

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

O.P(SR) 17 of 2011

Dated : 23-11-2011

Present

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

IN THE MATTER OF

Indian Wind Power Association (IWPA),  
Rep by its Secretary Shri. S. Sri. Murali  
Office at 6<sup>th</sup> Floor, Tower-I, Shakthi Towers,  
No.766, Anna Salai,  
Chennai – 6000 002 and also at  
No.6-2-1012, TGV Mansion,  
Opp. The Institution of Engineers,  
Khairatabad, Hyderabad.

.... **Petitioner**

**AND**

1. Non-Conventional Energy Development Corporation of Andhra Pradesh Ltd. (NEDCAP)  
Represented by its Vice- Chairman & Managing Director  
Having its Regd. Office : 5-8-207/2,  
Pisgah Complex, Nampally,  
Hyderabad – 500001.
2. Andhra Pradesh Central Power Distribution Company Limited (APCPDCL),  
Represented by its Chairman & Managing Director,  
Having its Corporate Office at 6-1-50, Mint Compound,  
Hyderabad – 500 063.
3. A. P. Transco represented by its  
Chairman & Managing Director,  
having office at Vidyut Soudha, Khairatabad,  
Hyderabad

.....**Respondents**

This petition coming up for hearing in the presence of Sri. Srinivasa Raghavan Advocate for the petitioner and having stood over for consideration for this day 24.08.2011 the Commission passed the following order:

**ORDER**

1. The petitioner filed this petition under section 61 read with 86(1)(e) of Electricity Act 2003 making the following averments:

- “ (i). The Petitioner herein, is an umbrella organization of the Wind Sector representing the various stakeholders in the Wind energy sector in India. The Association is registered under Tamil Nadu Society Registration Act, 1975. The Association represents the interest of its members and has been formed to air and seek redressal for common grievances and problems faced by them in the industry.
- (ii). The constituent members of the Association are governed and regulated by the provisions of the various relevant Orders of this Hon'ble commission.
- (iii). In the last few years, there has been a significant growth in capacity addition in many States due to implementation of a reflexive regulatory regime especially with regard to tariff and consequently wind energy is not any more considered miniature in the realm of electricity generating stations. In fact in the States like Tamil Nadu, Gujarat, Karnataka wind has become the major contributor to the energy requirement of these States.
- (iv). The APERC issued an Order on Determination of Tariff/Power Purchase Price in respect of “New Wind Based Power Projects” [in case of O.P.No.6 of 2009(limited to Wind Projects only) and O. P. No.7 of 2009] on 1<sup>st</sup> May 2009. Currently, the Tariff for all new and upcoming wind projects are governed under the realm of the above said Order. Prior to the abovementioned said

Order, for almost five years, there was virtually no growth in wind capacity addition in the State primarily because of the absence of a certain regulatory regime. Since the issuance of the above said Order of this Hon'ble Commission, a modest capacity addition of approximate 66.4 MW has been build up in the State of Andhra Pradesh. However, considering the fact that Andhra Pradesh is blessed with second highest wind potential (approx. 8275 MW) among all the Indian States, this capacity addition is not very encouraging.

(v). The Hon'ble APERC issued an Order on Determination of Tariff / Power Purchase Price in respect of "New Wind Based Power Projects" [in case of O. P. No. 6 of 2009 (limited to Wind Projects only) and O. P. No.7 of 2009] on 1<sup>st</sup> May 2009. Currently, the tariff for all new and upcoming wind projects are governed under the realm of the above said Order. Prior to the above mentioned said Order, for almost five years, there was virtually no growth in wind capacity addition in the State primarily because of the absence of a certain regulatory regime. Since the issuance of the above said Order of this Hon'ble Commission, a modest capacity addition of approximate 66.4 MW has been build up in the State of Andhra Pradesh. However, considering the fact that Andhra Pradesh is blessed with second highest wind potential (approx. 8275 MW) among all the Indian States, this capacity addition is not very encouraging.

(vi). The Hon'ble Central Electricity Regulatory Commission (CERC) has framed comprehensive Renewable Energy tariff regulations on 16.09.2009 just after passing of tariff order by this Hon'ble Commission and the regulations framed by CERC has referred to various aspects of tariff determination of wind based energy sources including proceedings for determination of tariff.

(vii). The Hon'ble CERC in its regulations has introduced a concept of Wind Power Density (WPD) linked Capacity Utilization Factor(CUF) based on zone wise tariff with an annual indexation mechanism. Indexation mechanism is based on few key market driven parameters like Capital Cost, Interest on Loan etc., which are used for the determination of Tariff. Further the CERC Tariff Regulations 2009 are also in line with the National Tariff Policy (NTP) 2006. As per clause 6.4(3) the NTP:

*“The Central Commission should lay down guidelines within three months for pricing non-firm power, especially from non-conventional sources, to be followed in cases where such procurement is not through competitive bidding.”*

(viii). Further, Section 61 of the Electricity act, 2003 casts obligation on the part of appropriate commission to follow certain guidelines for determination of tariff.

(ix). Therefore, in order to encourage renewable industry, it is necessary to constitute regulatory frame work for determination of tariff for wind generating companies. It is axiomatic on the part of the petitioner to state that the APERC has not issued any Regulation on tariff for determination of tariff for wind based generating sources since the notification of Electricity Act 2003.

(x). According to para 6.0 of the National Tariff Policy, generation capacity is to be increased at an accelerated rate to meet the growing demand of electricity. Adequacy of generation is also essential for efficient functioning of power market.

(xi). Regulatory Commission can give proper direction to the power sector by framing regulations in such a manner that generation based on renewable sources of energy including solar, wind, bio-fuel (bio-mass, bagasse etc.)

receives the necessary encouragement, so that capacity addition could take place without causing much disturbance to environment.

- (xii). The Hon'ble Appellate Tribunal for Electricity further observed in para 14 that the preamble to the Electricity Act 2003 recognizes the significance and importance of promotion of efficient and environmentally benign policies. In consonance with the preamble and section 61(h) of the Electricity Act 2003, spirit of the constitution and concern for the environment, it is the bounden duty of the Regulatory Commission to frame regulations with a view to give fillip to the production of power through renewable sources of energy.
- (xiii). The appellate authority while dismissing the appeal held that directions under section 121 of the Electricity Act, 2003 need to be issued to all the regulatory commissions of the Country to frame regulations in the light of the observation made by us. The regulation shall be framed within three months of the receipt of the copy of this order. Maharashtra Electricity Regulatory Commission (MERC) basing on the CERC RE Tariff Regulations has issued comprehensive Regulations in 2010 [Maharashtra Electricity Regulatory Commission (Terms and Conditions for determination of RE Tariff) Regulations, 2010]
- (xiv). However in the absence of the regulatory mechanism specifying the norms on which tariff would be based, as specified by the CERC, there is no transparency or certainty in the process and this acts as a major inhibitor for new investors, as well as existing generators wanting to expand capacity
- (xv). Hence, it is prayed that the Commission may be pleased to issue necessary directions with regard to or frame renewable Tariff Regulations for determination of RE tariff based on Central electricity Regulatory

Commission (Terms and Conditions for Tariff determination from Renewable Energy Sources) Regulations, dated: 16-09-2009 for Procurement of Wind Energy by Distribution Lincesees.”

2. In pursuance of conduct of Business Regulation, Commission decided to hear the petitioner on the question of maintainability of the petition and accordingly notice of hearing was given to the petitioner.
3. On 24.08.2011 counsel for the petitioner was heard. The counsel for the petitioner reiterated the contentions raised in the petition.
4. The main contention of the appellant is to issue necessary directions with regard to framing renewable Tariff regulations for determination of renewable energy tariff based on CERC. He has also relied upon a ruling reported in Tamilnadu News print papers Ltd. VS. Tamilnadu Electricity Regulatory Commission and another 2007 APTEL187.
5. In this a direction was issued under section 121 of Electricity Act 2003 to all the regulatory Commission of the Country to frame Regulations in the light of the observations made by the Appellate Authority.
6. It is clear that there is a direction from the Appellate Tribunal for Electricity to frame regulations as directed. So there is a prima facie case in making claim by the petitioner.
7. After examining the contentions of the petitioner, the Commission has decided to admit the petition filed by the petitioner for hearing the parties concerned on the merits of the case. Accordingly, it is ordered to number the petition and issue notice of hearing to both the parties herein.

The order is signed on this 23<sup>rd</sup> day of November, 2011

Sd/-  
(C. R. Sekhar Reddy)  
MEMBER

Sd/-  
(A. Raghotham Rao)  
CHAIRMAN

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