



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY DAY, THE EIGHTEENTH DAY OF OCTOBER

TWO THOUSAND AND TWENTY-THREE

(18-10-2023)

Present

Sri Thakur Rama Singh, Member

Sri P.V.R. Reddy, Member

OP.Nos. 45, 46, 47, 48, 49 & 50 of 2023

OP.No. 45 of 2023

Between

Mytrah Vayu (Krishna) Private Limited
Represented by its Authorized Representative,
Sri Jayavardhan Shankotai having its registered office at
8001, Survey No. 109, Q-City, Nanakramguda,
Gachibowli, Hyderabad - 500032, Telangana

.....Petitioner

AND

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupati - 517503
Chittoor District, Andhra Pradesh
2. Transmission Corporation of Andhra Pradesh Limited,
Represented by its Managing Director,
Vidyut Soudha,
Gunadala, ELuru Road,
Vijayawada, Andhra Pradesh - 520004

3. New & Renewable Energy Development Corporation of Andhra Pradesh Ltd.,
Represented by its Managing Director,
12-464/5/1, River Oaks Apartment,
CSR Kalyana Mandapam Road,
Tadepalli, Guntur District - 522 501

...Respondents

OP.No. 46 of 2023

Between

Mytrah Vayu (Indravathi) Private Limited
Represented by its Authorized Representative,
S. Nagarjuna Reddy having its registered office at
8001, Survey No. 109, Q-City, Nanakramguda,
Gachibowli, Hyderabad - 500032, Telangana

.....**Petitioner**

AND

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupati - 517503
Chittoor District, Andhra Pradesh
2. Transmission Corporation of Andhra Pradesh Limited,
Represented by its Managing Director,
Vidyut Soudha,
Gunadala, ELuru Road,
Vijayawada, Andhra Pradesh - 520004
3. New & Renewable Energy Development Corporation of Andhra Pradesh Ltd.,
Represented by its Managing Director,
12-464/5/1, River Oaks Apartment,
CSR Kalyana Mandapam Road,
Tadepalli, Guntur District - 522 501

...**Respondents**

OP.No. 47 of 2023

Between

Mytrah Vayu (Tungabhadra) Private Limited
Represented by its Authorized Representative,
S. Nagarjuna Reddy having its registered office at
8001, Survey No. 109, Q-City, Nanakramguda,
Gachibowli, Hyderabad - 500032, Telangana

.....Petitioner

AND

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupati - 517503
Chittoor District, Andhra Pradesh
2. Transmission Corporation of Andhra Pradesh Limited,
Represented by its Managing Director,
Vidyut Soudha,
Gunadala, Eluru Road,
Vijayawada, Andhra Pradesh - 520004
3. New & Renewable Energy Development Corporation of Andhra Pradesh Ltd.,
Represented by its Managing Director,
12-464/5/1, River Oaks Apartment,
CSR Kalyana Mandapam Road,
Tadepalli, Guntur District - 522 501

....Respondents

OP.No. 48 of 2023

Between

Mytrah Vayu (Krishna) Private Limited
Represented by its Authorized Representative,
Sri Jayavardhan Shankotai having its registered office at
8001, Survey No. 109, Q-City, Nanakramguda,
Gachibowli, Hyderabad - 500032, Telangana

.....Petitioner

AND

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupati - 517503
Chittoor District, Andhra Pradesh
2. Transmission Corporation of Andhra Pradesh Limited,
Represented by its Managing Director,
Vidyut Soudha,
Gunadala, ELuru Road,
Vijayawada, Andhra Pradesh - 520004
3. New & Renewable Energy Development Corporation of Andhra Pradesh Ltd.,
Represented by its Managing Director,
12-464/5/1, River Oaks Apartment,
CSR Kalyana Mandapam Road,
Tadepalli, Guntur District - 522 501

...Respondents

OP.No. 49 of 2023

Between

Mytrah Vayu (Krishna) Private Limited
Represented by its Authorized Representative,
Sri Jayavardhan Shankotai having its registered office at
8001, Survey No. 109, Q-City, Nanakramguda,
Gachibowli, Hyderabad - 500032, Telangana

.....Petitioner

AND

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupati - 517503
Chittoor District, Andhra Pradesh

2. Transmission Corporation of Andhra Pradesh Limited,
Represented by its Managing Director,
Vidyut Soudha, Gunadala, Eluru Road,
Vijayawada, Andhra Pradesh - 520004
3. New & Renewable Energy Development Corporation of Andhra Pradesh Ltd.,
Represented by its Managing Director,
12-464/5/1, River Oaks Apartment,
CSR Kalyana Mandapam Road,
Tadepalli, Guntur District - 522 501

...Respondents

OP.No. 50 of 2023

Between

Mytrah Vayu (Tungabhadra) Private Limited
Represented by its Authorized Representative,
S. Nagarjuna Reddy, having its registered office at
8001, Survey No. 109, Q-City, Nanakramguda,
Gachibowli, Hyderabad - 500 032, Telangana

.....Petitioner

AND

1. Southern Power Distribution Company of AP Limited,
Represented by its Chairman & Managing Director,
19-13-65/A, Srinivasapuram,
Tiruchanoor Road, Tirupati - 517 503
Chittoor District, Andhra Pradesh
2. Transmission Corporation of Andhra Pradesh Limited,
Represented by its Managing Director,
Vidyut Soudha,
Gunadala, ELuru Road,
Vijayawada, Andhra Pradesh - 520 004

3. New & Renewable Energy Development Corporation of Andhra Pradesh Ltd.,
Represented by its Managing Director,
12-464/5/1, River Oaks Apartment,
CSR Kalyana Mandapam Road,
Tadepalli, Guntur District - 522 501

... Respondents

All these petitions have been filed for identical reliefs i.e.,

- a. To hold and declare the action of respondents no.1
Withholding payments in consideration of the energy delivered over and above 23.5%/23.0% Capacity Utilization Factor (CUF) as the case may be is illegal and contrary to the terms of the power purchase agreement.
- b. To issue appropriate direction(s)/order(s) to the respondent no.1 to make payments towards the energy delivered from the commissioning date of the power plant over and above 23.5% /23.0% CUF as a case may be along with late payment surcharge.
- c. To allow legal and administrative cost incurred by the petitioner in pursuing the instant petition.

All these original petitions have come up for hearing before the Commission in the presence of Sri. Aditya K Singh counsel for the petitioner and Sri. P. Shiva Rao, Learned Standing Counsel for the respondent;

The counsel for the petitioners Sri. Aditya K Singh reiterated the grounds of his petitions.

Sri. P. Shiva Rao, counsel for the respondents contended that

- i. CUF should be limited to 23.5%/23.0% as a case may be and can't go beyond the prescribed limit as per clause 21 of Regulation No. 1 of 2015.

- ii. The Government of Andhra Pradesh vide letter dated 14-03-2017 directed the DISCOMs to pay for the energy with a ceiling of 23.5% /23.0% CUF in respect of projects covered under the said Generic Tariff Order and also directed to limit the payment for energy supplied upto 23.5%/23.0% CUF (as the case may be) in respect of projects covered under Regulation No. 1 of 2015.
- iii. In the said Regulation of 1 of 2015 the Hon'ble Commission has considered the CUF at 23.5% /23.0% and arrived at the tariff so as to meet the cost of the project per MW as stated in the said Regulation. Therefore, any money paid for the energy beyond CUF (23.5% or 23.0%) as the case may be would amount to wrongful enrichment to the Generators as held in the order dated 01-08-2015 passed by the Commission in OP.No. 3 of 2015.
- iv. The CUF of 23.5% /23.0% is not a mere indicator. The CUF is interlinked with capital cost and in turn will affect the tariff per unit. If CUF is increased, the tariff per unit has to be decreased since the capital cost is constant. Therefore, if the additional units are also paid, it amounts to additional revenue for the Generator at the cost of the consumers. He further submitted that the judgement dated 28-11-2022 passed by the Hon'ble APTEL in National Solar Energy Federation of India Vs TNERC is not applicable for the Wind Generators for the following reasons:
 - a. In the said case, the cost of solar generating equipment varied depending on manufacture of such equipment based on different technologies, and that the Regulatory Commission decided the CUF of such solar projects at

19%. Further, during the course of time, the Govt of India by exercising its power under Section 63 of the E.A 2003 has issued competitive bidding guidelines dated 03.08.2017. Clause 5.2.1 the guidelines provides that in respect of excess generation the procurers shall have right of first refusal and provide at a lower tariff. In pursuance of the said guidelines another circular was issued dated 05.11.2019 wherein it was clarified that procurer is not obligated to buy energy beyond contracted CUF. In the said MoP Notification, it is provided that in case the procurers purchase the excess generation, the same may be done at 75 % of PPA tariff and that such provision in the RFS document. Further, the CERC in its explanatory memorandum dated May 2020, (Terms and conditions for tariff determination from Renewable sources) Regulation, 2020 stated that the tariff for the energy supplied beyond normative CUF should not be the same tariff determined for the project. CERC further stated the Renewable energy project should be free to sell such excess energy to any other entities and at the same time priority should be given to the procurers under PPA. Considering the said facts and other issues involved in the said case, Hon'ble APTEL directed to pay 75% of the tariff for the energy supplied beyond 19% CUF.

- b. As far as wind power generators are concerned, in particular in the state of A.P, Regulation (1 of 2015) clearly states that normative CUF is 23.5%. Therefore, the Respondent DISCOMs are obligated to procure the power within such limits and are not obligated to procure power beyond such limit unlike the solar power case dealt by APTEL. There is no direction by the MoP / MNRE in respect of wind power generators who are supplying

power in A.P and in fact the same is governed by the said regulation. Therefore, the judgement of the Hon'ble Tribunal is not applicable to these wind power developers cases pending before this Hon'ble Commission.

The counsel for the petitioner in reply to the arguments of counsel for respondents mentioned para nos. 73,74 & 75 of APTEL judgement (Appeal No. 339 of 2022, I.A.No. 1235 of 2021 dated 28-11-2022) and pleaded if CUF is 23.5% it cannot be matched to the tariff and cannot be compensated to the project cost.

At the hearing of Sri. Aditya K Singh, learned counsel for the petitioners and Sri. P. Shiva Rao, learned standing counsel for the respondents while submitting that the main dispute is as to whether the petitioners are entitled for the payment for the power generated beyond the CUFs shown in the PPAs and, if so, at what rate - is covered by the Common Order dated 26-09-2021 passed by the Hon'ble Commission in OP.No. 66 of 2021 **(ZR Renewable Energy Pvt. Ltd Vs. Southern Power Distribution Company of Andhra Pradesh Limited)**, OP.No. 85 of 2021 **(Beta Wind Farm Private Limited Vs. Southern Power Distribution Company of Andhra Pradesh Limited.)** and OP.Nos. 18 to 24 of 2023 **(Hetero Wind Power Limited and others Vs Southern Power Distribution Company of Andhra Pradesh Limited)**, the counsel for the petitioners relied upon the judgement of APTEL in National Energy Solar Federation of India Vs TNERC case.

Having gone through the said judgement, we are of the opinion that the same has no application to the present cases for the following reasons.

- a. In the said case, the cost of solar generating equipment differs depending upon manufacture of such equipment based on different technologies, and that the regulatory commission decided the CUF of such solar projects at 19%. Further during the course of time, the Govt of India by exercising its power under sec 63 of E.A 2003 has

issued competitive bidding guidelines dt 03.08.2017. The clause 5.2.1 provides that in respect of excess generation, the procurers shall have right of first refusal and at a lower tariff. In pursuance of the said guidelines, another circular was issued dated 05.11.2019 wherein it was clarified that procurer is not obligated to buy energy beyond contracted CUF. In the said MoP Notification, it is provided that in case the procurers purchase the excess generation the same may be done at 75 % of PPA tariff and that such provision in the RFS document. Further The CERC in its explanatory memorandum dated May 2020, (Terms and conditions for tariff determination from Renewable Energy sources) Regulation 2020 stated that the tariff for the energy supplied beyond normative CUF should not be the same tariff determined for the project. And further stated the Renewable energy project should be free to sell such excess energy to any other entities and at the same time priority should be given to the procurers under PPA. Considering the said facts and other issues involved in the said case, Hon'ble APTEL directed to pay 75% of the tariff for the energy supplied beyond 19% CUF.

- b. As far as wind power generators are concerned, in particular in the state of A.P, Regulation (1 of 2015) clearly states that normative CUF is 23.5%/23.0% in respect of projects covered under generic tariff order and arrived as a tariff so as to meet the cost of the project per MW as stated in the said Regulation. The Respondent DISCOMs are obligated to procure the power within such limits and are not obligated to procure power beyond such limit unlike the solar power case dealt by APTEL in National Energy Solar Federation of India case (SUPRA). There is no direction by the MoP / MNRE in respect of wind power generators who are supplying power in A.P. Therefore, the judgement of the Hon'ble Tribunal is not applicable to these wind power developers cases pending before this Hon'ble Commission.

- c. The respondent never agreed to procure the power beyond 23.5%. As far as wind developers in A.P is concerned the Hon'ble Commission in OP 66 & 85 of 2021 vide order dated: 26-09-2022 categorically held that the excess power supplied beyond CUF of 23.5% shall be paid at 0.50 paisa per unit considering the same as incentive pari-materia with the Thermal Generating stations. However, it is further ordered that as and when the generator achieved the CUF at lesser than 23.5%, such excess generation in other years shall be adjusted.
- d. Therefore, since the judgement of APTEL was based on different facts and circumstances and statutory guidelines, the same is not applicable to the petitioner's case.

As conceded by both the learned counsel, these cases are squarely covered by this Commission order in **OP No. 66 of 2021 (ZR Renewable Energy Private Limited) and OP No. 85 of 2021 (Beta Wind Form Private Limited Vs APSPDCL)** wherein it was inter alia held "In the facts and circumstances of the case, we feel that payment of a sum of Rs. 0.50 ps per unit (twice the incentive of Rs. 0.25 ps per unit applicable for thermal plants prescribed in APERC Regulation 1 of 2008, because wind plants generate clean energy) for energy generated and supplied in excess of the prescribed CUF subject to adjustment as held in point no. 2 and illustrated in the **annexure** to this order will meet the ends of justice. Accordingly, the respondents are directed to calculate the energy and pay/adjust the amounts depending on excess or shortfall as the case may be within two months from the date of receipt of this order".

Following the said order these cases are also disposed of in similar terms.

In the present cases, the actual CUF achieved by the petitioners is required to be calculated. The respondents shall undertake the said exercise and, accordingly, pay the petitioners the charges in terms of the PPAs upto the prescribed CUF and at Rs. 0.50 ps., per unit beyond the prescribed CUF.

The above noted exercise shall be done after notice to the petitioners and allowing the petitioners' representatives to participate in the exercise, before arriving at the actual CUF. This exercise shall be completed within six weeks from today. Within four weeks thereafter, the amount, if any, found payable to the petitioners shall be paid.

These OPs are accordingly disposed of

**Sd/-
P V R REDDY
MEMBER**

**Sd/-
THAKUR RAMA SINGH
MEMBERR**

