



THE TELANAGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004

O. P. No. 4 of 2015
And
R. P. (SR) No. 56 of 2015
In
O. P. No. 4 of 2015
(interim order)

Dated: 18.09.2015

Present

Sri. Ismail Ali Khan, Chairman
Sri. H. Srinivasulu, Member
Sri. L. Manohar Reddy, Member

Between

M/s. Gayatri Sugars Ltd.
B-2, 2nd Floor, 6-3-1090,
TSR Towers, Raj Bhavan Road,
Somajiguda, Hyderabad – 500 082
Telangana.

.... Petitioner and
Respondent in R. P. (SR) No. 56 of 2015

AND

The Government of Telangana
(Originally filed against Govt. of AP)
Department of Power, Secretariat,
Hyderabad.

The Northern Power Distribution Company of Telangana State Limited
(formerly AP Northern Power Distribution Company Ltd.)
H.No. 2-5-31/2, Corporate Office,
Vidyut Bhavan, Nakkalgutta, Warangal – 506001

.... Respondent and
Petitioner in R. P. (SR) No. 56 of 2015

This petition came up for hearing on 27.01.2015, 29.04.2015, 22.06.2015, 16.07.2015, 11.08.2015 and 25.08.2015 in the presence of Sri. S. Rambabu, Advocate, Counsel for the Petitioner and Sri. P. Shiva Rao, Advocate on 27.01.2015 and Sri Y. Rama Rao, Advocate on rest of the days of hearing for the Respondents and having stood over for consideration to this day, the Commission passed the following:

ORDER

This Original Petition was remanded by the Appellate Tribunal for Electricity. That is how the matter is listed before us for disposal.

2. The Petitioner filed this original petition before the erstwhile AP Electricity Regulatory Commission claiming the following relief:

- i) *To implement the guidelines issued by the Commission to determine the tariff payable to the Petitioner;*
- ii) *To determine the tariff payable to the Petitioner for the power supplied from the date of the commercial operation to till date.*
- iii) *To direct the Respondents to implement the tariff order passed by the Commission vide order dated 31.3.2009 in O.P.No.5 of 2009.*
- iv) *To pass such other and further order(s) as the Commission may deem fit just and proper in the interest of justice.*

3. The AP Electricity Regulatory Commission (hereinafter referred to as 'APERC') heard the matter and dismissed the original petition vide order dt.31.8.2012. The Petitioner being an aggrieved party, filed an Appeal No.310/2013 before the Appellate Tribunal for Electricity, New Delhi (hereinafter referred to as 'ATE'). The appeal was contested by the licensee, ultimately, the Hon'ble ATE, vide order dt.20.11.2014 remanded the matter by recording certain observations and set aside the orders passed by the erstwhile APERC.

Brief facts as narrated by the Petitioner are as follows:

4. The Petitioner, M/s.Gayatri Sugars Ltd., Nizamsagar's Unit is a company incorporated under The Companies Act, 1956, having its registered office at B-2, 2nd floor, 6-3-1090, T.S.R. Towers, Raj Bhavan Road, Somajiguda, Hyderabad. It has set up a sugar plant along with a co-generation power plant of 16.5 MW. The Petitioner entered into a power purchase agreement dt.12.5.2006 (hereinafter referred to as 'PPA) with the distribution licensee, TSNPDCL (formerly known as AP Northern Power Distribution Company Limited) i.e., 2nd Respondent. The erstwhile APERC had prescribed the method for fixing the tariff and the 2nd Respondent fixed the tariff based on the two-part tariff method as prescribed. The 2nd Respondent determined the fixed cost for 10 years from the date of commercial operation i.e., from 16.5.2007 to

16.5.2017 and the variable costs for five years i.e., up to the year 2009-2010 as per the PPA. The unit rate offered by the 2nd Respondent was lower than the generic tariff determined by the erstwhile APERC. Moreover, the 2nd Respondent also imposed a ceiling limit for the tariff i.e., Rs.2.63 per KWh. The 2nd Respondent had not honoured the generic tariff orders issued by the erstwhile APERC and followed the rates of power stipulated in the PPA. The Petitioner did not sell the power to any 3rd party. The Petitioner struggled to supply the power at the rates prescribed in the PPA. Hence, the Petitioner approached the 2nd Respondent requesting for revision of tariff as per erstwhile APERC generic tariff orders and requested the 2nd Respondent to treat the Petitioner on par with other competitors in the market, but the Petitioner received no response from the 2nd Respondent. The Petitioner agreed to the rate of Rs.2.63ps per unit reluctantly under compulsion to comply with the other contractual obligations.

5. The Petitioner supplied about 4,21,01,000 units of power and received a sum of Rs. 11,07,25,630/- whereas as per the erstwhile APERC generic tariff orders, the Petitioner was entitled to a sum of Rs.12,89,59,030/-. Therefore, the balance amount payable to the Petitioner by the 2nd Respondent was a sum of Rs.1,83,33,400/- with interest @ 18% p.a. from the respective due dates. The Petitioner claimed that tariff that was offered to several companies such as Empee Sugars, NDSL etc., should be given to it also. The tariff was to be fixed by the 2nd Respondent based on Tariff Orders issued by the erstwhile APERC which should be equal to all the cogeneration plants in its area of operation (variable costs shall be same to all the plants). But the 2nd Respondent had imposed on the Petitioner a ceiling of Rs.2.63ps per unit without considering the fixed and variable costs as per the procedure prescribed by the erstwhile APERC. As per the PPA, the tariff has to be revised from the year 2009-2010, and thereby, the Petitioner is entitled for a revised tariff from the year 2009-2010. The objective of encouraging the Renewable Energy shall be defeated if scope for a negotiated tariff is made available by prescribing an overall ceiling concept. The imposition of overall ceiling on tariff payable to the Petitioner is contrary to the object of the Electricity Act, 2003 (hereinafter referred to as 'Act, 2003') and also contrary to law of the land. The Petitioner's cash flow was seriously affected due to imposition of ceiling on tariff by the 2nd Respondent. The Petitioner is incurring losses every year and the same may lead to closure of the plant.

6. The Petitioner submitted a representation vide letter dt.1.4.2011 to the 2nd Respondent requesting to reconsider the tariff as well as reimburse the due amounts. The 2nd Respondent failed to consider the said application and rejected the application without assigning any reasons.

7. The Petitioner had filed a petition before the erstwhile APERC against the rejection of its application by the 2nd Respondent. The erstwhile APERC had dismissed O. P. No. 58/2011 vide orders dt.31.8.2012, holding that the Petitioner had signed the PPA with its eyes wide open and hence cannot claim the relief prayed in the petition. The Petitioner, aggrieved by the said orders, filed a Writ Petition No.30547/2012 before the Hon'ble High Court of Andhra Pradesh. The Hon'ble High Court disposed of the Writ Petition at the admission stage directing the Petitioner to approach the Hon'ble ATE as there is an alternative remedy available under the Act, 2003. Thereafter, the Petitioner filed Appeal No.310 / 2013. The same was allowed with certain observations by setting aside the orders passed by the erstwhile APERC.

8. After promulgation of The AP States Re-organization Act of 2014, the Telangana State Electricity Regulatory Commission came to be constituted in the month of November, 2014. As the remanded Original Petition by the Hon'ble ATE pertained to the territory of Telangana, this O.P. was transmitted for disposal before this Commission. That is how, this Commission is seized of the matter.

9. Heard the learned counsel for the Petitioner Sri S. Rambabu, Advocate and learned counsel for the Respondents Sri Y. Rama Rao, Advocate.

10. The counsel for the Petitioner has filed a memo by duly enclosing the order of the Hon'ble ATE and the calculation memo. The Petitioner and the Respondents were given adequate opportunity to file additional material/counter affidavit. In fact, the 2nd Respondent has filed counter affidavit and additional counter affidavit.

11. The Learned counsel appearing on behalf of the Petitioner contended that the 2nd Respondent did not treat all the similarly circumstanced power producers on equal footing, resulting in violation of Article 14 of the Constitution of India. The 2nd Respondent ought to have implemented the generic tariff orders issued from time to time by the erstwhile APERC. Denying the same to the Petitioner amounts to

discrimination. Further, with meager amount of tariff, the Petitioner struggled to generate and supply the power to the 2nd Respondent resulting in huge losses. The Hon'ble ATE has remanded the matter and the Commission shall have to allow the generic tariff rates fixed from time to time from the year 2009 onwards. The Hon'ble ATE has passed the orders in Appeal No.310/2013 by following the orders covered in Appeal No.247 / 2013 between *M/s. SLT POWER AND INFRASTRUCTURE PROJECTS PVT. LTD., vs. APERC*. As per the remand order of the Hon'ble ATE, the Petitioner is entitled to variable cost and fixed cost. The legal issue involved is one of modifying the PPA to give impetus to the Companies generating electricity using the renewable sources, which is the intent of the Act, 2003.

12. Further, learned counsel for the Petitioner contended that the Petitioner is entitled to the fixed cost as per the remand order of Hon'ble ATE. The remand order is binding on this Commission in as much as the legal issue has already been decided by the Hon'ble ATE. Only, consequential action left is the application of the factual generic tariff orders passed by the erstwhile APERC from the year 2009 onwards with effect from the date of filing of the O.P. before the erstwhile APERC.

13. On the contrary, the counsel appearing on behalf of the 2nd Respondent vehemently contended that the Petitioner company negotiated the tariff within the ceiling limit and the same was approved by the erstwhile APERC. Detailed discussions were held between the Petitioner company and the 2nd Respondent which led to determination of a negotiated levelised tariff for a period of 20 years by considering the prevailing market rates and other cost factors. The draft PPA was submitted to the erstwhile APERC for approval and the same was approved vide letter dt. 6.5.2006. Thereafter, the PPA was concluded on 12.5.2006. The Petitioner, having signed the PPA and after considerable length of time, having received payments since the COD dt.16.5.2007 of the plant and from the silence on the part of the Petitioner for such a long period, one can infer that there is no infirmity in the PPA. The transaction between the Petitioner and the 2nd Respondent is governed by the PPA. The request for revision of tariff could not be considered in view of the provisions in Clause 2.2 of the PPA. The erstwhile APERC rightly rejected the plea of the Petitioner that negotiated tariff as per the PPA cannot be modified by the Commission.

14. The Learned counsel for the 2nd Respondent further contended that they are fostered by the decision of the Hon'ble Supreme Court of India rendered in *Civil Appeal No.5612 / 2012 between BANGALORE ELECTRICITY SUPPLY CO. LTD. Vs. KONARK POWER PROJECTS LTD. AND ANOTHER* wherein the Hon'ble Supreme Court categorically held that once the PPA was executed between the parties, the powers U/Ss.61 and 62 of the Act, 2003 cannot be exercised for redetermination of tariff. In fact, the said judgment has been followed by Punjab State Electricity Regulatory Commission in Petition No.58/2014 dt.25.6.2015 filed by Punjab Biomass Private Limited against Punjab State Power Corporation Limited.

15. Furthermore, learned counsel for the 2nd Respondent submitted that the parameters considered by the Petitioner in tariff calculation sheet in arriving the tariff for the Petitioner's power plant is much higher than the rate agreed at Rs. 2.63 per unit for the entire period of twenty years from declaring the Petitioner power plant as commercially operational. The Hon'ble ATE has remanded the case for redetermination of variable tariff for the appellant's power plant. It is a known fact that the negotiated PPA was concluded based on the stipulations in Renewable Power Purchase Obligation Order No.9/2005 dt.27.9.2005 issued by the erstwhile APERC. Further, the negotiated PPA was concluded at mutually agreed terms and tariff had the consent from the erstwhile APERC vide Letter No.E.953/DD-PPP/2006 dt.4.5.2006. Only after according the approval by the erstwhile APERC, the PPA was concluded on 12.5.2006. Therefore, there is no fault on the part of the 2nd Respondent in entering into a PPA.

16. The Learned counsel for the 2nd Respondent further contended that the PPA cannot be re-opened to revise the tariff as per the provisions contained in Article 2.2. of the PPA r/w Schedule 1A thereof. Further, there is no provision for any escalation, revision towards downward or upward tariff than the agreed in the PPA. Conversely, the tariff for the energy supplied/to be supplied is frozen at Rs.2.63 per unit till the duration of PPA. If at all if this Commission interferes in the petition, it will be opening a Pandora's box that each and every PPA shall be subject matter for amending or varying the contractual obligations. Therefore, the petition is liable to be dismissed.

17. In reply, learned counsel for the Petitioner submitted that the contentions of the 2nd Respondent in the counter and the additional counter are more or less like the

grounds filed in the Appeal, which is not permissible under law. The 2nd Respondent has not carried the order of the Hon'ble ATE in Appeal before the Hon'ble Supreme Court under section 125 of the Act, 2003 and cannot urge before this Commission to decide the matter on the basis of Judgment of the Hon'ble Supreme Court rendered in *BANGALORE ELECTRICITY SUPPLY CO. LTD. Vs. KONARK POWER PROJECTS LTD. AND ANR.* Thus, the order of the Hon'ble ATE in Appeal No.310/2013 has become final and cannot be re-opened. The petition is liable to be allowed.

18. Heard the learned counsel for the Petitioner and the learned counsel for the 2nd Respondent. Perused the material on record.

19. Admittedly, the Petitioner filed O.P.58/2011 before the erstwhile APERC. The same was dismissed by the erstwhile APERC vide order dt.31.8.2012 which led to filing of Appeal No.310/2013 before the Hon'ble ATE. The appeal was contested by the 2nd Respondent. Ultimately, the Hon'ble ATE vide order dt.20.11.2014 allowed the appeal and directed the Commission for considering the revision of tariff in terms of the observations made in the order.

20. It would be appropriate for us to refer to the observations made by the Hon'ble ATE, which reads as follows:

“13. The only issue for determination of the present Appeal is a legal issue. The relevant question is whether the State Commission has the power to modify a concluded long term PPA to give impetus to companies generating electricity using renewable resources. This issue is squarely covered in Appeal No.247 of 2013. However, the Respondent submits that the same can be revised prospectively and not retrospectively.

14. In Appeal No.247 of 2013, the Appellant Company therein operated its plant only for January 2008 and February 2008 i.e., for two months. It was in those circumstances this Tribunal had held in the said Judgment that the tariff as determined by the State Commission from time to time could only be prospectively applicable.

15. As pointed out by the learned Counsel for the Appellant in the present Appeal, the Appellant has admittedly been operating the plant since the date of Commissioning in 2007 and has been operating at a loss. This loss is further

continued by the fact that the Appellant is not permitted to sell electricity to any other party except the distribution company in A.P. Therefore, the Appellant was constrained to sell the electricity only to APTRANSCO and also only at the rates stipulated in the PPA.

16. *Hence, the issue of only prospective application of the rates determined by the State Commission would not apply to the present case. Therefore, we hold that the Appellant would be entitled to be paid as per the rates determined by the State Commission pursuant to the various generic tariff Orders dated 31.3.2009 and 16.5.2014 with effect from the date of filing of the Petition before the State Commission which resulted in passing of the Impugned Order.*

17. *TO SUM UP The Tribunal's finding allowing of the general tariff as determined by the State Commission in Appeal No.247 of 2013 will apply to the present case. However, the revised tariff has to be allowed to the Appellant with effect from the date of filing the Petition before the State Commission which resulted in passing of the Impugned Order.*

18. *In view of the above findings, we set aside the impugned Order and remand the matter to the State Commission for considering the revision of tariff in terms of the observation made in the above Judgment."*

21. We have perused the order of the Hon'ble ATE in Appeal No.247/2013 wherein the Hon'ble ATE held that under Sec.61 (h) and 86 (1) (e) of the Act, 2003, the State Commission has to promote the generation of electricity from the renewable sources of energy. Further, the Hon'ble ATE observed that the 2nd Respondent had used its dominant position to enter into a PPA with the Petitioner at a tariff which was less than the generic tariff determined by the State Commission. In Paragraph-13 of the order of the Hon'ble ATE in the case of the Petitioner, the Hon'ble ATE has applied the decision in Appeal No.247/2013 to the case of the Petitioner and eventually the Hon'ble ATE has held that the Petitioner would be entitled to be paid as per the rates determined by the State Commission pursuant to the generic tariff orders dt.31.3.2009 and 16.5.2014 with effect from the date of filing of the petition before the Commission.

22. The 2nd Respondent has not carried the matter by way of appeal to the Hon'ble Supreme Court under section 125 of the Act, 2003. Thus, the order of remand has become final and as such, binding on this Commission. The Hon'ble ATE has held to

revise the generic tariff with effect from the date of filing of the petition. We are unable to appreciate the contention of the 2nd Respondent that the generic tariff orders cannot be allowed in the case of the Petitioner in the light of the Judgment of the Hon'ble Supreme Court rendered in Civil Appeal No.5612/2012 dt.28.4.2015. The Hon'ble ATE has allowed Appeal No.310/2013 on 20.11.2014. The Hon'ble ATE order has become final and the Judgment of the Hon'ble Supreme Court referred to herein above, cannot be made applicable to the case of the Petitioner.

23. We have carefully perused the Judgment of the Hon'ble Supreme Court rendered in Civil Appeal No.5612/2012 between *BANGALORE ELECTRICITY SUPPLY CO. LTD. Vs. KONARK POWER PROJECTS LTD. AND ANOTHER*. The 2nd Respondent has strenuously relied on the Judgment and the Clauses 5.2, 5.3 and 5.4 of the 2004 Regulations framed by the Karnataka State Commission. We are afraid that we cannot apply the Karnataka Commission regulations to the case of the Petitioner. We are bound by our own regulations framed by us. Further, the Punjab Electricity Regulatory Commission has applied the ratio of the judgment of the Hon'ble Supreme Court between *BANGALORE ELECTRICITY SUPPLY CO. LTD. Vs. KONARK POWER PROJECTS LTD. AND ANOTHER* on 25.6.2015 which was decided after passing of the Hon'ble ATE order. Having regard to the peculiar facts and circumstances obtaining in this case on hand, the order of the Hon'ble ATE has become final and we cannot be persuaded to apply the judgment of the Hon'ble Supreme Court rendered in Civil Appeal No.5612 / 2012 between *BANGALORE ELECTRICITY SUPPLY CO. LTD. Vs. KONARK POWER PROJECTS LTD. AND ANOTHER* to the case of the Petitioner. We are bound by the order of the Hon'ble ATE.

24. We have carefully perused the Original Petition filed before this Commission as well as the grounds of appeal referred to in the order of the Hon'ble ATE. The Commission follows two-part tariff system comprising of fixed cost and variable cost. There is no specific prayer made in respect of fixed cost before the Hon'ble ATE. The Petitioner contended for the enhancement of variable cost but not for the enhancement of the fixed cost before the Hon'ble ATE. The arguments and findings of the Hon'ble ATE revolve around the variable cost and there was no discussion about the fixed cost in the order. The fixed cost (owing to depreciations) declines over a period of time but

the variable cost changes from time to time either upward or downward. We have considered the serious implications of ignoring or disregarding the binding and concluded PPA entered into by the Petitioner with the 2nd Respondent. The Hon'ble ATE at para -13 of its order observed that the Commission has the power to "modify" a concluded long term PPA to give impetus to companies generating electricity using the renewable energy. The term used by the Hon'ble ATE is to "modify" the PPA and the Hon'ble ATE did not direct the Commission either to disregard or ignore the PPA totally. The PPA is a binding commercial contract between the 2nd Respondent and the Petitioner. The 'consideration' in a contract is an important element and without which an agreement cannot be called a valid contract which during the course of hearings before the Commission, the learned counsel for the 2nd Respondent submitted that the PPA entered into by the Petitioner is binding and its terms and conditions cannot be altered unilaterally. The Petitioner would have relied upon the PPA, had the power tariff in the market declined below a sum of Rs. 2.63 per unit on account of fall in variable cost or other market forces. There is no doubt that the PPA is a binding commercial contract between the 2nd Respondent and the Petitioner. We appreciate the importance of 'consideration' in a contract. The 2nd Respondent has entered into the PPA with various renewable energy generators and the contents of various PPAs are more or less identical. At the time of entering into the PPA both the parties had agreed to certain terms and conditions and important clauses relating to the binding nature of the contract from the PPA dt.12.05.2006 are extracted as under for ready reference.

"2.2. The Company shall be paid the Tariff for the energy delivered at the interconnection point for sale to DISCOM at the rates specified in Schedule – IA or the Tariff as fixed by APERC from time to time or negotiated tariff, whichever is lower during the Agreement period. Notwithstanding the tariff indicated above there will be a special review of purchase price on completion of ten years from the date of commissioning of the project, when the purchase price will be reworked on the basis of Return on Equity, O&M expenses and the Variable Cost.

12.2. No oral or written modification of this Agreement either before or after its execution shall be of any force or effect unless such modification is in writing and signed by the duly authorized representatives of the Company and the APNPDCL, subject to the condition that any further modification of the Agreement shall be done only with the prior approval of Andhra Pradesh Electricity Regulatory Commission. However, the amendments to the Agreement as per the respective orders of APERC from time to time shall be

carried out. All the conditions mentioned in the Agreement are with the consent of APERC.”

25. We have considered the implications of the above clauses of the PPA entered into with the Petitioner by the 2nd Respondent. Normally, a commercial contract entered into by a company is binding under the Contract Act, 1872. In the normal course, it is not possible to change the terms relating to ‘consideration’ unilaterally. The Hon’ble ATE has directed the Commission to ‘modify’ the contract for the promotion of the Renewable Energy but not to ignore or disregard the PPA and follow the generic tariff order of the erstwhile APERC. The Hon’ble Supreme Court in *Joshi Technologies International Inc vs Union of India & Ors. (2015) 374 ITR 322* has at length dealt with the commercial contracts entered into by a public sector undertaking and by various Government departments. The 2nd Respondent is a state public sector undertaking and we have considered the ratio of the Hon’ble Supreme Court in the above case while deciding the issue before us. We are not able to appreciate the contention of the learned counsel for the 2nd Respondent that the order of the Hon’ble ATE is contrary to the ratio laid down by the Hon’ble Supreme Court in *Bangalore Electricity Supply (supra)* as it did not prefer an appeal in accordance with the provisions of Section 125 of the Act, 2003 to the Hon’ble Supreme Court. Thereby the order of the Hon’ble ATE is binding on the Commission. Further, nowhere in the order, the Hon’ble ATE has directed the Commission to totally ignore the contract and award the fixed cost to the Petitioner along with the variable cost. It is in the interest of all the stakeholders of the power sector not to disregard or totally ignore the PPA, despite the fact that the renewable energy requires encouragement. We are of the view that overall ceiling of Rs. 2.63 ps per unit as agreed in the PPA is not desirable and such a ceiling shall not promote the renewable energy generation because the total of fixed cost and variable cost may exceed a sum of Rs. 2.63ps per unit over a period of time. The PPA between the Petitioner and the 2nd Respondent has a provision for revision of the variable cost and it is a business necessity to revise the variable cost from time to time. The Hon’ble ATE at para-16 of its order had referred to two generic tariff orders dt.31.03.2009 and 16.05.2014 passed by the erstwhile APERC for the purpose of application of generic tariff rate to the Petitioner. We are of the view that the generic tariff orders to which the Hon’ble ATE had referred to deal with the variable cost and not with the fixed cost. Therefore, we are of the view that fixed cost as agreed by the Petitioner and the 2nd Respondent in the PPA requires to be adopted for the purpose

of determination of the tariff. Be that as it may, the PPA entered into by the Petitioner requires to be considered in the interest of the power sector and disregarding it totally is not conducive for the development of renewable energy sector. In a commercial contract, the 'consideration' cannot be changed at the will of one party to the contract. Thus, we are of the view that the fixed cost as reflected in the PPA needs to be adopted for determination of tariff and the variable cost is adopted from the generic tariff orders of the erstwhile APERC. This approach meets the ends of justice and at the same time sanctity of a commercial contract is preserved.

26. This Commission passed interim orders pending disposal of the remand matter. In order to mitigate the financial position, the 2nd Respondent was directed to pay 30% of the principal amount claimed by the Petitioner before the Commission as an interim measure. Further, the 2nd Respondent was directed to comply with the orders by 24.7.2015.

27. The 2nd Respondent / distribution licensee filed a petition seeking extension of time by filing I. A. No. 26 of 2015. The same stood dismissed by this Commission on 25.08.2015. Thereafter, the 2nd Respondent / distribution licensee filed R. P. (SR) No. 56 of 2015 sought a review of the interim order dt.17.7.2015. The application was heard along with the main O.P. and we decided to dispose of the main O.P. In view of this order, the review petition filed by the 2nd Respondent / distribution licensee becomes infructuous.

28. The Hon'ble ATE in its order dt.20.11.2014, at para 16, observed as follows:

"appellant is entitled to the amount as per rate determined by the State Commission. Pursuant to the various generic tariff orders dt.31.03.2009 and dt.16.05.2014 with effect from date of filing of the petition with the State Commission".

29. The erstwhile APERC vide order dt.31.03.2009 determined the variable cost of energy for various renewable sources of energy for the period from 01.04.2005 to 31.03.2014. The variable cost for Bagassee (Co-generation) based projects as determined by the Commission is as follows:

FY	Variable cost Rs. per unit
2009-10	1.68
2010-11	1.76

2011-12	1.85
2012-13	1.94
2013-14	2.04

30. Further, the erstwhile APERC vide order dt.16.05.2014 determined the variable cost of energy for various renewable sources of energy for the period from 01.04.2014 to 31.03.2019. The variable cost for Bagassee (Co-generation) based projects as determined by the Commission is as follows:

FY	*Variable cost Rs. per unit
2014-15	2.73
2015-16	2.89
2016-17	3.06
2017-18	3.25
2018-19	3.44

* The fuel price escalation is indicated at 6%. Actual fuel price escalation shall be notified by the Commission before the start of each financial year starting from FY 2015-16.

We direct the 2nd Respondent to adopt the above variable cost per unit for the purpose of tariff.

31. As discussed above, the fixed cost as agreed by the petitioner in the PPA is being adopted for determination of tariff in this order.

32. The fixed cost (for 10 years of operation), reflected in the Schedule – 1A of the Power Purchase Agreement (PPA) dt.12.05.2006, is as under:

Schedule – 1A

Year of operation (nth year)	Fixed cost Rs. per unit
1 st year	1.57
2 nd year	1.52
3 rd year	1.48
4 th year	1.44
5 th year	1.39
6 th year	1.35
7 th year	1.31
8 th year	1.27
9 th year	1.23
10 th year	0.90

We direct the 2nd Respondent to adopt the above fixed cost per unit for the purpose of tariff.

33. The Hon'ble ATE has directed that the revised tariff has to be extended to the Petitioner from the date of filing of the petition before the erstwhile APERC. The Petitioner has filed the petition before the erstwhile APERC on 02.07.2011. The APERC before admitting the petition had heard it on dt.17.09.2011 and admitted and ordered it to be numbered on dt. 21.11.2011. The number allotted was O.P.No.58 of 2011. The date of filing of petition is taken as 02.07.2011 for the purpose of arriving at the entitled amount of tariff payable to the Petitioner by the 2nd Respondent.

34. We have worked out the sums payable to the Petitioner based on the tariff determined in this order and the same is placed in Annexure-1. Annexure -1 reflects the energy exported (supplied to Discom) for the period from the date of filing of the petition before the erstwhile APERC to 24.03.2015 and Tariff determined in this order (Fixed cost plus Variable cost = total cost). The amount payable as per tariff determined, the amount already paid at tariff of Rs.2.63 per unit (as per schedule-1A of PPA dt.12.05.2006) and difference (nett) amount payable by the 2nd Respondent is as under.

(i)	No. of units (kWh) supplied by the Petitioner as per 2 nd Respondent statement which is accepted by the Petitioner during the hearing [from date of filing to 24.03.2015]	62,080,729
(ii)	The amount payable to Petitioner as per the tariff determined in this order (Fixed cost + Variable cost)	Rs.218,002,051
(iii)	The amount paid as per the tariff rate of Rs.2.63 per kWh (as per Clause 2.2 read with Schedule –IA of PPA)	Rs.163,272,315
(iv)	The difference (Nett amount payable) i.e., payable amount – amount paid as per tariff of PPA)	Rs.54,729,736

35. We have passed an interim order dt.17.07.2015 pending the disposal of the main petition, directing the 2nd Respondent to pay 30% of the principal amount claimed by the Petitioner. The amount, if paid, consequent to interim order shall be deducted from the difference amount determined above.

36. Further, the Petitioner in his petition has claimed interest amount @ 12% per annum from the date of filing of the petition on the amount due to it, relying on the erstwhile APERC order dt.22.06.2013. The erstwhile APERC in the said order has allowed interest @ 12% per annum based on the direction given by the Hon'ble ATE in the order dt.20.12.2012. As the remanded order dt.20.11.2014 of the Hon'ble ATE does not stipulate on any interest to be paid to the Petitioner, we have not allowed any interest to the Petitioner.

37. To sum up, the Petitioner had entered into a PPA on 12.05.2006 wherein, the fixed cost and variable cost was agreed subject to a ceiling of Rs.2.63ps per unit. The Petitioner requested for revision of the tariff and the same was declined. A petition was filed before the erstwhile APERC and the same was dismissed. The Petitioner filed a Writ Petition in the High Court and at the admission stage, the Hon'ble High Court of A.P. had directed to pursue the alternative remedy available. In pursuance thereof an alternative remedy appeal was filed before the Hon'ble ATE. The Hon'ble ATE directed the Commission to 'modify' the PPA to promote the Renewable Energy and directed to apply the generic tariff orders passed by the erstwhile APERC. The generic orders basically deal with the variable cost. We have adopted the fixed cost from the PPA as 'consideration' is an important element of a contract and it is not the interest of the renewable energy sector to totally ignore the PPA. Thus, the PPA was modified by allowing the variable cost from the generic tariff orders. The quantum of power supplied was submitted by the 2nd Respondent and the same was accepted by the Petitioner. The sum payable to the Petitioner has been determined at Rs.5,47,29,736/- . An interim order was passed directing the 2nd Respondent to pay 30% of the amount claimed by the Petitioner. If such a sum is paid, the same requires to be reduced. The Petitioner claimed interest but the same is not allowed as there is no direction from the Hon'ble ATE.

This order is corrected and signed on this 18th day of September 2015.

Sd/-
L.MANO HAR REDDY
MEMBER

Sd/-
H.SRINIVASULU
MEMBER

Sd/-
ISMAIL ALI KHAN
CHAIRMAN

CERTIFIED COPY

ANNEXURE - I

Calculation sheet

YEAR	Billing period		Energy exported	As per PPA		As per APTEL Order			Difference amount	
				Tariff Rate	Amount Paid	Tariff Rate				Amount payable
						Fixed cost	Variable cost	FC+VC		
2011-12	21.11.2011	24.11.2011	58452	2.63	153729	1.39	1.85	3.24	189384	35656
	24.11.2011	24.12.2011	4039000	2.63	10622570	1.39	1.85	3.24	13086360	2463790
	24.12.2011	24.01.2012	3927000	2.63	10328010	1.39	1.85	3.24	12723480	2395470
	24.01.2012	24.02.2012	3630000	2.63	9546900	1.39	1.85	3.24	11761200	2214300
	24.02.2012	24.03.2012	1556000	2.63	4092280	1.39	1.85	3.24	5041440	949160
	24.03.2012	31.03.2012	0	2.63	0	1.39	1.85	3.24	0	0
2012-13	01.04.2012	24.04.2012	0	2.63	0	1.35	1.94	3.29	0	0
	24.04.2012	16.05.2012	0	2.63	0	1.35	1.94	3.29	0	0
	16.05.2012	24.05.2012	0	2.63	0	1.35	1.94	3.29	0	0
	24.05.2012	24.06.2012	0	2.63	0	1.35	1.94	3.29	0	0
	24.06.2012	24.07.2012	0	2.63	0	1.35	1.94	3.29	0	0
	24.07.2012	24.08.2012	0	2.63	0	1.35	1.94	3.29	0	0
	24.08.2012	24.09.2012	0	2.63	0	1.35	1.94	3.29	0	0
	24.09.2012	24.10.2012	0	2.63	0	1.35	1.94	3.29	0	0
	24.10.2012	24.11.2012	647792	2.63	1703693	1.35	1.94	3.29	2131236	427543
	24.11.2012	24.12.2012	3420925	2.63	8997033	1.35	1.94	3.29	11254843	2257811
	24.12.2012	24.01.2013	3993311	2.63	10502408	1.35	1.94	3.29	13137993	2635585
	24.01.2013	24.02.2013	3945407	2.63	10376420	1.35	1.94	3.29	12980389	2603969
	24.02.2013	24.03.2013	1815462	2.63	4774665	1.35	1.94	3.29	5972870	1198205
	24.03.2013	31.03.2013	0	2.63	0	1.35	1.94	3.29	0	0
2013-14	01.04.2013	24.04.2013	0	2.63	0	1.31	2.04	3.35	0	0
	24.04.2013	24.05.2013	0	2.63	0	1.31	2.04	3.35	0	0
	24.05.2013	24.06.2013	1104	2.63	2904	1.31	2.04	3.35	3698	795
	24.06.2013	24.07.2013	0	2.63	0	1.31	2.04	3.35	0	0
	24.07.2013	24.08.2013	0	2.63	0	1.31	2.04	3.35	0	0
	24.08.2013	24.09.2013	0	2.63	0	1.31	2.04	3.35	0	0
	24.09.2013	24.10.2013	0	2.63	0	1.31	2.04	3.35	0	0
	24.10.2013	24.11.2013	165119	2.63	434263	1.31	2.04	3.35	553149	118886
	24.11.2013	24.12.2013	3650995	2.63	9602117	1.31	2.04	3.35	12230833	2628716
	24.12.2013	24.01.2014	4391239	2.63	11548959	1.31	2.04	3.35	14710651	3161692
	24.01.2014	24.02.2014	4451158	2.63	11706546	1.31	2.04	3.35	14911379	3204834
	24.02.2014	24.03.2014	2756088	2.63	7248511	1.31	2.04	3.35	9232895	1984383
	24.03.2014	31.03.2014	686852	2.63	1806421	1.31	2.04	3.35	2300954	494533
2014-15	01.04.2014	16.04.2014	871353	2.63	2291658	1.27	2.73	4.00	3485412	1193754
	16.04.2014	24.05.2014	0	2.63	0	1.27	2.73	4.00	0	0
	24.05.2014	24.06.2014	0	2.63	0	1.27	2.73	4.00	0	0
	24.06.2014	24.07.2014	0	2.63	0	1.27	2.73	4.00	0	0
	24.07.2014	24.08.2014	0	2.63	0	1.27	2.73	4.00	0	0
	24.08.2014	24.09.2014	0	2.63	0	1.27	2.73	4.00	0	0
	24.09.2014	24.10.2014	0	2.63	0	1.27	2.73	4.00	0	0
	24.10.2014	24.11.2014	1376298	2.63	3619664	1.27	2.73	4.00	5505192	1885528
	24.11.2014	24.12.2014	4647501	2.63	12222928	1.27	2.73	4.00	18590004	6367076
	24.12.2014	24.01.2015	4558697	2.63	11989373	1.27	2.73	4.00	18234788	6245415
	24.01.2015	24.02.2015	4083615	2.63	10739907	1.27	2.73	4.00	16334460	5594553
	24.02.2015	24.03.2015	3407360	2.63	8961357	1.27	2.73	4.00	13629440	4668083
	TOTAL		6,20,80,728		16,32,72,315				21,80,02,051	5,47,29,736