



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

**O. P. (SR) No. 8 of 2021**

**and**

**I. A. (SR) No. 9 of 2021**

**Dated 22.06.2022**

**Present**

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

Between:

M/s. Sneha Renewable Energies Limited,  
Registered Office Flat No.515,  
Prime Legend Apartments, Masjid Banda Road,  
Sriramnagar, Kodapur, Hyderabad – 500 084.

... Petitioner.

**AND**

1. State of Telangana,  
Rep. by its Principal Secretary,  
Department of Energy,  
Secretariat Buildings, Hyderabad  
Telangana State – 500022.

2. The Chairman & Managing Director,  
Southern Power Distribution Company of Telangana Limited,  
Mint Compound, Hyderabad,  
Telangana State – 500 063.

3. Chairman & Managing Director,  
Transmission Corporation of Telangana Limited,  
Vidyut Soudha, Khairatabad,  
Hyderabad – 500 082.

... Respondents.

The petition came up for hearing on 06.09.2021, 25.10.2021, 15.11.2021, 20.12.2021, 03.01.2022, 17.01.2022 and 31.01.2022. Ms. P.Laxmi, Advocate for petitioner has appeared through video conference on 06.09.2021, 25.10.2021,

15.11.2021. 17.01.2022 and 31.01.2022 and on 20.12.2021 physically and Sri P. Keshava Reddy, Managing Director of the petitioner has appeared physically on 03.01.2022. The proceedings of the matter has been conducted on 20.12.2021 and 03.01.2022 physically and through video conference on 06.09.2021, 25.10.2021, 15.11.2021. 17.01.2022 and 31.01.2022. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

### **ORDER**

M/s Sneha Renewable Energies Limited (petitioner) has filed a petition under section 86(1)(a)(b) & (c) of the Electricity Act, 2003 (Act, 2003) seeking determination of tariff for the mini hydel project of the capacity of 0.90 MW (2x450 kW) for the energy generated and to be sold to Southern Power Distribution Company of Telangana Limited (TSSPDCL). The averments of the petition are extracted below.

- a. It is stated that the petitioner established as a public limited company in the year September, 2000 under the Companies Act, 1956. The main objective of the company is hydel power generation and supply. The main objective of the company is to promote, establish small hydel power projects with the guidelines of the Government of India (GoI) and erstwhile Government of Andhra Pradesh (GoAP) and state of Telangana. To achieve the said object, the petitioner has power generation location on Vemuleru Vagu (run off river) on existing Anicut at Mallaialappaiah Bandam near Kalvapally village, Garidepalli mandal, Suryapet district, state of Telangana. The petitioner got cleared all the formalities and established a mini hydel power project with a capacity of 0.90 MW (2x450 kW). The petitioner entered an agreement on 13.04.2010 with Non-Conventional Energy Development Corporation of Andhra Pradesh Limited (NEDCAP) represented by its Chairman and Managing Director. The petitioner has completed the project in the year 2013 and synchronization to the grid on 06.11.2013 respectively.
- b. It is stated that the petitioner had entered into long term open access agreement (LTOA) for captive generation with the then Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL) on 05.02.2014. At the time of registering our interest to establish mini hydel power project (MHPP / MHES) with NEDCAP dated 04.04.2000 or

agreement with NEDCAP dated 13.04.2010 or LTOA agreement with the then APCPDCL dated 05.02.2014, wheeling charges were exempted for mini hydel power projects. But, the Commission through tariff order dated 27.03.2015 has removed the exemption of wheeling charges for HMPPs, which has drastically affected our company's revenue and existence of our company has become questionable.

- c. It is stated that due to local issues, drought situations for more than 3 years and machinery erection related technical issues, till date they could not generate enough power and revenue more than the wheeling charges payable to the TSSPDCL (respondent No.2), hence they could not generate any bills to their captive consumers and did not get any revenue even after more than 7 years of synchronization with grid.
- d. It is stated that the petitioner wished to bring to the Commission notice that the petitioner has incurred more than Rs.15.0 crore to complete the project (one location) in the year 2014, more than Rs.22.0 crore for two locations, (have not completed the other location). But till date the petitioner has not earned single rupee from this project and are under serious debts. It is pertinent to state that the other location is not even synchronized till date due to the financial crunch of the company.
- e. It is stated that the petitioner has established the mini hydel power project with great innovative concept, but due to sudden policy change of the Telangana Government in the year 2015 to charge wheeling charges on such a tiny MHES as ours, the petitioner was unable to generate the revenue till date (even after more than 7 years of COD), which shall be clearly shown and reflect from the petitioner's latest balance sheet. The petitioner submitted a representation to the 2<sup>nd</sup> respondent on 30.05.2020 requesting them to enter into PPA, considering the petitioner's financial problems for Rs.5/- per unit. The petitioner company stated that there are only three (tiny) mini hydel power projects in the state of Telangana.
- f. It is stated that the 2<sup>nd</sup> respondent issued a Lr. No. CGM (IPC & RAC) / SE(IPC) / F. SREL / D. No. 435 / 2020 dated 22.09.2020 declining our application, stating that the national policy stipulates the DISCOMs that procurement of power/ PPAs should be entered through competitive

bidding process, hence the petitioner is constrained to file this present petition.

- g. It is stated that the reliance placed by the 2<sup>nd</sup> respondent that the procurement of the power from the project has to be done through a competitive bidding route of a renewable source may be appropriate in a large size generator which may be viable to it. For such a tiny MHPP project (900 kW) like ours, insisting on competitive bidding process only is not appropriate and will negate the purpose of encouraging renewable sources of energy and also loss of available natural resources. It is pertinent to state that at present water is available at its project and if power is not generated it will be a national waste. In the central amendment bill of 2020, the GoI has given a support enforcing for hydel power generation, if it is not purchased small generators will be collapsed. It is also not known when the 2<sup>nd</sup> respondent would undertake competitive bidding process. Till then the petitioner cannot be put unnecessary vagaries of financial difficulties. The 2<sup>nd</sup> respondents ought to have procured the renewable source of power through bilateral agreement without waiting for the competitive bidding process which they themselves are not sure when they would start and complete.
- h. It is stated that be that as it may, the Commission had fixed the target for renewable energy procurement in the Regulation No.2 of 2018 being TSERC Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy / Renewable Energy Certificates) Regulations, 2018. It is relevant to mention here the target fixed is as extracted below.

<b>Year / RPPO</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>
Non-Solar	0.67%	0.73%	0.79%	0.90%

- i. It is stated that even otherwise, the GoI has fixed very ambitious target to be achieved while procuring power from renewable sources of energy. The government had notified the targets as below:

<b>Long Term Trajectory</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>
Non-solar	8.75%	9.50%	10.25%
Solar	2.75%	4.75%	6.75%
Total	11.50%	14.25%	17.00%

- j. It is stated that the Commission has been considerate enough to take note of the difficulty in procuring such high capacity and fixed a moderate percentage as shown above which is only a minimum rate of quantity to be procured by the DISCOMs in the state of Telangana. The respondents ought to have procured more than the percentage fixed by the Commission, instead are now coming with a reason which are detrimental to the investment in generation of the renewable sources, which is neither called for nor is appropriate in the teeth of the policies of the government encouraging renewable sources of energy. It is also contrary to the commitment set out by the country towards reducing the carbon emissions on the international fora.
- k. It is stated that Ministry of Power notified resolution being National Tariff Policy (NTP) on 28.01.2016. Paragraph 5.5 states that:  
 “The developer of a hydroelectric project, including pumped storage plant (PSP), would have the option of getting the tariff determined by the appropriate Commission for the power to be sold through long term power purchase agreements (PPAs) on the basis of performance based cost of service regulations if the following conditions are fulfilled:
- (i) The appropriate commission is satisfied that the project site has been allotted to the developer by the concerned state government after following a transparent two stage process. The first stage should be for prequalification on the basis of criteria of financial strength, past experience of developing infrastructure projects of similar size, past track record of developing projects on time and within estimated costs, turnover and ability to meet performance guarantee etc. In the second stage, bids are to be called on the basis of only one single quantifiable parameter, such as, additional free power in excess of percentage of free power, as notified by the Central Government, equity participation offered to

the state government, or any other parameter to be notified by the central government from time to time.

(ii) Concurrence of CEA (if required under section 8 of the Act), financial closure, award of work and long term power purchase agreement (PPA) (of the duration of 35 years or more) of the capacity specified in (c) below with distribution licensees are completed by 15.08.2022.

(iii) Long term PPA is firmed up for 60% or more of the total saleable design energy, balance being allowed for merchant sale.

Provided that distribution licensees can extend the duration of long term PPA beyond 35 years for a further period of 15 years at the existing terms and conditions subject to the approval of Appropriate Commission.

Provided further that nothing contained in this clause shall apply to Pumped Storage Plants (PSP).

(iv) The time period for commissioning of all the units of the project shall be fixed at four years from the date of approval of the commissioning schedule by the Appropriate Commission. However, the Appropriate Commission may, after recording reasons in writing, fix longer time period for hydroelectric projects (reservoir as well as run-of-river projects) of more than 100 MW capacity. Agreed timelines to achieve the fixed commissioning schedule along with penalty for delay shall be decided by the Appropriate Commission in consultation with the Central Electricity Authority. The Appropriate Commission shall allow pass through the Interest During Construction (IDC) and Financing Cost (FC) only upto the period of delay not attributable to the developer, as approved by the CEA.

(v) Award of contracts for supply of equipment and construction of the project, either through turnkey or through well-defined packages, are done on the basis of international competitive bidding.

I. It is stated that section 6.4 (2) of Ministry of Power resolution on NTP dated 28.01.2016 stated that:

*Renewable sources of energy generation including co-generation from renewable energy sources:*

"However, till such notification, any such procurement of power from renewable energy sources projects, may be done under Section 62 of the Electricity Act, 2003. While determining the tariff from such sources, the Appropriate Commission shall take into account the solar radiation and wind intensity which may differ from area to area to ensure that the benefits are passed on to the consumers."

- m. It is stated that the Commission has got ample power to determine the tariff for supply of electricity by a generating entity to a distribution licensee and to regulate electricity purchase under section 86 (1) (b) read with section 62 (1) (a), section 61 (h) of the Act, 2003. Hence, the present petition is filed.
- n. It is stated that the NTP is clearly contemplating that for encouraging mini hydel power project establishments, the 2<sup>nd</sup> respondent's reply is clearly depriving the sustenance of the mini hydel power projects (MHPPs), hence the Commission has got the power and jurisdiction to direct the 2<sup>nd</sup> respondent to enter into PPA with the petitioner.
- o. It is stated that the primary object of the power policy vis-a-vis the non-entering of PPA by the 2<sup>nd</sup> respondent with the petitioner itself is creating financial crunch for survival of the MHPPs. Hence, the interference of the Commission is warranted in the instant case to implement the NTP dated 28.01.2016 and more particularly clauses 5.5 and 5.6 issued by the MoP.
- P. It is stated that the 2<sup>nd</sup> respondents at present are not inviting or preparing for any competitive bidding process and when the 2<sup>nd</sup> respondents will invite the bids for determining the tariff for purchase of electricity, no one knows. There is a complete vacuum in this process. Hence, the 2<sup>nd</sup> respondent's reply letter dated 22.09.2020 is contrary to National Power Policy (NPP).
- q. It is stated that the respondents are not creating conducive atmosphere for investment in renewable sources of energy. It is also pertinent to mention that the GoI has set an ambitious target of 175 GW of renewable sources energy generation by the year 2022, while that be so, the action

of the respondents appears to be retrograde in nature as it amounts to negating the existing investment also. Simply stated, the respondents have onerous duty to procure renewable energy as much as possible.

- r. It is stated that the applicant is a small project and dependent on nature and that of water flow in the canal. The applicant are wasting natural resources as they should have taken the benefit of water flow and availed the generation. In this regard, it may be appropriate to refer to the case of M/s. Balaji Energy Private Limited, decided by the erstwhile Andhra Pradesh Electricity Regulatory Commission (APERC) in O.P.No.2 of 2007 decided on 07.03.2007, herein the Commission had directed that tariff be paid for the power drawn, as it is renewable source, which order has been adopted by the Commission in Regulation No.1 of 2014. Therefore, the petitioner is entitled for relief from the respondents by entering into PPA with the petitioner, without waiting for the competitive bidding process to be commenced.

2. The petitioner has sought the following reliefs in the petition.

“to direct the 2<sup>nd</sup> respondent to enter into PPA by fixing tariff per unit as Rs.5.00 as per sections 61(h), 62 (1) (a), 86 (1) (b) of the Electricity Act, 2003.”

3. The petitioner has also filed an interlocutory application and the averments of it are extracted below.

- a. It is stated that the applicant was established as a public limited company in the month of September, 2000, under the Companies Act, 1956. The main objective of the company is hydel power generation and supply. The main objectives of the applicant is to promote, establish small hydel power projects with the guidelines of the GoI and erstwhile GoAP and state of Telangana. To achieve the said object, the applicant has mini hydel power generation location on Vemuleru Vagu (run off river) on existing Anicut at Malyalappaiah Bandarn near Kalvapally Village, Garidepalli Mandal, Suryapet District, in the state Telangana. The applicant got cleared all the formalities and established. a mini hydel power project (MHPP) with a capacity of 0.90 MW (2x450 kW). The

applicant entered into an agreement on 13.04.2010 with NEDCAP represented by its Chairman and Managing Director. The applicant has completed the project in the year 2013 and completed synchronization to the grid on 06.11.2013.

- b. It is stated that the applicant entered into LTOA for captive generation with APCPDCL on 05.02.2014. At the time of registering our interest to establish mini hydel power project (MHPP/MHES) with NEDCAP dated 04.04.2000 or agreement with NEDCAP dated 13.04.2010 or LTOA agreement with APCPDCL dated 05.02.2014, wheeling charges were exempted for mini hydel power projects. But, the Commission through tariff order dated 27.03.2015 has removed the exemption of wheeling charges for MHPPs, which has drastically affected the applicant's revenue and existence of the applicant has become questionable.
- c. It is stated that due to local issues, drought situations for more than 3 years and machinery erection related technical issues, till date they could not generate enough power and revenue more than the wheeling charges payable to TSSPDCL, hence the applicant could not generate any bills to their captive consumers and did not get any revenue even after more than 7 years of synchronization with grid.
- d. It is stated that the applicant wished to bring to the Commission notice that the applicant has incurred more than Rs.15.0 crore to complete the project (one location) in the year 2014, more than Rs.22.0 crore for two locations, (have not completed the other location). But till date the applicant has not earned single rupee from this project and are under serious debts. It is pertinent to state that the other location is not even synchronized till date due to the financial crunch of the applicant.
- e. It is stated that the applicant has established the mini hydel power project with great innovative concept, but due to sudden change of policy of the government of Telangana in the year 2015 to charge wheeling charges on such a tiny MHESs as the applicant, it was unable to generate the revenue till date (even after more than 7 years of COD), which shall be clearly shown and reflect from the applicant's latest balance sheet. The applicant submitted a representation to the 2<sup>nd</sup> respondent on 30.05.2020 requesting them to enter into PPA, considering the applicant

financial problems for Rs.5/- per unit. The applicant stated that there are only three (tiny) mini hydel power projects in the state of Telangana.

- f. It is stated that the 2<sup>nd</sup> respondent issued a Lr. No.CGM (IPC & RAC) / SE(IPC) / F. SREL / D. No. 435 / 2020 dated 22.09.2020 declining the application, stating that the national policy stipulates the DISCOMs that procurement of power / PPAs should be entered through competitive bidding process, hence the applicant is constrained to file the present petition.

4. The petitioner has sought the following relief in the application as below.

“To direct the 2<sup>nd</sup> respondent to purchase the power from the petitioner on the payment of average pooled purchase cost till the Commission decides the main matter.”

5. The petitioner has filed written submissions and stated as below.

- a. The Commission was pleased to pass an order in Madhucon Sugar and Power Industries in O.P.No.9 of 2021. Averments by the petitioner therein at page No.3, clause (e)

“e) that the Government of India (Gol) set up the Ministry for Non-Conventional Energy Sources (MNES) to promote and develop non-conventional energy projects and to evolve policy guidelines. Accordingly institutional mechanisms (Viz, IREDA etc..) were established and the Gol announced a policy package of incentives, which included duty concessions, tax exemptions, subsidies, concessional and promotional finance, etc.”

at page No.3, clause (f).

“That the state governments were also required to promote and facilitate the establishment of NCE projects based on the guidelines issued by the MNES. For development of NCE projects in the composite state, the erstwhile state of AP established NEDCAP and also encouraged the establishment of NCE power projects by private enterprise. The facilitation and incentives to these power projects included sale of electricity to third parties, wheeling by the state utilities, banking of energy and purchase of

electricity by the APSEB / APTRANSCO. The government of composite state of AP, keeping in view of the policy formulated and the guidelines issued by the central government for promotion and fiscal incentives, formulated incentives schemes for nonconventional sources of energy including bagasse based cogeneration plants and improved upon the same from time to time.”

at page No.4

“Section 86 (1) (e) of Act, 2003

Functions of State Commission

(1) The State Commission shall discharge the following functions namely:

(e) Promote cogeneration 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 license.”

b. Petitioner’s averments / request in the instant petition to the Commission is,

"The state Commission should provide us suitable measures for connectivity with the grid, by directing the DISCOM to enter into PPA with Rs.5.00 per unit."

As per APERC tariff order dated 9<sup>th</sup> May 2014, clause 113, para III, page no.87, wheeling charges were exempted for mini hydro power projects. But, after bifurcation of state, as per TSERC order dated 27<sup>th</sup> March 2015, para 48 and 49, page No.50, wheeling charges were imposed on mini hydro power projects. But, the Hon'ble High Court for the state of Telangana and Andhra Pradesh has stayed the above tariff order vide W. P. M. P. No. 3648 of 2015 in W. P. No. 2716 of 2015.

c. The petitioner further submit that the Madhucon Industries in their petition mentioned in Page No.5 the tariff policy.

*“Tariff policy notified by Central Government under section 3 of the Electricity Act, 2003 reflects the mandate under section 86 (1)*

(e) in Para 6.4 (1), which is extracted here under:

Pursuant to the provisions of section 86 (1) (e) of the Act, the Appropriate Commission shall fix a minimum percentage of the total consumption of electricity in the area of distribution licensee for purchase of energy from renewable energy sources taking into account availability of such resources and its impact on retail tariffs. Cost of purchase of renewable energy shall take into account while determining tariff by State Electricity Regulatory Commissions. Long term growth trajectory of Renewable Purchase Obligation (RPOs) will be prescribed by the Ministry of Power in consultation with MNRE.”

at Page No.6/7 it is also mentioned that;

“m) that in terms of section 86 (1) (e), the Commission is required to promote generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person.

d. In page No.12 of respondent's counter affidavit in O.P.No.9 of 2021 (Madhucon Sugar and Power Industries) it is mentioned that;

“Section 86 (Functions of State Commission) "(a), (b), (c) & (e) are important".

(1) 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 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;

(c) facilitate intra-State transmission and wheeling of electricity;

... ..

(e) promote cogeneration 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;

That as submitted above, "Section 61 of the Act, 2003 confers powers to the Commission to specify terms and conditions for the determination of tariff, guided by several factors. However, the condition precedent under section 62(1) and also sections 86(1)(a) and 86(1)(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 respondent has no subsisting agreement with the petitioner as on date, the prayer of the petitioner seeking determination of the project specific tariff is not justified."

- e. It is further stated that several factors averred in the above paragraph are:
  - (i) Waiving of wheeling charges, imposing of wheeling charges is against encouraging small hydro power projects, ours is a tiny project, 900 kW, (less than 1.0 MW only.)
- f. Hence, the petitioner requested the Commission to direct the TSSPDCL to enter into PPA at the rate of Rs.5/- per unit and help the unit from becoming sick and avoid closure of the project. It didn't had any revenue for the past more than 7 years.
- g. Its contention is that as on date it is having a subsisting agreement (PPA)

with respondent / DISCOM (TSSPDCL) for LTOA for captive generation, but due to imposing of wheeling charges on such a tiny MHES by the Commission, which is against the spirit of developing non-conventional energy sources, the generating unit has become unviable, hence it is interested in supplying power to government of Telangana by entering into long term PPA with TSSPDCL at Rs.5.0 per unit. It is not interested in continuing the LTOA. It intends to sell the power to the DISCOM only.

- h. The respondent in O.P.No. 9 of 2021 averred in page Nos. 14 and 23 (c) “(3) i) that after bifurcation of the state, the Commission vide Regulation No.1 of 2014 adopted all regulations, decisions, directions, orders issued by the erstwhile APERC as in existence as on the date of constitution of the Commission. As per APERC tariff order dt. 9<sup>th</sup> May 2014, page no. 87, Section 113, clause III, (Wheeling charges are exempted), the extract of the regulation was inline with government policy, there shall be no wheeling charges for Non-conventional Energy generators using Wind, Solar and Mini Hydel sources.”

But, as per TSERC tariff order dt. 27<sup>th</sup> March 2015, wheeling charges are imposed, mentioned at para 48 & 49, page no. 50 for mini hydro power projects.

- i. Further in O.P.No.9 of 2021 the respondent therein page No.14, averred, “(I) that this commission is empowered to pass appropriate directions to the DISCOMs in case of non-fulfillment of Renewable Power Purchase Obligation and DISCOMs cannot be thrusted by any party to enter into long term PPA at a tariff as demanded by the developers.”
- j. With regard to the tariff, it undertakes that it shall abide by and accept any decision made by the Commission. Further in O. P. No. 9 of 2021 the respondent therein page No.15, averred as

*“n) In light of the above, the respondent (TSNPDCL) prays this commission to grant liberty to the DISCOM to take a decision on entering into PPA with the petitioner, duly taking into consideration the power requirement of the licensee and non-solar RPPO % to be met.”*

The petitioner humbly submit that the above prayer clearly establishes that the jurisdiction and authority of Commission with regard to directing the DISCOMs to enter into PPA with the non-conventional power generators.

- k. The averment / contention is that the DISCOM has not mentioned anywhere in the entire affidavit that as the National Tariff Policy stipulates that the DISCOMs are obligated to procure power from all RE power projects (except MSW/RDF based projects) through competitive bidding, as replied by TSSPDCL on 22.09.2020 to petitioner's request dated 30.05.2020. Nowhere, in the entire Madhucon Industries O.P.No.9 of 2021 the respondent DISCOM's affidavit has stated that "as the National Tariff Policy stipulates that the DISCOMs are obligated to procure power from all RE power projects (except MSW / RDF based projects) through competitive bidding, process only.

Hence, the petitioner stated that the Commission can direct the DISCOM to enter into long term PPA with it.

- l. Further in O.P.No.9 of 2021 the respondent therein at page Nos. 18, 19 and 20, averred as (Record of proceeding)

"5. The Commission has heard the counsel for the petitioner and the representative of the respondent. It has perused the material available on record. The submission on different dates are recorded below;

Record of Proceeding dated 29.07.2021, page no. 20, para 2

The counsel for petitioner adverted to the contentions of the respondent that the tariff cannot be determined unless there is an agreement between them and rebutted it by explaining the provisions of sections 62, 86(1)(a) and (b) of the Act 2003. It is his case that variable cost is being determined by the Commission, this petition is limited to determination of fixed cost only. He also stated that the petitioner is a cogeneration project and the respondents (TSNPDCL) have sent a letter stating that they are willing to enter into an agreement provided the entire capacity (24.20 MW) is sold to them, which is uncalled for as it is a captive cogeneration plant."

(The petitioner, Madhucon Industries, is ready to sell 18.50 MW to 22.20 MW only out of 24.20 MW generated)

- m. Further in O.P.No.9 of 2021 the respondent therein at page No.20, averred on 29.07.2021

“The representative of the respondent stated that the petitioner had been supplying power to the DISCOMs all these years through the short term procurement process and never came forward to sign the PPA. Had the petitioner approached the DISCOM at the relevant time, the petitioner's case would have been considered. He opposed the contention that the DISCOMs are not required to enter into an agreement before the tariff is determined by the Commission by explaining the provisions of the Act 2003. It is his case that the DISCOM is willing to enter into an agreement and procure the power provided the petitioner is agreeable to sell the entire capacity (24.2 MW) of the unit.”

Based on the above, the petitioner requested the DISCOM TSSPDCL to enter into PPA for the entire capacity of 900 kW (less than 1.0 MW) on 30.05.2020, but TSSPDCL on 22.09.2020 declined our request stating that as the National Tariff Policy stipulates that the DISCOMs are obligated to procure power from all RE power projects (except MSW / RDF based projects) through competitive bidding,

- n. But, the DISCOM TSNPDCL has sent a letter to Madhucon Sugar and Power Industries willing to enter into an agreement for procuring the entire power of 24.20 MW dated 29.07.2021, without the process of competitive bidding. In fact, as per national tariff policy for less than 1.0 MW, bidding process is not required. Therefore, the petitioner requests the commission to direct TSSPDCL to enter into PPA with Rs.5.00/unit for such a tiny plant, otherwise we shall become bankrupt and the result may end our life.
- o. The petitioner further stated that the Commission in O.P.No.9 of 2021 at page No.25 (before Issue no.2) last para, observed that;
- “However, the commission doesn't find it prudent to delve into the petitioner's submission that the respondent had not fulfilled RPPO, as neither material evidence has been placed by the

petitioner nor the same is the subject matter of the present petition."

The petitioner stated that renewable power purchase obligation RPPO fulfilment is the subject matter of our petition, it has mentioned in our O.P.RPPO fulfilment should be submitted by respondents not by petitioner, petitioner doesn't have the access nor the competency to submit the material for the same. It is the duty of DISCOMs to submit fulfilment of RPPO to the Commission.t

p. The petitioner further stated that here is no dispute with regard to capacity, it is offering the entire capacity of 900 kW, less than 1.0 MW to enter into an agreement to sell to TSSPDCL.

q. The petitioner has relied on the case laws:  
(State Commission has the Jurisdiction)

(i) Before the Appellate Tribunal for Electricity; Appeal No.310 of 2013, dated 20.11.2014

"17. Thus, these functions together with the other functions of the State Commission as laid down in section 86 of the Act make it clear that so far as determination of tariff is concerned a power purchase agreement if to be concluded by and between a developer and a distribution licensee cannot be the final say in the matter. A power purchase agreement is always subordinate to the provisions of the Act which empowers the State Commission to determine tariff, to promote generation from renewable sources of energy, to promote competition, efficiency and economy and to ensure transparency while exercising its functions. Section 61 lays down the broad philosophy in the matter of determination of tariff.

20. No doubt, the provisions of S. 86 (1) (b) permits execution of power purchase agreement between the licensee and supply with the generating companies, but the right is not absolute in as much as the Commission has the statutory duty and power to regulate electricity purchase and procurement process of distribution

licensees including the price at which procurement is proposed through agreements.”

It further observed at Page no.21

“22) It is a fact. If the PPA does not take cognizance of components of tariff including capital cost and if intervening circumstances do happen, the Commission has authority to reopen PPA.”

The petitioner submitted that intervening circumstances are, imposing wheeling charges after bifurcation of state on 27.03.2015 against APERC tariff order dated 09.05.2014.

ii. It was also observed in Appeal No.247 of 2013 and I.A.No.333 of 2013 at page No.39

“23. Summary of Tribunal findings:

(i) The findings of the Tribunal in the various cases clearly establish that the State Commission has a duty to encourage development of renewable sources of energy. The State Commission has powers to modify a concluded PPA between the distribution licensee and the generating company and revise the tariff keeping in view the circumstances of the case which are uncontrollable and revision of tariff is necessary to meet the objective of the Act and where the tariff of a renewable project agreed to between the parties is unviable resulting in closure of the power plant.”

In the present case there is no revenue even after more than 7 years for the petitioner.

iii. It is also observed in Appeal Nos. 90 to 93, 108 to 111 of 2006 at page No.41

“A distinction, however, must be drawn in respect of a case, where the contract is re-opened for the purpose of encouraging and promoting renewable sources of energy projects pursuant to the mandate of section 86 (1) (e) of the Act, which requires the State Commission to promote cogeneration and generation of electricity from renewable sources of energy.”

35. The preamble of the Act also recognizes the importance of promotion of efficient and environmentally benign policies. It is not in dispute that non-conventional sources of energy are environmentally benign and do not cause environmental degradation. Even the tariff regulations u/s 61 are to be framed in such a manner that generation of electricity from renewable sources of energy receives a boost. Para 5.12 of the National Electricity Policy pertaining to nonconventional sources of energy provides that adequate promotional measures will have to be taken for development of technologies and a sustained growth of the sources. Therefore, it is the bounden duty of the Commission to incentivise the generation of energy through renewable sources of energy. PPAs can be reopened only for the purpose of giving thrust to nonconventional energy projects and not for curtailing the incentives.”

iv. The Hon'ble Apex Court in Civil Appeal Nos.2926, 5940 to 5991 of 2006, 4106 of 2006, observed that;

“51. The basic policy of both the Central as well as State Government was to encourage private sector participation in generation, transmission and distribution of electricity on the one hand and to further the objective of distancing the regulatory responsibilities of the Regulatory Commission from the Government and of harmonizing and rationalizing the provisions of the existing laws relating to electricity in India. The object and reasons of Electricity Act, 2003 as well as the Reform Act, 1998 are definite indicators of such legislative intent. The basic objects of these enactments were that the said Regulatory Commission may permit open access in distribution of energy as well as to decentralize management of power distribution through different bodies

The policy decisions of these constituents are to be in conformity with the object of the Act.

Thus, it is necessary that the Regulatory Commission, in view of

the object, take practical decisions which would help in ensuring existence of these units rather than their extinguishment as alleged.”

- r. In view of the above facts and circumstances and as per the judgments of the Hon'ble Apex Court and Hon'ble Appellate Tribunal, considering the same the Commission may be pleased to overrule the office objection of the maintainability of the petition directing for interim PPA and tariff and consequently number the I. A. (SR) No.9 of 2021 in O.P.(SR) No.8 of 2021 and issue notice to the respondents and pass for such other orders in the interest of justice as deemed fit.

6. The Commission has heard the counsel for the petitioner and perused the material available on record. The submissions made on the relevant days of hearing are briefly extracted below:

Record of proceedings dated 06.09.2021:

“... .. Ms. P. Lakshmi, advocate for petitioner has appeared through video conference and stated that she has to file some citations in respect of the matter. She also stated that due to demise of her uncle, she is not ready to argue the matter today and therefore, the matter may be adjourned to some other day. Accordingly, the matter is adjourned.”

Record of proceedings dated 25.10.2022:

“Ms. P. Lakshmi, advocate for petitioner sought to appear through video conference, however, while the Commission was proceeding with the matter, she could not establish her link to the Commission. The Commission having considered the situation agreed to adjourn the hearing on the submission of the office.”

Record of proceedings dated 15.11.2021:

“Ms. P.Lakshmi, advocate for petitioner sought to appear through video conference, however, while the Commission was proceeding with the matter, she could not establish her link to the Commission. However, the Commission considering the situation, agreed to adjourn the hearing on the submission of the office.”

Record of proceedings dated 20.12.2021:

“... .. The counsel for petitioner stated that the matter involves directions to the

respondents to enter into PPA and determine the tariff as prayed for. Though the project was established in 2015, it was undertaking third party sale by the petitioner was becoming unviable, as such it has approached the respondents to procure power by entering into PPA at rate of Rs.5/- per unit. However, the respondents refused to procure power from the project, stating that the policy of the Government of India requires procurement through competitive bidding. The refusal was given in September, 2020 by the licensee. She has stated and relied on the provisions mentioned in the tariff policy. She also stated that the project is losing generation as there is availability of water at present, but there is no agreement for supply. She sought to rely on judgments filed on behalf of the petitioner. At this stage, the Commission sought to know as to how it can direct payment of tariff as also entering into an agreement.

The counsel for petitioner sought time to make detailed submission on the query along with the judgments filed by her earlier. Accordingly, the matter is adjourned.”

Record of proceedings dated 03.01.2022:

“... .. The representative of the petitioner has stated that the counsel on record is not well and is unable to attend the hearing. The Commission sought to know whether judgments proposed to be filed have been filed. The representative replied in the affirmative. In view of the request of the representative, the matter is adjourned.”

Record of proceedings dated 17.01.2022:

“... .. The counsel for petitioner has stated that she needs to file some more judgments in the matter and therefore sought further time of one week. The Commission, while pointing out that the matter has to be proceeded with, however, granted time as requested by the counsel for petitioner.”

Record of proceedings dated 31.01.2022:

“... .. The counsel for petitioner has stated that the petitioner is filed for directions to purchase power from the petitioner’s hydel project by entering into PPA. It is her case that the petitioner has established the project of small capacity and earlier undertook long term open access. However, at present it intends to cancel the LTOA and undertake supply to the licensee only at a tariff of Rs.5/- per unit. The petitioner would be able to generate the power as and only when water is available, as at present the flow of water is available.

She submitted that it being a small hydro project is a renewable source and should be encouraged by the Commission. In fact, the sister licensee of the respondent has made submission in another matter in O.P.No.9 of 2021 before this Commission that it is ready to procure power from a power plant of the capacity of 24 MW. Compared to the said project, the petitioner's is very small project. Inasmuch as, the Electricity Act, 2003 and the policy seek to encourage renewable power purchase by the licensees. Having said that the petitioner is seeking similar consideration for ensuring power sale to the licensee being a renewable source.

The counsel for petitioner strenuously contended that in the light of the judgments of the Hon'ble ATE and the Hon'ble Supreme Court, the Commission may consider to direct the licensee to procure power from the petitioner's project. Reliance has been placed on the judgment of the Hon'ble ATE in Appeal No.4 of 2006 and batch, Appeal No.247 of 2013 and the Hon'ble Supreme Court judgment in Civil Appeal No.2926 of 2006 to support the case that renewable sources should be encouraged.

The counsel for petitioner also relied on other provisions of the Electricity Act, 2003 and extensively submitted that the petitioner should be allowed to sell energy to the licensee by directing them to enter into PPA. It is also stated that the petitioner has invested huge amount for establishing the unit as well as another unit elsewhere. The investment so made is relating to public finance and non-functioning of the generating unit, would result in petitioner becoming an NPA. All these years, even though, there was LTOA availability, yet did not make money out of it.

The counsel for petitioner prayed for consideration of the project and its survival. Having heard the submissions, the matter is reserved for orders."

7. The issue that arises for consideration in this petition is that -  
'Whether the petition is required to be admitted or refused?'
8. The petitioner in this case is a small hydro project of the capacity of 0.90 MW located at Vemuleru vagu (run off river) on existing Anicut at Mallaiappaiah Bandam near Kalvapally village, Garidepalli mandal, Suryapet district in the state of Telangana.
9. The project was originally conceived to serve other consumers through open

access and for that purpose it has availed long term open access. At present, due to several factors it is not able to undertake the generation of power and serve other consumers. Therefore, by the present petition it is seeking directions to the licensee to enter into PPA by determining tariff under the provisions of Act, 2003.

10. While submitting the arguments on the admissibility of the petition the counsel for the petitioner had relied on the orders of Hon'ble ATE as also the Hon'ble Supreme Court. Reference has been made to Civil Appeal No.2926/2006 decided on 08.07.2010 by Hon'ble Supreme Court and Appeal No.31/2013 decided on 20.11.2014 by Hon'ble ATE.

11. The counsel for petitioner extensively quoted from the Tariff Policy 2016 and the growth trajectory notified by the Ministry of Power apart from relying on the order of the Commission in O. P. No. 9 of 2021.

12. Upon thorough examination of the submissions made by the counsel for the petitioner and as reliance being placed on the tariff order for 2018-19 with regard to retail supply, the Commission is of the view that matter is required to be considered in detail. Also, it is required to be ascertained as to why a renewable source, more particularly, small hydro source generation has not been contracted by the licensee. Moreover, the licensee to comply with the RPPO trajectory decided by the Commission which is also a contention in the present petition.

13. Accordingly, the Commission deems it appropriate to admit the petition along with interlocutory application filed by the petitioner. Office to number the original petition and the interlocutory application and issue notice to the parties. The hearing may be scheduled on 22.08.2022.

**This order is corrected and signed on this the 22<sup>nd</sup> day of June, 2022.**

Sd/-	Sd/-	Sd/-
(BANDARU KRISHNAIAH)	(M. D. MANOHAR RAJU)	(T. SRIRANGA RAO)
MEMBER	MEMBER	CHAIRMAN

**//CERTIFIED COPY//**

