



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500 004

**R.P.No.1 of 2022**

**in**

**O.P.No.29 of 2020**

**Dated 09.06.2022**

**Present**

Sri T. Sriranga Rao, Chairman  
Sri M. D. Manohar Raju, Member (Technical)  
Sri Bandaru Krishnaiah, Member (Finance)

Between:

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

...Review

Petitioner /

AND

M/s Gayatri Sugars Limited,  
B2, 2<sup>nd</sup> Floor, TSR Towers,  
Somajiguda, Rajbhavan Road,  
Hyderabad – 500 082.  
Petitioner.

...

Respondent /

The review petition came up for hearing on 11.04.2022 and 02.05.2022. Sri. Mohammad Bande Ali, Law Attachee for review petitioner and Sri. N. Sai Phanidra Kumar, Advocate representing Sri. Challa Gunaranjan, Advocate for respondent are present on 11.04.2022 and Sri. K. Vijaya Kumar, SE / IPC (FAC) / TSPCC for the review petitioner and Sri. Deepak Chowdary, Advocate representing Sri. Challa Gunaranjan, Advocate for respondent are present on 02.05.2022. The matter having been heard physically on 11.04.2022 and 02.05.2022 and having stood over for consideration to this day, the Commission passed the following:

**ORDER**

The review petitioner has filed a petition under section 94 (1) (f) of the Electricity Act, 2003 (Act, 2003) seeking review of the order dated 02.06.2021

passed in O.P.No.29 of 2020 and I.A.No.15 of 2020 filed by M/s Gayatri Sugars Limited. The contents of the review petition are as below.

- a) It is stated that the review petition is preferred against the order dated 02.06.2021 in O.P.No.29 of 2020 and I.A. No.15 of 2020, on the file of the Commission in the matter of petition filed by M/s Gayatri Sugars Limited for determination of tariff towards fixed cost to take effect on completion of 10 years of the 16.5 MW bagasse based cogeneration project from the commercial operation date.
- b) It is stated that M/s. Gayatri Sugars Limited filed petition O.P.No.29 of 2020 under section 62 read with section 86(1)(b) of the Act, 2003 for determination of tariff towards fixed cost to take effect on completion of 10 years of their 16.5 MW bagasse based cogeneration project located at Maagi village, Nizamasagar mandal, Nizamabad district.
- c) It is stated that original petitioner in the petition had prayed for determination of fixed cost to their project for the period from 11<sup>th</sup> to 20<sup>th</sup> years of operation in terms of PPA dated 12.05.2006 either by fixing project specific tariff or alternatively extending the generic tariff as fixed by order dated 05.08.2014 issued by erstwhile joint APERC in O.P.Nos.8 of 2011, 9 of 2012, 12 of 2012, 22 of 2014 and 25 of 2014 and consequently to direct licensee to pay the differential tariff from the 10<sup>th</sup> year onwards.
- d) It is stated that the developer also filed I. A. No. 15 of 2020 seeking interim relief for payment of generic tariff as fixed by order dated 05.08.2014.
- e) It is stated that the Commission by order dated 02.06.2021 disposed of O. P. No. 29 of 2020 and I. A. No. 15 of 2020. The relevant portion of the orders is reproduced below:  
“... ..  
8. Inasmuch as the parties were in consensus ad idem as far as tariff is concerned subsequent to the directions of the Commission to the licensee when it sought consent for amendment to the PPA which the Commission refused and required filing of a petition by the licensee for determination of tariff.

9. In view of the concession made by them in the counter affidavit that they are agreeable for the tariff as determined by the Commission, there remains little scope for the Commission to traverse beyond the agreement impliedly reached by the parties.
10. In this context it has to be stated as per the PPA the petitioner would have been entitled to Rs.0.90 per unit of fixed cost. However, the petitioner has agreed with the licensee to avail fixed cost as determined by the erstwhile APERC in order dated 05.08.2014 and has now claimed the same to be fixed as an alternative prayer which has been conceded by the respondent.
11. As such the Commission is not inclined to dwell into the other contentions and accordingly allows licensee to negotiate the tariff between themselves considering the tariff specified in the order dated 05.08.2014 which has been adopted by this Commission in Regulation No.1 of 2014 as the ceiling tariff. Such negotiated tariff would come to effect from the 11th year from the commercial operation date i.e., 16.05.2017 onwards. Therefore, the issue is answered accordingly.
12. The licensee is directed to submit the revised PPA negotiated with the petitioner based on the ruling in the above paragraph at the earliest.
13. Any arrears of the amount in difference of tariff shall be settled and payment made within a period of eight (8) weeks from the date of approval of the PPA. Accordingly, the present petition is allowed to the extent indicated. No costs. As a sequel and in view of the disposal of the main petition, the interlocutory application is closed.

... ..

It is stated that the observation of the Commission at para 10 of the order under review is a mistake apparent on the face of record and the same leads to erroneous interpretation that respondent/petitioner was entitled to Rs.0.90 per unit of fixed cost even after completion of 10<sup>th</sup> year and hence the petitioner herein prefer to file this review petition on the following and among other ground which will be urged at the time of arguments with the permission of the Commission.

i. For convenience

6) Schedule – 1A of the PPA dated 12.05.2006 entered between M/s.Gayatri Sugars Limited and NPDCL, which is extracted below:

Year of operation (n <sup>th</sup> year)	Fixed cost Rs. per unit	Financial year	Variable cost Rs. per unit
1 <sup>st</sup>	1.57	2005-2006	1.06
2 <sup>nd</sup>	1.52	2006-2007	1.10
3 <sup>rd</sup>	1.48	2007-2008	1.14
4 <sup>th</sup>	1.44	2008-2009	1.19
5 <sup>th</sup>	1.39		
6 <sup>th</sup>	1.35		
7 <sup>th</sup>	1.31		
8 <sup>th</sup>	1.27		
9 <sup>th</sup>	1.23		
10 <sup>th</sup>	0.90		

- i. The project shall be entitled to a tariff with the component of fixed charges based on the year of operation (nth year) and variable charges corresponding to the financial year of operation. The fixed charges from the 11<sup>th</sup> year onwards shall be negotiated but shall not exceed the fixed charges determined by the Commission for bagasse based cogeneration plants from time to time for the corresponding years.
- ii. The variable charges for the period from 2009-2010 onwards will be negotiated but shall not be higher than the variable charges fixed by the Commission for bagasse based cogeneration plants from time to time for the corresponding years.
- iii. Settlement period is one year from the date of commercial operation for calculation of fixed charges.
- iv. Fixed charges are payable for a PLF of 55% of energy for export to grid for sale to APNPDCL as indicated in Schedule-1.
- v. Where PLF during a settlement period exceeds 55% only variable cost as indicated above and an incentive of 25 paise per unit shall be paid for every unit delivered in excess of the above PLF upto 100% PLF.

- vi. Notwithstanding the above, the tariff comprising both fixed cost and variable cost shall not exceed Rs.2.63 per kWh.
- e) It is stated that the Commission vide order dated 18.09.2015 in O. P. No. 4 of 2015 allowed to modify the PPA adopting variable cost from the generic tariff orders. In accordance with the directions of the APTEL to modify the PPA to promote the renewable energy and to apply generic tariff orders to the developer. However, the fixed cost (for first 10 years of operation) was continued as contained in the PPA.
- f) It is stated that accordingly, the amendment dated 03.09.2016 to the PPA dated 12.05.2006 was amended duly incorporating the orders dated 18.09.2015 of the Commission.
- g) It is stated that as per PPA the fixed charges from the 11<sup>th</sup> year onwards shall have to be negotiated but the same shall not exceed the fixed charges determined by the Commission for bagasse based cogeneration plants from time to time for the corresponding years.
- h) It is stated that in light of the provisions of the PPA, negotiations were held with original petitioner and the generator requested to allow the fixed cost from 11<sup>th</sup> to 20<sup>th</sup> year of operation as per the generic tariff order dated 05.08.2014 issued by joint APERC (and adopted by TSERC vide Regulation No.1 of 2014) on par with other bagasse based cogeneration developers.
- i) It is stated that the request was examined and the proposal of the generator was accepted for allowing the fixed cost from 11<sup>th</sup> to 20<sup>th</sup> year of operation as per the generic tariff order dated 05.08.2014.
- j) It is stated that however, provisionally the petitioner is being paid fixed cost at the rate of Rs.0.90 per kWh (the 10<sup>th</sup> year FC as per PPA) for the energy being supplied from 11<sup>th</sup> year onwards and the variable cost as per the Commission orders from time to time on par with the other bagasse developers.
- k) It is stated that from the PPA the developer was entitled for payment of fixed cost at the rate of Rs. 0.90 per kWh for the 10<sup>th</sup> year of operation alone and from 11<sup>th</sup> year onwards the fixed cost charges shall have to be negotiated and the same shall not exceed the fixed charges determined by the Commission, in respect of bagasse based cogeneration projects from time to time for the corresponding years.

l) It is stated that in view of the submissions made in paragraphs above, the observation of this Commission at para 10 of the order under review is a mistake apparent on the face of record and the same needs to be deleted by reviewing the order.

m) It is stated that as per para 5 of the counter filed by this petitioner / TSNPDCL in O. P. No. 29 of 2020, negotiations have been held with the developer and a mutually consented conclusion is arrived at to allow the fixed cost as per the generic tariff determined by the Commission by order dated 05.08.2014.

2. Therefore, the review petitioner has sought the following prayer in the petition for consideration.

“i. to admit this review petition.

ii. to allow this review petition and to delete para – 10 of the order under review.”

3. The respondent has filed counter affidavit and stated as under.

a. It is stated that the Commission while considering the O.P. at para No.10 of the order had stated the following.

*“10. In this context it has to be stated as per the PPA the petitioner would have been entitled to Rs.0.90 per unit of fixed cost. However, the petitioner has agreed with the licensee to avail fixed cost as determined by the erstwhile APERC in order dated 05.08.2014 and has now claimed the same to be fixed as an alternative prayer which has been conceded by the respondent.”*

b. It is stated that in fact, as per the terms of the PPA in particular Schedule-IA of PPA, the 10<sup>th</sup> year tariff agreed was Rs.0.90 per unit insofar as tariff for the 11<sup>th</sup> year onwards, it has been agreed that the same shall be mutually agreed between the parties and shall not be more than tariff approved by erstwhile APERC. This aspect of the matter has not been taken note by this Commission and hence there is an apparent error and mistake on the face of the order in stating that, the petitioner is entitled only for Rs.0.90 per unit towards fixed cost and

since both parties agreed for specifying fixed cost in terms of order dated 05.08.2014, the same has been accepted.

- c. It is stated that the above said portion of para No.10, therefore, needs to be reviewable by considering the fact that the PPA itself has provided for the manner and method of determination of 11<sup>th</sup> year tariff and in the present case as the erstwhile APERC by order dated 05.08.2014 has determined the same, parties herein have agreed to adopt the same and sought for consent of this Commission.
- d. It is stated that unless the order in O.P.No.29 of 2020 is reviewed and para No.10 corrected, the respondent herein will not be in a position to insist for payment of differential fixed cost in terms of para No.13 of the order and therefore, prays the Commission to allow the review as prayed for.

4. The Commission has heard the parties to the review petition and also considered the material available to it including the order passed by it. The submissions on the dates are noticed below, which are extracted for ready reference.

Record of proceedings dated 11.04.2022

“... .. The advocate representing the counsel for respondent stated that the respondent has no objection, if the order is sought to be modified only to the limited extent of deleting the concession made by the review petitioner as otherwise he needs time to file counter affidavit. The representative of the review petitioner stated that he is insisting for modification of the order and to fix the tariff insofar as 10<sup>th</sup> year of operation is considered. In view of the submission the advocate representing the respondent sought time for filing counter affidavit for three weeks. Having considered the submission of the parties, the matter is adjourned.”

Record of proceedings dated 02.05.2022

“... .. The representative of the petitioner stated that the review petitioner is seeking the modification of the order in view of the submissions made in the counter affidavit by reviewing the same. The advocate representing the counsel for respondent stated that the respondent filed counter in the matter and agreed to the suggestion made by the petitioner. In view of the submissions of the parties, the matter is reserved for orders.”

5. At the cost of repetition, the said paragraph 10 is reproduced below:

“10. In this context it has to be stated as per the PPA the petitioner would have been entitled to Rs.0.90 per unit of fixed cost. However, the petitioner has agreed with the licensee to avail fixed cost as determined by the erstwhile APERC in order dated 05.08.2014 and has now claimed the same to be fixed as an alternative prayer which has been conceded by the respondent.”

Considering the submission made by the parties, the Commission proposes to replace the said paragraph in the original order as below:

“10. In this context it has to be stated as per the PPA the petitioner would have been entitled to Rs.0.90 per unit of fixed cost **for the 10<sup>th</sup> year of operation. But this is not the issue in this petition. The petitioner has sought determination of the tariff for the period 11<sup>th</sup> to 20<sup>th</sup> year of operation.** Further, the petitioner has agreed with the licensee to avail fixed cost as determined by the erstwhile APERC in order dated 05.08.2014 and has now claimed the same to be fixed as an alternative prayer which has been conceded by the respondent.”  
(emphasis supplied and corrections identified)

6. Suffice it to state that upon the said modification, the order is comprehensively corrected and thus the review petition filed by the review petitioner respondent stands allowed. Since the order passed by the Commission originally on 02.06.2021 is sought to be modified, the findings therein would take effect from the date of disposal of the review petition and the timeline if any specified therein would accordingly be construed as being applicable from the date of disposal of the review petition.

7. Keeping in view the observation and reasoning set out above the review petition stands allowed, but in the circumstances without any costs.

**This order is corrected and signed on this the 09<sup>th</sup> day of June, 2022.**

<b>Sd/-</b>	<b>Sd/-</b>	<b>Sd/-</b>
(BANDARU KRISHNAIAH)	(M.D.MANO HAR RAJU)	(T.SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

**//CERTIFIED COPY//**