



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

O.P.No.72 of 2018

Dated 25.06.2021

Present

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

Between:

M/s Kallam Spinning Mills Pvt. Ltd.

... Petitioner

AND

1. The Northern Power Distribution Company of Telangana Limited
2. The Southern Power Distribution Company of Telangana Limited

... Respondents

The petition came up for hearing on 04.02.2021, 15.03.2021, 22.03.2021 and 02.06.2021. Sri P.Srinivasa Rao, Advocate for the petitioner and Sri Mohammad Bande Ali, Law Attaché for the respondents have appeared through video conference on 04.02.2021, 15.03.2021, 22.03.2021 and 02.06.2021. The matter having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

The Petitioner has filed petition under Sections 62(1)(a) and 86(1) (a), (b) & (e) of the Electricity Act, 2003 (Act, 2003) read with Regulation No.2 of 2015 for determination of tariff for the captive 4 MW capacity non-conventional mini hydel project and seeking directions to respondents to procure power from the Petitioner project. The contentions of the Petitioner in short, is here under:

- a) The Petitioner Company is incorporated under the Companies Act, 1956 with the objects to produce and supply power by using conventional and non-conventional source of energy.

- b) That, it has established a 4 MW [1x0.8+2x1.6] capacity captive Mini Hydel power at 16th & 17th Branch Canal of Nandigama Branch of Nagarjunasagar Left Main Canal, near Neelakondapalli village of Khammam District after obtaining sanction from Non-Conventional Energy Development Corporation of Andhra Pradesh (NEDCAP) and an agreement was entered to that effect with NEDCAP.
- c) That, it has entered and signed a Power Purchase & Captive Wheeling Agreement (PP&CWA) on 11.02.2002 with the then Transmission Corporation of Andhra Pradesh (APTRANSCO) (now assigned to 1st respondent) for a period of twenty (20) years and the generation of power from the plant commenced from 29.01.2002 i.e., Commercial Operation Date (COD). As per the PP&CWA, out of the generated 4 MW capacity –
- i) 1% i.e., 0.04 MW power is for Auxiliary Consumption;
 - ii) 70% i.e., 2.8 MW is for captive consumption to M/s Kallam Agro Products and Oils Limited situated at Chowdawram of Guntur district by wheeling; and the remaining.
 - iii) 29% i.e., 1.16 MW for sale to the then APTRANSCO @ Rs.2.25 per unit with -
 - escalation at 5% per annum with 1994-95 as base year and to be revised on 1st April of every year up to the year 2003-04;
 - after the year 2003-04 the purchase price as decided by Electricity Regulatory Commission; and
 - after completion of ten (10) years from the date of COD a further review of purchase price on the basis of Return of Equity, O&M Expenses and the Variable Cost;
- d) That, after Reorganisation of State of Andhra Pradesh, its, captive consumption unit i.e., M/s Kallam Agro Products and Oils Limited situated at Guntur district fell at State of Andhra Pradesh and power generation project remained at Telangana State. The petitioner could not wheel that 2.8 MW power meant for its captive usage mainly for the reason that it is burdened with two statutory charges for transmission and two cross subsidy charges.
- e) That, after obtaining orders from Hon'ble High Court for third party sales, a request was made with 1st respondent for 70% of the generated energy for third party sale and the 1st respondent after verification of the technical feasibility of

supply issued proceedings for the supply to that extent of 70% out of 4 MW to M/s Sagar Cements Limited (NLG-13) by wheeling. Consequently, an Amendment to PP&CWA dated 05.03.2015 was entered. Accordingly, the petitioner is undertaking third party sale.

- f) That, at present captive usage is not met and the object of denuded burdening it with statutory charges for transmission and cross subsidy surcharge which are heavily liability resulting in virtual closure of the project. It became difficult for the petitioner to use 70% of power out of the installed capacity of 4 MW and neither the 1st respondent could be approached for sale through amended PP&CWA nor the same could be utilised for any other purpose.
- g) That, the petitioner given its proposal to 1st respondent through a letter dated 10.07.2018 for sale of power @ Rs.4.20 per unit with a bonafide impression that the proposal will be examined and considered by 1st respondent. But to the utter surprise with the letter dated 21.08.2018 the 1st respondent intimated about the refusal of the proposal saying that it is high cost. The reason assigned by 1st respondent is unjust, untenable and unreasonable as such the project is renewable source of energy to which encouragement ought to be given. Nothing prevented either of the respondents, particularly the 1st respondent to procure the balance of power when under the existing PP&CWA already procuring 30% of the capacity.
- h) That, the respondents have sought to procure solar energy through competitive biddings, wherein the tariff approved by the Commission has been @ Rs.5.19 to Rs.5.92 per unit, which is much higher than their rate offered by the petitioner. Further, the Commission fixed Rs.3.84/kWh as polled cost of power purchase price for the FY 2016-17 and Rs.3.97/kWh for the FY 2017-18 to be paid by the distribution licensee. Also, the Cost of Service as determined for the FY 2018-19 is Rs.6.04 pr unit based on which the tariff has been arrived at i.e., payable by the individual consumers. For the control period 2018-20 the Commission determined the tariff for wind energy procurement @ Rs.3.61/kWh. And the tariff determined for the Municipal solid waste projects for the FYs 2016-19 was approximately @ Rs.7.00/kWh.

- i) That, the tariff offered by the petitioner merely satisfies the cost of generation and the reasonable return on the project cost. The tenure of PP&CWA is twenty years (20) from the COD i.e., 29.01.2002 and the validity of PP&CWA is till 28.01.2022.
- j) That, in the above stated circumstances this petition is filed and the Commission by allowing this petition may be pleased to direct the 1st respondent to purchase the balance 70% generated energy @ Rs.4.20/kWh by setting aside the communication dated 31.08.2018, or alternatively to direct the 2nd respondent to procure the power from the project at the rate offered to 1st respondent without insisting of payment of transmission and wheeling charges.

3. The respondents sought dismissal of the petition on the following grounds:

- a) That, the Commission approved tariff for the energy being delivered to 1st respondent determined by the then APERC. and as adopted vide Regulation No.1 of 2014s below:

For first 10 years of Operation As per Order dated 22.06.2013		For 11 th to 20 th year of Operation As per Order dated 23.08.2014	
Year of Operation	Tariff Rs./kWh	Year of Operation	Tariff Rs./kWh
1 st	3.89	11 th	2.15
2 nd	3.79	12 th	2.22
3 rd	3.69	13 th	2.30
4 th	3.60	14 th	2.39
5 th	3.51	15 th	2.48
6 th	3.42	16 th	2.58
7 th	3.33	17 th	2.68
8 th	3.25	18 th	2.79
9 th	3.17	19 th	2.91
10 th	3.10	20 th	3.03

- b) That, the Articles 1.18, 3.3 and 11 of PP&CWA enables the 1st respondent for procurement of unutilized surplus energy at the existing tariff which made applicable for the purchase of 1.16 MW (29%) out of 4 MW.
- c) That, in view of cancellation of open access wheeling agreement from 01.09.2014 the petitioner company on 21.10.2014 addressed a letter to 1st respondent by offering sale of additional 2.8 MW @ Rs.4.50/kWh in addition to the existing PP&CWA capacity of 1.16 MW, for a period of 12 months from immediate effect under a short term agreement and to consider the proposal as per intra state regulations of APERC without daily schedules.

- d) That, as response to that letter, 1st respondent addressed a letter dated 29.11.2014 to petitioner company stating that it is willing to purchase the additional 2.8 MW power at the rate as determined by APERC under the orders dated 22.6.2013 and 23.08.2014 for mini hydel projects i.e., @ Rs.2.30 per unit (as the project of the petitioner company running with 13th year) up to a PLF of 45% and beyond an incentive of 50 paise per unit payable. The petitioner company did not give any response.
- f) That, the petitioner company addressed another letter dated 10.07.2018 under which it has proposed for sale of 70% power which was earmarked for captive usage at Guntur plant by wheeling under PP&CWA @ Rs.4.20 per unit. Since the petitioner company was already intimated about the provisions of PP&CWA enabling purchase of offered power at existing power tariff through letter dated 29.11.2014, the proposal made in the letter dated 10.07.2018 for the sale @ Rs.4.20 per unit was not accepted as it was on higher side and the same was intimated through letter dated 31.08.2018. In fact both parties are bound to act in line with the PP&CWA dated 11.02.2002.
- g) That, at present the petitioner company has been selling the balance power under third party agreement to M/s Sagar Cements Limited.
- h) That, the 1st respondent examined the proposal thoroughly and acted in accordance with the provisions of the PP&CWA which enables the purchase of balance power only at the agreed tariff and the 1st respondent is bound by the PP&CWA and subsisting Regulations under the Electricity Act, 2003. The Mini hydel captive project of the petitioner company cannot be compared with other Renewable Energy Sources as such each of the renewable energy source is different and unique in their own way and different tariffs will be determined for them depending upon the kind of Renewable Energy Project.
- i) That, it is true that the Electricity Act, 2003 says for the promotion of renewable energy sources but all such renewable energy purchases are governed by the provisions of the Electricity Act, 2003, Tariff policy and of the directions of Ministry of Power, Government of India and the Commission and such promotion and encouragement shall not be at the cost of DISCOMS which are entrusted with larger responsibility of protecting the interests of consumers.

j) That, the petitioner company contention for exemption in relation to levy of transmission and wheeling charges for the power being sold to third party cannot be accepted as such the DISCOMS are acting as per the Electricity Act, 2003 which is uniform and equal to all the Power Generators.

4. The petitioner company as a reply to the counter of respondents filed a rejoinder wherein it has stated the following:

a) That the PP&CWA dated 11.02.2002 entered by it is in force. The Commission earlier with an Order dated 06.03.2000 fixed parameters for generation and sale of electricity from Non-Conventional energy source.

b) The Article 3.3 of the PP&CWA dated 11.02.2002 is to the effect that –

“The Company shall be paid the tariff for energy delivered at the interconnection point for sale to at Rs.2.25 per unit with escalation at 5% per annum with 1994-95 as base year and to be revised on 1st of April every year up to the year 2003-04.

Beyond the year 2003-04, the purchase price by APTRANSCO will be decided by Andhra Pradesh Electricity Regulatory Commission,

There will be further review of purchase price on completion of 10 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”.

c) The Commission in exercise of its Suo Moto powers in O.P.No.1075 of 2000 passed an order on 20.06.2001 wherein it said that -

“(i) Power generated by non-conventional energy developers are not permitted to sell the energy to third parties.

(ii) Developers of non-conventional energy shall supply power generated by to APTRANSCO/DISCOMS of A.P only.

(iii) Price applicable for purchase by the supply licensee should be Rs.2.25 per unit with 5% escalation per annum with 1994-95 as base year.

A suo-moto review of the incentives which are to take effect from 1st April 2004 will be under taken by the Commission after discussion with all the concerned parties and there will also be a review of purchase price with specific reference to each developer on completion of 10 years from the date of commissioning of project (by which time the loans from financial institutions would have been repaid), when the purchase price will be worked on the basis of Return on Equity, O&M expenses and the Variable Cost”.

d) The Commission subsequently passed an order on 20.03.2004 wherein the power purchase price was for Mini Hydel projects was re-determined as a single tariff. Against that Order a Writ Petition was filed before the Hon'ble High Court and as per the Order in that Writ Petition, a Review Petition was filed on

20.03.2004 before the Commission for the review of the order. The Order passed in the Review Petition by the Commission was carried in batch of appeals before the Hon'ble Appellate Tribunal for Electricity (APTEL) and the Hon'ble APTEL allowed the appeals with the order dated 02.06.2006. The order of the Hon'ble APTEL dated 02.06.2006 was carried in appeal before the Hon'ble Supreme Court and the Hon'ble Supreme Court with Order dated 08.07.2010 in C.A.No.3884 of 2006 set aside the order dated 02.06.2006 of Hon'ble APTEL and remanded the matters to Electricity Regulatory Commission for a fresh hearing of Nonconventional energy generators/ developers for determining the Tariff in accordance of law and that decision of the Hon'ble Supreme Court was reported in (2011) 11 SCC 34.

- e) That, in view of above stated legal position the tariff fixation order dated 23.08.2014 of the then APERC upon which the 1st respondent relying has got no relevance and the 1st respondent cannot press in to service that tariff order in the present litigation. The petitioner company in the present litigation is not seeking for determination of tariff for the entire plant upon completion of 10th year and from 11th year to 20th year as such the life span of plant as per PP&CWA will to an end by February 2022 and in the given circumstances it is just and proper to direct the 1st respondent to procure/purchase the energy generated from the plant at the rate quoted by petitioner by treating as a special case.
- f) That, the 1st respondent without assigning any reasons and with calling for negotiation unilaterally rejected the petitioner company proposal on the premise the rate quoted as high. The action of the 1st respondent by not considering the material fact is illegal and unjust. The letter dated 29.11.2014 was issued by power coordination committee on behalf of DISDCOM but not by the DISCOM itself, hence the proposal made by the petitioner company remained unresolved. It is false to say that the petitioner company did not choose to respond to the letter dated 29.11.2014 and the fact is that the petitioner company is under a legitimate expectation that the 1st respondent would procure the part of the energy at a fixed price and as directed by this Commission. The saying of the 1st respondent in the letter dated 29.11.2014

that it will go by the review undertaken by the Commission in addition to the order dated 23.08.2014 has got no legal sanctity and validity.

- g) That, when the issue of power procurement remained unattended despite negotiations with 1st respondent a detailed representation along with profit and loss accounts was submitted to the State Government by submitting the copies of that representation to the Special Chief Secretary, Department of Energy and to the TSGENCO, but no response to that representation from any one till date.
- h) That, due to formation of State of Telangana on the advent of State Reorganisation Act 2014, a part of the energy generated from the plant i.e., 2.8 MW which was used for captive usage by way of wheeling at Chowdawaram village of Guntur in the State of Andhra Pradesh had to be withdrawn for several reasons and that energy remaining idle and the petitioner company is unable to put it in to use except offering it to the 1st respondent to purchase, who in fact purchasing the balance generated power to the extent of 1.16 MW. The saying of the respondents that, the tariff rates fixed by the Commission under various orders for FY 2016-17, 2017-18 and 2018-19 are applicable to banked energy and those tariffs should be restricted for competitive bidding process cannot be accepted and the Commission has got wide powers to apply the same tariff for procurement of the capacity also. In the absence of competitive bidding being under taken and the project of the petitioner company being below 5 MW project, the respondents ought to have agreed to procure the 2.8 MW power at the rate offered by the petitioner company as such the price quoted is just and reasonable.
- i) That, the PP&CWA will be coming to an end by February 2022 and very few months are left and for the left over period this Commission may be pleased to adopt the tariff decided for banking purposes and direct the respondents to procure the same, without conceding that the petitioner company would otherwise entitled for higher tariff, if determined independently based upon its financial and operational parameters. This Commission as regulator of the power sector can direct the 1st respondent to procure the balance power and if it is not possible to the 1st respondent to procure the balance power then the same may assigned to the 2nd respondent without levying any charges for transmission and wheeling etc. It is submitted that, Ministry of Power, Union of

India in its order dated 14.06.2018 has fixed the percentage of power from Solar and Non-Solar for the FY 2019-20 to 2021-22 and the non-solar percentage is 10.50%. Even this Commission was pleased to fix percentage of non-solar for 2021-22 under Regulation No.2 of 2018 framed for Renewable Power Purchase Obligation (RPPO).

- j) That, it is humbly requested for fixing of any reasonable tariff for the petitioner company Mini hydel project duly taking into consideration of the tariffs determined under the tariff orders of previous financial years and in the light of the directions of the Hon'ble Supreme Court made in order dated 08.07.2010 in C.A.No.3884 of 2006 by allowing the petition.

5. The respondents filed their additional submissions after filing of rejoinder by Petitioner Company as a reply to the contentions/objections raised in the rejoinder and those additional submissions as under:

- a) That, the petitioner company filed the petition with a prayer to direct the respondents to purchase the balance 70% power i.e., 2.8 MW from its Mini hydel project @ Rs.4.20 for kWh initially and in its rejoinder prayed for determination by this Commission.
- b) That, the proposal made by the petitioner company to purchase the balance energy of 70% (2.8 MW) was examined in good faith in the light of the Article 11 of PP&CWA and it was informed to the petitioner company about the willingness for procurement/purchase of that balance energy at the tariff determined by the Commission i.e. the same tariff at which the 30% (1.16 MW) is being procured/purchase as per Article 1&3 of PP&CWA. The petitioner company without giving any response to that intimation has chosen to file the present petition.
- c) That, in the rejoinder it is said that, the tariff order dated 23.08.2014 of APERC under which the tariff determined for mini hydel projects to take effect after completion of 10 years of operation has got no relevance and the same is in contravention of the Judgement of Hon'ble Supreme Court dated 08.07.2010 is not correct, as such, that order dated 23.08.2010 was issued by the then APERC which was acting as a Joint Regulatory Commission for both States of Andhra Pradesh and Telangana. The APERC vide its Order dated 20.06.2001

fixed the tariff for Non-Conventional Energy sources @ Rs.2.25 per unit with 5% escalation every year with 1994-95 as base year which was applicable for the operational period up to 31.03.2004. Till 30.03.2014 there was uniform tariff for all the NCE projects. Thereafter the APERC with the Order dated 20.03.2004 issued two-part tariff (Fixed Cost and Variable Cost) in a scientific manner by examining the issue of tariff. Aggrieved with the Order dated 20.03.2004 of APERC along with Orders dated 07.07.2004 in Review Petitions of APERC several appeals were filed before the Hon'ble APTEL and the Hon'ble APTEL with a common order dated 02.06.2006 set aside the APERC Order dated 20.03.2004. The DISCOMS and various Renewable Energy developers have filed Civil Appeals before the Hon'ble Supreme Court against the Order dated 02.06.2006 of Hon'ble APTEL. The Hon'ble Supreme Court disposed of all those civil appeals with a common order dated 08.07.2010 by holding that APERC has jurisdiction to determine the Tariff towards procurement of power from RE sources and there by remanded the matters to APERC for a fresh hearing and to determine the tariff. As a result of the directions of Hon'ble Supreme, the APERC issued the Order dated 22.06.2013 under which the tariff was determined for procurement of energy from RE sources through PPAs by DISCOMS. The fixed cost was determined for 10 years of operation and the variable cost for the period 2004-2009. Subsequently, orders were also issued determining Fixed Cost tariff from 11th year to 20th year of operation and variable cost for each financial year up to 2023-24.

- d) That apart, this Commission adopted the Regulations, decisions directions and orders issued by APERC vide TSERC Regulation No.1 of 2014. It was specially held the tariffs determined in the order dated 23.08.2014 are applicable to all the Mini Hydel projects having agreement with DISCOMS irrespective of the fact whether they approached the Commission or not for such determination.
- e) That, the contention of the petitioner company that order dated 23.08.2014 is subjected to litigation before the Hon'ble APTEL appears to be vague as no concrete documents were filed in support of the contention. It is made to understand there are no appeals were filed against that order dated 23.08.2014 either by the DISCOMS of Telangana State or by the Mini Hydel developers

under PPAs with DISCOMS including the petitioner company. In fact, the petitioner company has been raising invoices and receiving payments for the energy of 30% delivered to 1st respondent at the rate as determined in the tariff order dated 23.08.2010 since 29.01.2012 i.e., from 11th year of operation to till date. Hence the same tariff is applicable for the rest of 70% energy if the petitioner company is willing to sell the same to respondents.

- f) That, Power Co-ordination Committee of the DISCOMS is responsible for collective policy decisions, therefore the authority of Power of Coordination Committee cannot be questioned and the TSPCC issued the letter dated 29.11.2014 and the petitioner company questioning of the status of TSPCC in issuing that letter in the rejoinder, does not with stand.
- g) That, under the pretext of fulfilling RPPO percentages, the DISCOMS cannot be compelled for procurement of power. Apart from that, as per National Tariff Policy of Government of India the DISCOMS are under no obligation to purchase the power from any of the renewable energy sources, except from MSW projects under MoU route. As of now the DISCOMS are mandated to make purchase from renewable energy sources as prescribed by this Commission and the DISCOMS are complying the RPPO targets fixed by this Commission as per Regulation No.2 of 2018.
- h) That, it is pertinent to mention that the petitioner company has not questioned or challenged the APERC tariff determination orders dated 22.06.2013 and 23.08.2014 and the petitioner company cannot seek directions for procurement of balance power of 70% at a separate tariff in violation of the tariff orders dated 22.06.2013 and 23.08.2014 determined by the APERC which were adopted by this Commission and in violation of the terms of PP&CWA dated 11.02.2002.

6. Heard the arguments of both sides. It also examined the material available on record. In this regard the submission of the parties at the time of hearing are as extracted below:

Record of proceeding date 04.02.2021

... .. The counsel for the petitioner stated that the matter involves procurement of power for the balance capacity of the project by the DISCOMS or else permitting it to sell to third parties by exempting payment of transmission and cross subsidy charges. He also stated that the counter affidavit is yet to be filed and the PPA for the present

capacity is expiring within a period of one year. The representative of the DISCOMs stated that he needs time to file counter affidavit of six weeks. On being questioned that it is a matter where two years have already passed, the representative sought at least four weeks time to file counter affidavit.

Considering the request of the respondents, the matter is adjourned. The counter affidavit shall be filed on or before 01.03.2021 by duly serving a copy of the same to the counsel for the petitioner. The counsel for the petitioner may file rejoinder, if any, on or before 08.03.2021 by duly serving a copy of the same to the respondents.

Record of proceeding date 15.03.2021

... .. The counsel for the petitioner stated about the details of the case and also read out the various communications made between the parties apart from referring to orders of the erstwhile APERC as also the orders of the Hon'ble ATE and Supreme Court. He stated that a specific rejoinder along with documents has been filed duly serving a copy of it on the representative of the respondents. However, the representative of the respondents did not confirm the receipt of the rejoinder along with the documents. Therefore, the petitioner is directed to make available a set of those documents to the respondents. The matter will be heard on the next date of hearing finally.

Record of proceeding date 22.03.2021

... .. The counsel for the petitioner stated that the petitioner requested for procurement of balance capacity of the hydel project under the existing agreement. This request is now being made due to the reason that earlier that capacity was utilized for captive consumption in the combined state of Andhra Pradesh, which is not feasible now. The situation arose due to bifurcation of the erstwhile state of Andhra Pradesh and the said capacity cannot be utilized as captive power, as it will attract several charges and is uneconomical. The petitioner made a request to the DISCOM to procure the said capacity also at a rate of Rs.4.20 per unit as in any case they are required to comply with the renewable power purchase obligation.

The counsel for the petitioner also stated that the present agreement would expire in about 11 months that is February 2022, as such the present request is made for the remaining period of agreement. The respondents sought to rely on the orders of the erstwhile APERC in the year 2013 and 2014. The said orders are neither relevant nor appropriate. The order of the erstwhile APERC of the year 2013 is with reference to finalization of the figures relating to tariff in continuation of the orders of the Hon'ble ATE. The order relating to the year 2014 has no bearing as it had landed in Hon'ble ATE and got modified including its application, is not appropriate to the facts of this case. The counsel for the petitioner relied on the decision of the Hon'ble Supreme Court on the action of the administration and how it should be interpreted.

The representative of the respondents while reiterating the facts stated in the counter affidavit sought to emphasize that the licensees are agreeable to procure power at a rate as approved by the Commission. He quoted the tariff as decided by the erstwhile APERC and stated that the tariff of Rs. 3.03 per unit is agreeable for them. Though, they have not stated in the reply to the counter affidavit, they are willing to procure the power at a reasonably mutually agreed tariff.

The counsel for the petitioner placed on record the submission that representations are made upto the level of the government for consideration of the issue. At this stage the Commission felt it appropriate and directed the parties to mutually discuss the

matter across the table and settle the issue. The Commission required the parties to report about the action taken by them by the next date of hearing.

Record of proceeding date 02.06.2021

... .. The counsel for the petitioner stated that as directed by the Commission the petitioner has approached the licensee for settlement of the issue of tariff between them. However, no amicable settlement could be reached in the matter. He has submitted the correspondence resting on the subject by way of memo filed on 01.06.2021 through email. He also relied on certain judgements. The representative of the respondents stated that they have offered the rate has decided by the combined Commission and sought to place reliance on the contentions in the counter affidavit. Having heard the matter on earlier occasion in detail it is not required to hear all the contentions again.

7. The point arises for determination is:

“Whether the petitioner company is entitled to the reliefs of giving direction to the 1st respondent to purchase the entire energy at the rate of Rs.4.20 by setting aside the communication dated 31.08.2018 of 1st respondent and giving of direction to 2nd respondent to procure the power from the project at the rate offered to 1st respondent without insisting of payment of transmission and wheeling charges?

8. As per the PP&CWA dated 11.02.2002 out of 4.00 MW generated by the petitioner company 0.04 MW is for auxiliary consumption, 2.80 MW for captive consumption by wheeling and the remaining 1.16 MW for sale to the then APTRANSCO (at present 1st Respondent) @ Rs.2.25 per unit with escalation at 5% per annum with 1994-95 as base year and to be revised on 1st April of year up to the year 2003-2004 and beyond the year 2003-04 the purchase price will be decided by the Electricity Regulatory Commission and a further review of purchase price shall be on completion of 10 years from the date of commissioning of the project and the purchase price will be reworked on the basis of Return on Equity, O&M expenses and the Variable Cost. The petitioner company could not wheel that 2.80 MW of energy meant for captive consumption due to Reorganisation of State of Andhra Pradesh in view of the location of its captive consumption unit is at Chowdavaram Village of Guntur District of Andhra Pradesh. In order to avoid the wastage of that 2.80 MW energy, the petitioner company headed for 3rd party sale with the approval of 1st respondent and the Schedule-4 of the PP&CWA dated 11.02.2002 was got amended on 05.03.2015 and that 2.80 MW (70%) energy was put for sale to M/s Sagar Cements Limited, situated at Nalgonda District of Telangana State by wheeling. It appears that, before heading for third party sale the petitioner company offered to sell that 2.80 MW (70%) of energy to TSDISCOMs @ Rs.4.50 per kWh by addressing the letter dated

21.10.2014 to TSTRANSCO and the TSTRANSCO informing to petitioner company with the letter dated 29.11.2014 about willingness of TSDICOMs to purchase the additional 2.80 MW power at the rate determined by the then APERC with order dated 23.08.2014 and the applicable tariff is Rs.2.30 per unit up to PLF of 45% beyond which an incentive of 50 paise per unit. For the reasons best known, the petitioner company in its petition did not plead this fact but, in its rejoinder admitted the same by giving some unacceptable reasons. Again on 10.07.2018 the petitioner company addressed a letter to 1st respondent by offering to sell the power generated from its hydel projects at Rs.4.20 per unit as such the generation of power has become low on account of deterioration of water availability in Krishna River basin and it has become difficult to pay the interest and principal of the outstanding loans availed from financial institutions. The 1st respondent with the letter dated 31.08.2018 informed to the petitioner company that, it is not feasible to accept the proposal for purchase the balance 70% (2.80 MW) power at the offered as such it is on the higher side.

9. The contents of PP&CWA dated 11.02.2002 disclosing that it was entered in to by keeping in mind the order passed by the APERC in O.P.No.1075 of 2000 dated 20.06.2001 and the Article 3.3 of PP&CWA is to the effect that purchase price for 1.16 MW was agreed as Rs.2.25 per unit with escalation at 5% per annum with 1994-95 as base year and to be revised on 1st of April every year up to the year 2003-04 and thereafter the purchase price will be decided by Electricity Regulatory Commission and there will be further review of purchase price on completion of 10 years from the date of commissioning of project, when the purchase price will be reworked on the basis of Return on Equity, O&M expenses and the Variable Cost.

10. It appears that, the APERC in order to determine the purchase price after the FY 2003-04 by taking in to consideration various factors issued two part tariff (Fixed Cost and Variable Cost) order on 20.03.2004 and Review orders dated 07.07.2004 and on appeals against them they were set aside by Hon'ble APTEL with a common order dated 02.06.2006 and in upon filing several Civil appeals against that common order of Hon'ble APTEL, the Hon'ble Supreme Court with a common order dated 08.07.2010 set aside the common order dated 02.06.2006 of Hon'ble APTEL and remanded the matters to APERC for a fresh hearing and disposal and those remanded matters were heard a fresh by the APERC as directed by the Hon'ble Supreme Court

and passed tariff orders for the 1st 10 years on 22.06.2013 and for 11th to 20th years on 23.08.2014.

11. The contention of the petitioner company is that the order dated 23.08.2014 of APERC under which the tariff passed tariff order for 11th to 20 year has got no relevance and it is in contravention of the ratio laid down by the Hon'ble Supreme Court in the common order dated 08.07.2010 and this Commission is proper authority to determine the price of power supplied to the DISCOMS by non-conventional energy projects and in support of his contentions the learned counsel for petitioner company relied on the following two citations:

- a. *(2011) 10 SCC 154 in between Sagar Sugars and Allied Products Limited (Appellant) Vs APTransco and Others (Respondents) the Division Bench of Hon'ble Supreme Court held that, Andhra Pradesh Electricity Regulatory Commission with its expertise in determination of price and tariff of power can decide as to what would be the price for the supply of unutilized power by the Appellant to the 1st respondent during the disputed period when the sugar plant of the Appellant (was not a cogeneration plant) as is not commenced the production of the sugar.*
- b. *(2014) 15 SCC 622 in between APTransco (Appellant) Vs SLS Power Limited(Respondent) the Division Bench of Hon'ble Supreme Court as an interim measure during the pendency of batch of appeals directing the Appellants of Civil Appeal Nos.1376 to 1385 of 2013 to pay at least 75% of the amount due, excluding the interest on arrears @ 12% to be compounded on quarterly basis, as directed in the order dated 12.12.2012 of the Appellate Tribunal. (para 4 of this 2nd quoted citation disclosing that, the Appellate Tribunal determining the tariff on 20.12.2012 while making final disposal of the appeals filed against the three individual opinions with regard to fixation of the tariff by the three members of the Regulatory Commission in the matters remanded by the Hon'ble Supreme Court of India in a common order dated 08.07.2020 in Civil Appeal No.2926 of 2006).*

12. In these two citations it is not found about challenging of the tariff orders of APERC dated 22.06.2013 and 23.08.2014. As rightly pointed out by the 1st respondent the tariff fixed under them holds good.

13. It is made to understand that, Petitioner Company selling the 30% i.e. 1.16 MW of energy to 1st respondent at the tariff as issued by APERC dated 22.06.2013 and 23.08.2014 and raising invoices and receiving payments from 29.01.2012 (from 11th year of operation) till date. When it is said that the tariff order dated 23.08.2014 of APERC is in contravention of the common order of Hon'ble Supreme Court dated 08.07.2010, then how the petitioner company accepting the payments from 1st

respondent for the 1.16 MW (30%) at the tariff as fixed by APERC on 23.08.2014 is not made clear.

14. The 1st respondent in all its fairness stated that, it will go for procurement of the balance 70% (2.28 MW) energy which offered for sale by the petitioner company at the same rate at which it is making purchase of 1.16 MW of energy from petitioner company i.e., @ Rs.3.03 per kWh if this Commission makes an order to that effect. Per Contra, the petitioner company would submit the cost of generation of power has gone up and the rate offered by it @ Rs.4.20 per unit is reasonable when compared to the pool cost for the FY 2019-20 @ Rs.4.28 as determined by this Commission in its order dated 02.03.2020 vide O.P.No.7 of 2020 by treating the case of Petitioner Company as a special case. The 1st respondent has opposed to this contention on the premise that PP&CWA dated 11.02.2002 is for 20 years and now the 20th year is in operation and within few months it is going to expire and at this stage no such consideration can be given as sought by the petitioner company. A force is found behind this saying of 1st respondent as such the prayer of the petitioner company made in the petition is to direct the 1st respondent to purchase entire generated energy from the plant @ Rs.4.20 and not the 70% (2.28 MW) balance capacity of energy which at present sold to third party and if the request of petitioner company is considered then certainly the 1st respondent will be put up in to lot of hard ship and it will be against to the settled principles and against to the tariff fixed by APERC on 23.08.2014 which tariff adopted by this Commission and which still holds good. Hence in the given circumstances, the 1st respondent can be asked to procure the balance of 70% (2.80 MW) @ Rs.3.03 per kWh till the expiry of PP&CWA at which the 1st respondent at present procuring the 30% (1.16 MW), till the end of PP&CWA i.e. upto 28.01.2022 and there is no need to ask the 2nd respondent to procure the power from the project at the rate offered to 1st respondent without insisting of payment of transmission and wheeling charges.

15. That during the pendency of this petition, this Commission on 09.03.2021 directed both the parties for amicable settlement of the dispute with mutual discussion. It appears in furtherance of the direction mutual discussions by way of correspondence was held in between the parties and the Counsel for petitioner company along with a memo dated 29.05.2021 submitted that correspondence for perusal of this

Commission. The letter dated 02.04.2021 addressed by the petitioner company to 1st respondent disclosing about the request made for proposing a date, time and venue at Hyderabad for mutual discussion. The letter dated 20.04.2021 addressed by the petitioner company to The Joint Managing Director, to the TSTRANSCO revealing about the offer made by it to sell the power at the rate Rs.4.20 per unit is quite reasonable when compared to the pool cost for the FY 2019-20 at the rate Rs.4.28 as determined by this Commission in its order dated 02.03.2020 vide O.P.No.7 of 2020. The letter dated 29.04.2021 addressed by the 1st respondent to Petitioner Company disclosing that it is decided to negotiate for supply of balance 70% of energy (2.80 MW) at the same tariff as is being paid for 30% energy (1.16 MW) which is Rs.3.03 per kWh till the completion of validity of PP&CWA i.e. up to 28.01.2022, at the Corporate Office of 1st respondent on 05.05.2021 at 3.30 pm. The learned counsel for petitioner on 02.06.2021 submitted that no amicable settlement was reached in the matter.

16. In view of above stated factual and legal aspects, the petition is disposed of by giving liberty to the Petitioner Company to sell and the 1st respondent would purchase the balance 70% energy out of generated 4 MW (2.80 MW) @ Rs.3.03 per kWh i.e., at the same tariff as is being procured for 29% energy (1.16 MW) under PP&CWA, till the end of tenure of PP&CWA i.e., upto 28.01.2022.

This order is corrected and signed on this the 25th day of June, 2021.

Sd/-
(BANDARU KRISHNAIAH)
MEMBER

Sd/-
(M.D.MANO HAR RAJU)
MEMBER

Sd/-
(T.SRIRANGA RAO)
CHAIRMAN

// CERTIFIED COPY //