a highly reduced and adhoc tariff with out the approval of the Commission. They further stated that the petitioner had accepted the same, since they have no other alternative. The petitioner has also stated that in the above said circumstances, the petitioner has been constrained to file the present petition. On the other hand, the respondent has submitted that a number of NCE developers who have completed 10 years of operation have approached APDISCOMS to pay the 10th year fixed cost till Commission finalizes the fixed cost payable to them from 11th year of operation. Further, they also stated that APDISCOMS have taken a decision to pay 90% of the 10th year fixed cost till Commission finalizes the matter besides variable cost as per Commission's order dated 31.03.2009 for smooth running of power projects. The respondent has stated that the determination of tariff payable should be done as in terms of the Article 2.2 of the PPA and 20.03.2004 order of APERC.

10. Be that as it may, the Commission has recently passed an order dated 16.11.2012 in O.P. No. 63 of 2012, determining the interim tariff payable, beyond the 10th year of operation, in the case of a mini-hydel project in terms of order of Hon'ble ATE dated 20.07.2012. The same principles as in the above said orders need to be followed in the instant case which is on similar lines and as such the Commission proposes to adopt the same principles. The direction contained in the above said order is extracted as here under:

“Keeping in view, the financial difficulties being experienced by the mini hydro generators and the distribution licensees continuing to off-take power from these generators even after completion of 10th year of operation, we feel there is urgent need for the State Commission to determine an interim tariff for the

period from 11th year onwards. Accordingly, we direct the State Commission to determine the interim tariff for the mini hydro projects who have already completed 10 years of operation for sale to the distribution licensees from 11th year onwards, keeping in view the interim order dated 01.02.2012 passed by this Tribunal.....”.

11. In the said case, the Commission took as basis the pattern contained in the Chairman's order dated 19.08.2011 and not the pattern contained in the 20.03.2004 order, in view of the orders of Hon'ble ATE dated 20.07.2012 read with ATE order dated 01.02.2012. In the instance case also, no reliance can be placed on the Commission order dated 20.03.2004, while determining the tariff beyond the 10th year and any determination of interim tariff from 11th year onwards has to be in terms of interim order dated 01.02.2012 only. However, the said order does not contain the tariff for the 11th year. In view of this fact, determination of interim tariff for the 11th year onwards has to be derived from the tariff pattern determined in Chairman's order dated 19.08.2011. For this purpose and before going any further on the matter, it is necessary to extract the Fixed Cost stream determined by Chairman's order dated 19.08.2011 as hereunder:

Year of operation	Fixed Cost (Rs/unit)
1 st	1.71
2 nd	1.68
3 rd	1.65
4 th	1.62
5 th	1.59
6 th	1.58
7 th	1.56
8 th	1.53
9 th	1.48
10 th	1.11

12. As can be seen from the above table, the fixed cost reduction year-on-year is in the range of 1 paise to 37 paise and the average works out to 6 paise per unit. That being the case and in as much as the fixed tariffs get reduced with aging of project, the fixed cost for 11th year can be fixed at Rs.1.05 per unit i.e., (Rs.1.11 – Rs.0.06) and the fixed costs for subsequent years can be arrived at by reducing the previous year, figure by an amount of 6 paise per unit. In view of the above, the respondents are directed to make payments in accordance with the above fixation of fixed costs in the interim period. The variable cost payable shall be any way as per the Commission's orders dated 31.03.2009.

This order is corrected and signed on this 22nd day of November, 2012.

Sd/-
(R.ASHOKA CHARI)
MEMBER

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

Sd/-
(A.RAGHOTHAM RAO)
CHAIRMAN