# ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
## 4th & 5th Floors, Singareni Bhavan, Red Hills, Hyderabad 500 004

O.P. No.39 of 2009
&
I.A. No.17 of 2009
&
I.A. No.19 of 2011

Dated: 08.03.2013

Present
Sri A.Raghotham Rao, Chairman
Sri C.R.Sekhar Reddy, Member
Sri R.Ashoka Chari, Member

Between
M/s Spectrum Power Generation Ltd

…. Petitioner

And

1. Transmission Corporation of Andhra Pradesh Ltd
2. Central Power Distribution Company of A.P. Limited
3. Southern Power Distribution Company of A.P. Limited
4. Northern Power Distribution Company of A.P. Limited
5. Eastern Power Distribution Company of A.P. Limited
6. A.P. Power Co-Ordination Committee

... Respondents

This petition coming up for hearing on 02.06.2012 in the presence of Sri S.Ravi, Advocate for the petitioner and Sri P.Shiva Rao, Advocate for the respondent and having stood over for consideration to this day, the Commission delivered the following

**ORDER**

The petitioner filed a petition u/s 86 (1) (f) of the Electricity Act, 2003 (for short, 'the Act') (a) to declare the contents of the Letter No. CE/Comml/ DEBPP/ADE-2/F.ROE17.17/D.No.535/03 dated 20.8.2003 of the respondents as bad, illegal, arbitrary in nature, unenforceable and not in accordance with the statutory Notification No. S.O. 251 (E) dated 30.03.1992 as well as the provisions

of the Power Purchase Agreement (for short, 'PPA') and (b) to pass an order directing the respondents to implement and give effect to the statutory Notification No. S.O. 251 (E) dated 30.03.1992 in so far as it provides for a Return on Equity (for short, 'ROE') of 16% and not to deduct any amount on this account from the future bills of the petitioner.

2. The averments mentioned in the main petition, in brief, are as follows:

i) The petitioner is a generating company within the meaning of Section 2 (28) of the Act and has constructed, commissioned and is operating 208 MW power plant at Kakinada in Andhra Pradesh.

ii) For the purpose of selling the power generated by it, the petitioner entered into a PPA with the then APSEB on 20.06.1993.The said PPA was revised from time to time and the final agreement was entered into by both the parties on 23.01.1997. Under the reform process, Respondent No.1 stepped into the shoes of APSEB for the purpose of PPA.

iii) Thereafter, Respondent Nos. 2 to 5 succeeded Respondent No. 1 with regard to the rights and obligations of the Respondent No. 1 and the erstwhile APSEB under the PPA with the petitioner. Respondent Nos. 2 to 5 are thus burdened by the same obligation to pay the monthly bills of the petitioner under the PPA. Similarly, in the event of any dispute, clause 6.5 of the PPA would continue to operate as against Respondents Nos. 2 to 5.

iv) The PPA is a statutory contract entered into u/s 43 A (1) of the Electricity (Supply) Act, 1948 and provisions relating to calculation of tariff constitute the fundamental part of the PPA. The PPA is a comprehensive document and covers the entire gamut of operations of the petitioner company and its transactions with the respondents. The tariff is as per the PPA as determined in accordance with the norms relating to the operation and Plant Load Factor (PLF) as laid down by the Central Electricity Authority (CEA). In pursuance of Section 43 A (2) of the said Act, the Government of India made the notification dated 30th March, 1992 and the same has been amended from time to time. The statutory notification was the basis of the

provisions relating to the tariff contained in the PPA between the petitioner and the respondents.

v) Respondent No.1 issued Letter No.CE/Comml/DEBPP/ADE-2/F.ROE17. 17/D.No. 535/03 dated 20.8.2003 threatening to adjust /deduct an amount of Rs.8,51,36,123/- from the future energy bills of the petitioner company. The said letter of the respondent is bad, illegal and arbitrary in nature and the same is unenforceable in the eye of law as the same is not supported by any provisions contained in the PPA. As per the clauses of Notification dated 30.03.1992 which forms part of the PPA, ROE shall be computed on the paid up and subscribed capital relatable to the generating unit, and shall be at an annual rate of 16% of such capital. The payment of fixed charges which include the ROE shall be on monthly basis. Articles 1.1, 3.2.1 and 3.3.1 of the PPA deals with the said issue.

vi) In the letter dt. 20.08.2003, Respondent No.1 stated that ROE works out to 17.17% as payments were made on monthly basis to the petitioner company; and that the said issue has been discussed in the meeting of COPU held on 27.06.2003 and consequently it was decided by them unilaterally to adjust the so called excess amount paid to the petitioner company. In fact Respondent No. 1 has been paying the petitioner company ROE at the rate of 16% only, but not at the rate of 17.17% and the same is evidenced from the letters dated 08.10.1998, 28.05.1999, 11.07.2000, 31.05.2001 and 08.01.2003 written by Respondent No.1 itself.

vii) Respondent No.1 has issued the impugned letter dated 20.08.2003 without giving the petitioner company an opportunity of being heard and hence the act of Respondent No.1 is in total violation of the principles of natural justice.

viii) Respondent No.1 has been making payments to the petitioner strictly in accordance with the provisions of the PPA, which is binding on both the parties. It is mentioned in the PPA that the fixed charge constituting various elements shall be calculated prior to each tariff year including ROE at the annual rate of 16% and shall be paid to the

rate of one-twelfth of the sum thus arrived at during each month. There is no scope for ambiguity and the allegation of respondents that they are remitting ROE at the rate of 17.17% is only imaginary.

ix) The provisions of the PPA do not allow any party to take a unilateral decision. But the Respondents, time and again, have been resorting to unilateral decisions which are arbitrary resulting in great financial difficulties to the petitioner company. The Commission may restrain the Respondent No.1 from acting unilaterally and arbitrarily and direct it to make the monthly payments against the monthly energy bills in accordance with the provisions of the PPA. Petitioner will be put to serious and irreparable loss and hardship if the said amount of Rs.8,51,36,123/- is adjusted by the Respondent No.1.

x) Payment of tariff under the PPA is, in fact and in law, a payment required to be made under the statutory notification dated 30.03.1992 and hence respondents are obliged to ensure that payments are made to the petitioner in accordance with the said notification. Any variation thereof, would amount to a breach of a statutory duty. Therefore, the Commission may restrain the respondents from adjusting Rs.8,51,36,123/-. Otherwise the petitioner may be forced to cease all operations, which may cause severe loss to the financial institutions, besides causing undue hardship to the electricity consumers.

xi) The petitioner bonafidely filed a writ petition No.18165/2003 on the above said grounds. The Hon'ble High Court was pleased to issue a stay order and notice to the respondents and the matter was awaiting final disposal. During the pendency of the above said writ petition, the Hon'ble Supreme Court on 13.03.2008 pronounced its judgment in Appeal (Civil) 1940 of 2008 Gujarat Urja Vikash Nigam Ltd Vs. Essar Power Ltd., holding that after the advent of the Act the disputes between the generating company and licensee are to be adjudicated by the concerned Regulatory Commission and are not to be resolved through the arbitration mechanism as provided in PPAs. In view of the said judgment of Hon'ble Supreme Court of India, on 09.06.2009 the

Hon'ble High Court of AP passed an order in W.P. No.18165/2003 stating that the writ petition is dismissed with liberty to the petitioner to approach the Andhra Pradesh Electricity Regulatory Commission on the issue and allowed the already issued stay order to continue for a period of 6 weeks. In view of the said order, the petitioner is filing the instant petition before the Commission for redressal of the above said dispute between the parties.

3. On 07.01.2010, counter is filed on behalf of all the respondents together. The reply of respondents, in brief, is as follows;

i) ROE shall be computed on the paid up and subscribed capital relatable to the generating unit and shall be at an annual rate of 16% of such capital. Payment of fixed charges which include the ROE are paid on monthly basis and the respondents have been paying accordingly since the inception of the COD. However, in view of the CAG Audit report and as per the mathematical calculations, the effective / resultant total ROE works out to 17.17%, for the simple reason that the payments are made on monthly basis yielding an extra 1.17% over and above the agreed 16% ROE at the end of the tariff year. Therefore, the amount of progressive accruing interest on the ROE for the purpose of calculating fixed charges exceeds the proposed ROE payable by the respondents as per the terms of the PPA.

ii) The discrepancy / ambiguity regarding the payment of ROE arose in the light of the findings of the CAG Audit and the respondents are statutorily obliged to set right the said anomalies in their statement of accounts. It is in this context, the petitioner was intimated that the amount of excess ROE paid shall be adjusted in the future energy bills as the petitioner is required to return the undue/ unjustifiable benefit accruing contrary to the intention of the parties of the contract.

iii) The issue was discussed in COPU meeting and accordingly decided to deduct the excess amount of Rs.8,51,36,123/- from the future energy bills. Hence there was no unilateral decision taken by the

respondents and in fact, the respondents have been paying the bills to uphold the sanctity of the agreement despite the fact that there is no consensus ad idem as to the variance in the ROE after the findings of the CAG Audit report.

iv) Having regard to the nature of dispute, fact finding enquiry is necessary to determine the actual ROE, that the petitioner is receiving pursuant to the findings of the CAG Audit report.

vi) The petition is barred by limitation as the petitioner was pursuing the same subject matter before the wrong court, in spite of having information that the Regulatory Commission is the competent authority to adjudicate disputes between licensees and generators relating to PPAs. The time spent in pursuing the matter before the High Court cannot be excluded for computation of limitation period because it cannot be said, that the petitioner was prosecuting his case under the bonafide mistake that the High Court had the jurisdiction to entertain the petition. Thus, the present petition deserves to be dismissed since barred by limitation.

vii) For the aforesaid reasons, the Commission may be pleased to dismiss the petition and allow the respondents to recover the excess ROE amounting to Rs.8,51,36,123/- and also pass appropriate orders for payment of the ROE at the annual rate of 16% as per the provisions of the PPA, duly apportioning it month wise.

4. As mentioned in paragraph-2 above, the petitioner also filed petition u/s 94 (2) of the Act and the same is numbered as I.A. No.17 of 2009. In the said petition, the petitioner requested the Commission to allow the petitioner to refer and rely on the contents of the main petition in O.P. No.39 of 2009. It is further mentioned that the petitioner has a prima facie case in its favour and the balance of convenience is also in its favour. Any deduction and non-payment from the monthly bill and Supplementary bill would endanger the financial viability and capacity of the petitioner to continue to generate and supply the electricity to the State and very existence and functioning of the petitioner would be in peril.

5. On the date of hearing, the counsel for the petitioner while reiterating the averments mentioned in the petition as mentioned in paragraph-2 supra, submitted that CAG audit objection is peculiar and there is no basis for the assumption that payment of 1/12$^{th}$ ROE every month in effect works out to 17.17% or 1.17% over and above the agreed 16% ROE. Therefore, it is prayed that the letter dt. 20.08.2003 of the respondents may be declared as bad in law and further direct the respondents not to deduct any amount, with regard to payment of ROE, from the future bills of the petitioner.

6. On the other hand, the counsel for the respondents while reiterating the averments mentioned in the counter submitted that apportionment of ROE month-wise and paying 1/12$^{th}$ of ROE every month in effect works out to payment of 17.17% or excess of 1.17% over and above the agreed payment of ROE @ 16%. As per Article-3 of the PPA, the Commission is empowered to determine tariff every year. Therefore, it is prayed that the respondents may be allowed to recover the excess ROE amounting to Rs.8,51,36,123/- and in future allow the respondents to pay ROE @ 16% duly apportioning it month-wise.

7. No interim relief is granted in the Interlocutory Application mentioned above. As the said IA is also coming for hearing along with the main petition, there is no need to pass separate orders in the said I.A. No.17 of 2009.

8. The petitioner also filed another petition u/s 94 (2) of the Act and the same is numbered as I.A. No.19 of 2011. The contents of the petition are briefly as follows:

a) when the petition and IA were dismissed on the ground of limitation, the petitioner has carried the matter in appeal to the Appellate Tribunal for Electricity (Appellate Jurisdiction) (hereinafter referred to as the "Appellate Tribunal") (Appeal No.80 of 2011). The appellate Tribunal was pleased to pass an order dated 10.08.2011 setting aside the order passed by this Commission and remanding the matter back to the Commission for consideration on merits.

b) In view of the settled legal position, the interim order passed by this Commission would continue and the illegal demand made by the

respondents cannot be recovered from the petitioner. However, the petitioner reliably understands that if the petitioner submits its bills for payment for electricity supplied by the petitioner to respondents under the PPA, the respondents would deduct the impugned demand. In as much as this Commission's order is already in subsistence, such deduction that would be made by respondent would be detrimental to the interest of the petitioner.

c) By way of abundant caution and for clarity in this regard, the petitioner has also approached the Hon'ble High Court through W.P. No.23588 of 2011 seeking the issuance of a writ, direction or order especially in the nature of a writ of mandamus declaring that the order dated 07.01.2010 passed by this Commission in I.A. No.17 of 2009 in O.P. No.39 of 2009 pending disposal of O.P. No.39 of 2009 is subsisting and, consequently, restrain the respondents from deducting or adjusting the sum claimed by the respondents in their impugned letter (Lr. No. CE / Comml / DE-BPP / ADE-2 / F.ROE 17.17 / D.No. 535 / 03) dt. 20.08.2003 from the monthly energy bills for the months of June, 2011 and July, 2011 and any future energy bills of the petitioner pending disposal of O.P. No.39 of 2009 by this Commission.

d) In view of the settled legal position that the interim relief granted by this Commission in I.A. No.17 of 2009 by order dated 07.01.2010 would continue since the matter has now been remanded and restored by the Appellate Tribunal and in view of the fact that the respondents are threatening to deduct amounts if bills are presented by the petitioner, the petitioner is constrained to file the present application before this Commission seeking interim relief by way of abundant caution.

9. The learned advocate for the petitioner mainly argued on the following points:

(i) The Commission dismissed OP No.39/2009 as well IA No.17/2009. Against that order, the petitioner filed an appeal before the Hon'ble APTEL and the Hon'ble APTEL set aside the order of the Commission

by holding that the delay caused by the petitioner in filing W.P.No.18165/2003 before the Hon'ble High Court is not barred by limitation and remanded the matter to the Commission.

(ii) The very remand order passed by the Hon'ble APTEL restores OP No. 39/2009 as well IA No.17/2009 and all the orders in existence prior to the date of dismissal. The respondent issued a notice through a letter for adjustment of the amount of Rs.8,51,36,123/- on the ground that the CAG submitted a report about the excess payment made by the respondents.

(iii) Against that letter the petitioner filed the above said writ petition and obtained stay and finally writ petition was withdrawn with a liberty to file a petition before the Commission and in pursuance of the said direction, the petitioner filed the above said petition.

(iv) The very letter dated 20.08.2003 itself is incorrect and the calculation and methodology adopted by CAG at 17.17% is incorrect and the Return on Equity as paid by the respondents prior to the said letter at 16% is on correct lines and therefore the impugned letter dated 20.08.2003 is liable to be set aside.

10. Whereas, the learned advocate for the respondent submitted his arguments projecting mainly the following grounds:

(i) the respondents have initiated proceedings basing on the report of CAG.

(ii) The calculation and methodology as mentioned in the report are on correct lines.

(iii) The impugned letter is valid and the respondents are entitled to adjust the said amount in future bills and the petition filed by the petitioner is liable to be dismissed.

11. Now the two issues for consideration of the Commission are as hereunder:

(1). whether the calculation and methodology adopted by the Comptroller and Auditor General (CAG) in arriving at effective ROE of 17.17% being paid to the Developer on account of monthly payment,

pursuant to which the letter dated 20-08-2003 was issued by the respondent is correct?

(2). whether the letter issued by the respondent dated 20-08-2003, is consistent with the statutory Notification dated 30-03-1992 as well as the provisions of the PPA?

12. While addressing the issue at (1) above, it is necessary in the first place to examine the calculation and methodology adopted by the CAG. For that purpose, the relevant extract of the audit para is given below:

> *"The payment of RoE to investors is normally an annual feature. The payment of RoE by the Board every month on pro-rata basis would leave un-utilized cash balance with the Developer. It would have been financially beneficial, had the board negotiated for payment of RoE on annual basis as is the case with the payment of taxes on income to the Developer. Payment of RoE on the entire equity of Rs.224.53 Crores at 16% (Rs.35.92 Crores) on monthly basis proportionally works out to 17.17% per year (Rs.38.55 Crores) a gain of Rs.2.63 Crores every year to the Developer. The GoI guidelines also did not preclude the Board from negotiating better terms and conditions..... In view of savings involved, in payment of RoE on annual basis, the Board should have negotiated for its payment on annual basis".*

In order to understand and appreciate the import of the audit para of CAG, the following illustrative table needs to be consulted:

| Month | RoE @ 16% p.a. on Equity of Rs.224.53 Crores | 1/12th of RoE paid monthly (Rs. Crores) (Rs.35.92 Crs /12) | Interest @ 16% p.a. accrued due to monthly payment (Rs. Crores) | Total amount said to have been received on account of RoE due to monthly payment (Rs. Crores) | Effective RoE (38.56/ 224.53*100) (Rs. Crores) (%) |
|---|---|---|---|---|---|
| 1 | 35.92 | 2.99 | 0.00 | 2.99 | 17.17 |
| 2 | | 2.99 | 0.44 | 3.42 | |
| 3 | | 2.99 | 0.40 | 3.39 | |
| 4 | | 2.99 | 0.36 | 3.35 | |
| 5 | | 2.99 | 0.32 | 3.31 | |
| 6 | | 2.99 | 0.28 | 3.27 | |
| 7 | | 2.99 | 0.24 | 3.23 | |
| 8 | | 2.99 | 0.20 | 3.19 | |
| 9 | | 2.99 | 0.16 | 3.15 | |
| 10 | | 2.99 | 0.12 | 3.11 | |
| 11 | | 2.99 | 0.08 | 3.07 | |
| 12 | | 2.99 | 0.04 | 3.03 | |
| **TOTAL Amount** | **35.92** | **35.92** | **2.63** | **38.55** | **17.17** |

As can be seen from the above table, it is clear that, on account of monthly payment of RoE at the rate of 1/12th of Rs.35.92 Crores (16% on Rs.35.92 Crores),

instead of the same being paid at a time annually, would leave un-utilized cash balance with the Developer as rightly pointed out by CAG in their audit report. However, the computation that the additional benefit to the developer on account of monthly payment would translate to Rs.2.63 Crores per annum, thus, resulting in an effective RoE of 17.17% need not necessary be true since, it depends upon the Rate of Interest, the developer would have got at the relevant point in time.

13. While addressing the issue at (2) above, it is necessary in the first place to examine the relevant provisions contained in the statutory Notification dated 30th March, 1992 and the provisions of the PPA signed by parties.

The relevant provisions in the notification dated 30-03-1992 are hereunder:

*1. **Thermal Power Generating Stations:***
*The two-part tariff for sale of electricity from Thermal Power Generating Stations (including Gas based stations) shall comprise the recovery of annual fixed charges consisting of interest on loan capital, depreciation, operation and maintenance expenses (excluding fuel), taxes on income reckoned as expenses, **Return on Equity (RoE)** and Interest on Working Capital at a normative level of generation, and energy (variable charges) covering fuel charge recoverable for each unit (kWh) of energy supplied and shall be based on the following norms.*

*: : : : : : : :*

*1.5. The annual fixed charges shall be computed on the following basis:*

*a. Interest on loan capital*
*.....*

*b. The rates of depreciation*
*....*

*c. Operation and Maintenance Expenses*
*....*

*d. Taxes on Income*
*....*

*e. **Return on Equity** shall be computed on the paid-up and subscribed capital relatable to the generating unit, and shall be 16% of such capital.*
***Explanation:***
*For the purpose of this paragraph, the generating company shall, in regard to subscribed equity brought-in foreign exchange, have the option to compute the Return on Equity not exceeding 16% in the currency of the subscribed capital.*

*f. Interest on working capital*
*....*

*1.6. Full fixed charges shall be recoverable at generation level of 6000 hours/kW/year. Payment of fixed charges below the level of 6000*

*hours/kW/year shall be on pro-rata basis. There shall not be any payment for fixed charges for generation level above 6000/kW/year. For generation of above 6000 hours/kW/year, the additional incentive payable shall not exceed 0.7% of Return on Equity, for each percentage point increase of Plant Load Factor above the normative level of 6000 hours/kW/year. While computing the level of generation, the extent of backing down as ordered by the regional electricity board, shall be reckoned as generation achieved.* ***The payment of fixed charges shall be on monthly basis,*** *proportionate to the Electricity drawn by the respective boards and other person. Necessary adjustment based on the actual shall be made at the end of each year.*

As per clause 1 of the Notification, the two-part tariff for sale of electricity from Thermal power Generating Stations (Including Gas based stations) shall comprise the recovery of annual fixed charges consisting, inter-alia Return on Equity. Further, as per clause 1.5, the annual fixed charges shall be computed on the basis of certain parameters indicated therein, including Return on Equity of 16% and as per clause 1.6, the payment of fixed charges shall be on monthly basis.

A combined reading of above three clauses clearly indicates that, the Return on Equity of 16% is to be taken into account while computing the Annual Fixed Charges, which are to be paid by way of tariff (fixed cost component of two-part tariff) and on monthly basis.

14. In view of the above finding, it cannot be said that the existing method of computing the Return on Equity at 16% per annum and paying the same by way of a tariff on monthly basis cannot be said to be in-contradiction with the Notification dated 30th March, 1992. Interestingly, the Comptroller and Auditor General (CAG) also did not anywhere state that, the existing practice is in-contradiction with the Notification dated 30th March, 1992, though observed that in view of the savings involved in payment of Return on Equity on annual basis, the Board should have negotiated for its payment on annual basis.

15. Having examined the provisions of the Notification dated 30th March, 1992, the provisions of the PPA are being examined as hereunder. For that purpose, the relevant provisions in the PPA are extracted as hereunder:

> **Article 1.1 (lxxiii) – Return on Equity** means in relation to a specified period a Return on the Equity during such period at a per annum rate of 16% and, in the case of foreign equity, converted to rupees at the relevant current rate of exchange.
>
> **Article 3.2.1 (a)** – The fixed charge component of the tariff for each billing month in a tariff year shall be a lumpsum amount equal to one-twelfth of the following amounts, computed in accordance with Article 3.3 for such tariff year.
>
> (i) ...
> (ii) Return on Equity for such tariff year
> : :
> (vii)
>
> (b) (i).
> (ii).
>
> **Article 3.3 – Provisional Tariff - Adjustments:**
>
> **Article 3.3.1 – Calculation of Payment:** Not later than 30 days prior to each tariff year, the company will provisionally calculate the amount of each element of fixed charge component which are payable by Board with respect to such tariff year. The date on which such calculation is made, shall be referred to as the "Fixed Charge computation date". Such calculations shall be strictly in accordance with the terms of this agreement and will be made in consultation with the Board. The Board will make monthly payments of Fixed charge (as adjusted pursuant to the terms of Article 3.3.2 hereof) in Rupees in accordance with Article 6.1.
>
> **Article 3.3.2 – Exchange Rate Adjustments.**
> **.....**
> **Article 6.1 – Monthly bills.**
> **.....**

16. A combined reading of all the above Articles of the PPA, would indicate that, on the fixed charge computation date, the company will provisionally calculate [strictly in accordance with the terms of the PPA and in consultation with the Board] the amount of each element of fixed charge component [including Return on Equity at a per annum rate of 16%] which are payable by Board with respect to such tariff year. Thereafter, the fixed charge component of the tariff for each billing month in a tariff year shall be computed as a lumpsum amount equal to one-twelfth of sum of certain amounts indicated therein including Return

on Equity for such tariff year. Further, such fixed charge component of the tariff for each billing month is to be paid monthly.

17. In view of the above finding, it cannot be said that the existing method of computing the Return on Equity at 16% per annum and paying the same by way of a tariff on monthly basis cannot be said to be in-contradiction with the PPA. Interestingly, the Comptroller and Auditor General (CAG) also did not anywhere state that, the existing practice is in-contradiction with the PPA, though observed that in view of the savings involved in payment of Return on Equity on annual basis, the Board should have negotiated for its payment on annual basis.

18. As can be seen from the above, the existing method of computing the Return on Equity at 16% per annum and paying the same by way of a tariff on monthly basis is neither in-contradiction with the statutory Notification dated 30th March, 1992 nor in-contradiction with the PPA signed by the parties. Further, the CAG also did not anywhere comment that, the existing method of computing the Return on Equity is in deviation either with the statutory Notification dated 30th March, 1992 or the PPA. The observations of the CAG are in the nature of what the Board should have done while entering the PPA. As such, the deductions sought to be made by letter dated 20-08-2003 cannot be held to be valid specially when the present practice of payment of Return on Equity is in terms of the statutory Notification dated 30th March 1992 and the PPA executed in pursuance thereof. The Commission in the instant case, has to base its judgment on the concluded PPA entered pursuant to the statutory Notification dated 30th March, 1992 alone.

19. In the circumstances stated above, the impugned letter dated 20-08-2003 issued by the respondents to the petitioner purported to adjust the said amount in future bills has no legs to stand.

20. Hence, we are of the considered opinion that the impugned notice / letter issued by the respondents is liable to be set aside.

21. In the result, the petition is allowed directing the respondents not to make any adjustment as mentioned in the said notice / letter dated 20.08.2003. The same rate has to be paid in future bills also.

**I.A. No.17 of 2009**

22. In view of the findings given in the main O.P. itself the relief now sought is infructuous. Hence, the same is closed.

**I.A. No.19 of 2011**

23. In view of the findings given in the main O.P. itself the relief now sought is infructuous. Hence, the same is closed.

***This order is corrected and signed on this 8th day of March, 2013.***

| | | |
|---|---|---|
| Sd/- | Sd/- | Sd/- |
| **(R.Ashoka Chari)** | **(C.R.Sekhar Reddy)** | **(A.Raghotham Rao)** |
| Member | Member | Chairman |