ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500004

WEDNESDAY, THE THIRTEENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY THREE
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:Present:
Justice C.V. Nagarjuna Reddy, Chairman
Sri Thakur Rama Singh, Member
Sri P.V.R. Reddy, Member

OP Nos. 64 of 2022

Between

1. Eastern Power Distribution Company of AP Ltd.(APEPDCL), P&T colony, Seethamma Dhara, Visakhapatnam - 530013, Andhra Pradesh.
2. Southern Power Distribution Company of AP Ltd.(APSPDCL) D.No. 19-13-65/A, Tiruchanoor Road, Tirupati - 517503, AndhraPradesh.

…Petitioner

And:

M/s Spectrum Power Generation Ltd.
MCH No.63-3-1093, Space No.602, 6th Floor,
VV Vintage Boulevard, Raj Bhavan Road,
Somajiguda, Hyderabad-500082.

… Respondent

This Original Petition has come up for hearing before us today in the presence of Sri P. Shiva Rao, learned Standing Counsel for the Petitioners and Sri M. Naga Deepak, learned Counsel for the Respondent; that after hearing the learned counsel for the parties and on consideration of the material on record, the Commission passed the following:

ORDER

This Original Petition is filed by the Eastern Power Distribution Company of AP Limited (APEPDCL) and Southern Power Distribution Company of AP Limited (APSPDCL) (for short “the petitioners”) seeking determination of tariff for procurement of power from M/s Spectrum Power Generation Ltd., (for short “the respondent”) for the past period covering 19th April, 2016 to 31st March, 2017 (FY 2016-17) as Rs.3.18 ps per unit, single part, for the units procured from the respondent.

Shorn of needless details, the brief facts leading to filing of this OP are stated hereunder:

The erstwhile APSEB has entered into a long term PPA for a period of 18 years with the respondent on 23-1-1997 for procurement of power from its 208 MW Gas based power plant located at Uppada, East Godavari District, which got expired on 18-4-2016; even after expiry of the PPA, the petitioners continued to procure the power from the respondent on adhoc basis; and as the tariff for FY 2016-17 was not fixed, the petitioners purchased power during the period from 19-4-2016 to 31-3-2017 by paying the same tariff as applied for FY 2015-16. Meanwhile, in pursuance of the report given by the Accountant General (Audit), Enquiry, an amount of Rs.24.96 crores was recovered from the respondent towards the excess tariff paid to it for the FY 2016-17 by applying the tariff of FY 2017-18. The respondent filed a petition in

OP No.76 of 2021 before this Commision, *inter alia*, challenging the aforesaid recovery, and this Commission, vide: order dated 24-8-2022 disposed of the said OP with the observation that "*without adjudicating on the actual tariff payable to the petitioner(SPGL) by the respondents for the FY 2016-17 and reserving right to the respondents to file an application for this purpose, we hold that the respondents are not entitled to recover any amount from the petitioner or withhold any amount payable to the petitioner on the purported ground that they have paid excess amount to the petitioner for the FY 2016-17*". In pursuance of the aforesaid liberty, the petitioners filed the present petition for approving the procurement price for the period from 19-4-2016 to 31-3-2017, being the period of procurement on adhoc basis.

It is, *inter alia*, stated in the petition that this Commission vide: Tariff Order dated 31-3-2016, has approved the energy despatch from the respondent at the Power Purchase Cost of Rs.3.72 ps., and the petitioners have paid the respondent at the said rate; that for the subsequent Financial Years from 2017-18 to 2019-20 the Commission has determined the tariff at Rs.3.31 ps. per unit; that the Fixed Cost of power procurement as on the date of expiry of the PPA was 0.89 ps per unit; and that the said rate may be made applicable in the year of expiry of PPA. As regards variable cost, it is stated that the variable cost is contingent on the APM Gas price fixed by the Ministry of Petroleum and Natural Gas on half yearly basis and the prevailing Dollar Rupee conversion rate at that point of time; that the average drop in APM Gas price is almost 19% in the Financial year under consideration when compared to the immediately preceding Financial year, which is the year of expiry of the PPA; that, keeping in view the drop in gas prices and other parameters governing variable cost, the variable cost for FY 2016-17 works out to Rs.2.18 ps., per unit and the total procurement cost would be Rs.3.18 ps; and, therefore, the petitioners prayed for determination of tariff for procurement of power from the respondent for the past period from 19th April to 31st March, 2017 (FY 2016-17) as 3.18 ps, single part, for all the units procured from it.

The respondent filed a counter, *inter alia,* stating that the present petition is not maintainable under Section 86(1)(f) of the Electricity Act, 2003 as no dispute is existing between the parties and the petitioners have paid the entire tariff on the basis of the PPAs, which were extended unilaterally by themselves, from month to month; that the petitioners filed the present petition, without complying with the directions given by this Commission in OP No.76 of 2021 dated 24-8-2022, to evade the payments directed to be made thereunder; that the petitioners procured the power from the respondent on the promise that the tariff would be paid as per the terms and conditions of the PPA; that, after procurement of the power and payment of the tariff, the petitioners cannot now seek redetermination of the tariff; that, while fixing the tariffs in the RTSO for the FY 2016-17, this Commission has taken note of the point that, despite expiry of the PPA on 18-4-2016 the DISCOMs had shown the annual projections of gas supply allocation and procurement of the power from the respondent for the entire financial year and, accordingly, approved the tariff payable to the respondent; that once the Commission had approved the PPA taking into consideration the ARR filings in respect of the gas availability for the entire financial year, no fresh petition can be filed to adjudicate the issue already decided; that this commission, vide: order dated 29-11-2017 in IA No.8 of 2017 in OP Nos.28 and 29 of 2017, permitted the petitioners to procure power from the respondent at a fixed single part tariff of Rs.3.31 ps, per unit from the FY 2017-18 only and the petitioners have not sought for determination of tariff for the FY 2016-17 therein; that the observations made by this Commission in the order passed in OP No.76 of 2021 do not create any fresh right or fresh cause of action for the petitioners to file this petition for determination of the tariff; that the respondent supplied the energy to the petitioners at Rs.3.44 ps per unit as against the approved tariff of Rs.3.72 ps per unit by this Commission for the FY 2016-17; that it is incorrect to state that the petitioners have paid Rs.3.72 ps per unit to the respondent for the FY 2016-2017; and that, therefore, sought for dismissal of the petition.

The petitioners filed a rejoinder reiterating their stand in the Original Petition and denying the averments in the counter.

We have heard Sri P.Shiva Rao, learned Standing Counsel for the petitioners and Sri M.Naga Deepak, learned counsel for the respondent.

Admittedly, the PPA between the parties expired on 18-4-2016. However, the respondent continued to supply power to the petitioners on adhoc basis and received payment at Rs.3.44 ps., per unit. Since it was only an adhoc price, the petitioners have come out with the present petition.

The respondent has raised various legal contentions, such as, maintainability of this petition etc. However, during the hearing, Sri M.Naga Deepak fairly submitted that his client is not interested in pressing all those legal submissions and urged the Commission to fix the reasonable tariff for the aforementioned period. He further submitted that the petitioners have calculated a single part tariff at Rs.3.18 ps., per unit by adopting Fixed Cost at Rs.0.89 ps., per unit based on the ARR of FY 2016-17. He has, however, pointed out that for the FY 2017-18 this Commission has approved the fixed cost at Rs.0.92 ps., per unit and that since lower depreciation for the FY 2016-17 has to be worked out, compared to FY 2017-18, fixed cost can in no case be less than Rs.0.92 ps., for the previous FY 2016-17. Sri P.Shiva Rao, learned Standing Counsel for the petitioners, did not dispute this submission.

In view of this, we find it reasonable to allow the Fixed Cost at Rs.0.92 ps., per unit. Sri M. Naga Deepak fairly agreed for this amount of Fixed Cost.

As regards the Variable Cost, the petitioners have proceeded on the premise that there was a reduction of gas price at 19.4% and 19.1% respectively during the two half yearly periods of FY 2016-17. However, the respondent has filed an additional counter, wherein the gas price fixed by the MoPNG is shown as under:

Period	Gas Bais rate per MMBTU (USD)	Average Exchange Rate	Gas Cost Per 1000 SCM (Rs)	Heat Rte (kcal)	GCV (kcal)	VC per Unit (Rs)
	A	B	C	D	E	F=(10xCxD/ (Ex97)/100
01-4-16 to 30-9-16	3.06	67.02	11518.47	2000	9459.97	2.51
01-10-16 to 31-3-17	2.50	66.74	9920.19	2000	9478.83	2.16

The above statement is not disputed by the learned Standing Counsel for the petitioners. Since we have to fix the tariff for the past period, we find it appropriate to take the average cost of gas for the entire year, instead of dividing the same into two halves.

Accordingly, the average cost works out to Rs.2.33 ps., per unit. Adding the Fixed Cost to the average cost, as fixed above, the total tariff will come to Rs.3.25 ps., per unit as against the amount of Rs.3.18 ps., proposed by the petitioners.

The OP is accordingly, disposed of.

Sd/-	Sd/-	Sd/-
Sri P.V.R Reddy, **Member**	**Justice C.V. Nagarjuna Reddy** **Chairman**	**Thakur Rama Singh** **Member**