



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

R.P. No.11 of 2015

&

R.P. No.13 of 2015

In O.P. No. 39 of 2014

Dated 22.04.2017

Present

Dr. P. Raghu, Member

Sri P. Rama Mohan, Member

Between:

M/s Empee Power Company (I) Limited

....Petitioner in R.P.No. 11 of 2015

AND

Andhra Pradesh Power Coordination Committee and two (2) others

....Respondents in R.P.No. 11 of 2015

&

Between:

Andhra Pradesh Power Coordination Committee and two (2) others

....Petitioners in R.P.No. 13 of 2015

AND

M/s Empee Power Company (I) Limited

...Respondent in R.P.No. 13 of 2015

These petitions have come up for hearing finally on 31-12-2016 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the respondents in R.P. No. 11 of 2015 and petitioners in R.P.No.13 of 2015; and Sri Challa Gunaranjan, learned Counsel for the petitioner in R.P.No.11 of 2015 and respondent in R.P.No.13

of 2015. After carefully considering the material available on record and after hearing the arguments of all the parties, Commission passed the following:

COMMON ORDER

A review petition dated 3rd June, 2015 under Regulation 49 of the APERC (Conduct of Business) Regulations, 1999 read with section 94 (F) of the Electricity Act, 2003, praying the Commission to review the order dated 23-05-2015 in O.P No. 39 of 2014 was filed in the Commission. The said review petition was taken on the file of the commission with R.P No. 11 of 2015.

3. According to the petitioner in R.P.No.11 of 2015, a petition was filed in O.P. No. 39 of 2014 and I.A No.10 of 2014 seeking determination of tariff / power purchase price [in respect of the power supplied by bagasse based co-generation projects by using coal during non-crushing period in terms of G.O.Rt.No.43 of Energy (Power II) Department dated 13-03-2014] and interim tariff/power purchase price respectively.

4. The petitioner in R.P.No.11 of 2015 further stated that the Commission passed order dated 23-05-2015 in O.P. No. 39 of 2014 and I.A. No. 10 of 2014, wherein it held that it accepted the GCV of 4900 Kcal per Kg allowing usual tolerances in as much as it corresponds to GCV (ADB) of 5500 indicated in the quotation [wherein the base price of Rs. 4300 per ton is also indicated and finally allowed by the Commission] which is error apparent on record and that the GCV which actually corresponds to GCV (ADB) of 5500 is 4362 Kcal per Kg, but not 4900 Kcal per Kg, requiring review of the said order.

5. The petitioner in R.P.No.11 of 2015 also submitted the formula to arrive GCV as accepted world wide as hereunder and computed the alleged correct GCV as 4362 Kcal per Kg.

$$\text{Formula for calculation of GCV} = \frac{\text{GCV (ADB)} \times (100 - \text{Total moisture})}{(100 - \text{Inherent moisture})}$$

The values for the above parameters as mentioned in the quote are: Inherent moisture= 12-14%, Total moisture = 31 ± 2% and GCV (ADB) = 5500 ± 100 Kcal/Kg

$$\begin{aligned}\text{Hence GCV} &= (5500 \times (100-31)) / (100-13) \\ &= (5500 \times 69)/87 \\ &= 4362 \text{ Kcal/kg}\end{aligned}$$

6. According to the petitioner in R.P.No.11 of 2015, this error also results in the tariff going wrong, as the variable cost worked out at Rs.3.90 / kWh in the impugned order, now works out to Rs.4.38, when worked with the correct GCV of 4362 Kcal per kWh, requiring the order to be reviewed.

7. On 30-07-2015, the respondents in R.P.No.11 of 2015 have filed their reply praying the Commission to dismiss the review petition with costs on various grounds.

8. The respondents in R.P.No.11 of 2015 have stated that the scope of review is settled by precedent law besides statutory conditions and that the review petition is permissible only on the grounds of Arithmetic mistakes, accidental errors, which are apparent on the face of record and not in other situations. That being the case and in the backdrop of the main contention of the petitioner being that the Commission arrived at the finding as to the GCV value of coal put to use, ought to have adopted a different method / different formula and as such there being no mistake apparent on the face of record more particularly in the absence of any illegality crept in the analysis adopted by the Commission, the review petition is not maintainable either at facts or at law and hence is liable to be dismissed.

9. The respondent in R.P.No.11 of 2015 further stated that the Commission in the impugned order dated 23-05-2015 determined the variable cost as Rs.3.90 per unit based on different parameters like Auxiliary Consumption, Cost of fuel, Station Heat Rate and Gross Calorific Value and while determining the tariff, adopted GCV of 4900 Kcal/Kg allowing usual tolerances in as much as it corresponds to GCV (ADB) of 5500 Kcal/Kg indicated in the quotation furnished by the petitioner. It was also stated that the Commission might have used the same formula with different values of moisture content for arriving GCV @ 4900 Kcal/Kg. Accordingly, the tariff has been determined.

10. The respondent in R.P.No.11 of 2015 also stated that since the values indicated in the quotation are not authenticated, the claim of the petitioner that GCV (ADB) of 5500 Kcal/Kg as indicated in the quotation corresponds to GCV of 4362 Kcal/Kg is not justified and hence cannot be accepted. They also added that the total moisture content as per the quotation viz. 31±2% is on much higher side and in fact it is in the range of 20% and hence the claim of GCV of 4362 Kcal/Kg is incorrect. They further, having enclosed the latest quotation for Indonesian coal, pointed out that the price of coal is US dollar 58.06/MT (i.e. Rs.3727) with GCV

(ADB) 5300 Kcal/Kg, total moisture of 21% and inherent moisture ranging from 13 to 16%, giving a GCV of 4897 Kcal/Kg. They have thus stated that the coal price and total moisture according to petitioner's quotation is incorrect and the claim of the petitioner for GCV of 4362 Kcal/Kg is not tenable.

11. On 16-08-2015, the petitioner in R.P.No.11 of 2015 filed a rejoinder, stating that the review petition was filed as there is an error apparent on the face of the record as there was an error with respect to calculation of GCV mentioned in the impugned order which according to the petitioner is not in accordance with the standard formula and as such denied the condition that the review petition is not maintainable and affirmed that the said petition contains all the ingredients of review and the same is to be allowed in the interest of justice.

12. The petitioner in R.P.No.11 of 2015 further stated that it is not their case that the Commission adopted a different formula as there is no separate formula adopted and mentioned in the impugned order, but their submission is that in order to arrive at the GCV, the formula as indicated at para 5 supra alone is to be used, which is universally adopted by all the stakeholders in the industry. Material papers wherein the World Coal Institute, BUMI Energy Coal, (an Indonesian Company), Bulk Testing Int, Surveyors and experts in raw materials having adopted the same formula for calculating the GCV, are enclosed. Hence, the petitioner adopted the same formula which is accepted world wide and there is no different formula adopted by the petitioner herein.

13. The petitioner in R.P.No.11 of 2015 further stated that, order in review do not indicate the basis and calculations for arriving GCV of 4900 Kcal per Kg, as alleged by the respondents that the same is arrived with usual tolerances and as per the formula mentioned in para 5 supra. Under any circumstances, the GCV cannot be 4900 Kcal per Kg. Hence, in order to rectify the mistake occurred in the calculation i.e. error apparent on record, they filed the review petition.

14. The petitioner in R.P.No.11 of 2015 also contended that it is not open to the respondent to raise a new issue regarding the authentication of the quotation filed by the petitioner. Petitioner filed a quotation in the O.P. to indicate the coal price, as such it is not open to the respondents to agitate the same, since the same is not an issue in the review petition.

15. The petitioner in R.P.No.11 of 2015 also stated that the respondents are precluded from bringing a new quotation and agitating upon it at the stage of review.

16. While the matter stood thus, Andhra Pradesh Power Co-ordination Committee and two others filed a review petition praying the Commission to review the order dated 23-05-2015 in O.P No. 39 of 2014. The same was taken on the file of the Commission with R.P.No.13 of 2015.

17. The petitioner in R.P No.13 of 2015 having stated that GCV and cost of coal are directly proportional to each other, extracted as given below, certain submissions from the counter furnished by them in O.P No.39 of 2014.

- a) Corresponding to GCV of 4338 Kcal/Kg (as requested by the developer), the cost of coal as per Singareni i.e. Rs. 3000 per ton including VAT and transportation is to be adopted.
- b) Alternatively, corresponding to cost of coal of Rs. 4825/ton, it was requested to adopt GCV of 5000 kcal/kg (corresponding to GCV of 5500 kcal/kg as per quotation and allowing for usual allowances).
- c) However, it was reiterated that the quotation furnished by the developer has no authenticity and cannot be relied upon and accordingly requested the Commission to verify the invoices of the developer.

18. The petitioner in R.P.No.13 of 2015 against above background stated that they are constrained to file a review petition.

19. According to the petitioner in R.P.No.13 of 2015, the grounds for review are (i) the order dated 23-05-2015 in OP.No.39 of 2014 is contrary to law and weight of evidence; (ii) the said order suffer from error and mistake apparent on the face of the record in as much as it has considered the quotation instead of invoices; (iii) the Commission erred in deriving the values (GCV and cost of fuel) based on the quotation furnished by the respondent, which is not authenticated; (iv) GCV and cost of coal are directly proportional to each other and as such if the GCV adopted is reviewed, the cost of coal also need to be reviewed; (v) Commission holding in order dated 23-05-2015 that it is inclined to accept a GCV of 4900 kcal per kg allowing usual tolerances, from the price stated in the quotation instead of relying on the invoices or ascertaining the value of coal from State generators, is not justified since the quotation is not authenticated; (vi) The Commission allowed the base price of coal of Rs.4300/ton as indicated in the quotation furnished by the respondent herein, which is not justified since the quotation is not authenticated;

(vii) In view of the above errors apparent on record the GCV and cost of coal needs to be reviewed.

20. On 27-10-2015, M/s Empee Power Co (I) Ltd., (the respondent in R.P.No.13 of 2015) filed a counter praying the Commission to pass the order on the actual invoices and GCV value.

21. The respondent in R.P.No.13 of 2015 submitted that they have imported and used 26,128 tons of coal between July and October 2014 and generated & exported electricity to APTRANSCO. Statement of invoices, cost of coal and GCV is enclosed along with copy of invoices as required by APERC (Annexure-I). Analysis reports on coal done at load port and certified by the supplier M/s A & A International showing GCV (ARB) is enclosed as Annexure-II.

22. They also stated that since these details were not available while the O.P. was filed, the tariff was calculated on the basis of quotation and in case these actuals being considered for arriving at the tariff, the respondent prays the Commission to take into account freight charges in support of which freight invoices are enclosed (Annexure-III) rather than adopting APTRANSCO rate. By adopting the above figures, the tariff payable, when worked out based on the formula given at page 19 of the impugned order, will be Rs.4.22 per unit with 7 paise for working capital and fixed cost of Rs. 1.39 per unit and total tariff working out to Rs.5.68 per unit.

23. On 21-11-2015, the petitioner in R.P. No.13 of 2015 filed a rejoinder praying the Commission to fix the GCV as 4900 kcal/kg as determined in the order dt.23-05-2015 in O.P. No.39 of 2014 as the invoices furnished by the developer cannot be trusted.

24. The petitioner in R.P. No.13 of 2015 in the said rejoinder also stated that the period of supply of power using coal as fuel was from July to November, 2014 and the respondent in R.P. No.13 of 2015 in their original petition sought determination of tariff based on quotation from Star Coal India Pvt. Ltd.

25. The petitioner in R.P.No.13 of 2015 also further submitted that the Commission in the impugned order dt.23-05-2015 determined the variable cost at Rs.3.97/unit [Rs.3.90 (VC) + Rs.0.07 (IWC)] using the following parameters: Auxiliary Consumption - 9%, Station Heat Rate - 3600 kcal/ kWh, GCV - 4900 kcal/kg and Cost of Fuel - Rs.4825/ton [Rs.4300 + 215 (VAT) + 310 (Transportation)].

26. It is further stated that, the respondent in R.P. No. 13 of 2015 filed a review petition numbered as R.P. No. 11 of 2015 stating that the Commission erred in adopting GCV of 4900 kcal/kg as against 4362 kcal/kg. The petitioners in R.P.No.13 of 2015 filed a review petition requesting the Commission to peruse the actual coal invoices and adopt GCV of 4900 kcal/kg.

27. The petitioners in R.P.No.13 of 2015 also submitted that the developer in the counter filed on the review petition R.P. No.13 of 2015 furnished the statement of invoices, cost of coal and GCV by the supplier M/s A & A International. The developer also enclosed the invoices from Madras - Cuddpah road transport for transportation cost of Rs.500/MT. In fact, the developer has not disputed the APERC approved transportation cost of Rs.310/MT in the review petition filed by the respondent herein. As such, there is no merit in the developer's request for alteration of transportation cost.

28. The petitioner in R.P.No.13 of 2015 have submitted that they have been insisting for verification of actual invoices of coal in the counter filed by APSPDCL in O.P.No.39 of 2014 (filed in the month of December, 2014) as well as in the counter in R.P.No.11 of 2015 (filed in the month of July, 2015). Once again the developer was requested to produce the actual invoices in the R.P.No.13 of 2015 filed by APSPDCL in the month of August 2015 and the Commission also directed to produce the actual invoices but the developer sought time to produce the same and finally furnished purported invoices in the counter to R.P.No.13 of 2015 in the last of week of October 2015. It may be noted that the purported invoices are dated in the month of July and August, 2014. But the respondent as evident from the record took adjournments for submitting the same. As such, the purported invoices are brought up for the purpose of this. There is no authenticity of correctness of such documents, therefore, the same should not be acted upon.

29. The petitioner in R.P.No.13 of 2015 submitted that even during the hearings in O.P.No.39 of 2014 towards determination of power purchase price for the units generated using coal and also by the time of the order dt.23-05-2015, the developer did not opt to produce or rely on the said invoices, instead the respondent relied on quotations given by M/s Star Coal India Pvt. Ltd.

30. The petitioner in R.P. No. 13 of 2015 submitted that, also as per these invoices, the developer is claiming for GCV of 4039 kcal/kg against APERC approved GCV of 4900 kcal/kg. The invoices are dated in the month of July and August, 2014. As stated supra, had the respondent purchased the coal under these invoices, there

is no reason as to why it has relied on the quotations of different sources i.e., M/s Star Coal India Pvt. Ltd., and claimed GCV of 5500 kcal per kg with an error margin of ± 100 . But the developer filed review petition based on the ground that APERC erred in adopting the formula for calculation of GCV and requested to adopt GCV of 4362 kcal per kg and not 4039 kcal/kg as per the invoices. As such, it is clear that these invoices are not genuine and brought up for the purpose of this case. By considering two sets of documents stated above, it is clear either of them is fake or both of these are false. Hence, the developer deserves to be prosecuted for submitting incorrect information.

31. They also submitted that in the abstract of coal invoices pertaining to the coal purchases from high seas, amounts were reflected under duties/taxes column but in the high seas sale invoices it was clearly mentioned that TCS is Nil. As such, the amounts under duties/taxes cannot be considered.

32. The petitioner in R.P. No.13 of 2015, without prejudice to the above submissions, by adopting the coal price as per the invoices furnished by the developer and considering approved transportation charges at Rs.310/MT, VAT at 2% as laid down in the invoices and excluding the amounts quoted under duties/taxes head pertaining to high seas invoices worked out the weighted average cost of coal at Rs.4014/MT. Also adopting GCV as 4039 kcal/kg as furnished by the developer and considering APERC approved Station Heat Rate at 3600 kcal/kWh and Auxiliary Consumption at 9% worked out the variable cost to Rs.3.93/unit by adding 7 paise as working capital, the total variable cost comes to Rs.4/unit with the eligible fixed cost being Rs.1.39/unit, the total tariff works out Rs.5.39/unit.

33. On 06-02-2016 the respondent in R.P.No.13 of 2015 having stated that the Commission granted permission to the respondent to file the certificates issued by the Chartered Accountant of the respondent vendors in support of Annexure I & III of the counter affidavit, requested the Commission to receive the same in the interest of justice. The details of the documents filed under this memo are as briefly presented hereunder:

- a) Certificate dated 31-01-2016 issued by Ramaswamy and Murali Associates: The certificate relates to the invoices mentioned therein dated between 16-07-2014 to 18-10-2014 raised by M/s A&A International Trading (P) Ltd., pertaining to supply of coal from Ennore port to Empee Power Company India Ltd. for the FY2014-15 to the effect that the above invoices

have been verified by them during the audit for the year 2014-15 and it forms part of annual audited balance sheet.

b) Certificate dated 21-01-2016 issued by Sundaresan & Company: The certificate is to the effect that M/s Sri Madras Cuddapah Road Transport had raised transport bill to M/s Empee Power Company India Ltd, Ayyapareddypalem, Naidupet-524126 to the tune of Rs.1,30,83,220/- (Rupees one crore thirty lakhs eighty three thousand two hundred and twenty only) during the FY2014-15 and the above certificate is based on books and records produced before them and issued at the request of M/s Sri Madras Cuddapah Road Transport. The invoices are dated from 14-07-2014 to 05-11-2014 and rate for each trip is indicated as Rs.500/MT.

c) Certificate dated 23-12-2015 issued by R.Rajagopalan, Chartered Accountant: The certificate is to the effect that M/s Empee Power Company India Ltd. had purchased the coal from M/s A&A International Trading (P) Ltd., for the FY2013-15 (18 months) and the bills mentioned therein had been verified by him during the audit for the year 2013-15 and it forms part of Annual Audited Balance Sheet. As per the certificate the invoices are dated from 16-07-2014 to 18-10-2014 and the type of sale is indicated as stock and sale in respect of 15 transactions out of 17 transactions and only in respect of two transactions, it is indicated as high-seas.

d) Certificate dated 23-12-2015 issued by R.Rajagopalan, Chartered Accountant: The certificate is to the effect that M/s Empee Power Company India Ltd. had booked coal transportation bills of M/s Sri Madras Cuddapah Road Transport for the FY2013-15 (18 months) and the bills mentioned therein have been verified by him during the audit for the year 2013-15 and it forms part of the Annual Audited Balance Sheet. The transportation period is from 14th July to 5th November in different block periods.

34) On 17-03-2016, the petitioner in R.P.No.13 of 2015 filed an application under clause 16 of APERC Conduct of Business Regulations numbered as I.A.No.2 of 2016 submitting that the respondent had furnished copies of invoices relating to the purchase of coal reported to have been consumed in their project during the relevant period in issue. However, during further course of time as corroborative evidence they also submitted the copies of auditor certificates. As per auditor certificate dated 31-01-2016 two more invoices under which the respondent company is reported to have purchased coal are also reflecting (invoice

No.1092/14-15 & 028/14-15). Aside of the same in some of the invoices details of transport vehicles are found, but in some of the invoices such details are absent. The petitioner in R.P.No.13 of 2015 further submits that the invoice reflects that the submission of 'C' forms concerned to such purchases also shows payment of custom duty. One invoice No.027/14-15 submitted by the respondent is not reflecting in Auditors Report dated 31-01-2016. In view of the aforesaid inconsistencies of the documents furnished, there exists reasonable doubt as to the correctness of the invoices. Hence, it is prayed to direct the respondent to furnish 'C' forms, documents reflecting payment /receipt of customs duty and about the utilization of coal pertaining to two other invoices in the interest of justice.

35) On 04-11-2016, the company in their memo submitted that the Commission vide order dated 30-07-2016 directed them to file 'C' forms concerning the purchase and excise duty paid by the company. They further stated that the Auditor due to oversight instead of mentioning invoice No.027/14-15, wrongly mentioned as invoice No.028/14-15 and requested the Commission to receive the said 'C' forms and excise duty vouchers into the record.

36) On 19-11-2016, the company in their memo submitted that the Commission vide order dated 05-11-2016 directed them to file mode of payments made for coal purchases. The Company made payments to M/s A&A International Trading (P) Ltd., on adhoc basis and not invoice-wise in as much as it continued to buy coal for its sugar plant from time to time. The company has paid substantially for the coal supplied and is yet to pay part of it, which is shown as trade payables, in the balance sheet for FY2014-15. The details of payments made are furnished in the annexed statement and requested the Commission to receive the same on record.

37) On 13-12-2016, the company in their memo submitted that the Commission vide order dated 19-11-2016 directed them to file ledger account of payments made for the coal procured from M/s A&A International Trading (P) Ltd., and details of payments made that are reflected in the bank statement. The details of ledger account and bank statement are annexed and requested the Commission to receive the same.

38) On 15-12-2016, the petitioner in R.P.No.13 of 2015, through a counter to the memo filed by the company, made certain submissions as hereunder and requested the Commission to consider the observations made by them and pass such other order:

- a) Initially M/s Empee Power filed O.P.No.39 of 2014 dated 21-04-2014 for determination of power purchase price for generation of power using coal as fuel during non-crushing season in 2014.
- b) Based on the quotation of M/s Star Coal India Ltd., dated 24-03-2014, M/s Empee Power requested for fuel cost of Rs.4,300/Ton (adding Rs.215 towards VAT, Rs.310 towards transportation and Rs.50 towards unloading charges), Station Heat Rate (SHR) of 4378 Kcal/kWh and Gross Calorific Value (GCV) of 4338 Kcal/kg.
- c) APPCC / APDISCOMs in their counter requested to adopt Cost of Fuel of Rs.3,000 /Ton and GCV of 4338 kcal/kg. However, it was submitted that the quotation furnished by the developer had no authenticity and cannot be relied upon. Hence, it was requested that the Commission may verify the invoices.
- d) Further, the Commission passed order dated 23-05-2015 determining the power purchase price using coal as fuel by M/s Empee Power as Rs.3.97/unit (Rs.3.90 (VC) + Rs.0.07(IWC)) duly adopting the parameters as AC-9%, SHR=3,600Kcal/kWh, GCV=4,900Kcal/kg and Cost of Fuel=Rs.4825/Ton (Rs.4,300+215 (VAT) + 310(Transportation)).
- e) On the above order, M/s Empee power filed review petition R.P.No.11 of 2015 in O.P.No.39 of 2014 on 03-06-2015 stating that the Commission erred in adopting GCV of 4,900 Kcal/kg as against 4,362 Kcal/kg and sought for variable cost of Rs.4.38/unit as against Rs.3.90/unit.
- f) APDISCOMs filed counter in review petition stating that the quotation (M/s Star Coal India Ltd.,) furnished by the developer has no authenticity and cannot be relied upon.
- g) Further, APPCC filed R.P.No.13 of 2015 in O.P.No.39 of 2014 as on 20-08-2015 requesting the Commission to peruse the actual coal invoices and adopt GCV of 4,900 Kcal/kg for determination of variable cost.
- h) The developer filed counter in R.P.No.13 of 2015 duly furnishing the statement of invoices, cost of coal by the supplier M/s A&A International Trading (P) Ltd., and invoices pertaining to the coal purchases from high-seas in the month of July and August, 2014 (invoices from 16-07-2014 to 18-10-2014).

- i) APDISCOMs filed rejoinder to R.P.No.13 of 2015 stating that though the invoices are available, the developer did not opt to produce the same even during the hearings in O.P.No.39 of 2014 and also by the time of order dated 23-05-2015 and filing of R.P.13 of 2015, instead of requesting to determine the tariff based on the quotation of M/s Star Coal India (P) Ltd.
- j) Further, after verifying all documents furnished by the developer, APDISCOMs filed I.A.No.2 of 2016 in R.P.No.13 of 2015 in O.P.No.39 of 2014 requesting to furnish copies of 'C' forms on purchases from M/s A&A International, receipt of customs duty for procurement through high-seas and utilisation of coal pertaining to two invoices No.1092/1415 and 028/14-15.
- k) Based on the Commission's daily order dated 30-07-2016, the company filed memo on 06-09-2016 submitting the audited accounts like income and expenditure, balance sheet.
- l) On verification, it is found that the expenditure towards procurement of coal is not segregated and the supporting documents for verification of such procurement are not furnished as directed by the Commission.
- m) Further, M/s Empee Power filed a memo on 19-11-2016 enclosing the statement of payment made to M/s A&A International Trading (P) Ltd., which is not an authenticated document. Hence, the Commission directed M/s Empee Power to submit ledger account of payment made for coal procurement from M/s A&A International Trading (P) Ltd., and details of payments made reflected in bank statement.
- n) As directed by the Commission M/s Empee power filed memo on 13-12-2016 enclosing details of ledger account and bank statement.
- o) On examination of ledger sheet and Journal Vouchers (JVs) furnished by M/s Empee Power Company India Ltd., it is observed that (i) The payments for coal procurement were made from the head office account in lump-sum manner and there is no invoice-wise data provided by the company. (ii) As the payments were made from the head office accounts, the vouchers pertaining to each lump-sum payment need to be produced along with supporting invoice details. (iii) Also M/s Empee Power Company India Ltd., has not produced the copies of 'C' forms of purchases from M/s

A&A International and receipts towards payment of custom duty for coal purchases from high-seas as sought by APDISCOMs.

39) On 31-12-2016, the petitioner in R.P.No.13 of 2015 submitted written submissions essentially requesting to dismiss the R.P. No. 11 of 2015 and allow the R.P. No. 13 of 2015. The other submissions made are as hereunder:

- i. Initially, M/s Empee Power filed O.P No.39 of 2014 dated: 21.04.2014 for determination of power purchase price for the generation of power using coal as fuel during non-crushing season in 2014.
- ii. Based on the quotation of M/s Star coal India Limited dated: 24.03.2014, M/s Empee Power requested to determine variable cost tariff @ Rs.5.3 per unit at para 8 & 9 in page 6 & 7 of O.P. No. 39 of 2014 for the power generated using coal as fuel during non-crushing season by adopting the fuel cost of Rs. 4300/ton (adding Rs.215 towards VAT, Rs.310 towards transportation and Rs.50 towards unloading charges), Station Heat Rate (SHR) of 4378 Kcal/Kwh, Gross Calorific Value (GCV) of 4338 Kcal/Kg .
- iii. APDISCOMs in their counter at para (e) in para 7 requested to adopt cost of fuel as Rs.3000/Ton & GCV of 4338 Kcal/Kg. However, it was submitted that the quotation furnished by the developer has no authenticity and cannot be relied upon. Hence they requested the Commission to verify the invoices.
- iv. Then, the Commission in O.P. No. 39 of 2014 passed order dated: 23.05.2015 determining the power purchase price using coal as fuel by M/s Empee Power as Rs.3.97/unit (Rs.3.90 (VC) + Rs.0.07 (IWC)) duly adopting the parameters as AC-9%, SHR 3600 Kcal/Kwh, GCV 4900 Kcal/Kg & Cost of fuel Rs.4825/ton (Rs.4300+215 (VAT)+310(Transportation)).
- v. On the above order, M/s Empee Power on 03.06.2015 filed R.P. No. 11 of 2015 in O.P.No. 39 of 2014. At para D in page 3 of review petition stating that the Commission erred in adopting GCV of 4900 Kcal/Kg as against 4362 Kcal/Kg and sought for variable cost of Rs.4.38/unit as against earlier decided tariff of Rs.3.90/unit.
- vi. APDISCOMs filed counter stating that quotation furnished by the developer has no authenticity and cannot be relied upon.
- vii. Further, APDISCOMs filed R.P.No. 13 of 2015 in O.P.No. 39 of 2014 as on 20.08.2015 requesting the Commission to peruse the actual coal invoices and retain GCV of 4900 KCal/Kg.

- viii. The developer filed counter in R.P.No. 13 of 2015 duly furnishing the statement of invoices, concerned to cost of coal by the supplier M/s A&A International & invoices about the coal purchases either by road supply or from High Seas in the month of July & August 2014 (Invoices from 16/07/2014 to 18/10/2014). The said statement is contrary to their earlier statement as to the quotation i.e. from M/s Star Coal India Limited.
- ix. Then the developer, at para 3 in page 2 of its counter to R.P.13 of 2015 worked out tariff payable would be Rs. 4.22 per unit by considering the parameters as AC-9%, SHR 3600 Kcal/Kwh, GCV 4039 Kcal/Kg & weighted average Cost of fuel Rs.4306/ton (CST 2% on 5000, freight charges- Rs.500)
- x. APDISCOMs filed rejoinder to R.P.No. 13 of 2015 stating that though the invoices are available earlier, the developer did not choose to produce the same even during the hearings in O.P No. 39 of 2014 and also by the time of order dt: 23.05.2015 & by the time of filing R.P.13 of 2015, instead it has requested to determine the tariff based on the quotation of M/s Star Coal India Pvt. Ltd.
- xi. After verifying all the documents furnished by developer, APDISCOMs filed I.A.2 of 2016 in R.P.No.13 of 2015 in O.P. No. 39 of 2014 requesting to furnish copies of 'C' forms on purchases from M/s A&A International, and receipt of Customs duty for procurement through High Seas i.e. coal procured under two invoices No.016/14-15 & 027/14-15.
- xii. On compliance of the directions of the Commission, the developer submitted the Ledger account and bank statement which was signed by M/s Empee Sugar and Chemicals Limited. On verification of the documents produced by the developer, the following is submitted :
- a. The Invoices numbers available in the ledger book account are not matching with the numbers of invoices already submitted by the developer in the counter filed in R.P. 13 of 2015.
 - b. Amounts as well as quantities are not matching with the invoices already submitted by the developer in their counter in R.P. 13 of 2015.
 - c. The Payments for coal procurement were made from the head office account in lump-sum manner. There is no invoice-wise data provided by the developer. There is only quantity mentioned without referring to any invoice number. There is no clarity whether the amount pertaining to the particular invoice was paid or not.

- d. The copies of the purchase order were not submitted to ascertain whether GCV is either as per the invoice or as per the purchase order.
 - e. It is observed from the invoices of M/s A& A International Trading Private Limited furnished by the developer at the time of submission of counter to R.P. 13 of 2015 in O.P. No. 39 of 2014 that the destination point for delivery of coal is Naidupeta through a truck, where the power plant locates. But the developer also submitted transportation details for delivery of coal to Naidupeta through Sri Madras Cuddapah Road Transport for the period from 04.08.2014 to 08.11.2014. The details of such transport as well as payment for transport charges are not reflected in the ledger account. Hence, the purchase price for procurement of coal from A& A International Trading Private Limited is inclusive of transport charges. However, the developer produced the payment made to the Sri Madras Cuddapah Road Transport through Indian Overseas bank for an amount of Rs.10 lakh on 25.09.2014 & Rs. 4 lakh on 24.10.2014 totalling to Rs. 14 Lakhs. The said total quantity of coal procured through High Seas Transactions was 16144 MT. Thus the transport charges for the coal procurement through High Seas Transactions would be Rs.86.7 per MT. Hence, the question of freight charges at Rs.500 per MT claimed by developer does not arise at all for coal procured from A&A by road.
- xiii. In view of the above, the following are the parameters for determination of variable cost as canvassed by the developer in their counter to R.P. No. 13 of 2015 (except the freight charges) :
- a) SHR - 3600 Kcal/kWh (as sought by the developer).
 - b) GCV - 4039 Kcal/Kg (as sought by the developer).
 - c) Weighted Average Fuel price - 3653 per MT (arrived based on the calculation furnished by the developer by considering fuel price, taxes & duties, port charges as sought by the petitioner only by considering transportation charges as Rs.86.7 per MT for high seas transaction only).
 - d) Fuel Price - Rs. 5000 per MT
 - e) Taxes & duties - Rs. 100 per MT (as sought by the petitioner)

- f) Port charges - As per the voucher of A&A international towards stevedoring charges which was produced by the petitioner.
- g) Transportation charges- Rs. 86.7 per MT (Arrived for quantity against 16144 MT for high seas transaction only, since the developer produced payment made to Sri Madras Cuddapah Road Transport through Indian Overseas bank for an amount of Rs.14 Lakh). Above parameters are tabulated and enclosed as Annexure-I.

xiv. Alternatively, even by considering all the parameters as sought by the developer in their counter to R.P. 13 of 2015 in O.P. No. 39 of 2014 only by restricting the transport charges at Rs.310 per MT instead of Rs.500 per MT, which was stated by the developer in O.P.No.39 of 2014 at para 8 & 9 in page 6 & 7 of petition and the same was accepted by the Commission vide order dated: 23.05.2015, fuel price would be Rs.3909 per MT. The copy of the statement is herewith enclosed as annexure- II.

40) On 07-01-2017, the respondent in R.P.No.13 of 2015 submitted that this Commission vide order dated 31-12-2016 directed them to file purchase orders made for supply of coal with M/s A&A International Trading (P) Ltd., and accordingly they have filed purchase orders and requested the Commission to receive the same.

41) Further to the foregoing, the points for consideration of the Commission are as hereunder:

- a) Whether the R.P. No. 11 of 2015 and R.P. No. 13 of 2015 can be entertained under law and facts?
- b) If so, to what effect?

42) Whether the R.P. No. 11 of 2015 and R.P. No.13 of 2015 can be entertained under law and facts?

43) The primary ground on which the petitioner in R.P. No. 11 of 2015 has sought the review of the impugned order dated 23.05.2015 in O.P. No. 39 of 2014 and I.A. No. 10 of 2014 is that the Commission erred in accepting the GCV of 4900 kcal/kg corresponding to a GCV (ADB) of 5500 kcal/kg, when it should have been taken as 4362 kcal/kg when computed with the formula as accepted world wide as pointed at para (5) supra and thus requiring review of the said order. According to the petitioner herein, this error also results in the tariff going wrong, as the

variable cost worked out at Rs. 3.90 / kWh in the impugned order, now works out to Rs. 4.38 / kWh when worked out with the correct GCV of 4362 kcal/kWh.

44) While the matter stood thus, Andhra Pradesh Power Co-ordination Committee (APPCC) and two others filed a review petition R.P. No. 13 of 2015 praying the Commission to review the impugned order dated 23.05.2015 in O.P. No. 39 of 2014 primarily on the ground that the Commission erred in deriving the values (GCV and cost of fuel) based on the quotation furnished by the respondent which is not authenticated and in as much as the GCV and cost of coal are directly proportional to each other and as such if the GCV adopted is reviewed, the cost of coal also needs to be reviewed. In response to the above, the respondent in R.P. No. 13 of 2015 filed a counter also praying the Commission to pass the order on actual invoices and GCV value.

45) While addressing the above issue, we need to cognize order 47 Rule 1 of CPC and for that purpose the same is extracted as hereunder: Order 47 Rule 1 of CPC reads as follows: “1. Application for review of judgment:- (1) Any person considering himself aggrieved,— (a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred, (b) by a decree or order from which no appeal is allowed, or (c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order. (2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review. Explanation: The fact that the decision on a question of law on which the judgment of the court is based has been reversed or modified by the subsequent decision of a superior court in any other case, shall not be a ground for the review of such judgment.”

46) So, it is the duty of the petitioners in R.P.No.11 of 2015 and R.P. No. 13 of 2015 to establish at least one of the 3 main grounds mentioned in the above said

provision of order 47 Rule 1 of CPC. Under order 47 Rule 1 of CPC, the petitioners have to establish;

- (1) The discovery of new and important matter or evidence which after exercise of due diligence, was not within his knowledge or could not be produced at the time of hearing of the main case.
- (2) On account of some mistake or error apparent on the face of record.
- (3) For any other sufficient reason.

47) Having stated thus, and with due regard to the grounds for review both in R.P.No.11 of 2015 and R.P.No. 13 of 2015 extracted supra broadly pointing to there being error apparent on the face of record and against the back drop of both the parties seeking for the order to be reviewed duly taking into account the actual invoices and GCV value, we believe there is sufficient reason to entertain both the Review Petitions (namely R.P.No.11 of 2015 and R.P.No.13 of 2015) and pass appropriate orders on merits as under.

48) If so, to what effect?

49) Having entertained both the Review Petitions, it is our duty now to determine the variable cost per unit using coal as fuel payable for the energy generated by M/s Empee Power Company (I) Ltd. and supplied to APDISCOMs. The parameters that go in for determination of variable cost include Station Heat Rate (SHR) in kcal/kWh, Gross Calorific Value (GCV) in kcal/kg, cost of fuel in Rs./MT and Auxiliary Consumption. It is to mention herein that there is no dispute on the parameters related to SHR and Auxiliary Consumption and as such they need not be dealt with.

50) The two parameters on which a decision has to be taken are i) Gross Calorific Value (GCV) and ii) Cost of Fuel. As regards to GCV there is no need for adopting the formula referred to in para (5) supra in as much as the same has to be now determined with due regard to the documents/material submitted by the developer and furthermore in the wake of both the parties requesting the Commission to determine the variable cost based on the invoices / material submitted by them. Coming to the issue of determining the cost of fuel, it is to be noted that the developer in his counter dated 27.10.2015 in R.P. No.13 of 2015 submitted a statement of invoices, cost of coal and GCV. According to the said statement the average price of coal works out to Rs. 4306 per MT (consisting of Base price, duties/taxes, port charges and freight charges) and the GCV (ARB) is

4039 kcal/kg. Subsequently, the developer also filed copies of chartered accountants' certificates, copy of C- Forms, copy of excise duty vouchers, copy of payment details, copy of ledger and bank statements. (Earlier on they have also filed copy of the independent auditor's report along with annexures in R.P. No. 11 of 2015).

51) Coming to the issue of determination of the two parameters mentioned above, even though the DISCOMs initially questioned the authenticity and genuineness of the invoices and other material submitted by the developer in support of its claim after much pursuance, the DISCOMs seems to have rather tacitly agreed (as in the Annexures -I & II to the written submissions dated 31.12.2016 in R.P. No. 13 of 2015) to the GCV of 4039 kcal/kg furnished by the developer, in the statement of invoices, cost of coal and GCV as in Annexure-I submitted as part of their counter in R.P. No. 13 of 2015 dated 27.10.2015.

52) As such, the only bone of contention is in relation to the Cost of Fuel and more particularly with regard to the transportation cost that can be allowed. On this issue, while the developer is seeking freight charges of Rs. 500 per MT being allowed basing its request on the material submitted by it, the DISCOMs have broadly pointed out the inconsistencies in the information produced by the developer in relation to invoice numbers in the ledger book account not matching with the number of invoices submitted in the counter filed in R.P. No. 13 of 2015, amounts as well as quantities not matching with the invoices already submitted by the developer in their counter, the payments for coal procurement were made from Head Office account in lump-sum manner and there is no invoice-wise data provided by the developer and only quantity mentioned without referring to any invoice number giving rise to a doubt as to whether the amount pertaining to the particular invoice was paid or not. More particularly the transportation details for delivery of coal to Naidupeta through M/s Sri Madras Cuddapah Road Transport for the period from 4.08.2014 to 8.11.2014 as well as payments for transport charges are not reflected in the ledger account. Hence, they contended that the purchase price for procurement of coal is inclusive of the transport charges as the invoices of M/s A&A Trading Pvt. Ltd. indicate that the destination point for delivery of coal as Naidupeta through truck where the power plant is located. The DISCOMs further argued that the developer furnished the particulars of payment made to M/s Sri Madras Cuddapah Road Transport through Indian Overseas Bank for an amount of Rs. 10 Lakhs on 25.09.2014 and Rs. 4 Lakhs on 24.10.2014 totalling to Rs. 14 Lakhs. Thus the transport charges for the coal procurement through high seas transactions

would be Rs. 86.7 / MT when worked out based on the total quantity of coal procured through high seas transaction of 16144 MT. Accordingly, they stated that the question of allowing freight charges at Rs.500/MT claimed by the developer does not arise at all for the coal procured from M/s A&A by road and the coal price sought to be made out by following this approach is Rs. 3653 per MT as in the Annexure-I to the written submissions of AP DISCOMs dt. 31.12.2016. Alternatively the DISCOMs also submitted Annexure-II and took a freight charge of Rs. 310 per MT instead of Rs. 500 per MT and indicated an average coal price of Rs. 3909 per MT.

52) The options available to us in deciding the cost of coal per MT that can be allowed for computing the variable cost are whether to allow (i) Rs. 4306 per MT (worked out with a transport cost of Rs. 500 per MT); (ii) Rs. 3909 per MT (worked out with a transport cost of Rs. 310 per MT which was stated by the developer in O.P. No. 39 of 2014 and was accepted by the Commission vide the orders passed on the same) and (iii) Rs. 3653 per MT (worked out with a transport cost of Rs. 86.7 per MT only in respect of high seas transactions). As can be seen from the above, the only contention is in relation to what transportation cost can be allowed and there is no dispute as regards base price and other cost components i.e. taxes and port charges. Before going further, the cost component indicated at item (ii) above cannot be accepted as the same is based on the quotation and not the invoices as the present exercise is one based on invoices / material submitted by the developer. Thus, leaving only two options to decide from, viz. item (i) and (iii) above.

53) As regards to item (i) of para (52) supra, even though the developer has claimed a transport cost of Rs. 500 per MT based on the details furnished in Annexure-III (stated to be freight invoices) to their counter dated 27.10.2015 in R.P. No. 13 of 2015, upon verification it is found that they are not invoices per se but are compilation statements of invoices. That apart, as also pointed out by AP DISCOMs, the coal invoices of M/s A&A International Ltd. also show that the destination is Naidupeta where the plant is located and the same is despatched through by truck (terms of delivery). That being the case, a doubt arises as to whether transport costs are also forms part of the coal bills of M/s A&A international trading Pvt. Ltd. Leaving it aside for a moment and upon verification of the invoices connected with high seas indicate that the terms of delivery is 'high seas sale basis - Ennore' and the port of discharge is also 'Ennore, India'. Thus it gives an impression that this coal needs to be transported to the plant location at Naidupeta incurring expenses towards transportation. Even verification of ledger

and bank statements reveal that only an amount of Rs. 14 Lakhs was paid to M/s Sri Madras Cuddapah Road Transport Ltd. on 25.09.2014 and 24.10.2014 as against the alleged claim to the tune of Rs. 1,30,83,220/- as found from the copy of the Chartered Accountant's certificate (filed vide Memo dated 06.02.2016 by the developer in R.P.No.13 of 2015) regarding transportation charges issued by the auditors of the developer's vendors. Further, Sri Sundaresan & Co., Chartered Accountant certified that Sri Madras Cuddapah Road transport Ltd. have raised the bills on M/s Empee Power (I) Ltd. to the tune of Rs. 1,30,83,220 Cr. (Rupees One Crore thirty Lacks two hundred and twenty only) for the FY2014-15, there is no mention of receipt of amount therein. Chartered Accountant Sri Rajagopalan certified that M/s Empee Power (I) Ltd. have booked coal transportation for 18 months period of FY2013-15 as verified by them during the audit for that period. There is no mention of any payment towards the transport charges booked as per bills. The Chartered Accountant for Madras Cuddapah Road Transport Ltd. has only given a statement of invoices with quantity and amount and no individual invoices or details of receipt of amount are furnished. Same is the situation with the audit certificate issued by M/s Rajagopalan and Company. Further, the invoice numbers given by both the auditors are not matching with each other. For the above said reasons we are unable to allow Rs. 500 per MT towards transportation cost as claimed. The copies of the purchase orders submitted by the developer vide Memo dated 07.01.2017 in R.P.No. 13 of 2015 also cannot tilt the balance in its favour in spite of the fact that the item freight is indicated as falling in their scope, for the reason that the copies of the purchase orders do not have seal and a signature of the supplier i.e. M/s A&A International Ltd. indicating their acceptance. Even assuming that the above purchase orders are genuine, the developer has failed to prove with facts and figures that he has infact paid the transportation charges of Rs.500/MT of a transaction that occurred in the year 2014 till the date in respect of which he has filed copy of the purchase order(s) on 07-01-2017. Till the end, the developer also could not refute the contentions of the Discoms that Rs.500/MT towards transportation charges cannot be allowed, as such claim is not substantiated with clear-cut evidence. All that can be allowed as transportation cost is Rs. 14 Lacks paid to M/s Sri Madras Cuddapah Road Transport Ltd. Discoms have come up with a way of recovering this by dividing it over the quantum of coal received through high sea transactions which work out to Rs. 86.7 per MT. In our view that is the only amount that can be allowed towards transportation as also contended by the DISCOMs in their submissions.

54) However, while actually computing the average coal cost per MT, even though DISCOMs have indicated port charges / stevedoring charges as Rs. 335 and Rs. 344 against the high seas transactions, the same have not been added while arriving at the total price and consequently the average coal cost per MT is understated. This mistake needs to be corrected and if the same is done the final average cost of coal per MT works out to Rs. 3860 as against Rs. 3653. Accordingly, based on the invoices and other material submitted by the developer, the Commission is inclined to allow coal cost of Rs. 3860 per MT for the purpose of working out variable cost.

55) In conclusion, with the GCV of 4039 kcal/kg and the coal cost of Rs. 3860 per MT, and all other parameters remaining the same as there is no dispute on such parameters, the variable cost per unit of power sold using coal as fuel works out to Rs. 3.78 per unit. With the above, the impugned order dated 23.05.2015 is reviewed and modified to the above effect with other terms and conditions remaining unaltered.

56) The Review Petitions R.P.No.11 of 2015 and R.P.No.13 of 2015 stands disposed with the above directions. No costs.

This order is corrected and signed on this the 22nd day of April, 2017.

Sd/-
P. Rama Mohan
Member

Sd/-
Dr. P.Raghu
Member