



TELANGANA STATE ELECTRICITY REGULATORY COMMISSION
5th Floor, Singareni Bhavan, Red Hills, Lakdi-ka-pul, Hyderabad 500004

O. P. No. 63 of 2018

Dated 01.07.2021

Present

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

Between:

M/s Srinivasa Power Private Limited,
Priti Nandita Residency, Flat No.G-2,
D.No.10-2-289/86, Near SBH Shanti Nagar Branch,
Masab Tank, Hyderabad-500 019.

... Petitioner

AND

Southern Power Distribution Company of Telangana Limited,
6-1-50, Mint Compound, Hyderabad-500 063.

...Respondent

The petition came up for hearing on 17.11.2018 before the earlier Commission and stood adjourned. It is now posted for virtual hearing through video conference on 01.02.2021 and 15.02.2021. Sri P.Srinivasa Rao, Advocate for petitioner on 01.02.2021 and 15.02.2021, Sri Mohammad Bande Ali, Law Attachée for respondents on 01.02.2021 and 15.02.2021 have appeared through video conference, having been heard and having stood over for consideration to this day, the Commission passed the following:

ORDER

M/s Srinivasa Power Private Limited (petitioner) has filed a petition under Sections 62 (1) (a) and 86 (1) (a), (b) and (e) of the Electricity Act, 2003 (Act, 2003) r/w Commission's Conduct of Business Regulation No.2 of 2015 for determination of the tariff for 0.55 MW Mini Hydel project of the petitioner for 11th to 20th year of operation. The contentions of the petitioner are as hereunder:

- a) That it is registered with Registrar of Companies, Hyderabad under the provisions of Companies Act, 1956 and a certificate dated 26.02.1999

was issued by said Registrar. The company is an electricity generating company in new and non-conventional energy sector which has established a 1x550 kW capacity mini hydro power plant in the State of Telangana in terms of the incentives granted from time to time by the Government of India as well the Government of Telangana. The generating project was set up at Thummadam Village, Nidamanoor Mandal, Nalgonda District. The capacity on off-take of Mudimanikyam major from Nagarjuna Sagar Left Canal at km 38 the above village. The petitioner company was also issued a certificate dated 22.11.1999 by the then NEDCAP (presently TSREDCO) whereby it was accorded sanction orders for the petitioner project.

- b) That it has signed a Power Purchase Agreement (PPA) dated 05.02.2002 with the then Transmission Corporation of Andhra Pradesh (APTRANSCO) which PPA has now been assigned to the respondent, Southern Power Distribution Company of Telangana Limited (TSSPDCL). The PPA was executed in superseding the earlier agreement dated 17.01.2000 between the parties.
- c) The Commission passed an Order 20.06.2001 in exercise of suo moto powers for determination of the purchase price for purchase of electricity by the distribution companies from the non-conventional energy developers in the State of Telangana. In the order dated 20.06.2001, the Commission, inter alia, held as under:
29. *The existing incentives under G.O.Ms.No.93, dated 18.11.1997, which are continued under the orders of the Commission from time to time till 24.06.2001 under our letter No.2473, dated 24.04.2001 are extended for the time being till 24.07.2001. (The temporary extension has been given to enable the developers to finalize agreement/arrangements relating to supply of power to APTRANSCO prior to 24.07.2001). With effect from the billing month of August, 2001 all generators of non-conventional energy shall supply power to APTRANSCO only as per the following terms:*
- i) *Power generated by non-conventional energy developers is not permitted for sale to third parties.*

- ii) *Developers of non-conventional energy shall supply power generated by APTRANSCO/DISCOMs of AP 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 the base year.*
30. *A suo-moto review of the incentives to take effect from 1st April, 2004, will be undertaken by the Commission after discussions with all the concerned parties. There will also be a review of the purchase price with specific reference to each developer on completion of 10 years from the date of commissioning of the 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 variable cost.*
- d) The above principles were also adopted and incorporated in the PPA. In this regard, the PPA in Article 2.2 inter-alia provides as under:
The company shall be paid the tariff for energy delivered at the interconnection point for sale of APTRANSCO 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 of every year upto 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.
- e) The Commission initiated suo-moto proceedings for determination of purchase price of power for APTRANSCO/distribution companies from non-conventional energy projects to be effective from 01.04.2004 onwards. The above proceedings of the Commission culminated in the passing of the order dated 20.03.2004 whereby a reduced tariff was determined for the developers including the petitioner herein.
- f) Aggrieved by the above said order dated 20.03.2004, the Small Hydro Power Developers Association in the State filed a writ petition before the

Hon'ble High Court of Andhra Pradesh. By order dated 27.04.2004, the Hon'ble High Court disposed of the above writ petition and directed the project developers to approach the Commission for a review of the order dated 20.03.2004.

- g) Pursuant to the above, a review petition No.5 of 2004 was filed before the Commission. The Commission, by order dated 07.07.2004 disposed of the said review petition after considering minor modifications of the capital cost and certain other aspects. The following tariff as the power purchase price for APTRANSCO were determined.

Year of operation (nth year)	Tariff (Rs/unit)
1 st	2.69
2 nd	2.60
3 rd	2.52
4 th	2.43
5 th	2.34
6 th	2.26
7 th	2.17
8 th	2.09
9 th	2.00
10 th	1.92

- h) Aggrieved by the order dated 07.07.2004 passed by the Commission, the Small Hydro Power Developers Association filed another Writ Petitions No.16621 of 2004 in the Hon'ble High Court of Andhra Pradesh. Subsequently, upon the constitution of the Appellate Tribunal for Electricity (APTEL or ATE) in the year 2005, the Hon'ble High Court by an order dated 15.06.2006 disposed off the writ petition with a direction to the petitioners therein to approach the Hon'ble APTEL by way of appeal.
- i) The Hon'ble APTEL allowed the above appeals of the project developers by a judgment dated 02.06.2006 and set aside the orders of the Commission revising the tariff applicable to the non-conventional project developers.

- j) Aggrieved by the above order of the Hon'ble APTEL, the APTRANSCO filed an appeal being Civil Appeal 2926 of 2006 before the Hon'ble Supreme Court of India.
- k) Finally the Hon'ble Supreme Court vide judgment dated 08.07.2010 reported as Transmission Corporation of Andhra Pradesh Ltd., Vs Sai Renewable Energy Limited 2011 (11) SCC 34, set aside the judgment dated 02.06.2006 passed by the Hon'ble APTEL, inter-alia, holding as under:

52. (a) *The order of the Tribunal dated 02.06.2006 is hereby set a side*

(b) *We hold that the Andhra Pradesh Electricity Regulatory Commission has the jurisdiction to determine tariff which takes within its ambit the purchase price for procurement of the electricity generated by the Non-Conventional energy developers/generators, in the facts and circumstances of these cases.*

(c) *We hereby remand the matters to the Andhra Pradesh Electricity Regulatory Commission with a direction that it shall hear the Non-Conventional energy generators afresh and fix/determine the tariff for purchase of electricity in accordance with law, expeditiously.*

(d) *It shall also re-examine that in addition to the above or in the alternative, whether it would be in the large interest of the public and the State, to permit sale of generated electricity to third parties, if otherwise feasible.*

(e) *The Andhra Pradesh Electricity Regulatory Commission shall consider and pronounce upon all the objection that may be raised by the parties appearing before it, except objections in relation to its jurisdiction, plea of estoppels and legitimate expectancy against the State and/or APTRANSCO and the plea in regard to PPAs being result of duress as these issues stand concluded by this judgment.*

(f) *We make it clear that the order dated 20.06.2001 passed by the Andhra Pradesh Electricity Regulatory Commission has attained finality and was not challenged in any proceedings so far. This judgment shall not, therefore, be in detriment to that order which will operate independently and in accordance with law.*

(g) *We also hereby direct that State of Andhra Pradesh shall be added as party respondent in the proceedings and the Andhra Pradesh Electricity Regulatory Commission shall grant hearing to the State during pendency of proceeding before it.*

In the facts and circumstances of the case parties are left to bear their own costs.”

l) In the meantime, the Commission initiated proceedings for determination of tariff for sale of electricity by the non-conventional energy (NCE) developers in the State to the distribution licensees for the period from 01.04.2009 to 31.03.2014. By Order dated 31.03.2009, the Commission determined the applicable tariff for various types of non-conventional energy projects in the State of Andhra Pradesh. However, the Commission did not determine any tariff for the period from 01.04.2009 onwards for Mini Hydel projects, on the ground that tariff for Mini Hydel projects had been determined in the year 2004 for 10 years of operation of the project and no tariff was presently necessary to be determined. The relevant finding in as under:

“14. **Mini Hydel Projects**: *Since the tariff for mini hydel projects has been fixed in the 20.03.2004 order from 1st year of operation to 10th year of operation there is no need to make a determination w.e.f. 01.04.2009. The issues raised regarding this sector will be addressed separately by the Commission in due course.”*

m) Pursuant to the remand by the Hon'ble Supreme Court as per judgment dated 08.07.2010, the Commission re-heard the matter and by Order dated 12.09.2011, determined the tariff for the non-conventional energy. The matter was decided by three separate Orders given by each member of the Commission. These orders were also dated differently.

- n) After appeal having been filed both by the developers and the distribution companies, the Hon'ble APTEL vide a detailed judgment dated 20.12.2012 had fixed the norms and parameters for determination of tariff for Mini Hydel plants as under:

Mini Hydel Power Plants:

a)	Capital Cost	Rs.4.5 crore/MW
b)	Capacity utilization factor (PLF) for Determination of tariff	32%
c)	Auxiliary Consumption	1%
d)	O&M expenses	3.5% of capital cost
e)	Annual escalation of O&M	As per actual CAGR of CPI & WPI indices for the period 2004–09 with 40% weightage to CPI and 60% to WPI.
f)	Computation of working capital	i) one month's O&M expenses ii) 2 month's receivables iii) 1% project cost towards maintenance spares
g)	Interest on working capital	12%
h)	ROE	16% with MAT/income tax as pass through
i)	Debt equity ratio	70:30
j)	Interest on debt	12%
k)	Incentive:	For energy generation above 45% PLF, incentive @ 35 paise/kWh shall be payable
l)	Depreciation	7% p.a. for first 10 years & 20% spread over uniformly over next 15 years.
m)	Electricity duty	To be allowed as pass through
n)	Water royalty	To be reimbursed as pass through

- o) The above judgment has been implemented by this Commission vide the orders dated 21.06.2013 and 22.06.2013. The litigations against the above orders and the judgment of the Hon'ble APTEL are pending before the Hon'ble Supreme Court.
- p) When the matters stood thus, and after most of the developers had completed 10 years of operation, an application was filed under Sections 62 and 86 (1) (b) of the Act, 2003 for determination of tariff (fixed cost/single part tariff) from 11th upto 20th year of operation. The above application culminated into the Order dated 23.08.2014 wherein without hearing the developers, the Commission re-fixed the tariff for all the Mini Hydel power plants who had completed 10 years of operation including the petitioner.
- q) Again the matter was carried in Appeal No.268 of 2014, before the Hon'ble APTEL against the order dated 23.08.2014 of the Commission. The subject order of the Commission has been set aside by the Hon'ble APTEL vide the judgment dated 20.01.2016, inter-alia holding as under:
21. *We must at this stage revert to the judgment of the Supreme Court in Sai Renewable, where while remanding the matter to the State Commission to hear the Non-Conventional Energy Generators afresh and fix/determine the tariff for purchase of electricity in accordance with law, the Supreme Court made it clear that Order dated 20.06.2010 passed by the State Commission had attained finality as it was as not challenged in any proceedings and that its judgment shall, therefore, not be in detriment to that order which will operate independently and in accordance with law. Thus, the Supreme Court expressly kept order dated 20.06.2001 passed by the State Commission untouched and made it clear that order shall operate independently. As stated above, in that order, the State Commission has observed that "there will also be a review of the purchase price with specific reference to each developer on completion of 10 years from the date of commissioning of the project (by which time the loans from financial institutions would*

have been repaid) when the purchase price will be reworked on the basis of return on equity, O&M expenses and variable cost.” Thus, it was necessary for the State Commission to follow its order dated 20.06.2001 and conduct review of the purchase price with specific reference to each developer. In this case, we feel that such exercise has not been done. It is admitted that Appellant No.2 has not been served. It is not clear as to whether Appellant No.3 has been served at all. One notice was sent to Appellant No.1 and Appellant No.1 supplied information pursuant thereto. However, no letter was issued to Appellant No.1 calling upon Appellant No.1 to attend the proceedings. The State Commission interpreted the record furnished by Appellant No.1 without giving Appellant No.1 chance to explain its case. As per the impugned order, only one hearing took place i.e., on 03.07.2013 which is much prior to the notice dated 18.03.2013 received by Appellant No.1 on 19.03.2014.

22. Allegedly, a meeting was held on 28.04.2014 in which some of the mini-hydel project developers including appellant No.3 was called. If that is so, it is not understand as to why such a notice was not given to appellant Nos.1&2. In the aforementioned circumstances, we feel that this is a fit case where in the interest of justice the matter needs to be remanded to the State Commission with a direction to review the purchase price in the light of paragraph 30 of the order dated 20.06.2001 of the State Commission.
23. In the circumstances, the impugned order is set aside qua the appellants to the extent it fixes the appellant’s tariff. The matter is remanded to the State Commission. The appellants shall furnish such data to the State Commission as they feel necessary within one month from today. If any further data is required, the State Commission shall call upon the appellants to furnish the same within two weeks thereafter. The said data shall be furnished by the appellant within two weeks of receipt of such letter. The State Commission shall complete the entire exercise of determination

of the appellant's tariff in the light of paragraphs quoted hereinabove of order dated 20.06.2001 of the State Commission within a period of five months from today. The State Commission shall conduct the entire exercise independently and in accordance with law. We have expressed no opinion on the merits of the case. All the contentions of both sides are kept open.

24. *Till such time as the State Commission complete the entire exercise as directed by us, respondent Nos.2 to 4 shall pay the tariff as per the impugned order without prejudice to the rights and contentions of all parties. Needless to say that the State Commission shall ensure that its order is given effect to by making necessary adjustments as regards the difference, if any, in the tariff received under the impugned order and order and order that may be passed by the State Commission.*

25. *We make it clear that this order shall create no equities in favour of other Mini/Small Hydro Power Projects which have not challenged the impugned order and have accepted it.”*

- r) In view of the above, the petitioner is filing the present petition praying for re-determination of tariff for the 11th to 20th year of operation with specific reference to the petitioner and based on the data furnished hereinafter without claiming any benefit under the order said above passed by the APTEL.
- s) The petitioner has raised the legal submissions as hereunder:
- i) The petitioner stated that, what has been contemplated all along including in the Order dated 20.06.2001 was that depending on the position of outstanding loan with specific reference to each developer, the tariff was to be re-determined. This is because for the initial ten years, the Hon'ble Commission fixed a generic tariff for all the mini-hydel developers. While for certain developers, the generic tariff would have resulted in substantial loan re-payment for certain others, it may not have been sufficient for loan re-payment. Therefore, the order dated 20.06.2011 and the PPA contemplated re-determination of project specific tariff with reference to each developer after ten years of operation.

- ii) The above aspect was also specifically pointed out and accepted by the Hon'ble Supreme Court in the Sai Renewable judgment supra as under:

The order of 20th June 2001 read in conjunction with the PPA's extended by the parties controlled the entire field and all the persons including the Regulatory Commission as well as the State therein

52.

(f) We make it clear that order dated 20.06.2001 passed by the Andhra Pradesh Electricity Regulatory Commission has attained finality and was not challenged in any proceedings so far. This judgment shall not, therefore, be in detriment to that order which will operate independently and in accordance with law.

- iii) Section 62 of the Act, 2003 provides as under:-

62. Determination of tariff - (1) The Appropriate Commission shall determine the tariff in accordance with the provisions of this Act for -

- (a) Supply of electricity by a generating company to a distribution licensee:

Provided that the Appropriate Commission may, in case of shortage of supply of electricity fix the minimum and maximum ceiling of tariff for sale or purchase of electricity in pursuance of an agreement, entered into between a generating company and a licensee or between licensees, for a period not exceeding one year to ensure reasonable prices of electricity;

- (b) Transmission of electricity;
(c) Wheeling of electricity
(d) Retail sale of electricity

... ..

- iv) The Act, 2003 itself contemplates that tariff of a generating company to a distribution licensee should be determined. It is well settled principle of Law, that if a statute contemplates a thing to

be done in a particular manner, it should be done in that very manner and in no other manner.

- v) In any event, the above principle has been accepted by the Hon'ble APTEL in the judgment dated 20.01.2016 and therefore, the Commission has to fix an individual tariff for the petitioner for the 11th to 20th year of operation, years 2011-12 to 2020-21.
- t) The submissions on individual parameters of tariff re-determination, the details are as follows:

<u>Position of outstanding loans:</u>	
Loan outstanding	Rs.3,68,52,642 lakhs
Interest funded	Rs.1,23,20,469 lakhs
Interest due	Rs.–
Liquidated damages	Rs.–
U/s Loan	Rs.–
Total at the end of 10 th year	Rs.4,91,73,111 lakhs
Total outstanding loan including, funded interest due, liquidated damages etc., as at the end of 10 th year was Rs.4,91,73,111 lakhs as at 31.03.2011	
Received Rs.23,54,273.00 lakhs as arrears for the initial 10 years on the orders of the Hon'ble APTEL and Hon'ble Supreme Court from time to time as detailed below:	
29.07.2013	Rs.5,46,650.00 lakhs
24.03.2014	Rs.18,07,623.00 lakhs
Total	Rs.23,54,273.00 lakhs
During the year 2003-2004 water was not released for generation of power. This has once again put the unit in a very critical financial problem. Therefore, the above amount should be the basis for fixation of tariff including the determination of the amount and rate of interest on loan.	
<u>Project Cost and Additional Capitalization:</u>	
Loan	Rs.2,74,19,837 lakhs
Equity	Rs.72,81,000 lakhs
Actual project cost	

As per annual report 2004-05	Rs.3,38,52,152 lakhs
Date of Synchronization	15.04.2001
<u>Return on Equity:</u>	
<p>That due to the long drawn litigation and non-payment of the entire tariff for the first 10 years to the petitioner by the Respondent.</p> <p>The above has also been due to severe drought conditions in 2001-2004 and also due to reduction in purchase prices from 01.04.2004 as per the orders dated 20.03.2004 and 07.07.2004 for the Mini Hydel plants</p>	
<u>Operation and Maintenance Expenses:</u>	
<p>At 3.5% of the Project Cost with an escalation of 6.69% year on year.</p> <p>In consistent with the judgment of the Hon'ble APTEL dated 20.12.2012 and the consequential order dated 22.06.2013 passed by this Commission.</p>	
<u>Plant Load Factor (PLF):</u>	
<p>The plant of the petitioner has achieved only 19.178% PLF during the initial 10 years. The average PLF achieved during 11th to 16th years is 9.448%. The plant is unlikely to achieve even average PLF of 10% in 17th year to 20th year. The Central Commission has decided 32% PLF for tariff calculation and decided that the tariff shall be paid for entire energy delivered. For the purpose of tariff calculation for 11th to 20th year, the PLF of 9.488% should be fixed, even if the PLF of 10% is adopted, the tariff shall be paid for the entire generation without any upper limit, so that the deficit in the years 11 to 16 can be recovered during the years 17 to 20. In view of the above, the petitioner is praying for a fixation of a PLF of 9.448% for the 11th to 20th year of operation. This would ensure that a proper and cost reflective tariff will be re-fixed for the 11th to the 20th year of operation.</p>	
<u>Other Parameters:</u>	
Capacity of the project	0.55 MW (6570000 units/year)
Plant loan factor (PLF)	19.178% (initial 10 years)
Auxiliary consumption	1%
Date of Commissioning	15.04.2001

Project cost	Rs.338.52 lakhs
Tariff period	11 th year to 20 th year
Outstanding loan	Rs.491.73 lakhs
Outstanding loan repayment period	10 years
Interest on loan	12%
Equity at the beginning of the 11 th year	Rs.7281000 + 24838.651 lakhs (unpaid ROE of Rs.2,48,38,651.00 not proposed to be repaid in 10 years) = 3,21,19,651.00 (O/s ROE at the end of 10 th year)
ROE (Post-tax)	16% on (3,21,19,651) = Rs.51,39,144.00 per year
Income Tax	Pass through
Depreciation	1.33% per year on 67.704 lakhs-Rs.4,51,360/- (70% during initial 10 years-10% salvage value) 20% next 15 years (Rs.67,704 lakhs)
Interest on working capital	12%
O&M expenses on a actual project cost	3.5% with an escalation of 6.69% every year (Rs.21,22,109.00 at the end of 10 th year)
Water royalty charges an electricity duty	Pass through

The petitioner stated that the plant loan factor (PLF) achieved during the initial 10 years from COD is as follows:

Sl. No.	Period	PLF (%)
1.	01.04.2001 to 31.03.2002	12.814%
2.	01.04.2002 to 31.03.2003	2.844%
3.	01.04.2003 to 31.03.2004	0.000%
4.	01.04.2004 to 31.03.2005	10.634%

5.	01.04.2005 to 31.03.2006	22.623%
6.	01.04.2006 to 31.03.2007	30.255%
7.	01.04.2007 to 31.03.2008	33.690%
8.	01.04.2008 to 31.03.2009	27.509%
9.	01.04.2009 to 31.03.2010	26.087%
10.	01.04.2010 to 31.03.2011	25.328%
Average PLF for initial 10 years		19.178%

Thereafter, the PLF achieved from the 11th year of operation till date by the petitioner is as under:

Sl.No.	Period	PLF (%)
11.	01.04.2011 to 31.03.2012	16.60%
12.	01.04.2012 to 31.03.2013	00.04%
13.	01.04.2013 to 31.03.2014	18.30%
14.	01.04.2014 to 31.03.2015	14.97%
15.	01.04.2015 to 31.03.2016	1.36%
16.	01.04.2016 to 31.03.2017	5.39%
Average PLF for 11 th to 16 th years		9.448%

The model tariff computation has been done by the petitioner for the 11th to 20th year of operation.

With regard to the applicability of tariff, it is stated that the same would be applicable from the 11th year that is from the year 2011 and the difference in arrears as a result of the tariff re-determination by this Commission should be paid to the petitioner along with carrying cost from the date on which such tariff was actually due.

- u) The petitioner has sought the following prayer in the petition.
- i) *Take up the matter expeditiously and determine the final tariff to be paid to the petitioner by the respondent for the 11th to 20th year of operation in terms of the judgment dated dated 20.01.2016 passed by the Hon'ble Tribunal.*
 - ii) *Direct the Respondent to pay the tariff as may be determined by the Hon'ble Commission in the present petition for 11th year of operation onwards;*

iii) *Direct the payment of interest on the arrears of tariff at the rate of 12%.*

2. The respondent filed counter affidavit and the contentions are as below.
- a) that the petitioner has filed the present petition under sections 62 (1) (a) and 86 (1) (a) (b) and (e) of the Electricity Act, 2003 read with Commission's Conduct of Business Regulation No.2 of 2015 praying for determination of tariff for 0.55 MW Mini Hydel project of M/s Srinivasa Power Private Limited for 11th to 20th year of operation.
 - b) The petitioner entered into PPA dated 05.02.2002 superseding the earlier agreement dated 17.01.2000 for sale of energy from its 0.55 MW Mini Hydel power project located in Nalgonda District with the then APTRANSCO, which is now assigned to TSSPDCL and was commissioned on 15.04.2001.
 - c) The Article 2.2 of the PPA stipulated for payment of tariff for the energy delivered as follows:
 - Rs.2.25 per unit with escalation at 5% per annum with 1994-95 as base year upto the year 2003-04. From 01.04.2004, the purchase price is to be determined by the Commission.
 - Review of the purchase price by the Commission on completion of 10 years from the date of Commissioning of the project on the basis of return of equity, O&M expenses and the variation cost.
 - d) The then APERC had issued orders dated 20.03.2004 determining the tariff payable to all the RE projects including Mini Hydel projects for first 10 years of operation with effect from 01.04.2004. After prolonged legal combat before various forums, as per the directions given by the Hon'ble Apex Court, the said order upon directions of APTEL vide orders dated 20.12.2012 finally culminated into APERC orders dated 22.06.2013.
 - e) Many of the RE projects including Mini Hydel projects completed 10 years of operation from their respective CODs. As such DISCOMs/developers filed petitions before the erstwhile APERC towards determination of tariff from 11th to 20th year of operation. O.P.No.10 of 2012 is one such petition filed by the then APEPDCL before APERC towards determination of tariff from 11th to 20th year of

operation for M/s Manihamsa Power Projects Private Limited, a Mini Hydel project.

- f) After bifurcation of the State, the “joint APERC” has decided to dispose of the petition filed by APEPDCL in O.P.No.10 of 2012 referred to supra, by a common order applicable to all the Mini Hydel power projects, which have completed 10 years of operation, stipulating that all the essential elements of the tariff frame work for Mini Hydel projects, which have completed 10 years will be similar.
- g) In pursuance thereof, the joint APERC issued notice to all Mini Hydel developers requesting for information relating to (1) performance indications of the projects over the last 10 years (2) projections by developer of these parameters for the next ten years (3) copies of balance sheets and profit and loss accounts of the developer for the period from COD till 31.03.2013.
- h) After analysing the data received, the joint APERC issued orders dated 23.08.2014 determining the Generic Tariff applicable for all the Mini Hydel power projects having PPAs with DISCOMs from 11th to 20th year of operation.
- i) The Commission further directed that the tariff will be payable by the respective DISCOMs for all Mini Hydel based NCE projects, which complete ten years of operation irrespective of whether they have approached the Commission or not for such determination.
- j) After constitution of this Commission, the Commission issued Regulation No.1 of 2014 duly adopting all regulations, decisions, directions, orders issued by the erstwhile APERC (Regulatory Commission for states of Andhra Pradesh and Telangana).
- k) Accordingly, the said tariff order for Mini Hydel projects was also made applicable to all the Mini Hydel projects under PPAs with TSDISCOMs including the petitioner’s 0.55 MW Mini Hydel power project and the payments are also being made in compliance with the order dated 23.08.2014.
- l) Mini Hydel developers including the petitioner herein in the State of Telangana did not chose to prefer appeal against the order dated 23.08.2014.

- m) Whereas the 3 Nos Mini Hydel projects, namely, M/s PMC Power Private Limited, M/s Bhavani Hydro Power Projects Private Limited and M/s NCL Industries Limited in the residual State of A.P. filed Appeal No.268 of 2014 before APTEL against the joint APERC order dated 23.08.2014 seeking directions to the present APERC to determine project specific tariffs for the period from 11th to 20th year of operation on the ground that they were not involved in the Generic Tariff determination process.
- n) Accordingly, APTEL vide orders dated 20.01.2016 in Appeal No.268 of 2014, set aside the joint APERC orders qua the appellants to the extent the tariff is fixed for the appellants and further issued directions to the newly formed APERC to determine tariffs for the period beyond 10 years in respect of the 3 Nos Mini Hydel project developers, who had approached APTEL, clearly stipulating that *'we make it clear that this Order shall create no equities in favour of other mini/small hydro power projects, which have not challenged the impugned order and have accepted it.'*
- o) Subsequently, the newly formed APERC has determined the tariffs in respect of the 3 No developers, who have filed appeals before APTEL only, continuing the erstwhile Joint APERC order dated 23.08.2014 in respect of the remaining other Mini Hydel projects in the residual State of A.P.
- p) In the light of the clear directions of Hon'ble APTEL, restricting re-determination of tariff from 11th year onwards for only to the 3 Nos Mini Hydel developers, who had approached Hon'ble APTEL, the present petition filed by M/s Srinivasa Power Private Limited is liable to be dismissed as the petitioner did not chose to contend the order dated 23.08.2014. As such, the prayer of the petitioner to determine the tariff for the petitioner's project from 11th year of operation onwards in terms of Hon'ble APTEL judgment dated 20.01.2016 in Appeal No.268 of 2014 is unlawful and devoid of merits.
- q) Also, the prescribed time limits for either filing review before the Commission or filing appeal before Hon'ble APTEL against the orders dated 23.08.2014 are already expired and as such, the petitioner cannot

be permitted under law to reopen the agreed tariff order, which has attained finally.

- r) It is pertinent to replicate that even the newly formed APERC re-determined the tariff only for the 3 Nos Mini Hydel developers, who filed appeal before Hon'ble APTEL. Whereas, the tariff as per orders dated 23.08.2014 is being applied to the rest of the Mini Hydel developers.
- s) In view of the submissions made above, the respondent prayed the Commission to dismiss the petition as devoid of merits.

3. The Commission heard the counsel for the petitioner and the representative of the respondent. The relevant submissions in the matter are extracted below:

Record of Proceedings dated 15.02.2021

The counsel for the petitioner stated that the petition is filed for determination of tariff of the project for the period 11th to 20th year in terms of the PPA entered by the petitioner with the respondent. The petitioner has filed the necessary details in the petition itself for enabling the Commission to determine the tariff. The respondent had filed a counter affidavit stating that it is continuing to implement the order passed by the erstwhile APERC in the year 2014 as adopted by this Commission.

The counsel for the petitioner stated that this petition is filed for a specific determination of this project's tariff for the period from 11th to 20th year of operation. The order of the erstwhile APERC cannot be fastened on the petitioner as there was no notice nor its view were taken into consideration by the said Commission. Moreover, the said order of the then APERC stood challenged before the Hon'ble ATE by some of the generators and the Hon'ble ATE remanded the matter to the present APERC in the year 2016 insofar as the generators, who have approached it. The Hon'ble ATE made it clear that no benefit will be created to others, who have not approached the tribunal and accepted the order of the Commission. But in the case of the petitioner as it had no notice while determining the generic tariff by the then APERC, the consequences of the said order are not applicable to the petitioner.

The Hon'ble ATE while deciding the appeal relied on the decision of the Hon'ble Supreme Court in the matter of Transmission Corporation of Andhra Pradesh Vs. Sai Renewable Power Limited as decided on 08.07.2010. The counsel for

the petitioner made specific submissions by relying on the said judgment as also the judgment of the Hon'ble ATE. He has quoted extensively from the said orders to emphasize the point that the Commission is alone the authority to determine the tariff and that in the absence of the notice the orders of the then APERC as also the Hon'ble ATE cannot place fetters on the petitioner seeking the present relief. He also pointed out that the law rendered by the Hon'ble Supreme Court under Article 142 of the Constitution of India is binding on this Commission.

The counsel for the petitioner while relying on the decision of the Hon'ble Supreme Court as also the provisions of the Electricity Act, 2003, narrated the background sequence of events and the orders passed by the erstwhile APERC upto the order of the Hon'ble Supreme Court. He sought to emphasize that the provisions made by the erstwhile APERC in the order dated 20.06.2001 as upheld by the Hon'ble Supreme Court would continue to apply to the case of the petitioner. He has shown the relationship between the order of the Commission and the PPA as regards determination of tariff for 11th to 20th year. Thus, he has sought orders from the Commission for allowing the petition by determining the tariff for 11th to 20th year period exercising powers under section 62, 64 and 86 of the Act, 2003.

The counsel for the petitioner as part of his arguments also relied on the aspect of notice and communication as provided in the Act, 2003, Business Regulations of the Commission and general principles of notice. It is his case that the erstwhile APERC has not issued any notice before passing the order, nor communicated it after passing the same to the petitioner. Likewise, the petitioner had no notice of the appeal filed by certain generators as also the order passed thereon subsequently by the Hon'ble ATE. The petitioner cannot be subjected to any conditions imposed in the absence of notice of such orders passed by any authority.

The representative of the respondent submitted that the petition ought not to have been entertained by the Commission, as the petitioner has completed 10 years of the project in the year 2002 and the petition is filed in the year 2018. There is a delay beyond reasonable time for filing a money suit, which is three years under the Limitation Act. The petitioner had also not approached the Commission in time as the order of the APERC in the year 2014 and the Hon'ble

ATE in the year 2016. The respondent is implementing the order passed by the then APERC as adopted by the Commission and the petitioner cannot claim any relief on the basis of the order of the Hon'ble ATE. This Commission may not consider the present request of the petitioner for the reason that in the absence of notice, it does not amount to non-application of the order of the Commission. If at all, the petitioner had any grievance against the order of the APERC, it should have filed appeal before the Hon'ble ATE. Now the period for appeal and review have already expired.

The representative of the respondent stated that the counsel for the petitioner submitted various arguments which are neither relevant nor appropriate. Though excellent efforts have been made to explain the law, it only resulted in confusing the Commission. There is no dispute with regard to application of the tariff or implementation of the existing PPA. Though the Commission has jurisdiction to decide the tariff, the petitioner having accepted the order of the APERC, cannot turn round and say that fresh determination of tariff is made insofar as the project is concerned contrary to subsisting orders and the provisions of the PPA. The present petition may be dismissed.

4. In order to appreciate the issue in the matter it may be appropriate to recapitulate the historical background in the matter as the petitioner has rightly referred to the order passed by the erstwhile APERC in O.P.No.1075 of 2000 as adopted by this Commission. The petitioner also referred to the provisions in the PPA in the petition. The petitioner also referred to order passed by the erstwhile APERC in R.P.No.84 of 2003, but did not mention the relevant portion. The Commission would gainfully a referred to the same.

[page 59 para 81]

.....

- iii) The tariff for mini-hydel power projects is exclusive of Royalty.*
- iv) In the case of tariff for mini-hydel power projects, where the PLF during settlement period exceeds 35%, only an incentive of 21.5 paise/kWh shall be paid for every unit delivered in excess of 35%.*
- v) The tariffs authorized above will be applicable w.e.f 01-04-2004 to all NCE power plants of respective categories for sale to APTRANSCO.*

- vi) *The above tariff structure is valid for a control period of five years with effect from 01-04-2004. Thereafter, the Commission will review the prices and incentives after consultation with the Developers and licensees.*
- viii) *A further review of the individual projects will be undertaken on completion of 10 years from the date of commissioning of the project, by which time the loan is expected to have been substantially repaid, and the purchase price will be based on O&M expenditure, return on equity, variable cost and residual depreciation, if any.*

... ..

5. He also pointed out the consequent litigation and the orders of the Hon'ble Supreme Court on the issue and the action taken by the erstwhile APERC in the interregnum. It is also his case that the petitioner now requires determination of tariff for the period 11th to 20th year of the PPA. The PPA was entered on 05.02.2002 whereas COD of the project is accepted as 15.04.2001. Thus, the duration of the agreement has to be limited to the date of COD.

6. The PPA was originally signed in the year 2002 and according to its provisions it is valid for the period of 20 years the relevant provision in the PPA is as below.

This agreement shall be effective upon its execution and delivery thereof between parties hereto and shall continue in force from the Commercial Operation Date (COD) i.e., 15.04.2001 and until the twentieth (20th) anniversary that is for a period of twenty years from the commercial operation date (COD). This agreement may be renewed for such further period of time and on such terms and conditions as may be mutually agreed upon by the parties, 90 days prior to the expiry of the said period of twenty years, subject to the consent of the APERC. Any and all incentives/conditions envisaged in the Articles of this agreement are subject to modification from time to time as per the directions of APERC, Government of Andhra Pradesh and APTRANSCO.

7. The petitioner has invoked section 62 (1) (a) and 86 (1) (a) (b) and (e) of the Act, 2003. The said provisions are applicable in the matter of determination of tariff in respect of generator undertaking sale of energy to the licensees. Though sub clause (a) of section 86 is mentioned, it is not appropriate and is applicable only in the case

generic situation, which is not the case in this petition. Likewise, clause (e) of section 86 is referred to and it is function of the Commission to take steps for encouraging renewable energy. Though it has no direct bearing on the matter the same may be required to support the case of petitioner.

8. The PPA that is entered in the year 2002 stood transferred to the respondent in this case consequent upon third transfer scheme notified by the Government in G.O.Ms.No.58 dated 07.06.2005. In terms of the PPA the Commission had been determining the tariff from the year 2001 onwards that is in the year 2004 and 2009. The observations in the relevant orders also enumerate that the purchase price will be reworked after 10 years of completion of the project. In that regard the procurer being the respondent herein ought to have approached the Commission as and when the project has completed 10 years of operation for determination of tariff.

9. From the material available on record the Commission does not find any sort of exercise in that direction. The Commission at this stage referred to section 86 (1) (b) as relied upon by the petitioner which is extracted below.

Functions of State Commission - (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:*
- (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 46 agreements for purchase of power for distribution and supply within the State;*

The provision requires the Commission to regulate the licensees in terms of procurement and the price at which power is procured.

10. The petitioner having entered into the PPA with the licensee ought to have initiated the process to get the tariff determined on completion of 10 years of operation of the project if not by 15.04.2011 at least within reasonable time thereafter. The petitioner has failed to initiate such process, whereas the sister concerned of the petitioner during the relevant time has initiated such process along with other developers and obtained order of the Commission dated 23.08.2014 in O.P.No.10 of

2012 and batch. The said order was passed on by the then APERC and stood adopted by the Commission after its formation in regulation No.1 of 2014. In the said order the Commission had determined the tariff for the hydel projects for a period of 15 years on completion of the first 10 years of operation i.e., for 11th to 25th year of operation. It is noticed from the submissions of the respondent that said order is being given effect to in favour of petitioner also.

11. Now the petitioner has put forth the fact that the order dated 23.08.2014 has been challenged before the Hon'ble APTEL and the Hon'ble APTEL after hearing the parties therein in Appeal No.268 of 2014 had remanded the matter back to the Commission for fresh determination in so far as appellants are concerned which is to the present APERC. Basing on the said remand proceedings, the petitioner now seeks fresh exercise in favour of it also on the lines as directed by Hon'ble APTEL.

12. The Commission notices that the petitioner seeks to submit that the order passed by the then APERC cannot be applied to the petitioner herein for the reasons that no notice were sent to it before hearing or the order dated 23.08.2014 has been communicated to it. The Commission notices that the order passed by the then APERC had observed as below.

9. *Since all the essential elements of the tariff frame work for mini hydel projects which have completed 10 years will be similar, the Commission has decided to dispose of the petition filed by APEPDCL in O.P.No.10 of 2012 referred to supra,, by a common order applicable to all the mini hydel power projects which have completed 10 years of operation. In pursuance thereof, the Commission issued notice to all mini hydel developers requesting for information relating to (1) Performance indications of the projects over the last 10 years to be filled up in two prescribed annexures (2) Projections by developer of these parameters for the next ten years (3) Copies of balance sheets and profit and loss accounts of the developer for the period from COD till 31.03.2013. The Commission despite pursuance and follow up received information from only 6 out of 12 operational mini hydel projects to whom this was sent. The Commission felt that the data received was an adequate sample based on which the operational history of mini hydel projects in Andhra*

Pradesh could be fruitfully extracted. Accordingly, the Commission used this data received from the mini hydel projects in its analysis. In addition, the Commission considered the averments mentioned by APEPDCL in O.P.No.10 of 2012, counter/reply filed by M/s Manihamsa Power Projects Pvt. Ltd., therein submissions of the parties concerned therein during the hearing before the Commission, study report of independent consultant instituted by Commission and all the other relevant material available on record.

10. *Based on its analysis, Commission decided to issue a common order in respect of all mini hydel power projects which have completed 10 years of operation.*

The Commission has perused the order passed by the then APERC in so far as the findings reached therein as also with regard to the parties heard in the matter.

13. The Commission in its finding at paragraph 88 has held as below.

88. *Based on the detailed discussion in respect of different parameters as mentioned in the previous chapter, the Commission determines that the fixed cost payable for mini hydel power projects will be as follows:*

Fixed cost for mini hydel power projects for 11th-25th year of operation (Rs./ Unit)	
Year of Operation	Fixed Cost
11	2.15
12	2.22
13	2.30
14	2.39
15	2.48
16	2.58
17	2.68
18	2.79
19	2.91
20	3.03
21	3.17

Fixed cost for mini hydel power projects for 11th-25th year of operation (Rs./ Unit)	
Year of Operation	Fixed Cost
22	3.31
23	3.46
24	3.62
25	3.80

89. *The above mentioned tariff (fixed cost) per unit is exclusive of income tax and minimum alternate tax. Further, the above mentioned tariff is to be paid upto 45% PLF. As mentioned earlier, Commission directs that the DISCOM concerned to pay an incentive of Rs.0.50 ps. per unit generation of electricity above 45% PLF to all such mini hydel project developers. The Commission also directs that electricity duty and water royalty charges paid by the mini hydel project developers during this period shall be reimbursed.*
90. *As will be seen, the Commission has determined a generic order for fixed cost for the 11th-25th year period of their operation. The Commission therefore directs that the above fixed costs will be payable by the respective DISCOMs for all mini hydel based NCE projects which complete ten years irrespective of whether they have approached the Commission or not for such determination.*

14. The Commission notices that the respondent licensee has emphatically stated that the above said finding is being given effect to in favour of all the Mini Hydel projects as this Commission has adopted the said order in its Regulation No.1 of 2014. The petitioner is not averse to this aspect. However, the present petition is framed and filed seeking fresh determination tariff for the 11th to 20th year based on the judgement of the Hon'ble APTEL as noticed earlier.

15. The Commission at this juncture is faced with the situation of the following the order of the Hon'ble APTEL and at the same time there is no direction to it from Appellate forum to revisit the tariff as determined by the erstwhile APERC in order dated 23.08.2014. In as much as it cannot be said that the petitioner has not availed the benefit of the revised tariff as decided by the then APERC, as conceded by the

respondent. In fact, the petitioner would have been paid much less tariff had the then APERC not revisited the tariff applicable and payable to Mini Hydel projects which have completed 10 years or more. At the same time the Commission finds no whisper on the receipt of higher tariff than what is contemplated in the PPA. It is noticed that under the subsisting PPA the petitioner would have received tariff of Rs.1.92 or less from 2011 onwards had the APERC not interfered with the issue of tariff and revised it by pegging it to Rs.2.15 in the 11th year itself. The order of APERC gradually enhances the tariff rather than decreasing it. Therefore, the petitioner cannot have any grievance in the matter of tariff.

16. At the same time it has been contented that no notice of initiation of proceedings or for that matter the final order made by the then APERC have not been communicated. It is surprising and this Commission takes judicial notice of the fact that the communication letter of the then APERC as available to it shows the petitioner address in the list of generators to whom order has been sent by the then APERC. Therefore, this Commission is not inclined to accept this contention of the petitioner.

17. Coming to the aspect of order passed by the Hon'ble APTEL, this Commission is aware that the said order having attained finality is binding on this Commission as it is an order of Appellate forum under the same enactment under which the Commission is functioning. Though the petitioner ought to have approached the Hon'ble APTEL, it did not do so against the then APERC, but claiming relief based on the direction given by the Hon'ble APTEL. The Commission being subordinate forum has to give effect to the finding albeit there being no direction to this Commission. Even otherwise the direction were passed in personem and not in rem, the petitioner being similarly situated cannot be discriminated upon as similarly placed generators have obtained orders of the Hon'ble APTEL.

18. In conclusion it has to be said that, the petitioner is not entitled for the relief sought in the petition for the reason that the Hon'ble APTEL in Appeal No.268 of 2014 specifically emphasised that the decision made there under is applicable only to the appellants of the appeal and not for other Mini/Small Hydro Power projects which have not challenged the impugned order. Needless to say that this Commission is bounded with that decision of the Hon'ble APTEL. Admittedly the petitioner has not challenged the tariff order dated 23.08.2014 and it is not one of the appellants of Appeal No.268

of 2014 and on the other hand it started enjoying the benefits of that tariff order. The petitioner without any merits filed this petition in the year 2018 i.e., more or less four (4) years after determination of tariff on 23.08.2014 with a flimsy reason of non-receipt of prior notice while determining that generic tariff.

19. In the circumstance and for the observations made in the preceding paragraphs the petition is disposed of. No costs.

This order is corrected and signed on this the 1st day of July, 2021.

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

