



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
HYDERABAD.
5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004**

O. P. No. 34 of 2015
&
I. A. No. 17 of 2015
&
I. A. No. 17 of 2017
&
I. A. No. 18 of 2017

Dated: 07.01.2019

Present

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Indian Wind Power Association (IWPA),
Office at 6th Floor, Tower-I, Shakthi Towers,
No. 766, Anna Salai, Chennai – 600 002.

.... Petitioner

(Original petitioner, applicant in I.A. No. 17 of 2015, respondent in I. A. 17 of 2017 & applicant in I. A. No. 18 of 2017)

AND

1. Non-Conventional Energy Development
Corporation of Andhra Pradesh Ltd. (NEDCAP),
5-8-207/2, Pishgah Complex, Nampally,
Hyderabad – 500 001.

2. Andhra Pradesh Central Power Distribution
Company Limited (APCPDCL),
Corporate Office, 6-1-50, Mint Compound,
Hyderabad – 500 063.

3. Andhra Pradesh Transco, Vidyut Soudha,
Khairatabad, Hyderabad.

.... Respondents
(Original respondents)

4. Transmission Corporation of Telangana Ltd.
(TSTRANSCO), Vidyut Soudha, Somajiguda,
Hyderabad.

5. Telangana State Southern Power Distribution
Company Ltd. (TSSPDCL), Corporate Office,
6-1-50, Mint Compound, Hyderabad – 63.

6. Telangana New and Renewable Energy
Development Corporation Ltd. 5-8-207/2,
Pisgah Complex, Nampally, Hyderabad – 1.

... Proposed Respondents

7. M/s. Axis Wind Energy Limited,
H. No. 119/A, Journalist Colony,
Jubilee Hills, Hyderabad – 500 033.

8. M/s. Axis Wind Farms (Vajrakaur) Pvt Ltd,
H. No. 119/A, Journalist Colony,
Jubilee Hills, Hyderabad – 500 033.

9. M/s. Axis Wind Farms (Borampalle) Pvt Ltd,
H. No. 119/A, Journalist Colony,
Jubilee Hills, Hyderabad – 500 033.

10. M/s. Axis Wind Farms (Nallakonda) Pvt Ltd,
H. No. 119/A, Journalist Colony,
Jubilee Hills, Hyderabad – 500 033.

11. M/s. Axis Wind Farms (Payalakuntla) Pvt Ltd,
H. No. 119/A, Journalist Colony,
Jubilee Hills, Hyderabad – 500 033.

12. M/s. Axis Wind Farms (MPR Dam) Pvt Ltd,
H. No. 119/A, Journalist Colony,
Jubilee Hills, Hyderabad – 500 033.

13. M/s. Axis Wind Farms (Tirumalayapalli) Pvt Ltd,
H. No. 119/A, Journalist Colony,
Jubilee Hills, Hyderabad – 500 033.

.... Impleading Petitioners

(Proposed respondents No. 7 to 13 in O.P. No. 34 of 2015 vide
I.A. No. 17 of 2015, applicants in I. A. No. 17 of 2017)

This petition came up for hearing on 04.02.2015, 16.04.2015, 24.06.2015,
15.07.2015, 05.06.2017, 23.10.2017 and 04.08.2018. The appearance of the parties
on each date is shown in the table below.

Date	Representation for the petitioner	Representation for respondents
04.02.2015	Sri. S.V.S. Chowdary, Advocate	Sri. Yella Reddy, Advocate, Induslaw Firm for implead petitioners Sri. G. V. Brahmananda Rao, Advocate representing Sri. P. Shiva Rao, Advocate for respondent Nos.2 and 3
16.04.2015	Sri. S.V.S. Chowdary, Advocate	Sri. Y. Rama Rao, Advocate for respondent Nos.2 and 3 along with Sri. B. N. Sarma, SE (Commercial) and Sri. J. Moses, DE
24.06.2015	Sri. S.V.S. Chowdary, Advocate	Sri. J. Aswini Kumar, Advocate representing Sri. Y. Rama Rao, Counsel for the respondent Nos. 2 and 3
15.07.2015	Sri. S.V.S. Chowdary, Advocate	Sri. Y. Rama Rao, Counsel for the respondent Nos. 2 and 3
05.06.2017	Sri. Sailendra, Co-ordinator of the petitioner association and also the representative of M/s. Mytrah Power Energy, Sri. T. Srinivasulu, Project Director for TNREDCL	Sri. Y. Rama Rao, Standing Counsel for the respondent Nos. 2 and 3
23.10.2017	Sri. Yella Reddy, Advocate representing Sri. S.V.S. Chowdary, Advocate	Sri. Y. Rama Rao, Standing Counsel for the respondent Nos. 2 and 3 alongwith Ms. M. Pravalika, Advocate and Smt. Rajeshwari, Asst.General Manager for impleading petitioners
04.08.2018	Sri. Deepak Chowdhary, Induslaw Advocates	Sri. Y. Rama Rao, Standing Counsel for the respondent Nos. 2 and 3 along with Ms. M. Pravalika, Advocate.

The petition having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s. Indian Wind Power Association (IWPA) has filed a petition for Issuing directions and framing of regulations for determination of RE tariff based on Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy sources) Regulations, dated 16.09.2009 [CERC (RE) Regulation, 2009] for procurement of wind energy by distribution licensees (DISCOMs) under section 86 (1) (e) and 61 of the Electricity Act, 2003 (Act, 2003)

read with clauses 8 and 57 of the Conduct of Business Regulation, 1999 (before the fresh regulation notified by the Commission).

2. The petitioner stated that it is an umbrella organisation representing various stakeholders in wind energy. It is registered under Tamil Nadu Society Registration Act, 1975 to represent its members to air and seek redressal for common grievances. The members of the petitioner are governed by various orders of the Commission.

3. The petitioner stated that there has been significant growth in capacity addition in many states due to reflexive regulatory regime with regard to tariff. In the states of Tamil Nadu, Karnataka, and Gujarat, wind energy has become a major contributor to energy requirements.

4. The petitioner stated that though the Commission had issued orders in respect of tariff / power purchased price in O. P. No. 6 of 2009 on 01.05.2009 there has been a modest capacity growth of 66.4 MW though there is potential for 8,275 MW in the combined state which is the second highest potential in the country. Earlier, there was no capacity addition in the absence of regulatory regime. It is due to the lack of dependable reflexive regulatory regime. The states which are doing well in capacity addition have regulations similar to multiyear tariff principles for determination of tariff including indexation formula for automatic annual updation of tariff. However, in the then state of Andhra Pradesh there are no such principles or methodologies for determination of the tariff applicable to the wind generating companies.

5. The petitioner stated that the CERC has framed comprehensive renewable energy tariff regulation on 16.09.2009 wherein it referred to various aspects of tariff determination. The said regulation introduced a concept of wind power density linked capacity utilisation factor (CUF) based on zone wise tariff with indexation mechanism. The indexation is based on parameters like capital cost, interest on loan etc. The said regulation is based on National Tariff Policy (NTP) of 2006 and it is stated as follows.

“The Central Commission should lay down guidelines within months for pricing power, especially from non-conventional sources, to be followed in case where such procurement is not through competitive bidding”

The said regulation is working as guideline for pricing of non-firm power as recognised in the statement of objects and reasons which is extracted below.

“1.2 Further, Clause 6.4 of Tariff policy entrusts the responsibility on the Central to framed guidelines for pricing of non-firm power especially from nonconventional sources for the cases when procurement is not through the competitive bidding process”

It is also stated that section 61 of the Act casts obligation to follow certain guidelines for determination of tariff and section 61 is reproduced in the petition.

6. The petitioner stated that issues pertaining to renewable energy are of high start-up cost and it is difficult to obtain finances due to perceived risks, intermittent nature of some forms of renewable energy and early stage of technical development. It is necessary to constitute regulatory framework for determination of tariff as the Commission has not issued any regulation on tariff determination under the Act. It is stated that Appellate Tribunal held that the Commissions are obligated to frame regulation and cannot postpone the same in definitely. It also pointed out the provisions of the Constitution of India in Article 21, 48-A, and 51 A (g) about casting a duty on state and citizen to protect the environment and NTP in clause 6. The capacity has to be increased, as it is essential for efficient functioning of power market, the rules should be made known for making investment otherwise investors will shy away.

7. The petitioner stated certain points in the petition which according to it require consideration.

a. Regulatory Commission can give proper direction to the power sector by framing regulations in such a manner that generation based on renewable sources of energy including solar, wind, bio-fuel (bio-mass, bagasse etc.) receives the necessary encouragement, so that capacity addition could take place without causing much disturbance to environment.

b. It further observed in para 14 that the preamble to the Act, 2003 recognizes the significance and importance of promotion of efficient and environmentally benign policies.

c. In consonance with the preamble and section 61 (h) of the Act 2003, spirit of the Constitution and concern for the environment, it is the bounden duty of the Commission to frame regulations with a view to give fillip to the production to power through renewable sources of energy.

d. The regulations should be fashioned in such a manner that it should be possible to build up sizable capacity through clean renewable source of energy.

8. The petitioner stated that in the absence of guidelines and norms on the bases of which tariff would be fixed, potential investors are hesitating from investing in the state, which led to the potential remaining untapped. With greater investment in wind energy there would competition and reduced cost. In the absence of regulatory mechanism as specified by the CERC, there is no transparency and acts as an inhibitor for investment and consequently delay in preparing the frame work, public interest would suffer.

9. Based on the above submissions, the petitioner has sought the following relief: "To issue necessary directions with regard to or frame renewable Tariff Regulations for determination of RE tariff based on Central Electricity Regulatory Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, dated 16.09.2009 for Procurement of wind Energy by Distribution Licensees."

I. A. No. 17 of 2015

10. One of the wind generating companies had filed an application to implead itself and its subsidiaries as petitioners in the original petition.

11. The implead petitioner No. 1 stated that the implead petitioner No. 1 is the holding company which is setting up wind power projects under mega project scale of 655.70 MW capacity in the notified areas of the then Andhra Pradesh, under the independent wind power producer model, with an investment of about Rs.4000-4500

Crores. The implead petitioner Nos. 2 to 7 are the special purpose vehicle companies promoted by the implead petitioner No. 1.

12. The implead petitioner No. 1 stated that it had made proposals to the government of Andhra Pradesh to establish 655.70 MW wind power projects and the nodal agency communicated the sanctions with the approval of Government of Andhra Pradesh for establishing 655.70 MW in the following areas.

S. No.	Name of the site	District	Capacity (MW)
1	Vajrakarur	Anantapur	300.00
2	Borampalle	Anantapur	150.00
3	Payalakuntla	Kadapa	49.50
4	Tirumalayapalli	Kadapa	49.50
5	MPR Dam	Anantapur	49.70
6	Nallakonda	Anantapur	57.00
Total			655.70

13. The implead petitioners stated that in the last few years, there has been a significant growth in capacity addition in many states due to implementation of a reflexive regulatory regime especially with regard to tariff and consequently wind energy is not any more considered miniature in the realm of electricity generating stations. In fact, in the states like Tamil Nadu, Gujarat, Karnataka wind has become the major contributor to the energy requirement of these states.

14. The implead petitioner stated that the Commission has issued an order on determination of tariff / power purchase price in respect of new wind based power projects in the case of O. P. No. 6 of 2009 limited to wind projects only and O. P. No. 7 of 2009 on 01.05.2009. Currently, the tariff for all new and upcoming wind projects are governed under the realm of the above said order. It is stated that prior to the abovementioned said order, for almost five years, there was virtually no growth in wind capacity addition in the state primarily because of the absence of a certain regulatory regime. Since the issuance of the above said order of the Commission, a modest capacity addition of approximate 66.4 MW has been build up in the State of

Andhra Pradesh. However, considering the fact that Andhra Pradesh is blessed with second highest wind potential among all the Indian states, this capacity addition is not very encouraging.

15. The implead petitioner stated that the Central Electricity Regulatory Commission (CERC) has framed comprehensive renewable energy tariff regulations on 16.09.2009 just after passing of tariff order by the Commission and the regulations framed by CERC has referred to various aspects of the tariff determination of wind based energy sources including proceedings for determination of tariff. The CERC in its regulations has introduced a concept of wind power density (WPD) linked CUF based on zone wise tariff with an annual indexation mechanism. Indexation mechanism is based on few key market driven parameters like capital cost, interest on loan etc., which are used for the determination of tariff. Further the CERC (RE) Regulation, 2009 are also in line with the National Tariff Policy (NTP) 2006. It is stated that as per clause 6.4 (3) the NTP:

“The Central Commission should lay down guidelines within three months for pricing non-firm power, especially from on-conventional sources, to be followed in cases where such procurement is not through competitive bidding.”

16. The implead petitioner stated that section 61 of the Act, 2003 casts an obligation on the part of the commission to follow certain guidelines for determination of tariff. The implead petitioners stated that in order to encourage renewable industry, it is, therefore, necessary to constitute regulatory frame work for determination of tariff for wind generating companies. It is stated that it will not be out of place to state that the then APERC has not issued any regulation on tariff for determination of the tariff for wind based generating sources since the notification of the Act, 2003.

17. The implead petitioners stated that according to para 6.0 of the NTP, generation capacity is to be increased at an accelerated rate to meet the growing demand of electricity. Adequacy of generation is also essential for efficient functioning of power market. Further, it is stated that the Maharashtra Commission basing on the CERC (RE) Regulation, 2009 has issued comprehensive Regulations

on 2010 [Maharashtra Electricity Regulatory Commission (Terms and Conditions for determination of RE Tariff) Regulations, 2010]).

18. The implead petitioners stated that insofar as the then state of Andhra Pradesh is concerned, in the absence of the regulatory mechanism, specifying the norms on which tariff would be based, as specified by the CERC, there is no transparency or certainty in the process and this acts as a major inhibitor for new investors, as well as existing generators wanting to expand capacity.

19. The impleading petitioners stated that the above circumstances have prompted the original petitioner viz. Indian Wind Power Association (IWPA) to file a petition before the Commission to pray that “the Honourable Commission may be pleased to issue necessary directions with regard to or frame renewable Tariff Regulations for determination of RE tariff based on Central Electricity Regulatory Commission (Terms and Conditions for Tariff Determination from Renewable Energy Sources) Regulations dated 16.09.2009 for procurement of wind energy by distribution licensees.”

20. The implead petitioners stated that they may be permitted to be impleaded into the said petition, which was admitted to be numbered as regular petition as parties since the reliefs sought for by the original petitioner are substantially the same that the implead petitioners are seeking for the wind power industry, being interested parties.

21. The implead petitioners stated that since the Commission was pleased to admit the said petition filed by Indian Wind Power Association (IWPA), it would be appropriate to permit the implead petitioners to be impleaded as parties in the said admitted petition to avoid multiplicity of proceedings on the same issues. Therefore, the implead petitioners sought the following relief in the application:

“Allow the petition and permit them to be impleaded as petitioner Nos. 2 to 8 in the admitted petition in O. P. (SR) No. 17 / 2011.”

I. A. No. 17 of 2017

22. The implead petitioner has filed an interlocutory application in the above said I. A. seeking to amend the title to the application.

23. The implead petitioner has also filed an application under order VI Rule 17 of the Civil Procedure Code, 1908 seeking to amend the cause title by deleting certain parties and adding certain parties to the application before the Commission.

24. The implead petitioners stated that pursuant to the bifurcation of the state of Andhra Pradesh, and the constitution of the state of Telangana, it has become necessary to amend the cause title of the respondents in the above petition in I. A. No. 17 of 2015 in O P No. 34 / 2015, by substituting the reference of Andhra Pradesh with the word "Telangana" to their names of respondent / DISCOMs falling under the jurisdiction of APERC.

25. The implead petitioners prayed that the Commission may be pleased to permit the amendment of the implead petition filed in the original petition by substituting the names of the respondents consequential to the constitution of state of Telangana as follows.

"a) Substituting the name of Transmission Corporation of Andhra Pradesh Limited, (APTRANSCO) Vidyutsoudha, Somajiguda, Hyderabad, with the name of 'Transmission Corporation of Telangana Limited, (TSTRANSCO) Vidyutsoudha, Somajiguda, Hyderabad'.

b) Substituting the name of Central Power Distribution Company Limited of Andhra Pradesh, (APCPDCL), Corporate Office, 6-1-50, Mint Compound, Hyderabad – 500 063, with the name 'Southern (Central wrongly typed) Power Distribution Company of TS Limited, Corporate Office, 6-1-50, Mint Compound, Hyderabad – 500 063'.

c) Substituting the name of Non-Conventional Energy Development Corporation of Andhra Pradesh (NEDCAP) 5-8-207/2, Pisgah Complex, Nampally, Hyderabad – 500 001, with the name 'Telangana New and Renewable Energy Development Corporation Limited', 5-8-207/2, Pisgah Complex, Nampally, Hyderabad – 500 001.

I. A. No. 18 of 2017

26. The original petitioner has also filed an application seeking to amend the title of the original petition.

27. The original petitioner has filed an application under order VI Rule 17 of the Civil Procedure Code, 1908 seeking to amend the cause title by deleting certain parties and adding certain parties to the case before the Commission.

28. The petitioner stated that pursuant to the bifurcation of the state of Andhra Pradesh, and the constitution of the state of Telangana, it has become necessary to amend the cause title of the Respondents in the above Petition in O. P. No. 34 / 2015, by substituting the reference of Andhra Pradesh with the word "Telangana" to their names.

29. The petitioner accordingly prayed that the Commission may be pleased to permit the amendment of the original petition by substituting the names of the respondent consequential to the constitution of the state of Telangana, as follows.

"a) Substituting the name of Transmission Corporation of Andhra Pradesh Limited, (APTRANSCO) Vidyutsoudha, Somajiguda, Hyderabad, with the name of 'Transmission Corporation of Telangana Limited, (TSTRANSCO) Vidyutsoudha, Somajiguda, Hyderabad'.

b) Substituting the name of Andhra Pradesh Central Power Distribution Company Limited (APCPDCL), Corporate Office, 6-1-50, Mint Compound, Hyderabad – 500 063, with the name "Telangana State Southern Power Distribution Company Limited, (TSSPDCL), Corporate Office, 6-1-50, Mint Compound, Hyderabad – 500 063.

c) Substituting the name of Non-Conventional Energy Development Corporation of Andhra Pradesh (NEDCAP) 5-8-207/2, Pisgah Complex, Nampally, Hyderabad – 500 001, with the name 'Telangana New and Renewable Energy Development Corporation Limited, 5-8-207/2, Pisgah Complex, Nampally, Hyderabad – 500 001'.

30. The Southern Power Distribution Company of Telangana Limited (TSSPDCL) earlier Central Distribution Company Andhra Pradesh Limited being 2nd respondent has filed a counter affidavit on behalf of the respondent Nos. 2 and 3 and stated as below.

i. It is stated that the respondents stated that the Government of Andhra Pradesh (GoAP) issued new wind power policy vide G. O. Ms. No. 48 dated 11.04.2008 and subsequently amended by G. O. Ms. No. 99 dated

09.09.2008, in order to encourage optimum utilization of the available wind power potential in the state by facilitating adoption of state of art technology through private participation, balancing the interest of the customers and the developers.

ii. It is stated that the then APERC in exercise of the powers conferred under section 62, 86 (1) (a) and (b) of the Act, 2003, initiated proceedings in O. P. No. 6 of 2009 (suo motu) towards the fixation of tariff / power purchase price in respect of the projects which are to be executed on or after 01.04.2009. Further, the petition filed by the petitioner for determination of the tariff for future wind energy projects was also taken on record by the then Commission with O. P. No. 7 of 2009 and it was tagged to the proceedings initiated by the then Commission. The then Commission passed orders dated 01.05.2009 determining the tariff for new and upcoming wind power projects, which have entered into PPAs between 01.05.2009 and 31.03.2014.

iii. It is stated that the then Commission has examined the various objections and suggestions raised by the stakeholders pursuant to the public notice issued on 04.02.2009. The Commission has noted the acceptance of the GoAP policy by the Indian Wind Turbine Manufacturers Association.

iv. It is stated that since the issuance of the said orders 86.8 MW capacity of wind power is added to the state grid. Further, the evacuation proposals from various wind power developers of about 3150 MW capacity were also received by the STU seeking feasibility of connectivity and the same are under process.

v. It is stated that the said CERC (RE) Regulation, 2009 was issued after the issue of the wind power tariff order dated 01.05.2009 by the then Commission taking into consideration of a cost plus approach with the key elements that influence the determination of tariffs that is (a) capital cost (b) CUF (c) operation and maintenance costs (d) depreciation (e) return on equity (f) interest cost on debts (g) debt equity ratio. Also, it is pertinent to mention here that Ministry of New and Renewable Energy (MNRE), Government of India (Gol) vide letter dated 26.09.2011 has informed that the Gol has decided that Accelerated Depreciation (AD) benefits are to be withdrawn with effect from 01.04.2012. In addition to the above the MNRE has removed the criteria wind power density for installation of wind power projects in the

country due to advancement of technology and availability of machinery that can generate at much lower threshold vide Circular dated 01.08.2011. Further, it has requested that the state government must ensure installation of only those machines, which guarantees minimum generation of 20% CUF. The legal agreements to this effect may be entered into with the concerned manufacturers / developers etc. in case the machine(s) are not able to produce the guaranteed generation, there should be adequate provisions in the agreement for removal of the wind turbines at the cost of manufacturers / developers. As such, the petitioner's plea to fix zone wise tariff based on CUF as per CERC (RE) Regulation, 2009, cannot be considered in the state of A. P.

vi. It is stated that the wind power tariff order dated 01.05.2009 by the then Commission taking into consideration of a cost plus approach with the key elements that has material bearing on the determination of tariffs that is (a) capital cost (b) CUF (c) operation and maintenance costs (d) depreciation (e) return on equity (f) interest cost on debts (g) debt equity ratio as already mentioned above. The Commission has examined the various objections and suggestions raised by stakeholders pursuant to the public notice issued on 04.02.2009 taking into consideration of the public interest and as per GoAP policy and posted orders thereon. As already mentioned above the state nodal agency NREDCAP has accorded sanction for the proposed wind power projects by various developers for about 3150 MW evacuation proposals were received and the same are under process of consideration by the STU.

31. The matter was listed for hearing on the above said dates and arguments were advanced in the matter. Later the arguments were concluded and I have perused the record and the material available therefor.

32. While the matter stood thus for consideration and passage of orders, this Commission noticing that there is a need for determining the generic tariff in respect wind based power plants initiated the necessary process. After undertaking thorough exercise by following the due procedure, this Commission had passed an order on 06.10.2018 determining the generic tariff for wind based power projects, which is

applicable for the period 2018 -2020. In the conclusion the Commission observed as below.

6. SUMMARY OF TARIFF COMPONENTS:

The Commission has considered all the parameters and submissions brought before it with reference to its discussion paper and it is of the view that the submissions made in respect of certain issues do not satisfy the normative conditions nor can they be factored while determining the tariff. Therefore, the Commission has arrived at the tariff based on the normatives that are taken into consideration and discussed thoroughly in this order. Based on the discussion, the final tariff is arrived at, which is applicable in the State of Telangana for wind generation projects for the period FY 2018-2020 (FY 2018-19 and 2019-20) in terms of the applicability stated at clause 4 of this order. Normatives parameter adopted for determination of tariff are given at Table – 5.”

33. In view of the determination made in the above said order, there is no necessity of undertaking a separate exercise of determination of tariff with reference to the petitioner’s project specifically. Suffice it to state that the determination would equally apply to the petitioner also. It is also appropriate to state that the Commission is not required to go into the rival contentions in view the order passed in the above said proceeding. That all the other contentions are left open except tariff determination which is covered by the said order and the same is being applied to this case.

34. Accordingly, having considered the rival contentions and relevant material including the discussion in the preceding paragraphs, the present petition is disposed in terms of the above said order. However, in the circumstances without any costs.

35. The interlocutory applications are allowed to the extent that this order is passed with reference to the state of Telangana only. Any reference to the state of Andhra Pradesh or parties located in the residuary state stands deleted and this order is not applicable to them.

This order is corrected and signed on this the 7th day of January, 2019.

**Sd/-
(ISMAIL ALI KHAN)
CHAIRMAN**

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