ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

WEDNESDAY, THE ELEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND NINETEEN

:Present:
Justice G. Bhavani Prasad, Chairman
Dr. P. Raghu, Member
Sri P. Rama Mohan, Member

O.P.No. 21 of 2019 & O.P.No. 28 of 2019

O.P.No.21 of 2019

Between:

M/s. RCI Power Limited ... **Petitioner**

A N D

APSPDCL ... **Respondent**

O.P.No.28 of 2019

Between:

M/s. Bharath Wind Farm Ltd ... **Petitioner**

A N D

APSPDCL ... **Respondent**

Both the Original Petitions have come up for hearing finally on 31-08-2019, in the presence of Ms. Ritu, learned counsel for the petitioners and Sri P. Shiva Rao, learned Standing Counsel for the respondent. After carefully considering the material available on record and after hearing the arguments of the learned counsel for both parties, the Commission passed the following:

COMMON ORDER

O.P.No.21 of 2019 is a petition to direct the respondent to pay the tariff at Rs.3.37 per unit for the electricity supplied upon completion of 10 years of the power plant, as determined in the order of the Commission dated 06-09-2014 and to pay the difference between the interim tariff paid and the final tariff of Rs.3.37 per unit along with wrongfully deducted charges with interest at 15% per annum from the date of payment of interim tariff till the date of payment of final tariff with costs and other appropriate reliefs.

2. The petitioner's case in O.P.No.21 of 2019 is that it is a generating company owning and operating a 20 MW wind farm at Kadavakallu, Anantapur District, which achieved commercial operation on 31-03-1999 and completed 10 years from the Commercial Operation Date on 31-03-2009. The petitioner originally entered into an agreement for energy wheeling and power purchase with the Andhra Pradesh State Electricity Board on 21-05-1997 and with the Transmission Corporation of Andhra Pradesh Limited on 31-01-2000 for supply of wind power for 20 years from the Commercial Operation Date. The erstwhile Andhra Pradesh Electricity Regulatory Commission ordered in O.P.No.1075 of 2000 on 20-06-2001 that the power generators in the State were not entitled or permitted to third party sale of electricity and that any power generated from Non-Conventional Energy sources shall be supplied only to the distribution companies. The petitioner originally supplying power to third parties, started selling power to the then Central Power Distribution Company of Andhra Pradesh Limited from September, 2006 at the tariff of Rs.2.70 per unit, as determined by the erstwhile Andhra Pradesh Electricity Regulatory Commission by an order dated

20-06-2001. The petitioner was paid the same tariff from April, 2009 to May, 2013 from the 11th year onwards. In the meanwhile, the erstwhile Andhra Pradesh Electricity Regulatory Commission, pending proceedings for determination of the final tariff for wind power plants for supply of electricity to the licensees from the 11th year onwards, determined an interim tariff of Rs.1.69 per unit, by an order dated 19-11-2012 in O.P.No.15 of 2006. The petitioner was paid such interim tariff from June, 2013 as admitted by the licensee in its letter. The erstwhile Andhra Pradesh Electricity Regulatory Commission passed the final orders in O.P.No.15 of 2006 on 06-09-2014, which orders became final. The then Central Power Distribution Company of Andhra Pradesh Limited desired the petitioner to execute a fresh Power Purchase Agreement at the tariff determined by the Commission by a letter dated 01-05-2014 and in the meanwhile, due to bifurcation of the State with effect from 02-06-2014, the wind farms of the petitioner came under the jurisdiction of the respondent. The respondent continued to pay at Rs.1.69 per unit terming the energy as 'banked energy'. In spite of the petitioner raising invoices at Rs.3.37 per unit as determined by the Commission from April, 2016, the respondent was paying Rs.1.72 per unit considering the energy as 'unutilized banked energy' at 50% of the rate determined by the Commission by its order dated 07-11-2015. The energy purchased under the terms of the Power Wheeling Agreement cannot be considered as 'banked energy' and when there is no Open Access supply at all and the entire supply being only to the licensee, the question of any banked energy does not arise. When the petitioner approached the respondent for execution of a Power Purchase Agreement for the remaining 5 years at the tariff determined by the Commission, the respondent demanded concurrence for a tariff of

Rs.2.70 per unit and not to claim any arrears for the past from the Transmission Corporation of Andhra Pradesh Limited / Andhra Pradesh distribution companies / Andhra Pradesh Power Coordination Committee. The petitioner was constrained to agree under duress and the draft Power Purchase Agreement dated 31-12-2015 was forwarded to the Commission. The Commission returned the same with a letter dated 16-10-2017 as the existing Wheeling Agreement is valid upto 31-03-2019 and that there was no jurisdiction for varying the tariff fixed by the Commission, as held in Shree Sidhbali Steels Limited and others Vs State of Uttar Pradesh and others **(2011) 3 SCC 193**, BSES Ltd Vs Tata Power Co Ltd **(2004) 1 SCC 195** and in the other decisions of the Hon'ble Appellate Tribunal for Electricity and the Commission. The tariff determined under Section 62 of the Electricity Act, 2003 is binding on the parties, more so, when the respondent accepted and paid the entire tariff as per order dated 19-11-2012 and the tariff fixed by the Commission was not challenged at all. The respondent is also deducting SLDC and other charges which are neither applicable nor permissible. Only KVArH charges can be a permissible deduction from the invoices and when the matter was referred by the respondent to the Andhra Pradesh Power Coordination Committee, it stated by a communication dated 30-04-2018 that the power is to be treated as 'unutilized banked energy'. The order of the Commission in O.P.No.17 of 2015 dated 02-06-2018 applies to the present case and hence, the petitioner came up with this petition giving a detailed statement of the quantum of electricity supplied upon completion of 10 years for which, interim tariff was paid. Hence, the petition.

3. The respondent in its counter affidavit claimed that the original revised Wind Purchase Agreement and Wind Power Wheeling Agreement with the Andhra Pradesh

State Electricity Board and the Transmission Corporation of Andhra Pradesh Limited respectively were followed by 2 separate amended and restated Agreements on 31-01-2000. The Power Purchase Agreements were not in the standard formats of the erstwhile Andhra Pradesh Electricity Regulatory Commission and had no approval of the Commission, while the Power Wheeling Agreements had such consent under which the petitioner was selling power to third parties upto September, 2006. At the request of the petitioner subsequently, the purchase of energy from the petitioner by the distribution companies commenced from September, 2006 under the Wind Power Wheeling Agreements under which, the petitioner raised invoices for sale of banked energy at Rs.2.70 per unit. After May, 2013, the then Central Power Distribution Company of Andhra Pradesh Limited decided to pay Rs.1.69 per unit for the energy delivered under the Wheeling Agreement upto September, 2015, at the request of the petitioner. In the meanwhile, the Commission amended the Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code) Regulation, 2006 (Regulation 2/2006) by an amending Regulation 2/2014 making provision for payment of unutilized banked energy at 50% of the pooled cost of the power purchase, applicable for that financial year, as determined by the Commission under RPPO Regulation 1/2012. The subsequent Regulation 2/2016 also provided the same and the petitioner is being paid accordingly. The Wheeling Agreement also expired on 31-03-2019 and as per the directions of the Andhra Pradesh Power Coordination Committee, a draft Power Purchase Agreement in the standard format was entered on 31-12-2015 between the parties for sale of power at Rs.2.70 per unit for the balance period of 20 years and the Commission by a letter dated 27-01-2016 sought for clarification, which was submitted on 08-06-2016. Further details were submitted by a letter dated 15-09-2016 in response to the letter dated 12-08-2016 from the Commission. An affidavit was submitted as required by the Commission in its further letter dated 25-10-2016 and the draft Power Purchase Agreement was returned by the Commission along with a letter dated 16-10-2017 as the existing Wheeling Agreement was valid upto 31-03-2019 and 31-03-2020 and as there is no justifiable basis for the tariff proposed afresh. Hence, the respondent continued to purchase the unutilized banked energy as per Regulations 2/2014 and 2/2016 under the existing Wheeling Agreement. The order dated 06-09-2014 of the Commission is not applicable in the absence of any Power Purchase Agreement or a provision in the agreement to apply that tariff. The payments made since inception till after bifurcation were received without any demur. The tariff determined by the Commission applies only to the projects with valid Power Purchase Agreements. The case of IL & FS Limited is inapplicable as it has a valid Power Purchase Agreement with the then Central Power Distribution Company of Andhra Pradesh Limited. The petitioner needs to pay the charges / duties as determined by the Andhra Pradesh Electricity Regulatory Commission from time to time, as per the provisions of the Wheeling Agreement. Hence, the said charges are collected. Hence, the respondent desired that the petition be dismissed with costs.

4. The petitioner filed a rejoinder contending that the respondent did not permit the petitioner to supply power to third parties from September, 2006 and the entire power being taken by the respondent, left no scope or permission for wheeling of power. The Commission directions prohibiting sale of power to third parties, were implemented by the respondent and in the communication dated 16-10-2017, the Commission stated that no fresh Power Purchase Agreement is required, as the entire power covered by the Power Purchase Agreement is being procured by the respondent under the existing agreement. The respondent cannot apply the provisional tariff of Rs.1.69 per kWh to the prejudice of the petitioner and thereafter refuse to apply the final tariff determined by the Commission. The mere nomenclature of the agreement as Energy Wheeling Agreement cannot be taken advantage by the respondent and Regulation 2/2014 providing for terms and conditions of Open Access for solar and wind plants has no application to the petitioner and the then Central Power Distribution Company of Andhra Pradesh Limited confirmed that the energy supplied was not banked energy by their letters. Every allegation made in the counter by the respondent was specifically disputed and denied in the rejoinder.

5. O.P.No.28 of 2019 is a petition for identical reliefs in favour of the petitioner therein on a similar factual background. The petitioner is also claimed to be a generating company owning and operating a 4.25 MW wind farm at Kadavakallu, Anantapur District achieving commercial operation on 31-03-2000 and completed 10 years from the Commercial Operation Date by 31-03-2010. The petitioner entered into an agreement dated 21-04-1999, amended on 19-03-2001 for energy wheeling and power purchase with the Transmission Corporation of Andhra Pradesh Limited for supply of wind power for 20 years from the Commercial Operation Date. The Wind Power Wheeling Agreement was amended on 19-09-2013 in the name of the petitioner with the then Central Power Distribution Company of Andhra Pradesh Limited. The petitioner was paid Rs.2.70 per unit from April, 2010 to September, 2012 on completion of 10 years from the Commercial Operation Date. The interim tariff of about Rs.1.69 per unit determined by the then Andhra Pradesh Electricity Regulatory Commission in I.A.No.6 of 2006 in O.P.No.15 of 2006 on 19-11-2012 was applied to the petitioner from October, 2012 considering completion of 10 years. The then Central Power Distribution Company of Andhra Pradesh Limited required the petitioner to execute a fresh Power Purchase Agreement at the tariff determined by the Andhra Pradesh Electricity Regulatory Commission by a letter dated 01-05-2014 but before the execution of a fresh Power Purchase Agreement, there was bifurcation of the State. From April, 2016, the respondent started payment of Rs.1.72 per unit and the petitioner was constrained to agree to a tariff of Rs.2.70 per unit without claiming any arrears for the past, while entering into a draft Power Purchase Agreement dated 31-12-2015 and ultimately, the respondent conveyed to the petitioner that the Andhra Pradesh Power Coordination Committee treated the power supplied by the petitioner as unutilized banked energy. So, for similar reasons as in the other petition, the petitioner came up with this petition.

6. The respondent in its counter affidavit raised similar contentions as in the other petition and claimed that the revised Wind Power Purchase Agreement with the Andhra Pradesh State Electricity Board and the revised Wind Power Wheeling Agreement with Transmission Corporation of Andhra Pradesh Limited on 21-04-1999 in respect of this generating unit were followed by two separate amended and restated agreements on 19-03-2001. Thereafter, the price of Rs.1.69 per unit was applied from October, 2012 to September, 2015. The draft Power Purchase Agreement entered on 31-12-2015 was ultimately returned with a letter dated 16-10-2017 of the Commission after exchange of correspondence as in the other case. On a similar factual background as in the other case, identical contentions were raised in the counter affidavit, with a request to dismiss the petition with costs.

7. The petitioner filed a detailed rejoinder which is similar to the one filed in the other petition in every respect with an ultimate denial of everything alleged by the respondent.

8. On such pleadings in both the petitions, the point for consideration is whether the respondent is liable to make good the difference between the interim tariff of Rs.1.69 per unit and the final tariff of Rs.3.37 per unit since the completion of 10 years from the Commercial Operation Date of the respective units and any charges that were deducted, with interest at 15% per annum from the date of payment of the interim tariff till the date of payment of the final tariff and also the costs of the proceedings ?

9. The revised Wind Power Purchase Agreement between Andhra Pradesh State Electricity Board and the petitioner in O.P.No.21 of 2019 dated 21-05-1997 provided for the tariff at which the Board shall purchase the entire delivered energy supplied by the company in article 3. Article 3 provided the tariff at Rs.2.25 per unit for 1 year from the date of commercial operation subject to annual escalation from the 2nd and subsequent years in accordance with the specified formula. After a period of 5 years from the date of commercial operation of the last wind mill of the projects, the tariff has to be decided at a mutually agreed rate for the rest of the duration of the agreement of 20 years from the scheduled date of completion subject to mutually agreed renewal. The agreement was amended and restated on 31-01-2000. Under article 3 Wheeling and Banking, it prescribed that no part of the power generated by the project shall be sold or transferred to any person other than the scheduled consumers of the Board and the

Board undertook the wheeling of the delivered energy to the scheduled consumers at a concessional rate of wheeling charges for the initial 5 years. Any request of the company for banking of the whole or part of the delivered energy were to be accepted by the Board subject to a banking charge of 2% making only 98% such energy available for future wheeling.

10. In O.P.No.1075 of 2000, the erstwhile Andhra Pradesh Electricity Regulatory Commission passed an order on 20-06-2001 prohibiting Non-Conventional Energy developers from selling power generated by them to third parties and directing them to supply such power at Rs.2.25 per unit with 5% escalation per annum with 1995 as the base year to Transmission Corporation of Andhra Pradesh Limited. By an interlocutory order dated 19-11-2012 in I.A.No.6 of 2006 in O.P.No.15 of 2006, the erstwhile Andhra Pradesh Electricity Regulatory Commission fixed the interim tariff at Rs.1.69 per unit for the power supplied to the then Central Power Distribution Company of Andhra Pradesh Limited by the developers beyond the 10th year pending fixation of final tariff applicable beyond 10th year. Ultimately, the then Andhra Pradesh Electricity Regulatory Commission passed order on 06-09-2014 in O.P.Nos.14 to 18 of 2006 determining that the present single tariff of Rs.3.37 per unit should be continued to all the subject projects and similarly placed wind based NCE projects till the expiry of the respective Power Purchase Agreements or since the completion of 10 years from the date of commercial operation whether they have approached the Commission or not for such determination, as the case may be. The letters dated 23-04-2014 and 30-08-2014 from the then Central Power Distribution Company of Andhra Pradesh Limited / the present Southern Power Distribution Company of Telangana Limited stated that the energy supplied by the petitioner cannot be considered as 'banked energy'. However, the subsequent letter from Andhra Pradesh Power Coordination Committee dated 30-04-2018 shows that the energy delivered to the Andhra Pradesh distribution companies by the petitioner is treated as 'unutilized banked energy' under the respective Wheeling Agreements with reference to Regulations 2/2014 and 2/2016.

11. In O.P.No.28 of 2019, the Wind Power Purchase Agreement dated 21-04-1999 subsequently amended on 19-03-2001 also stated about the generator being paid for the energy being delivered at the interconnection point for sale to AP Transco at Rs.2.25 per unit with escalation at 5% per annum with 1997-98 as the base year from the date of commercial operation of the project. From 18-11-2000, this purchase price was stated to be as per the orders of the Government of Andhra Pradesh and the APERC. The respondent addressed the petitioner on 30-08-2014 informing that the tariff approved is Rs.1.69 per unit for power purchased for the period from October, 2012 to January, 2014 as the project had completed 10 years period from the Commercial Operation Date. By a letter dated 01-05-2014, the respondent (APCPDCL) informed that for carrying forward the existing Power Purchase Agreement, it is required in the standard format approved by the APERC for future purchase of power for the balance period at the APERC approved tariff. The respondent (APCPDCL) had informed the APPCC by a letter dated 23-04-2014 that the petitioners in both cases supplied power at the tariff of Rs.1.69 per unit as the projects have completed 10 years. The letter clearly stated about the circumstances under which the energy cannot be considered as 'banked energy' as per the conditions. TSSPDCL (formerly APCPDCL) in its letter dated 30-08-2014 informed that the tariff of Rs.1.69 per unit was the purchase price for the power supplied by the petitioners as the projects have completed 10 years. It further stated clearly that TSSPDCL was purchasing power since prior to State Reorganization and as per the relevant articles of the Power Wheeling Agreements of the petitioners. Hence, the energy cannot be considered as 'banked energy' as per the conditions. Subsequently, the decision of the APPCC communicated to the respondent by a letter dated 30-04-2018 was to treat the energy supplied as 'unutilized banked energy' governed by Regulations 2/2014 and 2/2016, more so, in view of the APERC returning the draft PPA to the petitioners due to the validity of the existing Wheeling Agreements upto 31-03-2019 and 31-03-2010 respectively. Hence, APPCC concluded that the tariff of Rs.3.37 per unit as per the APERC order dated 06-09-2014 is not applicable to the petitioners.

12. The principles laid down by the Hon'ble Supreme Court in Shree Sidhbali Steels Limited and others Vs State of Uttar Pradesh and others **(2011) 3 SCC 193** and BSES Ltd Vs Tata Power Co Ltd **(2004) 1 SCC 195** are relied on by the petitioners. In the first decision, the Hon'ble Supreme Court, following its earlier decisions, held that the licensee has no power to amend and / or modify the tariff determined by the Regulatory Commission. In the second decision also, it reiterated that the provisions of the Act and the Regulations show that the Commission has exclusive power to determine the tariff and the tariff approved by the Commission is final and binding and it is not permissible for the licensee, utility or anyone else to charge different tariff.

13. The respondent relied on the Andhra Pradesh Electricity Regulatory Commission (Interim Balancing and Settlement Code) Regulations, 2006 as amended from time to time and as per clause 3 (f) of Appendix 3 of the said Regulation, the purchase price payable by the Discoms for unutilized banked energy will be equivalent to 50% of the pooled cost of the power purchase, applicable for that financial year, as determined by the Commission under RPPO / REC Regulation (1/2012). This Appendix 3 was under clause 12.2 of the Regulation, which stated that the banking facility to the wind, mini hydel and solar power generators shall be subject to the conditions specified in Appendix 3. Clause 12.2 of the Regulation clearly stated in the proviso that in the case of existing users of wheeling facility, the energy already banked as per the subsisting agreements as on the date of coming into force of the Regulation shall be paid as hitherto before till the expiry of the balance period available for utilization of the banked energy. This Regulation 2/2016 was made for Open Access transactions and though the petitioners were selling power to third parties upto September, 2006, admittedly the erstwhile APERC by its orders in O.P.No.1075 of 2000 dated 20-06-2001 prohibited any third party sale and directed that any power generated from NCE sources shall be supplied only to AP TRANSCO. As such since September, 2006, the petitioners were supplying power only to the Discoms and under such circumstances, when any third party sale is prohibited, applicability of the Regulations concerning the Open Access transactions to such sale of energy cannot be considered to continue to be operative.

14. The order dated 20-06-2001 in O.P.No.1075 of 2000 of the erstwhile APERC fixed the tariff for the electricity purchased by AP TRANSCO from NCE developers and continued the then existing incentives with a *suo motu* review proposed to take effect from 01-04-2004. The erstwhile APERC fixed the tariff for the NCE projects with effect from 01-04-2004 as per the orders dated 20-03-2004 in RP No.84 of 2003 in O.P.No.1075 of 2000. The tariff for wind power projects was frozen for the next 5 years at Rs.3.37 per unit. In I.A.No.6 of 2006 in O.P.No.15 of 2006 the erstwhile APERC by an order dated 19-11-2012 held that upon completion of 10 years from the date of commissioning of the project, the tariff for the same is to be further reviewed and fixed an interim tariff of Rs.1.69 per unit at 50% of rate paid for the 10^{th} year pending fixation of final tariff applicable beyond 10^{th} year. In detailed orders in O.P.Nos.14 to 18 of 2006 dated 06-09-2014, the erstwhile APERC passed a common order in respect of wind based power projects which have completed 10 years of operation and determined the single tariff again at Rs.3.7 per unit till the expiry of the respective Power Purchase Agreements of the projects and also for all similarly placed wind based NCE projects which completed 10 years from the date of commercial operation irrespective of whether they have approached the Commission or not for such determination.

15. Thus, the original agreements between the petitioners herein and the APSEB were styled as Wind Power Purchase Agreements and were composite agreements for wind power wheeling and purchase. The agreements specifically provided for the tariff payable for the energy delivered at the interconnection point for sale to AP Transco (succeeding the APSEB) at Rs.2.25 per unit while wheeling charges were separately and distinctly understood to mean the consideration of the APSEB / AP TRANSCO for wheeling the delivered energy at the point of interconnection which should be expressed in time as a percentage of the delivered energy. Wheeling and banking on the one hand and tariff for the delivered energy on the other were clearly provided for distinctly and separately under the original agreements and as amended and restated and Regulation 2/2006, as amended by Regulations 1/2013, 2/2014 and 2/2016 in relation to banking under clause 12 which is subject to the conditions specified in

Appendix-3 only relates to the wind, mini hydel and solar power generators having wheeling facility and the provision for banking. It is only in respect of the unutilized banked energy under clause 12 read with Annendix-3 (3) (f), the purchase price payable by the Discoms for unutilized banked energy is equal to 50% of the pooled cost of the power purchase applicable for that financial year. This arrangement relating to wheeling and banking and unutilized banked energy is thus with reference to the wheeling facility provided under the agreements but not delivered energy fed into the grid of APSEB / AP TRANSCO at the tariff payable as specified under the agreements.

16. However by the orders of the erstwhile Andhra Pradesh Electricity Regulatory Commission in O.P.No.1075/2000 dated 20-06-2001, all generators of non-conventional energy were directed with effect from the billing month of August, 2001 to supply power to AP TRANSCO only without any permission for sale to any third party, at the price of Rs.2.25 per unit with 5% escalation per annum with 1994-95 as base year and AP Transco was also directed to simultaneously arrange payment for the supply of power purchase from the developers to non-conventional energy. The Commission gave notices of the matter to all the developers of non-conventional energy and this order of the Commission, which became final, thus erased the component of wheeling and banking involving the generator, scheduled consumers and the utility leaving only the component of power purchase involving the generator and the utility alone for which the tariff payable and the other terms and conditions already existed distinctly and clearly under the agreements. By virtue of the orders in I.A.No.6 of 2006 in O.P.No.15 of 2006 dated 19-11-2012, the erstwhile Andhra Pradesh Electricity Regulatory Commission noted the earlier orders in O.P.No.1075 of 2000 dated

20-06-2001 and the initiation of *suo motu* proceedings by the Commission for determination of tariff applicable to NCE projects with effect from 01-04-2004 noting that upon completion of 10 years from the date of commissioning of the projects, the tariff is to be further reviewed and that the Discoms were then paying an adhoc tariff of 50% of Rs.3.37 per unit (the tariff determined in 20-03-2004 order) working out to around Rs.1.69 per unit. The Commission directed to pay Rs.1.69 per unit for the power supplied to them by the developers beyond the 10th year pending fixation of final tariff applicable beyond 10th year. The Commission while passing the final orders in O.P.Nos.14 to 18 of 2006 on 06-09-2014 ordered continuance of the then existing single tariff of Rs.3.37 per unit till the expiry of the respective Power Purchase Agreements and further directed the same tariff to be payable to all similarly placed wind based NCE projects which completed 10 years from the date of commercial operation irrespective of whether they have approached the Commission or not for such determination. Thus, it is clear that the orders are applicable to similarly placed wind based power projects with effect from the completion of 10 years from the date of commercial operation and the Commission was specific that "Short payments if any made by DISCOMS to generators for supply should be adjusted within a period of six months from the date of the order". As such it is clear that the petitioners are eminently justified by the chronology of events in claiming interim tariff of Rs.1.69 per unit and final tariff of Rs.3.37 per unit on completion of 10 years from the respective dates of commercial operation of their projects.

17. The letter from the then APCPDCL to APPCC dated 23-04-2014, the letter from TSSPDCL dated 30-08-2014 to the petitioner in O.P.No.28 of 2019, the letter from

TSSPDCL to APPCC and TSPCC dated 30-08-2014 etc., clearly show that both the petitioners and the Discoms clearly understood that the energy supplied by the petitioners respectively to the Discoms cannot be considered as banked energy as per the conditions. It is only the APPCC, which is not a party to the contracts, in its letter dated 30-04-2018 that desired to apply Regulations 2/2014 and 2/2016 to treat the energy delivered to AP Discoms by the petitioners as unutilized banked energy under the respective Wheeling Agreements, which, as already stated above, is neither the understanding of the parties to the agreements / contracts nor is in tune with the factual or legal position. The fact that this Commission returned the fresh agreements submitted by the parties with its letter dated 16-10-2017 is admittedly due to the earlier agreements continuing to exist and to be valid upto 31-03-2019 and 31-03-2020 respectively under which the Discoms have already availed power as they are entitled to and as there was no justifiable basis for varying the tariff fixed by the Commission in the proposed agreements. So that letter from the Commission provided no justification for the contentions of the respondent herein.

18. The defence now taken by the respondent in tune with the decision of APPCC is obviously in direct conflict with the stand taken by it in its own letters referred to above.

19. In the order in O.P.No.17 of 2015 dated 02-06-2018, the petitioner therein was held entitled to recover the difference between the interim tariff and the final tariff. The respondent contended that the petitioner therein had a valid Power Purchase Agreement in its favour which makes that case distinguishable but the issue therein was also about short payments arising out of the final order dated 06-09-2014 in

O.P.Nos.14 to 18 of 2006. Hence, the petitioners herein legitimately claim support from the said order on principle.

20. The petitioners of-course did not provide any material to show that any charges were excessively deducted by the respondent than legally and factually deductable and hence, the petitioners may not be entitled to any relief on that count. Similarly the averments of the parties relating to signing of fresh Power Purchase Agreements and the Commission returning the same also have no relevance herein and the petitioners did not substantiate their claim with reference to any specific terms and conditions of the agreements or the earlier orders of the Commission about being entitled to interest at 15% per annum from the date of payment of interim tariff till the payment of final tariff. In fact the erstwhile Commission in its orders in O.P.Nos.14 to 18 of 2006 dated 06-09-2014 granted six months from the date of the order to make good short payment made by the Discoms and made no reference to any liability to pay interest. The matter was obviously under correspondence between the petitioners and the respondent and the APPCC and the fault cannot be solely laid at the door steps of the respondent herein to make it liable to pay any interest. While any *pendete-lite* or *post decreetal interest* is within the judicial discretion of the adjudicating body, under the peculiar facts and circumstances of the case, there appears no clear justification for award of any interest by way of any compensation or damages, with the petitioners also not being very vigilant and prompt in pursuing their rights under law through any appropriate proceedings before any competent Forum before they filed the present petitions now. Under the circumstances the principal amount shall be awarded without imposing any liability to interest and costs in both the petitions.

Accordingly, it is held that the respondent is liable to pay to the petitioners in both the cases the tariff as determined by the erstwhile Andhra Pradesh Electricity Regulatory Commission in its orders in O.P.Nos.14 to 18 of 2006 dated 06-09-2014 at Rs.3.37 per unit for the electricity supplied to the respondent since completion of 10 years of such supply from the Commercial Operation Date, giving credit to the interim tariff already paid. Therefore, the respondent is directed to make such payment to the petitioners in both the cases within 6 (six) months from the date of this order and the petitioners are not awarded any interest or costs, due to which, both parties shall bear their own costs in both the Original Petitions.

Both the Original Petitions are ordered accordingly.

This order is corrected and signed on this the **11th day of September, 2019**.

P. Rama Mohan Member	**Dr. P. Raghu** **Member**	**Justice G. Bhavani Prasad** Chairman