

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
BENGALURU**

Dated : 19th December, 2017

Present:

Shri M.K. Shankaralinge Gowda	..	Chairman
Shri H.D. Arun Kumar	..	Member
Shri D.B. Manival Raju	..	Member

OP Nos.5/2017 to 19/2017

BETWEEN:

MSPL Ltd.,
Baldota Bhavan, 117,
Maharshi Karve Road,
Mumbai – 400 020.

.. **COMMON PETITIONER**

[Represented by Smt. Poonam Patil, Advocate]

OP Nos.20/2017 to 25/2017

Ramgad Minerals and Mining Pvt Ltd. (RMML),
Baldota Enclave,
Abheraj Baldota Road,
Hosapete – 583 203.

.. **COMMON PETITIONER**

[Represented by Smt. Poonam Patil, Advocate]

OP No.26/2017

P Venaganna Setty & Brothers (PVS),
Baldota Enclave,
Abheraj Baldota Road,
Hosapete – 583 203.

.. **PETITIONER**

[Represented by Smt. Poonam Patil, Advocate]

AND:

- 1) Bangalore Electricity Supply Company Limited,
Corporate Office,
K.R. Circle,
Bengaluru – 560 001.
- 2) The Chief Engineer
State Load Dispatch Centre,
28, Race Course Road,
Bengaluru – 560 009.

COMMON RESPONDENTS*[Respondent-1 represented by Just Law. Advocates]*

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COMMON ORDER

- 1) These petitions are filed under Section 62 of the Electricity Act, 2003. The prayer in the Petitions is to determine tariff of Rs.5.50 per kwh with 5% escalation per annum for supply of power to Respondent No.1, from the 11th year onwards, for the next ten years under the Power Purchase Agreement (PPA) or, in the alternative, to permit the Petitioners to terminate the PPAs and sell power to third parties. These Petitions involve similar questions of fact and law and, therefore, are taken up together for disposal.
- 2) The brief common facts about the Petitioners' case, as mentioned in the Petitions, are that:
 - (a) The Petitioners are Companies, incorporated under the provisions of the Indian Companies Act, 1956 and are independent power producers with 116 Wind Mills generating power to the extent of 133.5 MW. The capacities of the Projects, dates of commissioning, dates of signing of the respective PPAs with Respondent No.1, location of the projects and the current tariff are given below:

MSPL

Case No.	Com-pany	Place	Commissioning Date	Capacity (MW)	Date of signing the PPA	Current PPA rate (in Rs.)
OP 19/2017	MSPL	Chitradurga	21.03.2003	0.95	07.08.2003	3.658
OP 18/2017	MSPL	Chitradurga	30.09.2003	4.75	11.02.2004	3.658
OP 16/2017	MSPL	Chitradurga	21.05.2003	3.80	05.03.2005	3.658
OP 11/2017	MSPL	Chitradurga	08.09.2004 (3) 16.04.2004 (2) 24.12.2004 (1)	5.30	05.03.2005	3.658
OP 14/2017	MSPL	Chitradurga	08.09.2004 (2) 16.04.2004 (3)	3.75	05.03.2005	3.658
OP 17/2017	MSPL	Chitradurga	31.03.2004	3.80	18.03.2004	3.658
OP 15/2017	MSPL	Chitradurga	31.03.2004	2.85	05.03.2005	3.658
OP 13/2017	MSPL	Chitradurga	08.09.2004 (1) 19.05.2004 (1)	1.90	05.03.2005	3.658
OP 12/2017	MSPL	Chitradurga	31.03.2004 (3) 10.04.2004 (2)	6.25	05.03.2005	3.658
OP 6/2017	MSPL	Chitradurga	22.03.2005	1.25	23.05.2006	3.40
OP 5/2017	MSPL	Chitradurga	22.03.2005	3.75	23.05.2006	3.40
OP 8/2017	MSPL	Harapanahalli	21.03.2005 (7) 28.03.2005 (4)	13.75	21.04.2006	3.40
OP 10/2017	MSPL	Harapanahalli	21.03.2005 (8) 31.12.2005 (1)	11.25	21.04.2006	3.40
OP 7/2017	MSPL	Harapanahalli	30.04.2005 (1) 31.03.2005 (2) 31.05.2005 (1)	5	23.05.2006	3.40
OP 9/2017	MSPL	Harapanahalli	31.03.2005	16.25	21.04.2006	3.40
Total				84.60		

RMML

Case No.	Com-pany	Place	Commissioning Date	Capa-city (MW)	Date of signing the PPA	Current PPA rate (in Rs.)
OP 25/2017	RMML	Chitradurga	30.09.2003	1.90	11.02.2004	3.658
OP 24/2017	RMML	Chitradurga	19.05.2004	0.75	18.03.2004	3.658
OP 21/2017	RMML	Harapanahalli	28.03.2005 (6) 13.06.2005 (2)	10.00	21.04.2006	3.40
OP 22/2017	RMML	Harapanahalli	26.03.2005	7.50	21.04.2006	3.40
OP 23/2017	RMML	Harapanahalli	31.03.2005 (2) 31.05.2005 (1)	3.75	23.05.2006	3.40
OP 20/2017	RMML	Harapanahalli	30.04.2005 (5) 31.03.2005 (6) 31.05.2005 (3)	17.50	28.07.2006	3.40
Total				41.40		

PVS

Case No.	Com-pany	Place	Commis-sioning Date	Capa-city (MW)	Date of signing the PPA	Current PPA rate (in Rs.)
OP 26/2017	PVS	Harapanahalli	28.03.2005	7.50	21.04.2006	3.40

[Note: *Some of the dates mentioned in the Petitions do not tally with the dates mentioned in the documents. We have considered the dates mentioned in the documents in the above Tables.]*

- (b) The Respondent No.1, the BESCO entered into PPAs, in the Commission approved standard formats with identical clauses, with the Petitioners on different dates, as mentioned in the above table. The PPAs have completed the first ten year-term from the Commercial Operation Date (COD). As per Clause 5.2 of the PPA, the tariff fixed under the PPA is only for the first 10 years from the date of commissioning. From the 11th year onwards, the tariff has to be fixed by this Commission. Accordingly, the present Petitions are filed, seeking determination of tariff from the 11th year onwards, till the expiry of the term of the PPAs.
- 3) The common submissions of the Petitioners, made in support of their prayer may be summed up as follows:
- (a) The Commission has powers under the Electricity Act, 2003 to determine the tariff for generation, which is a statutory function. The Commission can revise or amend or determine the tariff, commensurate with the facts and circumstances of each case. The Petitioners are facing threat of survival at the tariff now being paid and, therefore, have sought the intervention of the Commission to determine a tariff that would be commensurate with the cost incurred by them.

- (b) Under the Generic Tariff Order dated 18.01.2005 in operation at the time of signing of PPAs, the tariff fixed for Wind Power Plants was Rs.3.40/- per unit without escalation for the first ten year-period from the COD of the Plant. Accordingly, the tariff of Rs.3.40/- per unit was adopted in the PPAs signed between the Petitioners and Respondent No.1, and the said tariff was applicable for the first ten years. The said Generic Tariff Order did not provide for a method for tariff from the 11th year onwards. The Generic Tariff Order dated 11.12. 2009 provided for tariff in the case of PPAs signed after the effective date, provided therein, viz., 01.01.2010. It also stipulated that, in the case of existing plants, which have completed 10 years of the PPA as on the date of the passing of the said Generic Tariff order, the tenth year tariff ought to continue for the remaining period of the PPA without any escalation. As on the date of the Generic Tariff Order of 2009, the Petitioner had not completed ten years of the PPA period and hence, the Tariff Order dated 11.12.2009 is not applicable to them.
- (c) The State Load Despatch Centre (SLDC) has been frequently issuing directions to the Petitioners to shut down the Plants on the ground of reduced demand and increased generation, despite the 'must run' status and 'free from merit order despatch' facility extended for windmills. The peak season being between May and October, the Petitioners had to forcefully shutdown the operations during the said period, resulting in huge financial loss. Every year, for the past three

years, the Petitioners had been issued with shutdown orders in the peak season.

- (d) There has been a consistent decrease in the generation pattern of the Wind Plants. The Petitioners have no role to play in the wind generation pattern, as the same is dependent on natural factors of wind velocity. In spite of huge O&M costs and huge investment on machinery, the Petitioners have been incurring revenue loss on account of decrease in the wind flow pattern.
- (e) There is huge rise in the cost of consumables and manpower, coupled with failure of major components like blades, gear box, main bearing and generator. Therefore, to enhance the life, efficiency and output of all the wind generators, overhauling of the major components of the plants is inevitable and requires to be taken up on top priority basis. Victory Windfarm Services Pvt. Ltd., a private Company, has estimated the cost of overhauling, in respect of the Petitioners' Plants, at Rs.91,80,000/- (Rupees Ninety One Lakhs Eighty Thousand) only (per generator). As per this estimate, the entire overhauling of the components requires approximately two years. According to an approximate estimate of expenses for effective functioning of the Petitioner's Wind Mill Plants for the next 10 years, which is duly certified by the Chartered Accountant of the Petitioners, the proposed tariff per unit, considering a margin of 15% on the average tariff of Rs.5.30 for 10 years,

from 2016-2017 to 2025-26, works out to Rs.6.10/- per unit. However, the Petitioners are restricting the claim to Rs.5.50/ unit.

- (f) Though the PPA provides for rebate of 1.8% of the tariff invoice payable by Respondent No.1-company as Letter of Credit (LC) charges, the same is an added burden on the fragile financial condition of the Petitioners as it results in reduction of revenue by 6 or 7 paise per unit. This deduction of LC charges in the monthly bills needs to be considered for computation of tariff.
 - (g) The Commission is not empowered to compel the generating companies to sell the power to any licensee at the tariff fixed by it, if there is no obligation to supply under a PPA. Under clause 5.2 of the PPAs, if tariff is not determined or if tariff fixed is not agreeable to the parties, the parties have the right to opt for third party sale.
- 4) Upon issuance of Notice, Respondent No.1 appeared through its Counsel and filed Objections to the Petitions in OP Nos.5, 22 and 26/2017 (adopting the same in others), which may be summarized as follows:
- (a) No cogent material is placed on record to seek increase in tariff by the Petitioners. The Generic tariff fixation exercise by the Commission takes into consideration all aspects of the project, which would impact the cost of production of power. Therefore, the contention that the

Petitioners have been incurring loss by supplying power under the PPA is baseless and untenable.

- (b) The question with regard to the appropriate tariff payable from the 11th year of the PPA has already been decided by the Commission in OP No.2/2011 in the matter of *MPPL Renewable Energy Pvt Ltd. Vs MESCOM & Others* and in OP Nos.3-5/2016 in the matter of *Indian Power Corporation Ltd Vs BESCO*. The facts of the said cases being identical to the cases on hand, the question of revising tariff would not arise.
- (c) The tariff fixed by the Commission is based on standard investment and technical parameters. There are assumptions made with regard to investments in such projects, working of the plant, plant load factor, servicing of debt etc. At the stage of fixing of tariff, cost of putting up individual projects is not gone into but the cost of construction of a plant per MW is determined after taking all parameters into account. The distribution companies are entitled to enter into contracts at the tariff so determined by the Commission. A party who has adopted the generic single part tariff cannot later contend that he is entitled to re-fixation of the same based on a statement that he has invested certain amounts for putting up a power plant or that he is unable to sustain his plant at the tariff determined.
- (d) Clause 5.2 of the PPA makes it evident that the contract does not permit the Petitioners to opt out of the PPA after the first 10 years. The

understanding of the Petitioners that unless the tariff from the 11th year onwards is agreeable to both parties, the same is not enforceable and that the Petitioners have a right under the contract to sell power generated to the 3rd parties, is opposed to the terms of the contract.

- (e) All the components of the tariff upon which the tariff is based were known to the Petitioners when the PPA was executed. It was well within the knowledge of the Petitioners what the cost for establishing and running the plant would be. Hence, the request for re-fixation is a mere after thought with a motive of unjustly enriching themselves at the cost of the consumers of the State. Although the Petitioners claim that the O&M costs have gone up enormously, the statement is unsubstantiated. Reliance has been placed, by the Petitioners, upon a quotation received for alleged overhauling of components of the Petitioners' equipment. However, when the useful life of a wind generator is considered to be 25 years, the question of overhauling the machinery every 10 years would not arise.
- (f) Victory Wind Farm Services Pvt. Ltd. has only submitted a competitive proposal for overhauling the major components of 115 WEGS, which have crossed 10 years of continuous operation on 21.11.2015 and furnished a quotation of Rs.91,80,000/-. The Petitioners have not submitted any documents with regard to whether, the proposal has been accepted, overhauling has been carried out, or payment has been made along with proof of payment made.

- (g) The Commission determines the tariff for the first ten years' period of the PPA by reckoning the fixed costs that are associated with establishing a plant and, ensures that the same is recovered within the first ten-year duration of the PPA. Hence, the tariff that would be paid from the 11th year onwards is a fixed tariff without escalation, as the Commission works on the presumption that the cost of establishing a plant is recovered within the first ten years itself. Even in the present cases, this Commission has determined the tariff based on the very same methodology. Hence, the contention of the Petitioners that after lapse of ten years of the PPA the tariff determined is not conducive for recovering the cost of establishing the plants is baseless.
- (h) The Petitioners have from the inception of the PPA known about the 1.8% rebate in tariff invoice for LC charges and the said rebate is being recovered from the Petitioners. The Commission has held in the matter of *Tuppadahalli Energy India Pvt Ltd Vs MESCOM* in OP No. 28/2012 that the deduction of rebate will not have any impact on the tariff.
- (j) With regard to inapplicability of the Generic Tariff Order of 2009 to the Petitioners, it is submitted that the tariff order is clear. Para 13 of the said Order states that, "*This tariff is also applicable to such PPA in which ten years period is already completed but no tariff has been determined*". Further, this Commission has in the matter of *Jindal Aluminum Ltd. Vs BESCOM & Others* in OP no.41/2012 clarified the position at paragraphs-

13(d) and (e) and held that the tariff determined in the order dated 11.12.2009 is applicable to all existing projects which would complete ten years during the control period of the Generic Tariff Order dated 11.12.2009.

- (k) In response to the contention of the Petitioners that, the Petitioners are entitled to revision of tariff due to the loss suffered by them on account of instructions issued by SLDC to stop generation, it is submitted that, the SLDC has been entrusted with several functions under Section 32 of the Electricity Act. It has been empowered to exercise control over the State Grid. The 2nd Respondent is, therefore, empowered to issue directions as and when required, to maintain the grid frequency. In the event of systems constraints, the 2nd Respondent has the power to issue such instructions as are necessary, to the generating stations in the State. The 2nd Respondent has issued instructions to generators in order to maintain grid frequency. Further, as per clause 3.7 of PPAs, upon the occurrence of an emergency in the evacuation system, for safe operation of its grid, the 1st Respondent reserves the right to shut down the line and has no obligation to evacuate the electricity or pay any compensation during such period. In such a scenario, the generator is required to suitably back down the generation. The backing down instructions given to windmills as per ANNEXURE-H would indicate that, during the period from July, 2013 to September, 2013, such instructions have only been given for a few hours in a day and 3 to 5 days in month.

- (l) During high frequency, the 2nd Respondent backs down Thermal Stations first, then Hydel Stations and lastly the Wind Plants for maintaining the safety of grid system. Hence, it is an emergency condition under Article 3.7 of the PPA, for which the Respondent is not liable to pay any compensation since it is beyond control of Respondent and SLDC is monitoring the security of grid system.

- (m) The Petitioner in OP No.5/2017 of 1.25 MW plant had generated an average of 0.53 MU more than the target generation and the Petitioner in OP No.22/2017 of 3.75 MW plant had generated average of 2.12 MU more than the target generation, and have recovered all the cost of investment and profited for the extra generation. Hence, there is no decrease in generation, as alleged.

- (n) Article 5.2 clearly states that only if the 1st Respondent is unwilling to purchase power at the rates determined by the Commission, the generating company can be permitted to sell energy to third parties. The contention that, the Petitioner is entitled to exercise its rights under the said clause in the event of disagreement of tariff, is opposed to the terms of the contract.

- 5) In the Rejoinder, the Petitioner has stated as follows:
- (a) In the Orders passed in OP Nos.3 to 5 of 2016, this Commission has accepted the contention of the Petitioner therein that they were entitled for project specific tariff and the contention of the Respondents that tenth year tariff itself would apply as per the generic tariff order of the year 2009 was overruled. Thus, the Petitioners are entitled for fixation of tariff from the 11th years onwards as sought by them.
- (b) The Respondents have not produced any material on record to show that the shutdown orders issued by SLDC in the peak seasons have been issued because of grid frequency and grid security issues.
- (c) The calculation furnished by the Respondent-1 with regard to PLF relates to the plant of 1.25 MW capacity (OP No.5/2017) and 3.75 MW capacity (OP No.22/2017) and the same cannot be relied upon. Countering the same, the Petitioners have given the generation and PLF data of 31 WEGs (out of 116 WEGs) of MSPL Ltd. & RMML for 2006-07 to 2014-15, as mentioned below and stated that generation of most of the WEGs and corresponding PLF is on a reducing trend, thus warranting overhauling after a continuous operation of more than 10 years. That in order to have a sustainable output for the remainder of the plant life, it is necessary for the Petitioners to undertake overhauling of major / moving components / subcomponents of all the wind turbines.

PLF of 31 WEGs of MSPL

2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
23.30%	20.47%	14.93%	20.75%	18.63%	21.04%	20.57%	20.88%	18.08%
24.66%	22.96%	22.02%	22.33%	19.55%	23.03%	22.93%	22.96%	19.87%
21.16%	19.39%	19.20%	18.47%	16.64%	7.40%	18.53%	19.42%	17.09%
21.82%	20.33%	15.56%	19.76%	16.53%	19.81%	19.44%	19.08%	17.80%
26.66%	25.22%	24.96%	23.98%	21.51%	24.47%	24.46%	24.21%	21.58%
24.90%	23.49%	23.34%	21.94%	20.38%	22.33%	23.36%	22.03%	19.24%
25.82%	24.67%	24.50%	24.11%	21.93%	23.95%	24.70%	23.95%	21.49%

PLF of 20 WEGs of RMML

2006-07	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
24.90%	23.49%	23.34%	21.94%	20.38%	22.33%	23.36%	22.03%	19.24%
25.82%	24.67%	24.50%	24.11%	21.93%	23.95%	24.70%	23.95%	21.49%

6) We have heard the Counsel for both parties and perused the records.

The following issues would arise for our consideration:

- (1) Whether the Petitioners are entitled to seek Project-specific tariff for its Projects from the eleventh year onwards from the COD?
- (2) If Issue No.(1) is answered in the affirmative, what shall be the tariff from the eleventh year onwards from the Commercial Operation Date?
- (3) What Order?

7) After considering the respective pleadings and the material on record and the oral submissions made by the parties, our findings on the above issues are as follows:

- 8) **ISSUE No.(1)** : *Whether the Petitioner is entitled to seek Project-specific tariff for its Projects from the eleventh year onwards from the COD?*
- (a) The Respondent has contended that, this Commission has decided in the cases of *MPPL Renewable Energy Private Limited-Vs- MESCOM and others* and *Indian Power Corporation Ltd Vs BESCO* that, the tenth year tariff would apply from the eleventh year onwards, for the remaining period of the PPA and therefore the present Petitions are not maintainable. On the other hand, the Petitioner has contended that, the present Petitions for determination of tariff are maintainable.
- (b) In the case of *MPPL Renewable Energy Private Limited-Vs- MESCOM and others*, Clause 5.2 of the PPA therein provided that, "From the eleventh year from the date of signing of the Agreement, the Corporation shall pay to the Company for the energy delivered at the Metering Point at a rate agreed by mutual negotiations. In case the parties do not arrive at a mutual agreement on the tariff, the Company shall be permitted to sell power to third parties." In that case, there was no agreement between the parties regarding the tariff payable from the eleventh year onwards, therefore, the Generator contended that the PPA had come to an end upon expiry of the first ten years, though the term of the PPA was for twenty years. This Commission has held, in that case, that the parties cannot agree or disagree, regarding the tariff payable from the eleventh year onwards, and that it is the exclusive jurisdiction of the Commission to determine the tariff, and that, as per the generic Tariff

Order dated 11.12.2009, the tenth year tariff would be applicable for the next ten years of the PPA for all Renewable Energy Projects.

- (c) The relevant portion of Clause 5.2 of the PPAs in the present cases states that:

"From the 11th year onwards, from the Commercial Operation Date, BESCO shall pay to the Company for the energy delivered at the Metering Point at a rate determined by the Commission. In case BESCO is unwilling to purchase the power at the rates determined by the Commission, the Company shall be permitted to sell energy to third parties..."

- (d) While determining the generic tariff in respect of Renewable Sources of Energy by Order dated 11.12.2009, this Commission has determined the tariff for the existing Plants which have completed ten years of the PPA period. The finding of this Commission reads thus :

"In view of the fact that, after completion of 10 years debt servicing will have been fully met and the only increase (marginal) would be in respect of O&M expenses, but at the same time the opportunity cost of the power has gone up, the Commission decides to allow the rate equal to the rate at the end of the tenth year, without escalation for the next ten years for all renewable projects. This tariff is also applicable to such PPAs in which ten years period is already completed but no tariff has been determined."

- (e) In the generic Tariff Order dated 11.12.2009, while determining the tariff of the existing Plants which have completed ten years of the PPA period, the Commission has assumed that, the material parameter, viz., the PLF of the Project remained unchanged. In the present cases, the Petitioners

have contended that, in respect of all the Projects, there was significant decrease in the PLF achieved. It cannot be denied that the PLF has a major impact on the total energy generation and thereby affects the total revenue recovery of a Project. In the generic Tariff Order dated 18.1.2005, the PLF assumed for the Wind Power Projects was 26.50%. Whereas, the Petitioners have contended that the Projects had achieved the reduced PLF, as mentioned in the preceding paragraphs.

- (f) The Respondent No.1 has denied the average PLF achieved by the Petitioners' Projects and has stated that the Petitioners have generated more than anticipated. The Petitioners have denied this aspect in the rejoinder. These are based on the total energy sold to Respondent No.1 prior to the filing of these Petitions for nearly 9 years. We hold that, the reduction in the achieving of the assumed PLF is a substantial variation, which would attract the determination of the Project-specific tariff. There is no prohibition in law on the power of this Commission to undertake such determination of the Project-specific tariff. Therefore, we answer Issue No.(1) in the affirmative.

- 9) **ISSUE No.(2)** : *If Issue No.(1) is answered in the affirmative, what shall be the tariff from the eleventh year onwards from the Commercial Operation Date?*

- (a) Now, we shall examine the grounds pleaded by the Petitioners for the determination of the tariff from the eleventh year onwards from the COD.

- (b) The main grounds urged by the Petitioners in this regard are: shut down instructions issued by Respondent No.2 during peak season, decrease in generation, increase in O&M cost and deduction of rebate towards LC charges in monthly invoices, non-applicability of the Tariff Order dated 11.12.2009 to the projects and termination of the PPA, if tariff is not agreeable.
- (c) With regard to shut down instructions issued by Respondent No.2, after considering the pleadings of the Petitioners and Respondent No.1, we note that such instructions are issued for ensuring grid security. Clauses 3.7 and 4.2 of the PPAs provide that, subject to system constraints and emergency conditions, the power has to be evacuated / purchased by Respondent No.1 and for reasons of grid security if there are shut down instructions, no compensation need be paid. It is stated in the letters dated 31.10.2013, 4.9.2014 and 4.6.2015 (Annexure H in OP No. 5/2017) that, due to grid frequency problems the SLDC has issued instructions to stop generation during certain days. As submitted by Respondent No.1, such instructions are issued only on a few days for a few hours. We note that, backing down for a few hour on a few days, as compared to the ten-year period, will not have much impact. The provisions of the Electricity Act, 2003 provides that, the SLDC has to maintain grid security, which may require it to direct a generator to back down its generation. The PPA provides that such loss of generation will not be compensated. Hence, we are unable to accept this ground as a factor while re-fixing the tariff.

- (d) The next ground urged by the Petitioners is the decrease in generation as per the data produced in ANNEXURE-K due to change in wind velocity. The Respondent-1 has stated that the Petitioners being in the business of wind generation, have established the projects after detailed analysis and the change in wind velocity is not within the control of Respondent No.1. The Respondent No.1 has also stated that considering the approved PLF of 26.5%, the Petitioner in OP No.5/2017 has generated an average of 0.53 MU more than the anticipated generation and the Petitioner in OP No.22/2017, has generated an average of 2.12 MU more than the anticipated generation. The Petitioners in the rejoinder have stated that the PLF considered by the Respondents cannot be accepted as the PLF of only a few machines were considered. The Petitioners have stated that ANNEXURE-K is the data of 116 machines. The Petitioners have furnished the PLF of the 31 machines of MSPL and 20 machines of RMML to show that the PLF achieved is less. The Petitioners have not denied the data given by Respondent No.1 on excess generation. Even accepting the data given by the Petitioners in the Rejoinder, we note that the PLF is 24-25% and not very low, as alleged.
- (e) The next ground urged by the Petitioners is the increase in O&M cost. The Petitioners have stated that the tariff of Rs.3.40 per unit is insufficient to meet the escalating O&M cost and that over hauling is needed to improve the efficiency and an expenditure of Rs.91,80,000/- will have to be incurred for this purpose. It is stated that considering these expenses

and other expenses like employee cost, annual maintenance charges, depreciation, etc., the viable tariff would be Rs.5.50 per unit for the next ten years as per Annexure M. We note that the current tariff (tariff at the end of 10th year) for 11 projects is Rs.3.40 per unit and for another 11 Projects it is Rs.3.658 per unit as per ANNEXURE-A. We also note that, as per Clause 4.1 (viii) of the PPAs, the Petitioners are required to operate and maintain the projects in accordance with Prudent Utility Practices. The O&M expenses allowed in the generic tariff, determined for Wind Power Projects, would include the repairs and overhauling expenses, including finance cost, employees' cost, etc., also. Therefore, no other expenses, other than the normative O&M expenses (roughly estimated based on the data furnished for a limited number of WEGs) could be allowed. Further, as rightly contended by Respondent No.1, the Petitioners having set up the plants, being well aware of the normative Capital Cost allowed by the Commission at that relevant point of time, cannot now seek a higher Capital Cost to be allowed, especially when we note that there are no valid grounds and justification for incurring higher Capital Cost.

- (f) Accepting the average PLF of 22% and O&M cost at Rs.11.14 Lakhs from FY 16-17 (at 1.25% of the Capital Cost, with an annual escalation at 5.72%), the following are the parameters to be applied for determining the tariff from the eleventh year onwards from the COD of the Projects:

Sl.No.	Particulars	Value Adopted
(i)	Capital Cost per MW (in Rs.Lakhs)	425
(ii)	Debt-Equity Ratio	70 : 30
(iii)	Capacity Utilization Factor (CUF)(in %)	22
(iv)	Return on Equity (in %)	16
(v)	Discount Factor (in %)	16
(vi)	O&M Expenses (in Rs.Lakhs) (From FY 16-17 with an escalation at the rate of 5.72% per annum)	11.14
(vii)	Working Capital	2 Months' receivables
(viii)	Interest on Working Capital (in %)	11
(ix)	Depreciation for 15 years from FY 16-17 (in %)	1.333

Using the above parameters, the levelized tariff from the eleventh year of the COD of the Projects would work out to about Rs.2.13/- per unit. The tariff worked out as above is much below the tariff of Rs.3.40 per unit or Rs.3.658 per unit, the tariff at the end of 10th year. Therefore, in the present cases, the question of enhancing the tariff above the tariff at the end of 10th year does not arise.

- (g) The other ground urged by the Petitioners is the deduction of LC charges in the monthly invoices, resulting in reduction in revenue by 6 or 7 paise per unit. The Hon'ble Supreme Court of India, in Civil Appeal No.8736/2013 in the case of *Tuppadahalli Energy India Pvt. Ltd. –Vs- Karnataka Electricity Regulatory Commission and another*, decided on 10.01.2017, has upheld the deduction of the said charges as per the relevant Clause in the PPA. Hence, the contention of the Psetitioners is rejected.

(h) With regard to the applicability of the Generic Tariff Order dated 11.12.2009, we note that, most of the projects have completed the 10- year term during the control period of the Order dated 11.12.2009. In the Order dated 21.8.2014 in OP No.41/2012 (*Jindal Aluminium vs BESCOM & another*), the Commission had considered this aspect and held as follows:

"13) ISSUE No.(2) :

(a) The operative portion of Paragraph-13 of the generic Tariff Order dated 11.12.2009 issued by this Commission reads thus:

'In view of the fact that, after completion of 10 years debt servicing will have been fully met and the only increase (marginal) would be in respect of O & M expenses, but at the same time the opportunity cost of the power has gone up, the Commission decides to allow the rate equal to the rate at the end of the tenth year, without escalation for the next ten years for all renewable projects. This tariff is also applicable to such PPAs in which ten years period is already completed, but no tariff has been determined.'

(b) The learned counsel for the Petitioner submitted that the operative portion of paragraph-13 of the above-said Order of the Commission is not applicable to the Petitioner's Project and that it applies only to those Projects which have completed ten years period of the PPA as on the date of the Order, but not for the Projects which have not yet completed ten years period as on the date of the said Order. The counsel for the Petitioner further contended that in the present case, the ten year period of the PPA was completed on 23.9.2013, and therefore, the tariff fixed for the existing Plants which have completed ten years of the PPA period under the Commission's Order dated 11.12.2009 is not applicable to the Petitioner's Project.

(c) On the other hand, the learned counsel for the Respondents contended that the tariff fixed in paragraph-13 of the Commission's Order dated 11.12.2009 for the existing Plants, which have completed ten years of the PPA period, not only applies to those Plants which have completed ten years period of the PPA before the date of the Commission's Order, but also to those Projects which would complete ten years period of the PPA during the five years review period fixed in the Commission's Order.

(d) From an analysis of the generic Tariff Order dated 11.12.2009, it could be seen that the said Order determines the tariff not only for the existing Projects, which have completed ten years of the PPA period, but also for the new Projects which would be commissioned on or after 1.1.2010. The tariff so determined in the said Order is subject to review after five years. The tariff determined for the new Projects would apply for a period of ten years from the date of signing of the PPA and the tariff determined for the existing Projects would apply for a period of ten years from the end of the tenth year of the PPA period. As already noted above, the tariff determined in the Commission's Order dated 11.12.2009 would be subject to review after five years. Therefore, this leads to the conclusion that the tariff determined for the existing Projects would apply to all the existing Projects which would complete ten years of the PPA period during the five years review period. The Commission's Order dated 11.12.2009 further stipulates that the tariff so determined for the existing Projects would also be applicable to the existing Projects which have already completed ten years of the PPA period before 11.12.2009, i.e., before the date of the said Order. This can be inferred from the last sentence of paragraph-13 of the Order dated 11.12.2009, which stipulates that, "this tariff is also applicable to such PPAs in which ten years period is already completed, but no tariff has been determined."

(e) In view of the foregoing analysis of the Commission's Order dated 11.12.2009, we are of the view that the tariff determined for the existing Projects is applicable to all the existing Projects, which would complete ten years of the PPA period during the five years review period stipulated in the said Order."

- (j) In view of the above, we are unable to accept the contention of the Petitioners that the Order dated 11.12.2009 is not applicable to the Petitioners' Projects. Even for the Projects which have completed the 10-year period from the COD after the Control Period of the Order dated 11.12.2009, the tariff at the end of the tenth year would continue for the remaining 10-year term of the PPAs, as the generic Tariff Order dated 11.12.2009 applies not only to the new Plants which have entered into PPAs after 01.01.2010, but also to the 'Existing Plants', as per paragraphs-13 and 14 of the said Order. The 'Existing Plants' would mean and include, all the Plants which have entered into PPAs upto 31.12.2009.
- (k) With regard to the contention of the Petitioners that, on the Commission fixing the tariff from the 11th year onwards, if the same is not agreeable to the Petitioners, they could terminate the PPA, we find that such a contention is not tenable. In OP No.41/2012, we have held that, upon coming into force of the Electricity Act, 2003, the Commission alone has jurisdiction to fix the tariff and that the parties cannot negotiate the tariff. Therefore, the tariff determined in this Order would continue for the remaining term of the PPAs.
- (l) Therefore, we answer Issue No.(2) in the negative.

10) **ISSUE No.(3)** : *What Order?*

For the foregoing reasons, we pass the following:

ORDER

- (a) The above Petitions are dismissed. The tariff prevailing at the end of the tenth year will continue for the remaining ten-year period of the PPA; and,
- (b) The original of this Order be kept in OP No.5/2017 and the copies, thereof, in the other connected cases.

Sd/-

(M.K. SHANKARALINGE GOWDA)
CHAIRMAN

Sd/-

(H.D. ARUN KUMAR)
MEMBER

Sd/-

(D.B. MANIVAL RAJU)
MEMBER