

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

**Dated : 31<sup>st</sup> March. 2016**

**Present:**

- |                                 |          |
|---------------------------------|----------|
| 1. Sri M.K. Shankaralinge Gowda | Chairman |
| 2. Sri H.D. Arun Kumar          | Member   |
| 3. Sri D.B. Manival Raju        | Member   |

**OP No.2 / 2015**

**BETWEEN:**

M/s. Shah Distributors,  
No.37, Shah Mansion, I Floor,  
Opposite Clock Tower,  
Station Road,  
DAVANAGERE – 577 001.

..

**PETITIONER**

*[Represented by Navayana Law Offices, Advocates]*

**OP No.3 / 2015**

**BETWEEN :**

M/s. Shree Krishna Minerals,  
No.192, 16<sup>th</sup> Ward,  
College Road,  
Hosapete - - 583 201.

..

**PETITIONER**

*[Represented by Navayana Law Offices, Advocates]*

**OP No.4 / 2015**

**BETWEEN :**

M/s. Shree Krishna Minerals,  
No.192, 16<sup>th</sup> Ward,  
College Road,  
Hosapete - - 583 201.

..

**PETITIONER**

*[Represented by Navayana Law Offices, Advocates]*

**AND:**

- 1) Gulbarga Electricity Supply Company Limited,  
Station Road,  
Kalaburagi - 585 101.
- 2) Karnataka Power Transmission Corporation Limited,  
Cauvery Bhavan,  
K.G. Road,  
Bengaluru – 560 009.

**RESPONDENTS**

*[Respondents are common in OP Nos.2/2015, 3/2015 and 4/2015.  
In all the three Petitions, Respondents are represented by  
Indus Law, Advocates]*

-----

**COMMON ORDERS**

- 1) The above three Petitions involve common issues of facts and law, for consideration. Therefore, these Petitions are clubbed together for passing final orders.
- 2) In each of these Petitions, the Petitioner has prayed for:
  - (a) Striking down Article 5.1 of the Power Purchase Agreement (PPA) entered into with the 1<sup>st</sup> Respondent-Gulbarga Electricity Supply Company Limited (GESCOM);
  - (b) Directing the 1<sup>st</sup> Respondent (GESCOM) to make payment for the energy injected into the State Grid between the date of commissioning of the Project and the date of signing of the PPA;  
and,

- (c) Passing any other order as may be appropriate under the circumstances, in the interest of justice and equity.
- 3) The material facts to understand the contentions of the Petitioners in support of their prayers may be stated as follows :
- (a) In all the above PPAs executed by the Petitioners and the 1<sup>st</sup> Respondent, Article 5.1 reads thus :

**“5.1 Monthly Energy Charges :**

- a. *The GESCOM shall for the Delivered Energy pay, for the first 10 years from the Date of signing of Power Purchase Agreement to the Company every month during the period commencing from the Date of signing of Power Purchase Agreement at the rate of Rs.3.70 (Rupees Three and seventy paise only) per kilowatt-hour without any escalation for energy delivered to the GESCOM at the Metering Point.”*
- (b) For the purpose of brevity and clarity, the relevant facts and dates that are necessary for resolving the controversy involved in these Petitions, are given below :

Sl.No.	Case No.	Capacity of Wind Power Generating Unit (in MW)	Date of Commissioning of the Project	Date of Execution of PPA	Date of Submission of PPA to the Commission for Approval	Date of Approval of PPA by the Commission	Date of filing of Petition before the Commission
1.	OP 2/2015	0.25	31.3.2009	18.6.2010	15.7.2010	9.8.2010	14.1.2015
2.	OP 3/2015	2.00	31.3.2009	18.6.2010	15.7.2010	9.8.2010	19.1.2015
3.	OP 4/2015	1.00	30.3.2009	28.4.2011	16.6.2011	4.7.2011	19.1.2015

- (c) In all the above three Petitions, the Petitioners have entered into the PPAs long after the date of commissioning of the Project. The Petitioners claim that, from the respective dates of commissioning, they started injecting energy from the Project into the State Grid. They have stated that the 1<sup>st</sup> Respondent (GESCOM) has paid for the energy subsequent to the respective dates of the PPA, but has not paid any tariff for the energy injected into the State Grid from the date of commissioning to the date of execution of the PPA. It is contended that the 1<sup>st</sup> Respondent (GESCOM), relying on Article.5.1 of the PPA, has been paying the tariff for the Delivered Energy from the date of signing of the PPA. It is stated that, as there was no provision in the PPA for payment for the Delivered Energy between the date of commissioning and the date of execution of the PPA, the 1<sup>st</sup> Respondent (GESCOM) has refused to pay for the energy injected into the State Grid for that period.

- (d) It is contended that Article 5.1 of the PPAs, in all the cases, have not been drafted in accordance with the Standard PPA in respect of Wind Power Projects, approved by this Commission under Order dated 18.8.2005. The said Article 5.1 of the Standard PPA reads thus :

**“5.1 Monthly Energy Charges :**

- a. *The ESCOM shall for the Delivered Energy pay, for the first 10 years from the Commercial Operation Date, to the Company every month during the period commencing from the Commercial Operation Date at the rate of Rs.\_\_\_\_\_ per kilowatt-hour without any escalation for energy delivered to the ESCOM at the Metering Point.”*

It is pointed out that, in the PPAs executed by the Petitioners with the 1<sup>st</sup> Respondent (GESCOM), payment for the Delivered Energy starts from the 'date of signing of the PPA', whereas in the approved Standard PPA the payment for the Delivered Energy starts from the 'date of Commercial Operation'. It is further contended that, as the Standard PPA has been approved by this Commission, after hearing the stakeholders and the public, the terms stated in the approved Standard PPA would prevail over the terms stated in Article 5.1 of the PPA, entered into by the Petitioners with the 1<sup>st</sup> Respondent (GESCOM).

- (e) It is contended that, on the principles stated in Section 70 of the Indian Contract Act, the Respondents are liable to pay for the Delivered Energy

from the date of commissioning to the date of execution of the PPA, on the facts and in the circumstances of the cases.

(f) This Commission, by Order dated 18.1.2005, determined the generic tariff in respect of Renewable Sources of Energy. Under this Order, for the Wind Power Projects, the tariff determined is Rs.3.40 (Rupees three and paise forty only) per Unit without any escalation for the first 10-year period from the year of the Commercial Operation of the Plant. The tariff determined under this Order has been made applicable to all the PPAs, filed before this Commission for approval, on or after 10.6.2004. It is also stated in the said Order that, the tariff determined under this Order would further be reviewed after five years, which shall be applicable to all the Power Purchase Agreements to be entered into after that date. The said Order dated 18.1.2005 directs that, the Karnataka Power Transmission Corporation Limited (KPTCL) has to file the draft Standard PPAs in respect of the Renewable Sources of Energy Projects for approval to the Commission. In pursuance of such direction, the Commission, after following the due procedure, approved the Standard PPAs for each category of the NCE Projects annexed to the Order dated 18.8.2005.

(g) This Commission, by Order dated 11.12.2009, determined the generic tariff in respect of Renewable Sources of Energy. Under this Order, for the Wind Power Projects, the tariff determined was Rs.3.70 (Rupees three and paise seventy only) per Unit without any escalation, for the first 10-year

period from the date of signing of the PPA. The tariff determined under this Order has been made applicable to all the new Renewable Energy Projects, in respect of which the PPAs are filed before this Commission for approval on or after 1.1.2010 for a period of ten years from the date of signing of the PPA. It is also stated in the said Order that the tariff determined under this Order would be further reviewed after five years, which shall be applicable to all the Power Purchase Agreements to be entered into after that date. In the said Order, it is also stated that, in respect of the PPAs already approved by this Commission and in respect of the PPAs received by the Commission before 1.1.2010, the tariff and all the terms and conditions as per those PPAs should hold good for the period specified in the PPAs. In the present PPAs entered into by the Petitioners with the 1<sup>st</sup> Respondent (GESCOM), the tariff agreed is Rs.3.70 (Rupees three and paise seventy only) per Unit, without any escalation.

- (h) It is contended that the Petitioners have entered into the PPAs on or after 1.1.2010, and therefore, they are entitled to tariff of Rs.3.70 (Rupees three and paise seventy) only per Unit, as determined by this Commission under the generic Tariff Order dated 11.12.2009. And, that they should have been paid for the Delivered Energy from the date of Commercial Operation, as per Article 5.1 of the Standard PPA, approved by this Commission vide Order dated 18.8.2005, but not merely from the dates of the PPAs in question.

**OP Nos.2, 3 and 4 of 2015**

- 4) The Respondents have appeared through their counsel and filed common Statement of Objections in all the three Petitions. The gist of their contentions is stated as follows :
- (a) The prayer of the Petitioners that, Article 5.1 of the PPA should be struck down as *ultra vires*, is beyond the scope of Section 86(1)(f) of the Electricity Act, 2003 (Act);
  - (b) The claim of the Petitioner is barred by limitation; and
  - (c) The Article 5.1 of the PPA entered into between the parties, is in line with the generic Tariff Order dated 11.12.2009. Therefore the contention of the Petitioners that, the Article 5.1 of the PPA should have been, as per the Standard PPA approved by this Commission under Order dated 18.8.2005, is incorrect.
  - (d) The Petitioners cannot claim compensation for the Delivered Energy, if any, from the date of commissioning of the Project to the date of execution of the PPA, as there was no Agreement for supply of energy, the same was unscheduled power and there was no request by the Petitioners to pay for the same.
  - (e) The applicability of Section 70 of the Indian Contract Act is denied. Accordingly, the Respondents have prayed for dismissal of the Petitions.



5) We have heard the learned counsel for the parties in these Petitions regarding the controversies raised in the pleadings. Considering the undisputed fact of the dates of commissioning of the Projects, involved in these Petitions, the Commission specifically had asked the learned counsel for the parties to submit their views, as to which of the generic Tariff Orders of the Commission, viz., generic Tariff Order, 2005 or the generic Tariff Order, 2009, is applicable to the Projects of the Petitioners. The learned counsel for the parties have submitted their views on this aspect. The learned counsel for the Petitioners pointed out, that this Commission had previously issued clarifications, viz., in the cases where commissioning of the Project had been achieved and the energy was being pumped into the Grid, prior to 1.1.2010, and PPAs were submitted to the Commission on or after 1.1.2010, the tariff applicability of such Projects, be as follows :

- "a) Old Tariff as determined in Commission's Order dated 18.1.2005 is applicable from the date of achieving CoD up to the date of submission of the PPA to the Commission.*
- b) The new tariff as determined in the Commission's Order dated 11.12.2009 is applicable only from the date of submission of the PPA to the Commission, provided the PPA is submitted to the Commission on or after 1.1.2010."*

The learned counsel for the Petitioners further submitted that the above guidelines may be followed in the present cases. The learned counsel for the Respondents stuck to his pleadings in this regard.

6) From the rival contentions, the following issues would arise for our consideration :

(1) Whether the Article 5.1 of the PPA in its present form requires any modification, for the reasons stated by the Petitioners?

(2) Whether the Petitioners are entitled to compensation for the energy injected, if any, into the State Grid, from the date of commissioning of the Project to the date of execution of the PPA?

(3) Whether the Petitioners are entitled to the tariff determined by this Commission in the generic Tariff Order dated 11.12.2009 or the generic Tariff Order dated 18.1.2005?

(4) What Order?

7) After considering the rival contentions and the material placed on record by the parties, our findings on the above issues are as follows :

- 8) We would like to consider Issue No.(3) first, as our findings on this issue would have a bearing on the final outcome of the dispute involved in these Petitions and also on other issues. Issue no.(3) is as follows:

**ISSUE No.(3)** : *Whether the Petitioners are entitled to the tariff determined by this Commission in the generic Tariff Order dated 11.12.2009 or the generic Tariff order dated 18.1.2005?*

- (a) The tariff for supply of electricity by a Generating Company to a Distribution Licensee is regulated under the provisions of the Act and the relevant Regulations framed thereunder. The State Commission has to regulate the electricity purchase and the procurement process of the Distribution Licensees, including the price at which electricity should be procured from Generating Companies, through agreements, for distribution and supply within the State.
- (b) This Commission had issued the Karnataka Regulatory Commission (Power Procurement from Renewable Sources of Energy by Distribution Licensees) Regulations, 2004 (hereinafter referred to as the 'KERC Regulations, 2004'). Pursuant to the said Regulations, this Commission had determined the generic tariff in respect of Renewable Sources of Energy by the Order dated 18.1.2005. Under this Order, for the Wind Power Projects, the tariff determined is Rs.3.40 (Rupees three and paise forty) only per Unit, without any escalation, for the first 10-year period from the year of Commercial Operation of the Plant. The tariff

determined under this Order has been made applicable to all the PPAs, filed before this Commission for approval, on or after 10.6.2004. It is also stated in the said Order that the tariff determined under this Order would be further reviewed after five years, which shall be applicable to all the Power Purchase Agreements to be entered into after that date.

- (c) This Commission subsequently, by the Order dated 11.12.2009, determined the generic tariff in respect of Renewal Sources of Energy. Under this Order for the Wind Power Projects the tariff determined is Rs.3.70 (Rupees three and paise seventy) only per Unit without any escalation for the first 10-year period from the date of signing of the PPA. The tariff determined under this Order has been made applicable to all the new Renewable Energy Projects, the PPAs in respect of which are filed before this Commission for approval, on or after 1.1.2010, for a period of ten years from the date of signing of the PPA. It is also stated in the said Order that the tariff determined under this Order would be further reviewed after five years, which shall be applicable to all the Power Purchase Agreements to be entered into after that date. In the said Order, it is also stated that, in respect of the PPAs already approved by this Commission and in respect of the PPAs received by the Commission before 1.1.2010, the tariff and all the terms and conditions as per those PPAs should hold good for the period specified in the PPAs. In the present Petitions, in respect of all the PPAs entered into by the Petitioner with the 1<sup>st</sup> Respondent (GESCOM), the tariff agreed is Rs.3.70

(Rupees three and paise seventy only) per Unit without any escalation for the Delivered Energy for a period of ten years from the date of the PPA.

(d) Regulations 5.7 and 5.8 of the KERC Regulations, 2004 read thus :

**“5.7** *The tariff so determined by the Commission shall be applicable for a period of 10 years from the date as notified by the Commission.”*

**“5.8** *The tariff so determined by the Commission is subject to review after 5 years and such revised tariff shall be applicable to agreements entered into after that date.”*

(e) In the generic Tariff Order dated 18.1.2005 at paragraph-8(vii), it is specifically stated that, the Commission is limiting the determination of tariff to new Projects only. The various Articles of the approved Standard PPA would show that the said terms of the Standard PPA would be applicable to the Projects proposed to be established, but not to the Projects already existing and commissioned. At Paragraph-12 of the generic Tariff Order, 2009, while dealing with the scope of the said Order, it is held that, *“The tariff determined in this Order is applicable to all the new Renewable Energy Projects which are entering into Power Purchase Agreements on or after 1.1.2010.”* Therefore, it could be said that the tariff determined in the generic Tariff Order, 2005 would be applicable to all the PPAs entered into in respect of new Projects to be established on or after 10.6.2004 till 31.12.2009, and the tariff determined in the generic Tariff Order, 2009 would be applicable to all the PPAs entered into in

respect of new Projects to be established on or after 1.1.2010 till 31.12.2014. However, by its subsequent generic Tariff Order dated 10.10.2013 relating to only Wind Power Projects, the Commission has curtailed the Control Period (1.10.2010 to 31.12.2014) and determined new tariff, applicable to the PPAs entered into on or after 10.10.2013 till 31.3.2018.

- (f) The generic Tariff Orders relating to Renewable Sources of Energy Projects would show that the Commission has taken into consideration the cost of various components that are necessary while establishing a Renewable Power Project, during the Control Period of five years, for determination of tariff payable to a particular Project. Therefore, the Project Cost incurred will be the basis for the determination of tariff for the energy generated from a Project. Regulations are framed to assess the various financial and operational parameters of a Project for enabling to determine the tariff applicable to that Project.
  
- (g) For various reasons, the cost of a Project may vary during different Control Periods. From the above-noted provisions of law and the generic Tariff Orders issued by this Commission relating to Renewable Sources of Energy, the tariff as determined by this Commission for a particular Project is dependent on the Project Cost incurred during the relevant Control Period. Having regard to this principle, the generic Tariff Orders have laid down the criteria for the applicability of the tariff determined

for the Projects to be established during the said Control Period. The generic Tariff Orders dated 18.1.2005 and 11.12.2009 specifically state that the tariff determined under these Orders are applicable for the new Projects to be established subsequent to the dates mentioned in the said Orders.

- (h) In the present cases, the Wind Power Projects have been commissioned on 31.3.2009, 31.3.2009 and 30.3.2009, as mentioned in paragraph-4 above. The generic Tariff Order dated 18.1.2005 was made applicable for the Projects in respect of which the PPAs were submitted to the Commission for approval on or after 10.6.2004 and the generic Tariff Order dated 11.12.2009 was made applicable for the Projects, in respect of which the PPAs were submitted to the Commission for approval on or after 1.1.2010. A Project, which had been commissioned on or before 31.3.2009, cannot be treated as a 'new Project' for the purpose of applicability of the tariff determined in the generic Tariff Order dated 11.12.2009 of the Commission. This Order applies to the Projects to be established on or after 1.1.2010. For the applicability of the generic Tariff Order dated 11.12.2009, the PPAs should be in respect of a new Project and it should be submitted to the Commission for approval on or after 1.1.2010. As already noted, in the present cases, though the Projects were not new, the tariff determined under the generic Tariff Order dated 11.12.2009 was made applicable, merely on the ground that the PPAs were submitted on or after 1.1.2010 for approval of the Commission. For

the above reasons, the Commission is of the considered view that the Petitioners' Projects should have been governed by the tariff determined in the generic Tariff Order dated 18.1.2005.

- (j) The PPAs in question have been entered into between the Petitioners and the 1<sup>st</sup> Respondent (GESCOM) and were submitted to the Commission for approval on 15.7.2010, 15.7.2010 and 16.6.2011. Whereupon, the Commission had approved the said PPAs, as noted in paragraph-4 above, without ascertaining whether these PPAs were in respect of new Projects or not. The tariffs for Wind Power Projects determined in the generic Tariff Orders dated 18.1.2005 and 11.12.2009 were Rs.3.40 per Unit and Rs.3.70 per Unit, respectively.
- (k) In the present cases, the PPAs have already been approved by this Commission, being under the impression that the tariff of Rs.3.70 (Rupees three and paise seventy) only per Unit would be applicable, as determined in the generic Tariff Order dated 11.12.2009. On the above facts and in the circumstances, whether this Commission can review its earlier approvals already given to the PPAs, is to be decided. The Commission is of the considered view that it has power to revise or review its earlier approvals given to the PPAs in question, for the following reasons :



- (i) The Commission has a duty to safeguard the interest of the consumers. The consumer would be the affected party, in case of a wrong application of tariff;
- (ii) The tariff for supply of electricity by generators is a matter of regulation by the Commission;
- (iii) The generic Tariff Orders of 2005 and 2009 and the criteria for their applicability to different Renewable Energy Projects have been laid down, after following the due procedure and hearing the stakeholders and consumers in the matter;
- (iv) The Generators as well as the Distribution Licensees have a duty to find out the appropriate tariff applicable to a particular Power Purchase transaction. Section 62(6) of the Act provides that a Generating Company cannot recover a price exceeding the tariff determined by the Commission;
- (v) The Commission should also verify the validity of the claim for a particular tariff, before granting approval to the PPA;
- (vi) In the present cases, it appears, before granting the approval, the Commission had not analyzed the relevant principles and facts to

ascertain the applicability of the correct generic tariff to be paid to the Petitioners. Hence, the Commission had misdirected itself, in assuming that the generic Tariff Order, 2009 would apply to the PPAs submitted for approval on or after 1.1.2010, irrespective of the date of commissioning of the Projects;

- (vii) The approvals have been given in a routine manner. Therefore, the approvals given are in the nature of an *ex-parte* order. Hence, such approvals can be reviewed at any time by the Commission, upon noticing the mistake committed in giving the approvals;
- (viii) The approvals granted earlier cannot be treated as, 'orders attaining finality in an adversarial judicial proceedings' and can be re-opened for valid reasons. The consumer would be the affected party, in case of allowing higher tariff than the legally permissible tariff;
- (ix) The term regarding tariff in a PPA is governed by the statute. Any higher claim for tariff is *void* and can be ignored by the party concerned in the PPA;
- (x) The conditions regarding the applicability of the generic Tariff Order, 2009, stated therein, are not reasonably subject to two

different interpretations. The approvals regarding the PPAs would not have been communicated but for the erroneous assumption, which in fact did not exist and its continuation would result in miscarriage of justice. In such circumstances, the Commission can rectify its own mistake. The payment of tariff under the PPAs is a continuing liability till the term of the PPAs and the Commission cannot allow the mistake to be continued on technical grounds.

(l) The clarification previously issued by the Commission, as pointed out by the learned counsel for the Petitioners, is not on any better footing. Hence, that does not impede the Commission from correcting its earlier mistake.

(m) For the above reasons, we hold that the generic Tariff Order dated 18.1.2005, issued by this Commission, is applicable to the Petitioners' PPAs and the Commission can issue directions to the parties concerned to rectify the mistake. We answer Issue No.(3) accordingly.

9) **ISSUE No.(1)** : *Whether the Article 5.1 of the PPA in its present form requires any modification, for the reasons stated by the Petitioners?*

(a) The Petitioners have contended that the words, "*from the date of signing of the Power Purchase Agreement*" appearing at two places in the Article 5.1 of the PPAs are to be replaced with the words, "*from the*

*Commercial Operation Date*". It may be noted that, the generic Tariff Order, 2009, insofar as the Wind Power Projects are concerned, states that, *"The Commission determines the tariff for Wind Projects at Rs.3.70 per Unit without any escalation for the first 10-year period from the date of signing of PPA."* Further, paragraph-14 of the said Order relating to the 'Date of Effect of the Order' states that, *"The tariff as determined by the Commission in the present Order shall be applicable to all the Power Purchase Agreements submitted to the Commission for approval on or after 1.1.2010 for a period of 10 years from the date of signing of PPA."* In view of these provisions in the said Order, the Standard PPA for Wind Power Projects approved by this Commission by Order dated 18.8.2005, should stand amended, accordingly, in respect of those wind Power Projects governed by the generic Tariff Order, 2009.

- (b) However, we found that the Projects of the Petitioners should be governed by the tariff determined under the generic Tariff Order, 2005. We have also noted that the Standard PPA for Wind Power Projects, approved by this Commission by Order dated 18.8.2005, would apply to the Projects to be established, but not for the existing Projects. In the case of the existing Projects, the provisions relating to the Financial Closure, the date of commencement of the Project, the date of completion of the Project and the consequences for the non-compliance of it, etc., need not be mentioned in the PPA.

- (c) As the generic Tariff Order, 2005, is to be applied to the Projects of the Petitioners, the PPAs should reflect the tariff as determined in the generic Tariff Order, 2005, for a period of ten years and the term of the PPAs should be twenty years from the date of commissioning of the Projects.
- (d) Consequently, the required amendments to the PPAs are to be effected by the parties concerned, as noted in above. The changes suggested by the Petitioners are not relevant, as the generic Tariff Order, 2009, is not applicable to these cases. We, therefore, answer Issue No.(1), accordingly.
- 10) **ISSUE No.(2)** : *Whether the Petitioners are entitled to compensation for the energy injected, if any, into the State Grid, from the date of commissioning of the Project to the date of execution of the PPA?*
- (a) The Respondents have opposed the grant of compensation on the ground of delay in preferring the claim. The Petitioners have claimed compensation for the energy said to have been injected into the State Grid from the date of commissioning of the Projects till the date of execution of the PPAs. The Petitioners have preferred the claims for it before this Commission on 14.1.2015, 19.1.2015 and 19.1.2015 by filing the above Petitions. Thus, the Petitions are filed more than four and a half

years after the cause of action for the claim had arisen, which is clearly barred by law of limitation.

- (b) The Petitioners have based their claim for compensation on the principles of Section 70 of the Indian Contract Act. The Commentary under Section 70 of the Contract Act by the learned Authors, Pollack & Mulla, 14<sup>th</sup> Edition, Volume II, states that the circumstances under which the ingredients of the said Section are not made out, and it reads thus :

*"... A claim on the basis of something done against the express provisions of statute cannot be claimed under this Section...."*

*"...The voluntary acceptance of the benefit of the work done or under delivery is the foundation of the claim under Section 70. The person on whom the benefit is conferred, enjoys the benefit voluntarily. It means that the benefit must not have been thrust upon him without his having the option of refusing it. Nobody has a right to forcing the benefit upon another. ..."*

- (c) In the present case, the law does not permit injection of power into the State Grid without execution of a PPA with a Distribution Licensee. Admittedly, the power was injected into the State Grid before execution of the PPAs. The Respondents had no opportunity to reject the power injected into the Grid. Therefore, any injection of power into the Grid without there being a PPA amounts to thrusting the benefit on the Respondents. Therefore, the conditions of Section 70 of the Indian

Contract Act are not satisfied by the Petitioners, in order to make a claim for compensation. Therefore, we answer Issue No.(2) in the negative.

11) **ISSUE No.(4)** : *What Order?*

- (a) On Issue No(3), we found that the tariff for the Petitioners' Projects should be governed by the generic Tariff Order dated 18.1.2005 of this Commission, pertaining to Wind Power Projects, at Rs.3.40 (Rupee three and paise forty) only per Unit for the Delivered Energy, but are not entitled to the tariff of Rs.3.70 (Rupees three and paise seventy) only per Unit. The tariff period is to be fixed for ten years and the term of the PPAs is to be fixed for twenty years from the date of commissioning of the Projects. The eleventh year tariff from the date of commissioning of the Projects shall be as may be determined by the Commission.
- (b) The phrases, 'Commissioning of the Project' and 'Commercial Operation of the Project' are not synonymous or interchangeable. The 'Commissioning of the Project' means synchronization / interconnection of the Project with the State Grid, enabling the Project to inject the power into the State Grid. 'Commercial Operation' means injection of the energy into the State Grid in pursuance of some commercial transactions, like PPAs with the Distribution Licensees or sale of power to third parties, by availing open access, etc. The date of Commercial Operation may coincide with the date of commissioning of a Project,

- where the PPA is executed with the Distribution Licensee in respect of a Project to be established or on the commissioning of the Project. However, in the case of the existing Project, which has already achieved the commissioning of the Project, if the PPA is executed at a later date, the date of commissioning of the Project would be different from the date of Commercial Operation of the Project.
- (c) In view of our findings on Issue No.(3), we are of the considered opinion that the terms of the PPAs should be rectified suitably, by inserting the tariff payable as per the generic Tariff Order, 2005 and fixing the Tariff Period and the term of the PPAs as ten years and twenty years, respectively, from the date of commissioning of each of the Projects, and by reckoning the eleventh year tariff from the date of commissioning of the respective Project, as may be determined by the Commission. Therefore, we are of the considered opinion that the terms of the PPAs should be rectified, accordingly.
- (d) When once the terms of the PPAs are rectified as stated above, the cause of action for adjustment of the rights and liabilities of the parties, as per those terms, would arise. In that event, though the Petitioners are not entitled to claim compensation for the energy injected into the State Grid, from the date of commissioning of the Projects to the date of execution of the PPAs, on the grounds stated by them in the Petitions, in view of the directions given below for rectification of the terms of the



PPAs, the Petitioners are to be allowed to receive the tariff for the quantum of energy injected into the State Grid, from the dates of commissioning of the Projects to the dates of execution of the PPAs.

(e) For the foregoing reasons, we pass the following :

**ORDER**

- (1) The parties to the Power Purchase Agreements (PPAs) in question shall modify the terms of the PPAs, as detailed in Paragraph-11(c) above and obtain approval of the Commission;
- (2) The parties to the PPAs shall adjust their rights and liabilities, as per the terms of the modified PPAs to be entered into, within 2 (two) months from the date of this Order, without any claim of interest on arrears, if any;
- (3) This Order shall be kept in OP No.2/2015 and copies of it be placed in OP No.3/2015 and OP No.4/2015.

Sd/-  
(M.K. SHANKARALINGE GOWDA)  
CHAIRMAN

Sd/-  
(H.D. ARUN KUMAR)  
MEMBER

Sd/-  
(D.B. MANIVAL RAJU)  
MEMBER