



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION  
HYDERABAD.**

5th Floor, Singareni Bhavan Lakdikapul Hyderabad 500004

O. P. No. 4 of 2018

&

I. A. No. 1 of 2018.

Dated: 07.01.2019

**Present**

Sri. Ismail Ali Khan, Chairman

Between:

M/s. Clean Wind Power (Ananthpur) Private Limited,  
Plot No. 201, 3<sup>rd</sup> Floor, Okhla Industrial Estate Phase III,  
New Delhi – 110 020.

.... Petitioner

**AND**

1. Southern Power Distribution Company of Telangana Ltd.,  
Mint Compound, Hyderabad – 500 034.

2. Northern Power Distribution Company of Telangana Ltd.,  
H. No. 2-5-31 / 2, Corporate Office, Vidyut Bhavan,  
Nakkalgutta, Hanamkonda, Warangal – 506 001.

.... Respondents.

This petition came up for hearing on 30.04.2018, 17.05.2018 and 18.06.2018. Sri. Sanjay Sen, Senior Advocate alongwith Sri. Sakya S. Chadhuri, Advocate and Sri. Avjeet Lala, Advocate representing Sri. Somasekhar Naidu, Advocate for the petitioner appeared on 30.04.2018, Sri. Sakya S. Chadhuri, Advocate and Ms. Shreya Mukerjee, Advocate representing Sri. P. Soma Sekhar Naidu, Advocate for the petitioner appeared on 17.05.2018 and Sri. Sakya S. Choudary, Advocate representing Sri. P. Somasekhar Naidu, Advocate for the petitioner appeared on 18.06.2018. Sri. Y. Rama Rao, Standing Counsel for the respondents alongwith Ms. M. Pravalika, Advocate appeared on 30.04.2018, 17.05.2018 and 18.06.2018. This petition having stood over for consideration to this day, the Commission passed the following:

## **ORDER**

M/s. Clean Wind Power (Ananthapur) Private Limited (petitioner) has filed a petition under section 62 read with sections 61 (h), 86 (1) (a), (b) and (e) of the Electricity Act, 2003 (Act, 2003) seeking determination of tariff for the wind power project of capacity 31.5 MW (15 X 2.1 MW) being developed by the petitioner located at Chilalla Pally Village, Sanga Reddy District.

2. The petitioner stated that 13 out of 15 wind turbine generators of the project are ready for commissioning and estimated to be commissioned by 31.01.2018, remaining 2 nos. of wind turbine generators have been estimated to be commissioned by 31.03.2018 as their foundation casting has already been completed.

3. The petitioner stated that the project was conceived to be developed in the undivided state of Andhra Pradesh. Accordingly, on 01.11.2013, Hero company applied to the New and Renewable Energy Development Corporation of Andhra Pradesh Limited (NREDCAP) for capacity allotment for setting up of 100 MW wind power project at Mangi Thanda, Zaheerabad Mandal, Sanga Reddy District, the then Andhra Pradesh.

4. The petitioner stated that subsequently, NREDCAP vide its letter dated 31.12.2013, communicated that the then Government of Andhra Pradesh (GoAP) has accorded sanction for the project. In accordance with the sanction, NREDCAP requested Hero company to enter into an agreement with NREDCAP for the development of project. Accordingly, Hero entered into an agreement with NREDCAP on 17.01.2014 for the development of project.

5. The petitioner stated that the then Transmission Corporation of Andhra Pradesh Limited (APTRANSCO) on 18.03.2014 accorded the connectivity approval for evacuation of power from the proposed project. Meanwhile, on 02.06.2014 the then state of Andhra Pradesh was bifurcated and a new state of Telangana was formed. As a consequence of bifurcation, the district where the project was being set up, was transferred to the state of Telangana. Subsequent to the formation of the state of Telangana, Hero company vide its letter dated 17.10.2014 informed

Telangana New and Renewable Energy Development Corporation Limited (TNREDCL) that the project will be developed by the petitioner.

6. The petitioner stated that on 10.12.2014 this Commission issued an order adopting the then existing regulations, decisions, directions or orders, license and practice directions issued by the then Andhra Pradesh Electricity Regulatory Commission (APERC). In pursuance of the aforesaid Regulation, this Commission adopted the tariff order dated 15.11.2012 passed by the then APERC in O. P. No. 13 of 2012 where under the APERC had fixed the generic generation tariff for the wind power projects entering into PPA with DISCOMs till 31.03.2015.

7. The petitioner stated that in response to the letter from Hero company dated 28.08.2015 Transmission Corporation of Telangana Limited (TSTRANSCO) accorded the approval on 26.11.2015 for consideration of 132 KV DC line (16 KM) from the proposed 132 / 33 KV pooling substation (PSS) to existing Zaheerabad APTRANSCO 132 / 33 KV SS and 132 KV bay extensions-2 no's at Zaheerabad APTRANSCO 132 / 33 KV SS for PSS, by Hero company through M/s. Vertex Engineers, Hyderabad on turnkey basis.

8. The petitioner stated that in the meanwhile, in furtherance of the request made under the letter dated 17.10.2014, TNREDCL on 30.03.2016 granted permission for the transfer of the project from Hero company to the petitioner, which is its wholly owned subsidiary. Accordingly, TNREDCL, Hero company and the petitioner entered into an agreement on 30.03.2016 to this effect.

9. The petitioner stated that in addition to the above, it is pertinent to note that in the meanwhile, Wind Independent Power Producers Association (WIPPA) filed a petition in O. P. No. 87 of 2015 on 26.03.2015 for determination of wind power generation tariff for future wind projects entering into PPA with the DISCOMs after 31.03.2015. Subsequently, on 24.08.2015 Hero company impleaded itself as a co-petitioner, seeking this Commission to determine wind generation tariff for future wind generation projects entering into power purchase agreement (PPA) with the Telangana DISCOMs after 31.03.2015.

10. The petitioner stated that it is noteworthy that the aforementioned petition in O. P. No. 87 of 2015 was required to be filed in view of the fact that subsequent to the bifurcation of the erstwhile state of Andhra Pradesh and creation of the new state of Telangana, there was no applicable tariff for the wind power projects coming up in the state of Telangana on and after 01.04.2015. The generic wind tariff determined by the erstwhile APERC vide its order dated 15.11.2012 in O. P. No. 13 of 2012 (APERC tariff order), which order was adopted by the Commission on 10.12.2014 by virtue of Regulation No. 1 of 2014 that is the TSERC (Adoption of previously subsisting regulations, decisions, directions or orders, license and practice directions) Regulation, 2014 covered only those wind projects which executed PPAs till 31.03.2015.

11. The petitioner stated that subsequent to the expiration of control period mentioned in the APERC tariff order on 31.03.2015 and in the absence of relevant tariff regulations and / or tariff order specifying the applicable tariff for the wind power projects which were to be commissioned after 31.03.2015 in the state of Telangana, it became expedient to seek new tariff for generation by wind power projects. The petition in O. P. No. 87 of 2015 is presently pending before the Commission. Hence, as on the date there is no applicable tariff for wind power projects which are commissioned or about to be commissioned in the state of Telangana.

12. The petitioner stated that in addition to the above, the subject project of 31.5 MW capacity, being developed by it which forms part of the project, is now nearing completion. It is stated that while the project is ready to be commissioned, but as on the date there is no applicable generation tariff for wind power projects at which tariff the power can be supplied to the Telangana DISCOMs. Hence, it is constrained by the fact that there is no applicable tariff for the wind power project being set up in the state of Telangana after 31.03.2015 coupled with the fact that its project is ready for commissioning, the present petition is being filed seeking generation tariff for the project, so that the project is able to achieve commissioning and is able to sign PPA with the DISCOMs of Telangana and also to supply power to the said DISCOMs.

## A. DETERMINING APPLICABLE TARIFF FOR THE PROJECT

13. The petitioner stated that the Commission is yet to issue a generic generation tariff order for wind power projects, which are commissioned on and after 01.04.2015 and the issue is subject matter of O. P. No. 87 of 2015 which is presently pending. Therefore, pending the final determination of generic generation tariff, it stated that for the purposes of the present petition and in order to fix generation tariff for the project, this Commission may consider adopting the tariff norms / parameters laid down by the Central Electricity Regulatory Commission (CERC) in the CERC (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, 2017 which has been notified on 18.04.2017. (CERC RE tariff regulation).

14. The petitioner stated that in this regard, it is important to bear in mind that section 61 of the Act, 2003 statutorily obliges the Commissions to be guided by the principles and methodologies specified by CERC for determination of tariff. The relevant extract of the said section is reproduced herein below.

“Section 61. (Tariff regulations): The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, and in doing so, shall be guided by the following, namely,

(a) the principles and methodologies specified by the Central Commission for determination of the tariff applicable to generating companies and transmission licensees.”

Therefore, in the absence of relevant tariff regulation for wind power projects and pending the determination of generic generation tariff applicable for wind power projects in the state of Telangana, the Commission may adopt and be guided by the tariff principles as contained in the CERC RE tariff regulation in accordance with section 61 (a) of the Act, 2003, for determining the project specific tariff of the petitioner.

15. The petitioner stated that it is also import to underscore here that in the counter affidavit filed in the petition in O. P. No. 87 of 2015, the respondents have also followed the then applicable CERC norms to work out the applicable generation tariff for wind projects. In other words, the respondents also in-principle concede to

the applicability of CERC tariff norms. Further, even while determining wind tariff in O. P. No. 13 of 2012, which tariff was also adopted by the Commission for projects commissioned up till 31.03.2015, the then APERC had given due weightage to CERC norms and had adopted as appropriate.

#### B. PROPOSED NORMS FOR DETERMINATION OF TARIFF

16. The petitioner stated that for determining the generation tariff for the project, the Commission may consider the following tariff norms as specified in the CERC RE tariff regulation.

	<b>Parameter</b>	<b>Value</b>
a	Tariff Period	25 years
b	Useful Life	25 years
c	Capital Cost	At actuals (inclusive of all capital work including plant and machinery, civil work, erection and commissioning, financing and interest during construction and evacuation infrastructure up to inter-connection point)
d	Debt Equity Ratio	70:30
e	Return on Equity	14%
f	CUF	27.45% (As per loan agreement)
g	Depreciation	5.28% for the first 13 years, and remaining depreciation to be spread during remaining useful life of the project considering the salvage value of the project as 10% of project cost.
h	Loan Tenure	13 years
i	O & M Cost	Project specific O & M expenses to be determined by the Commission based on the prevailing market information (As we have not entered in O & M agreement for this project we are considering the O & M expenses as per the APERC wind tariff order of FY 17-18)
j	Interest on Working Capital	10.95% (equivalent to the normative interest rate of 300 basis points above the average State Bank of India MCLR prevalent during last available 6 months)
k	Interest Rate on loan	9.95% (equivalent to the normative interest rate of 200 basis points above the average State Bank of India MCLR prevalent during last available 6 months)
l	Discount Rate	9.25% (Post Tax Weighted Average Cost of Capital)

Based on the above parameters and considering the project cost of 244.7 crores, the levelized generation tariff for the project works out to Rs. 4.58 per unit for the project of 31.5 MW. This price does not include the impact of tax as the CERC tariff regulation requires the same to be pass through on actual basis.

17. The petitioner stated that if a generation tariff with respect to the project is not determined expeditiously, then it would suffer irreparable monetary loss and other loss, which might not be competent and would also gravely prejudice the petitioner in as much the project capacity would remain stranded. It is pertinent to mention that it is in the greater public interest to determine tariff at the earliest as livelihood of various employees of it is dependent on the project and if tariff is not declared at appropriate time, the project may be closed and this will lead to amongst others following consequences:

- (a) Loss of ability of petitioner to service the debt making this project NPA.
- (b) Loss of livelihood of the employees' dependent on this project.

18. The petitioner stated that the Commission may appreciate the fact that it has already invested substantial amount of Rs. 244.7 Crores in setting up the project comprising of substantial debt raised from public financial institutions and banks and equity. Further, the consumers of Telangana would also be deprived of the capacity if the project is not able to export power for want of generation tariff. The instant petition also needs to be considered in the backdrop of the statutory obligations cast upon the Commission to promote renewable sources of energy. Stranding of valuable renewable power source for want of tariff, in spite of having all permits and approvals, is contrary to the letter and spirit of Act, 2003 and ambitions and goals of Government of India (GoI) which seeks to promote non-conventional energy sources and encourage private investment in them.

19. The petition has sought the following prayer in the petition.

- “(i) To determine the generation tariff for the 31.5 MW project; and
- (ii) To pass an exparte ad interim order in terms of prayer (i) above.”

20. The petitioner has also filed an application seeking urgent hearing in the original petition. It stated that 13 out of 15 wind turbine generators of the project are ready for commissioning and estimated to be commissioned by 31.01.2018, remaining 2 nos. of wind turbine generators have been estimated to be commissioned by 31.03.2018 as their foundation casting has already been completed. It is stated that the applicant herein has filed the accompanying petition for determination of generation tariff for the project set up by it, which is ready for commissioning. The facts and circumstances which led to the filing of the said

application have been set out therein in extensor and are not repeated for the sake of brevity.

21. The petitioner has sought the following interim prayer in the application  
“In view of the facts and circumstances set out above and in the light of the submissions made and those that may be urged at the time of hearing, this Commission may be pleased to list the accompanying petition O. P. No. 4 of 2018 for determination of generation tariff for the 31.5 MW project for an early hearing.”

22. The Southern power distribution Company of Telangana (TSSPDCL) being 1<sup>st</sup> respondent has filed a counter affidavit on behalf of the respondents and stated as below.

a) It is stated that the petitioner has filed the present petition under sections 61 (h), 86 (1) (a), 86 (1)(b) and 86 (1)( e) of the Act, 2003 praying for determination of generation tariff for petitioner’s 31.5 MW wind power project. The petitioner stated that erstwhile GoAP vide letter dated 26.12.2013 accorded sanction for 100 MW capacity wind power project at Zaheerabad Mandal, Sanga Reddy District, to M/s. Hero Wind Energy Private Limited. TNREDCL vide proceedings dated 30.03.2016, later granted permission for transfer of project from M/s. Hero Wind Energy Private Limited to M/s. Clean Wind Power (Ananthapur) Private Limited.

b) The erstwhile APERC had issued orders dated 15.11.2012 in O. P. No. 13 of 2012 determining the tariff payable to the wind power projects which would enter into PPA between the date of issue of order till 31.03.2015. Subsequent to bifurcation of state and formation of Commission for the state of Telangana, the Commission adopted the directions / orders / regulations issued by erstwhile APERC vide Regulation No. 1 of 2014. As such, there is no generic tariff prevailing for wind power projects after 31.03.2015.

c) In the context of petitioner’s request is for determination of specific tariff for their project in terms of sections 61 (h), 86 (1) (a), 86 (1)(b) and 86 (1)( e), the kind attention of this Hon’ble Commission is drawn to these sections which are extracted below for better appreciation:

Section 61 (Tariff Regulations):

“The Appropriate Commission shall, subject to the provisions of this Act, specify the terms and conditions for the determination of tariff, in doing so, shall be guided by the following namely:

.....

(h) the promotion of co-generation and generation of electricity from renewable sources of energy;

.....”

Section 86 (1) (a):

“The State Commission shall discharge the following functions, namely:

a) Determine the tariff for generation supply, transmission and wheeling of electricity, wholesale, bulk or retail, as the case may be, within the State:

Provided that where open access has been permitted to a category of consumers under Section 42, the State Commission shall determine only the wheeling charges and surcharge thereon, if any, for the said category of consumers;

b) Regulate electricity purchase and procurement process of distribution licensees including the price at which electricity shall be procured from the generating companies or licensees or from other sources through agreements for purchase of power for distribution and supply within the State;

.....

(e) promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a distribution licensee;

.....”

d) As stated above, section 61 of the Act, 2003 confers powers to the Commission to specify terms and conditions for determination of tariff, guided by several factors. However, the condition precedent under section 62 (1) and also Sections 86 (1) (a) and (b) mandating the Commission to determine the tariff for supply of electricity by a generating company to a distribution licensee is that there shall be a PPA subsisting between the parties for determination of tariff. Since the respondents have no subsisting agreement with the petitioner, the prayer of the petitioner seeking determination project specific tariff is not justified.

e) Further, in compliance with section 3 of the Act, 2003, the Ministry of Power (MoP) notified the revised National Tariff Policy (NTP) resolution dated 28.01.2016. The revised tariff policy mandates DISCOMs to procure power from renewable energy sources through competitive bidding only except from waste – to – energy projects. In pursuance of section 63 of Act, 2003 and in terms of provisions of NTP for encouraging procurement of renewable power through competitive bidding to reduce tariff, MoP through gazette dated 08.12.2017, notified guidelines for tariff based competitive bidding process for procurement of power from Grid connected wind power projects. Hence, TSDISCOMs are not obligated to enter any PPA on cost – plus tariff basis.

f) It is also pertinent to state before the Commission that other State Regulatory Commissions, such as Karnataka issued orders mandating the DISCOMs to make all future power procurement from grid connected wind power projects only through transparent process of bidding, in accordance with the guidelines dated 08.12.2017 issued by MoP.

g) Further it is stated that under section 86 (1) (e) the Commission is conferred with the powers to specify percentage of purchase of power from renewable sources. Accordingly, the Commission issued RPPO Regulation No. 2 of 2018 mandating TSDISCOMs for purchase from renewable energy sources a minimum quantity (in Kwh) of electricity expressed as a percentage of its total consumption of energy during FY 2018 – 19 as solar at the rate of 5.33% and non – solar at the rate 0.67%. As per the approved projections in retail supply tariff order for FY 2018 – 19, TSDISCOMs would be meeting the

non – solar RPPO purchases with 1.01% as against prescribed 0.67%. The Commission is empowered to pass appropriate directions to the DISCOMs in case of non-fulfilment of such obligation and DISCOMs cannot be thrusted by any party to enter into long term PPA with cost plus methodology under the pretext of RPO fulfilment. The tariff regime has changed for procurement of RE power from cost plus methodology to competitive bidding route and it is the DISCOMs prerogative to procure RE power as per their requirement, duly considering cost optimization.

h) It is further stated that neither the agreement dated 17.01.2014 executed by the petitioner with Telangana New and Renewable Energy Development Corporation Limited, pursuant to the sanction accorded to them for setting up wind power project, nor the approval accorded by TRANSCO for evacuation of power from their proposed wind power project binds the DISCOMs to enter into PPA with the petitioner. As already stated the NTP 2016 mandates the procurement for power from RE sources except waste to energy projects on competitive bidding route. As such, the petitioner is at liberty to participate in the future tenders to be called by TSDISCOMs and bid for the capacity available with it, but cannot compel the DISCOMs to purchase energy from their project under long term PPA with cost plus methodology in view of the mandatory competitive bidding process stipulated in the NTP 2016 and hence there are no valid grounds for the Commission to consider the prayer of the petitioner to determine project specific tariff. In view of the submissions made above, it is prayed that the Commission may please dismiss the petition as devoid of merits.

23. 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, including the material which was directed to be filed during the hearing.

24. 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.”

25. 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.

26. 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.

27. As a sequel as there is no necessity of going into to merits of the interim application which is pending consideration, therefore, it having become infructuous is dismissed.

*This order is corrected and signed on this the 07<sup>th</sup> day of January, 2019.*

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

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