



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P.(SR) No.30 of 2016  
Dated: 18-02-2017

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

**Between:**

M/s. Weizmann Ltd.

... Petitioner

**A N D**

Southern Power Distribution Company of  
Andhra Pradesh Ltd.

... Respondent

This petition has come up for hearing finally on 31-12-2016 in the presence of Sri Challa Gunaranjan, learned counsel for the petitioner. After carefully considering the material available on record and after hearing the arguments of the learned counsel, the Commission passed the following:

**ORDER**

The petitioner entered into a Revised Wind Power Purchase Agreement with the Andhra Pradesh State Electricity Board on 07-09-1995 in respect of a capacity of 3 MW. The duration of the Agreement was stated in Article-6.1 to be twenty years from the scheduled date of completion and it was agreed that the Agreement may be renewed for such further period and on such terms and conditions as may be mutually agreed upon between the parties, ninety days prior to the expiry of the said period of twenty years. The petitioner entered into another Revised Wind Power Purchase Agreement with the Andhra Pradesh State Electricity Board on 29-10-1995 with similar duration of Agreement, under an identical clause for 3000 kW.

2. The petitioner approached the Andhra Pradesh Power Coordination Committee with a letter dated 17-08-2015 mentioning that the Power Purchase Agreements will be expiring on 06-09-2015 and 28-10-2015 respectively and requested for extension of the Agreements to continue to sell power to the respondent herein at a tariff of Rs.3.37 per unit. The Andhra Pradesh Power Coordination Committee directed the respondent to take necessary action on the request for extension of Power Purchase Agreements in line with the procedure followed in the case of M/s. NILE Ltd., by a letter dated 19-04-2016. The proposal for payment of tariff for the delivered energy at Rs.2.23 ps per unit (including taxes and duties) made by the respondent in the letter dated 06-05-2016 was not accepted by the petitioner.

3. The petitioner then comes up with the present petition to consider the actual average CUF of the petitioner for fixing the tariff while having no objection for fixing all other parameters as fixed for M/s. NILE Ltd.

4. The petition was returned on 03-10-2016 by the Receiving Officer of the Commission informing that the petition is premature until a mutually agreed Agreement is filed before the Commission for consent. The learned counsel for the petitioner represented the same with a letter dated 19-10-2016 stating that both parties agreed for extension of the Power Purchase Agreement for ten years but have not come to agreement regarding the purchase price. The Commission approached under section 62 (1) (a) and 86 (1) (b) is empowered to determine the price and execution of an agreement is not a pre-requisite for exercising powers under section 62 (1) read with 86 (1) of the Electricity Act, 2003. When the petitioner was requested to furnish any binding or persuasive precedent in support of the proposition put forth by it, the learned counsel for the petitioner stated in a letter dated 23-11-2016 that there are no precedents for the proposition as to whether the Commission can exercise powers to determine the tariff of the renewable energy project (generating company) for supply to distribution licensees exercising power under section 62 (1) (a) read with section 86 (1) (b) and (e) of the Electricity Act, 2003 in the absence of a concluded agreement. As in this case there was an in-principle agreement to enter into an agreement but purchase price/tariff is in issue, the matter requires to be adjudicated by interpreting the obligation of the Commission to determine the tariff.

5. The point for consideration is whether this Commission has the jurisdiction to entertain and adjudicate upon this petition.

6. This petition was styled to be filed under section 64 (1) read with 62 (1) (a), 61 and 86 of the Electricity Act, 2003. Section 64 of the Electricity Act, 2003 which prescribes procedure for tariff order, mandates that an application for determination of tariff under section 62 shall be made by a generating company or licensee in such manner and accompanied by such fee, as may be determined by regulations. Section 62 (1) (a) prescribes that the Appropriate Commission shall determine the tariff in accordance with the provisions of the Act for supply of electricity by a generating company to a distribution licensee. Section 61 provides for the Appropriate Commission making tariff regulations. The making of tariff regulations under section 61 and the determination of tariff under section 62 (1) (a) on an application under section 64 shall have to be “subject to the provisions of this Act” as specified in section 61 and “in accordance with the provisions of

this Act” as specified in section 62. Section 86 of the Electricity Act, 2003 which lays down the functions of a State Commission makes determination of tariff for generation within the State and regulation of electricity purchase and procurement process of distribution licensees for purchase of power for distribution and supply within the State, two of the designated functions of a State Commission. Section 86 (1) (b) which mandates a State Commission to regulate electricity purchase and procurement process of distribution companies makes it inclusive of the price at which electricity shall be procured from the generating companies or from other sources “through agreements for purchase of power for distribution and supply within the State”. While determination of tariff under sections 61, 62 and 64 in the nature of fixation of a generic tariff for any specified category or class of generating companies may not require in law any pre-existing agreements for purchase of power, if it is a particular generating company’s specific tariff for supply of electricity to a distribution licensee, the unambiguous language of section 86 (1) (b) may clearly indicate the indispensable necessity for pre-existence of an agreement for purchase of power for distribution and supply within the State between the distribution licensee and the generating company. In the matter between the Southern Power Distribution Company of Andhra Pradesh Limited and M/s. NILE Ltd., the draft amended Power Purchase Agreement was one agreed upon and entered into voluntarily by both parties and on merits the Commission consented for the agreement which was not in any manner adverse to public interest. However, in this case, admittedly the parties were in disagreement about the tariff so far and under both the agreements dated 07-09-1995 and 29-10-1995, any renewal of any agreement for any further period of time was specifically and unambiguously agreed to be on such terms and conditions as may be mutually agreed upon by the parties. This legal and valid agreement between the parties cannot be overlooked or ignored and the Commission cannot forcibly intervene to fix the tariff on any notions or data which it considers relevant, appropriate and reasonable. Even the specific Article 3 in both the agreements about tariff even during the subsistence of the original agreements shows tariff to be at an agreed rate, formula for annual escalation from the second and subsequent years to be in an agreed form and the tariff beyond a period of five years to be decided on a mutually agreed rate for the rest of the duration of the agreement after fifth year. The tariff for any renewed period could not have been on a different footing on the specific language of Article 6 of the Agreements. Thus, a reading together of the Agreements between the parties and the relevant provisions of the Electricity Act, 2003 clearly shows that the request of the petitioner generating company to have fixation of individual centric tariff based on its actual average CUF without any agreement between the parties cannot be entertained in

the absence of both parties agreeing to enter into an agreement for purchase of power and the mere fact that there was correspondence between the parties to facilitate such an extension of the duration of the earlier agreements cannot be considered as indicating any in-principle agreement capable of being enforced in the face of the specific disagreement regarding the tariff. If parties enter into an agreement, it may be that the Commission would have considered the reasonableness and acceptability of the price agreed between the parties in exercise of its regulatory jurisdiction under section 86 (1) (b) but it cannot otherwise compel the respondent either to enter into an agreement for power purchase or to have such power purchase at a price sought for by the petitioner generating company.

7. Under the circumstances, the Commission does not appear to have any jurisdiction. While the learned counsel for the petitioner or the Commission could not lay their hands on any binding or persuasive judicial precedent on the aspect, any interpretation attempting at invoking such jurisdiction appears to be on unacceptable strained logic. Section 86 (1) (e) which was referred to in the letter of the learned counsel for the petitioner dated 23-11-2016 of-course refers to providing suitable measures for connectivity with the grid and sale of electricity to any person but that cannot be stretched to thrusting of purchase of power (even power from renewable sources) on an unwilling distribution licensee at a cost unacceptable to it.

8. In case of an application for determination of tariff not in accordance with the provisions of the Act etc., the procedure to be adopted is laid down under section 64 (3) (b) which provides for rejection of petition for reasons to be recorded in writing after giving a reasonable opportunity of hearing to the applicant before such rejection. Under the circumstances, the present petition has to be rejected accordingly for the above recorded reasons arrived at after a comprehensive opportunity of hearing to the petitioner.

9. Therefore, the petition is rejected, no costs.

This order is corrected and signed on this the **18<sup>th</sup> day of February, 2017.**

**Sd/-**  
**P. Rama Mohan**  
Member

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

**Sd/-**  
**Justice G. Bhavani Prasad**  
Chairman