

**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4<sup>th</sup> & 5<sup>th</sup> Floors, Singareni Bhavan, Red Hills, Hyderabad-500 004

Present

Sri A.Raghotham Rao, Chairman  
Sri. R.Radha Kishen, Member  
Sri C.R.Sekhar Reddy, Member

I.A.No.16 of 2009  
in  
O. P. No. 15 of 2009

Dated: 26-02-2010

**Between**

Andhra Pradesh Power Generation Corporation Ltd.,  
Vidyut Soudha, Hyderabad-500 0082 ... Petitioner

and

1. Central Power distribution Company of Andhra Pradesh Ltd.
2. Eastern Power Distribution Company of Andhra Pradesh Ltd.
3. Northern Power distribution Company of Andhra Pradesh Ltd.
4. Southern Power Distribution Company of Andhra Pradesh Ltd.,  
... Respondents

This Interlocutory Application (I.A.) coming on for hearing on 09.10.2009 in the presence of Sri K.Gopal Choudary, Advocate, for the Petitioner and Sri P. Shiva Rao, Advocate, for the Respondents, and having stood over for consideration to this day, the Commission delivered the following:

**ORDER**

In this I.A. filed under Section 94(2) of the Electricity Act, 2003 (for short, 'the Act'), it is prayed that pending disposal of the main petition in O.P.No.15 of 2009, the Commission may be pleased to pass interim orders directing the respondents to pay generation tariff to the petitioner for 2009-10 as per the Retail Supply Tariff order dated 20.03.2009.

2. In brief, the averments made in the I.A. are as follows:

(a) The petitioner filed an application for determination of tariff for supply of electricity to the respondents during the financial years 2009-14 u/s 62 of the Act, vide O.P.No. 15 of 2009.

(b) As per the Retail Supply Tariff order dated 20.03.2009 in O.P.Nos. 17 to 20 of 2008, the Commission has provided for total Fixed costs of the petitioner at Rs. 3392.63 cr for 2009-10.

(c) The Commission further provided for an amount of Rs.31.82 crores towards income tax and others. The said amount is to be released for payment of advance tax. The provision for incentive for an amount of Rs. 29.86 cr is also made to claim on the basis of actual generation.

(d) As per the tariff order dated 20.03.2009 at page 239, the Commission has provided for variable costs of various thermal stations for claiming every month. However, subject to adjustment for the actual values of gross calorific value of fuel and landed cost of fuel for every quarter.

(e) The amounts mentioned above and prayed for herein in this application have been allowed as pass through to the consumers and are being recovered by the respondents under Retail Supply Tariff. It is therefore, just and equitable that the petitioner be allowed to claim and be paid the said amounts from the respondents till disposal of the tariff determination application.

(f) In like circumstances for the year 2007-08 and 2008-09, the Commission was pleased to pass orders on 16.10.2007 in I.A.No. 11 of 2007 and 19.12.2008 in I.A.No. 10 of 2008 respectively allowing the petitions and directing the respondents to pay to the petitioner as per the amounts admitted in the Retail Supply Tariff order for that year.

(g) If no interim order is passed, the petitioner will not have a legal basis for claiming the amounts from the respondents and respondents will not suffer any prejudice whatsoever as the amounts now claimed are already being recovered by them from consumers through Retail Supply Tariff. The balance of convenience is in favour of the petitioner for grant of interim orders.

3. On behalf of all the respondents, a common counter is filed on 15.09.2009 stating that: -

(a) The I.A. is not maintainable at law and facts on record as the findings of the Commission in the Tariff Order dated 20.03.2009 for bulk purchases of energy are indicative and instructive, but not actual figures of liability to the petitioner.

(b) As per the Tariff Order dated 20.03.2009, fixed costs of Rs.3392.63 per annum is being paid on monthly proportionate basis to the petitioner. Therefore, there need not be any interim orders as the same would tantamount to reiterating the contents of the tariff order.

(c) In reply to para 3 of the petition, the respondents submit that Tariff Order FY 2009-10 provision was made for payment of Income Tax and incentive to the tune of Rs.61.68 crs. With respect to the payments relating to Income Tax, the respondents will be reimbursing from time to time after submission of bills by the petitioner duly certified by Chartered Accountants. In case of incentives, the respondents would be paying this amount FY 2009-10 as per Regulation No. 1 of 2008 and the incentive amount will be paid at the end of tariff year.

(d) In reply to para No.4 of the petition, it is to submit that the respondents have been paying the variable charges on monthly basis in line with the provisions of Tariff Order 2009-10. However, adjustments towards FCA claims are being done on quarterly basis by duly considering the variation of gross calorific value and landed cost of fuel.

(e) In reply to para 5 of the petition, the respondents have been submitting FSA claims by taking into consideration of approved sources mentioned in the tariff order. This claim would be submitted before the Commission as per the Regulation in vogue from time to time. However, the respondents have been making the payment towards variation of amounts on account of landed cost of fuel and gross calorific value of fuel.

(f) In reply to para 6 of the petition, it is to submit that the respondents have complied with the earlier orders passed by the Commission in I.A. Nos. 11 of 2007 and 10 of 2008. Further the contention of the petitioner that the amounts claimed now are already recovered by the respondents from consumers through Retail Supply Tariff is not correct. The variable charges in Tariff Order is only tentative and actual variable charges are being paid to the petitioner on quarterly basis. Respondents had paid the amounts relating to fixed charges and variable charges as per the respective tariff orders.

(g) In reply to para 7 of the petition, it is incorrect that the petitioner requires legal basis for its claims. In fact, the Tariff Order dated 20.03.2009 binds both the parties and that can be taken as a legal basis for the regular claims of the petitioner. As such the petition is infructuous.

(h) In reply to para 8 of the petition, it is submitted that the respondents have already been paying the fixed as well as variable charges as per the Tariff Order 2009-10. As such there will not be any irreparable loss to the petitioner, if interim order is not passed.

(i) Hence, it is prayed that the Commission may be pleased to dismiss I.A.No.16 of 2009 in O.P.No.15 of 2009.

4. Heard the counsel for the petitioner as well as the respondents and they reiterated the averments mentioned in the Application and the Common Counter respectively.

5. The point that arises for consideration of the Commission is “whether the petitioner is entitled for interim relief as prayed for” and if so, to what relief.

6. After carefully considering the pleadings, oral submissions and the material available on record, the Commission of the opinion that it is a fit case for grant of interim relief in favour of the petitioner pending disposal of the main petition.

7. Accordingly, the Commission directs that the respondents shall pay to the petitioner the following with effect from 01.04.2009, pending disposal of the main petition, which is further subject to the out come of the said main petition in O.P. No. 15 of 2009.

- i) Fixed charges for petitioner’s generating stations as per Annexure – G of Tariff Order, dated 20<sup>th</sup> March, 2009.
- ii) Fixed charges for VTPS-IV, KTPP and other new stations on proportionate basis depending upon the COD
- iii) Payment of Advance Income-Tax on proof of payment
- iv) Variable charges for thermal stations as per Annexure - E (iii) of the Tariff Order dated 20<sup>th</sup> March, 2009, duly adjusted for the Gross Calorific Value (GCV) and landed cost of fuel;
- v) Incentive on annual basis.

8. All the above payments except Advance Income Tax and incentive shall be paid on monthly basis, the payments due for and upto the end of the month preceding the date of issue of this order are to be made within 30 days from the date of issue of this order.

*The order is corrected and signed on this 26<sup>th</sup> day of February 2010.*

Sd/-  
(C.R.SEKHAR REDDY)  
MEMBER

Sd/-  
(R.RADHA KISHEN)  
MEMBER

Sd/-  
(A.RAGHOTHAM RAO)  
CHAIRMAN

**CERTIFIED COPY**