

N./75 / 2020

**BEFORE THE KARNATAKA ELECTRICITY REGULATORY COMMISSION,
No.16, C-1, Millers Tank Bed Area, Vasanth Nagar, Bengaluru-560 052.**

Dated: 02.09. 2021

Present

Shri Shambhu Dayal Meena : Chairman
Shri H.M. Manjunatha : Member
Shri M.D. Ravi : Member

OP. No. 31 / 2020

BETWEEN

Swarna Properties,
At Devanakatti Village, Chikkodi Taluk Belgaum District,
Head Office: No. 558, Swarna Hights, Arora colony,
Road No. 3, Banjara Hills,
Hyderabad-500034.

... Petitioner

(Represented by Sri. Aditya Narayan Saakshya Law Advocate)

AND

Hubli Electricity Supply Company Limited,
Corporate Office,
Navanagar, Hubballi-580025.

... Respondent

(Represented by Advocate Sri. Shahbaaz Husain)

ORDER

1. The petitioner has filed this petition under Section 62 (1) (a) read with Section 64 and Section 86 (1) (e) of the Electricity Act,2003 and Regulation 9 of the KERC (Power Procurement from Renewable sources by Distribution

Licensee and Renewable Energy Certificate Framework) Regulations praying for the following reliefs:

- a) to fix the tariff for the energy generated by the Wind Plant at Rs. 4.41 per unit from 11th years onwards.
- b) pass any other order in the interest of justice and equity.

2. The material facts submitted by the Petitioner are as follows:

- a) The Petitioner submits that M/s Swarna Properties is a Proprietary firm and is in the business of generating Wind power. (as per the copy of the relevant Certificate furnished as Annexure-A) The Petitioner submits that the Government of Karnataka (herein after referred to as GoK), by its Order No. EN 247 NCE 2002 dated 05.03.2003, accorded its sanction to the proposal of M/s ENG Micon India (Private Ltd.,) Bangalore for installation of wind energy based electric power generation of 5 MW Capacity at Devanakatti Village in Chikkodi District. The GoK, by its Order EN 409 NCE 2006 dated 18.06.2006, accorded its sanction to the proposal of M/s NEG Micon India (Private Ltd.,) Bangalore for enhancement of allotted capacity of wind project from 5 MW to 9.9 MW at Devanakatti Village in Belgaum District and the GoK, by its Order No. EN 463 NCE 2006 dated 12.12.2006 has accorded approval for change of company's name from M/s NEG Micon India (Private Ltd.,) to M/s Vestas Wind Technology India Private Limited. The GoK by Order No. EN 318 NCE 2007 dated 06.09.2007 has approved transfer of capacity of 1.65 MW to M/s Swarna Properties at

Devanakatti Village of Chikkodi District, Karnataka State, from out of the 9.9 MW capacity allotted to M/s Vestas Wind Technology and permitted Corporation to entered into an agreement with Karnataka Power Transmission Corporation (KPTCL) Limited for purchase of Electricity. Pursuant to this M/s Swarna Properties established a wind energy plant with a capacity of 1.65 MW. In view of separation of Trading activity from KPTCL, Hubli Electric Supply Company has entered into Power Purchase Agreement with the petitioner on 30th January 2008 as per Annexure-B.

- b) The Petitioner submits that power from its Wind Power Plant is being supplied as per the Power Purchase Agreement (PPA) entered into with the Respondent (HESCOM) on 30th January,2008. As per the terms of the PPA, the petitioner is getting Rs.3.40 per unit without any escalation for the first ten years from the Commercial Operation Date (COD). From 11th year onwards, from the COD, for the energy delivered to at the metering point, at the rate determined by the Commission shall be applicable. The Petitioner submits that during the first ten-year period, HESCOM has paid Rs. 3.40 per unit whereas the similarly placed plants are getting Rs.4.50 per unit.
- c) The petitioner, as per **Annexure C**, has submitted the actual calculation of Tariff for Wind power based on various parameters as detailed below:

Capital Cost / MW Rs. lakh	691.52
Debt: Equity Ratio	70 : 30
Debt Rs.Lakh	484.06
Equity – Rs. Lakh	207.46
Debt repayment tenure	12 Years
Interest charged on debt	12.5%
Capacity Utilization factor	25.12%
Annual Generation @ 25.12% CUF	26.28 Lakh unit per MW
Return on Equity	16%
MAT / IT Rate to be reimbursable	18.50% + 10% surcharge + 3% education cess = 20.9605%
IT / MAT reimbursement per unit (maximum)	-
Discount Factor	13.55%
Auxiliary Consumption	1.00%
O & M Expenses in Rs. Lakhs per MW	11.26
O & M Escalation P.A in % and Rs.	5.72% Rs.54, 397 compounded annually
Working Capital	2 months' receivables the cost per unit is 10 paisa
Depreciation for first 12 years	5.83%
Depreciation for next 13 years	1.20% (applicable from 13 th years onwards)
Total price per unit	Upwards of Rs.4.50 per unit (excluding MAT / IT)

- d) The Petitioner has referred to the KERC letter KERC/S/F-52/M-17/14-15/1445 dated 30.11.2015 relied upon by The Respondent (HESCOM) as per Annexure E, which states that, in case of wind and Mini Hydel Project which have entered into PPA up to 31.12.2009 and have completed 10 years' period from the date of commissioning, the 10th

year Tariff would be applicable for the next 10 years of the term of the PPA without any escalation. The Petitioner has further submitted that the Commission issued the KERC (Power Procurement from Renewable Sources by Distribution Licensees and Renewable Energy Certificate Frame Work) Regulations, 2011 repealing the 2004 Regulations. The 2011 Regulations empower the Commission to determine the tariff at any time for purchase of electricity from Renewal Energy Sources by Distribution licensees and prayed that letter dated 30.11.2015 by Secretary, KERC is not relevant and hence has filed the Petition before this Commission for revision of Tariff to their wind power plant.

- e) The Petitioner has submitted that the principles and methodologies for determination of tariff for supply of electricity by a generating company to a distribution licensee are enumerated in Section 61 of the Electricity Act, 2003, and the guidelines stated in Clause 5.0 and Clause 6.0 of the Tariff Policy, 2006, and accordingly the generation tariff determined should relate to the Project costs and other relevant facts. The determination of tariff is regulated by the Commission on the guidelines stated in the relevant provisions of the Electricity Act, 2003, and the Regulations framed thereunder. Considering the above facts, the Petitioner has submitted that the Commission can revise the tariff, taking into account the material changes in the circumstances. The petitioner has referred the decision of the Hon'ble Supreme Court reported in (2011) 11 SCC 34, in the case of Transmission Corporation

of Andhra Pradesh Limited and another Vs Sai Renewable Power Private Limited and Others in paragraph 63 of the said Judgment as to when the term regarding 'tariff' or 'purchase price' agreed in the PPA could be revised. Para 63 says that:

"... The term 'purchase price' indicated in the PPAs, as such, would be a matter within the realm of contract but this is subject to the changes which are contractually and / or even statutorily permissible...."

- f) The Petitioner, based on the facts and circumstances of the present case, submits that, the revision of tariff agreed in the PPA is statutorily permitted and further submitted the cost of the project as certified by the Chartered Accountant in the relevant extract of Audited Accounts for 2008-09 as per Annexure F.
- g) The Petitioner submits that, they are supplying power from their plant as per the Power Purchase Agreement (PPA) entered into with HESCOM and getting a tariff of Rs.3.40 per unit in the last ten years, whereas similarly placed Wind Power Plant are getting Rs.4.50 per unit. The Petitioner, in its petition has worked out revised ten-year average tariff of Rs.4.50 per unit on the capital cost of Rs.11,40,51,938 as certified by the Chartered Accountant for the first ten-year period as allowed to the similarly placed other wind power plants as in 'Annexure C'. As against this, the Petitioner has received Rs.3.40 per unit as per the PPA and claimed the difference of unrecovered capital cost of Rs.475 lakhs for 1.65 MW at the rate of Rs.1.10 per unit. The petitioner has

carried forward this unrecovered capital cost of the subject wind plant and reworked the tariff of Rs.2.25 per unit expected to be recovered for the next ten years from 11th year onwards as in 'Annexure G'. The Petitioner has also considered Rs. 450 Lakhs as the Renovation cost of the 1.65 MW wind plant, at the rate of Rs.272.73 per MW and computed the tariff of Rs. 2.16 per unit as in 'Annexure H', to be receivable for the next ten-year period from 11th year onwards for the supply of power to the Respondent. Thus, the Petitioner has claimed Rs.4.41 per unit (Rs.2.25+ Rs.2.16) as the revised tariff, as against the tariff of Rs.3.40 per unit, without any escalation for the next 10-year period, to be allowed to the Respondent, from 11th year onward.

- h) Therefore, the Petitioner requested the Commission to take in to consideration the unrecovered capital cost and renovation cost also while revising the Tariff to this power Plant. It is further submitted that they are yet to receive Rs.1.10 per unit in the Tariff for the first 10 years. This translates to Rs.4.75 Crore on account of non-recovery of required Tariff for the period from April 2009 to March 2019 as per 'Annexure H'.
- i) The Petitioner further submits that the project has completed 10 years and has not undergone any major overhaul of main machineries such as Wind Turbine and cost of increase in hub height of the plant. The renovation had to be carried out in accordance with the report received from Expert Engineers and Chartered Accountant and requested the Commission to consider the cost of renovation while

setting the Tariff of 11th year and onwards. As per Tariff Policy issued by Government of India on 28th January 2016, Renovation and Modernization of Generation Plant need to be encouraged for higher efficiency level even though they might not have completed their useful life. The impact of renovation as arrived of Rs. 2.16 per unit of generation as detailed in the calculation sheet is in 'Annexure I' and the Renovation Report is in 'Annexure J'. The Petitioner has referred to the tariff of Rs.4.50 per unit as in the KERC Order 2015 which is applicable for purchased from Wind Plant and requested for considering this tariff as per 2015 Order while fixing Tariff to this Plant. The Petitioner has also contended that the tariff fixed for petitioner's wind power plant is much lesser than the tariff required and worked out the tariff of Rs. 4.41 per unit (Rs.2.25 per unit Annexure G + Rs.2.16 per unit) for the next ten years as per 'Annexure G and I'.

- j) The Petitioner has also referred to the Hon'ble Supreme Court Order dated 05.07.2016, in Civil Appeal No.5875 of 2012 in Gujarat Urja Vikas Nigam Limited V/s Tarini Infrastructure Limited (ANNEXURE-N) and has submitted that the State Regulatory Commission is empowered to revise the Tariff, during the term of Power Purchase Agreement.
- k) The Petitioner has also submitted that, in the past, this Commission, in its Order dated 5th December 2014 has determined revised Tariff of Rs.3.40 per KWH for the energy delivered during first 10 years, even though a tariff of Rs.2.90 per KWH was originally fixed in the case of

Soham Phalguni Renewable Energy Pvt. Limited V/s MESCOM in O.P. No.48 of 2012 as per 'ANNEXURE - P'.

3. The Respondent (HESCOM) filed its Statement of Objections and requested for rejecting the contentions of the Petitioner. The Respondent further contended as under:

- a) The Respondent has submitted that, the Petitioner has filed the present petition seeking revision of tariff to Rs.4.41 per unit from the tariff rate of Rs.3.40 per unit which it is currently entitled for the energy supplied by its wind power project. The Petitioner in seeking revision of tariff based on the projected cost involved in renovation and modernisation of the project also relying on the tariff payable to other mini hydel power projects.
- b) The Respondent submits that the Petitioner has claimed revision of tariff on the ground that costs of proposed renovation have to be compensated through the process of determination of tariff for the next ten years. The Petitioner's claim for such revision of tariff is based on the costs that are yet to be incurred and the Petitioner cannot appear before this Commission and seek revision of tariff.
- c) The Respondent, stated that the applicable tariff with respect to a wind power project is fixed by taking into consideration the capital cost involved in setting up of such project along with associated costs involved in the up-keep and maintenance of the project. The

applicable tariff rate of Rs.3.40 per unit was determined at the time of setting up of the project and the same was incorporated into the PPA, which has been duly signed and agreed upon by the Petitioner. The Respondent has referred the relevant clause of the PPA dated 30.01.2008 executed between the Petitioner and the Respondent hereunder:

"Article 5

5.1. Monthly Energy Charges

HESCOM shall for the Delivered Energy pay, for the 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.3.40 (Rupees Three and Forty Paise only) per Kilowatt-hour without any escalation for energy delivered to the HESCOM at the metering point.

5.2 From the 11th year onwards, from the Commercial Operation Date HESCOM shall pay to the Company for the energy delivered at the Metering Point at a rate determined by the Commission. In case, HESCOM is unwilling to purchase the power at the rates determined by the Commission, the Company shall be permitted to sell the energy to third parties and enter into Wheeling & Banking Agreement with HESCOM /Corporation to sell power for which it shall pay transmission and other charges to HESCOM's / Corporations at the rates applicable from time to time as approved by the Commission.

- d) Referring from the above PPA Clause, the Respondent has submitted that, the Petitioner is only entitled for a tariff rates of Rs.3.40 per unit for a period of ten years from the date of commencement without any escalation, with the provision for the determination of tariff by this Commission after the conclusion of the first 10 years of operation of the project.

- e) The Respondent has submitted that the Commission, in its Generic Tariff Order dated 11.12.2009, has considered the issue of fixing the 11th year tariff, which will be applicable for the period after the completion of 10 years, and held as follows: -

“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.”

- f) The Respondent has further stated that this Commission has come to the conclusion that after the completion of 10 years, the debt servicing would have been completed and that the only increase would be in respect of O&M expenses. The Commission, by considering the applicable parameters and its impact on power generation, has ordered that the tariff payable after the end of 10 years shall be the tariff that was payable at the 10th year.
- g) The Respondent has submitted that, the said issue was further clarified by this Commission vide its letter KERC/S/F-52/M-17/14-15 dated 30.11.2015 (Annexure E to the Petition) as under:

“Inviting reference to your letter cited above, I am directed to clarify that, in case of the wind and mini hydel projects which have entered into PPA up to 31.12.2009 and that have

completed ten years' period from the date of commissioning, the tenth year tariff would be applicable for the next ten years of the term of the PPA without any escalation."

- h) Referring to the Article 5.1 of the PPA, the Respondent stated that, this clause cast upon a duty on the Commission to determine the tariff payable to the Petitioner after the completion of 10 years of operation. The Commission in exercise of such power granted under Article 5.1 of the PPA and under Section 86(1)(b) of the Electricity Act 2003, had issued the letter clarifying that all projects which have entered into PPA up to 31.12.2009 and which have completed 10 years, shall be eligible to supply energy at the tenth year tariff rate from 11th year onwards. As such the PPA entered into on 30.01.2008 Order of Commission clarified vide the said letter is squarely applicable to the Petitioners project. The applicable 10th year tariff of Rs.3.40 rate per unit shall be payable for the energy supplied after the completion of ten years from the date of commencement. The Petitioner is estopped from seeking revision of tariff when it has already been determined and clarified by the Commission.
- i) The Respondent has submitted that the decision of this Commission was communicated to the Petitioner vide its letter dated 30.11.2015 and hence, the issue of determination of tariff for a period after the completion of 10 years has already been dealt with by the Commission and the same need not be revisited again.

- j) The Respondent has submitted that all operation and maintenance related costs have already been accounted for while determining the original tariff rate of Rs.3.40 per unit by referring the relevant portions / Clause of the PPA as under:

"Article 4

4.1 Obligation of the Company:

(vi) The Company shall undertake at its own cost construction / up gradation of (a) the Interconnection Facilities and (b) the transmission line as per the specifications and requirements of Corporation / HESCOM, as notified to the Company.

(vii) The Company shall undertake at its own cost, maintenance of the Interconnection Facilities, including the transmission line as per the specifications and requirements of the HESCOM, as notified to the Company, in accordance with Prudent Utility Practices. The Transmission lines so constructed shall remain as dedicated transmission line without provisions for any tapping.

(viii) The Company shall operate and maintain the Project in accordance with Prudent Utility Practices....."

- k) The Respondent has submitted that as per Article 4.1 the petitioner is obligated to maintain as well as upgrade the project, whenever necessary, at its own cost. The Petitioner is responsible under the PPA to undertake such works which are necessary for the upkeep and maintenance of the project. If the Petitioner is under the impression that the project needs to be renovated and modernized, then the cost

involved in doing the same should be borne by the Petitioner exclusively. Further, the PPA casts a specific duty upon the Petitioner to operate and maintain the Project in accordance with Prudent Utility Practices under the Clause 4.1 (viii) of the PPA. The extract of the definition of Prudent Utility Practices, as provided under the Section 1.1 of PPA, reads as under:

“Prudent Utility Practices” mean those practices, methods, techniques and standards, as changed from time to time, that are generally accepted for use in electric utility industries taking into account conditions in India, and commonly used in prudent electric utility engineering and operations to design, engineer, construct, test, operate and maintain equipment lawfully, safely, efficiently and economically as applicable to power stations of the size, service and type of the Project, and that generally conform to the manufacturers’ operation and maintenance guidelines.”

- l) The Respondent has further submitted that, the Petitioner has made ~~the~~ irrelevant averment in seeking increase in the tariff rate, in line with the tariff payable to other mini-hydel power projects as the tariff payable with respect to a project is determined keeping in mind the capital and other associated costs involved in the setting up and operationalization of that specific power plant, which may vary from one project to another. The Respondent further submits that the Petitioner, at the time of executing the PPA, was aware that the applicable tariff is Rs.3.40 per unit without any escalation for 10 years

and as such, the averment related to applicable tariffs of other power plants is absolutely irrelevant and as such the petition is liable to be dismissed. The Respondent further objects to the averment made by the Petitioner based on fictitious and imaginary computations of tariff of Rs.4.50 per unit and claiming from Respondent a difference of Rs.1.10 per unit for the energy supplied by it for ten years.

m) The Respondent has disputed the reference made by the Petitioner about the decisions of the Hon'ble Supreme Court in case of Transmission Corporation of Andhra Pradesh Limited and another V/s Sai Renewable Power Private Limited and others, (2011) 11 SCC 34, and in Civil Appeal No.5875 of 2012 in Gujarat Urja Vikas Nigam Limited V/s Tarini Infrastructure Limited, to state that the Commission is empowered to revise the Tariff during the term of the PPA even though the PPA itself provides for the determination of tariff from 11th year onwards and determined the tariff of Rs.3.40 per unit from 11th year onwards vide its letter dated 30.11.2015. As such, the Petitioner is only entitled to a tariff of Rs.3.40 per unit.

n) Further, the Respondent has objected to the Petitioner's claim in line with the orders passed by the Commission in OP No.48 of 2012 in which the facts are different from that of the instant case and submitted the relevant portion of the order dated 05.12.2014 passed by the Hon'ble Commission in OP No.48/2012 as under:

“8(g) In the present case, admittedly, the Petitioner has incurred the Project Cost during the five years’ period i.e. from 1.1.2010 to 31.12.2014, when the generic Tariff Order dated 11.12.2009 was in force and the tariff of Rs.3.40 per KWhr was applicable for the projects commenced and completed during the said period.”

- o) The Respondent has submitted that while allowing the revision of tariff in OP No.48/2012, this Commission has considered the time period during which the project was completed and the applicable tariff during such time period. The PPA in this case was executed on 30.01.2008 and the project commenced shortly thereafter, and during such period of time, the applicable tariff was Rs.3.40 per unit as per the Generic Tariff Order of this Commission dated 18.01.2005. Applying the same reasoning provided under OP No.48/2012 to the present set of facts, it is clear that the Petitioner is only entitled to the tariff rate of Rs.2.80 per unit.
- p) The Respondent has submitted that the Petitioner has reworked the tariff rate by assuming the capital cost of RS.691.52 lakhs per MW as against the capital cost of Rs. 425 lakhs per MW considered by the Commission's, in its Generic Tariff Order dated 18.01.2005. The Respondent has objected to the claims of the petitioner for annual escalation O&M expenses at 5.72% and the effective MAT rate of 18.50% as against 5% and 17.47% respectively considered by the Commission for 2020-21. The Respondent also referred the tariff of

Rs.3.26 per unit approved by the Commission for wind power projects in the latest generic tariff order to substantiate that the cost of production of electricity from wind power projects have come down, which has necessitated the reduction in tariff rates. As there is reduction in the interest on loan and depreciation after 10-12 years, the rate should even less. Hence, the Petitioner's demand for increase in tariff rate is unjustified and untenable.

- q) The Respondent has further submitted that the Petitioner has been accepting tariff of Rs.3.40 per unit for a period of 10 years without any protest and after a lapse of 10 years' period, now seeking revision of tariff which is barred by limitation. By virtue of accepting Rs.3.40 per unit as the tariff for a period for ten years, the Petitioner has waived its right to claiming any fictitious tariff for the next ten years and not open to the Petitioner to dispute the tariff awarded to it during the first ten years and to revisit the same after such inordinate delay.
- r) The Respondent in its objection statement has submitted that the petitioner in the instant case contends that as per the capital cost of its project, it was originally entitled to a tariff of Rs.4.50 per unit from its Commercial Operation Date and now seeks to appropriate the balance tariff rate of Rs.1.10 (Rs.4.50 – Rs.3.40) in the tariff from 11th year onwards and has claimed Rs.4.41 per unit.
- s) The Respondent has submitted that the higher tariff claimed by the Petitioner is based on a purported higher project cost which is against

the settled position of law that ESCOMs cannot procure power at a higher rate than the tariff determined by the Commission in its generic tariff orders. The 2005 wind tariff order is applicable on the PPA of the Petitioner and accordingly PPA tariff of Rs.3.40 per unit has been arrived at. The respondent contended that, if the Petitioner claimed the higher capital cost than the amount considered by the Commission in its generic tariff order, the Petitioner is bound by law to approach this Commission and prove the factors that has resulted in a higher capital cost. The Petitioner has not shown the reason for purportedly incurring a higher capital cost, the reasons for the escalation in prices and hence requested for dismissal of the petition.

- t) The Respondent has submitted that the Petitioner has merely produced a purported Chartered Accountant(CA) report which is a self-serving statement to justify the higher capital cost. The Petitioner has not shown such report to form part of either IT returns or the MCA annual returns. The CA report shows the supposed expenditure of the Petitioner and not of the project. The Petitioner may have many activities in the running that warrant expenditure. There is nothing on record to prove that the Petitioner has incurred a higher capital cost than the amount considered by this Commission in its 2005 generic tariff order.
- u) The Respondent further submits that, the Petitioner has signed on the PPA with the tariff of Rs.3.40 per unit and has been receiving such tariff

without any protest for the past 10 years' period of the PPA. The Petitioner is merely taking a wishful chance, by claiming a higher capital cost without adducing any evidence to support the same and hence is liable to be dismissed by imposing heavy cost, for filing such frivolous and unsubstantiated claims.

- v) The Respondent has further submitted that the Petitioner has produced a report prepared by independent technical experts recommended for renovation and modernization of the Petitioners' power plant. The report has been prepared by a private party that was engaged by the Petitioner and is not prepared by any authorised agency. Reliance on the report by the Petitioner and filed by an affidavit and through the oral submissions, are merely self-serving statements.
- w) The Respondent has submitted that during the course of the hearing, the Commission has directed the counsel for the Petitioner to elaborate on the validity of the report submitted by the Petitioner and the argument made thereon and verifying affidavit produced along with the report, which validates the contents of the report for proving the authenticity of the same. The Respondent has objected to the contention of the petitioner that if such contention of the Petitioner is accepted, then averments in all the Petitions filed before this Hon'ble Commission will have to be accepted prima facie as true and all the

contentions in the Petition will have to be accepted without any requirement of objections from the Respondents.

- x) The Respondent has further submitted that the Petitioner has claimed revision of tariff for the next ten years by means of compensation of the cost for the proposed renovation and modernization of the plant, which has not been incurred. The Respondent has contended that there is no provision in the PPA to claim revision of tariff for incurring any expenditure towards renovation of the plant.

- y) The Respondent has referred the Generic Tariff Order dated 11.12.2009, wherein the tariff payable at the end of 10th year will be payable for the next ten years for all renewable energy projects. The Respondent has also referred to the contents of Commission's letter No. KERC/S/F-45/Vol-A/16-17/1922 dated 03.11.2016 that in case of wind and mini-hydel projects, which have entered into PPA up to 31.12.2009 and have completed ten years' period from the date of commissioning, the tenth year tariff would be applicable for the next ten years of the PPA without any escalation. The Respondent has substantiated that after completion of ten years of the project, debt which constitutes 70% of the total investment stands serviced and correspondingly the burden of the interest on capital loans and depreciation elements has been reduced and the tariff must logically decrease from the 11th year onwards.

- z) The respondent has submitted that if the contention of the Petitioner to factor in renovation costs in the tariff for the next 10 years is accepted then it has to be added only on the 30% of the capital cost (As 70% stands serviced by 10th year) and then the other tariff parameters (without interest on term loan) should be applied. By considering this, the tariff for 11th year even after factoring the renovation cost will be lower than the original tariff of Rs.3.40 per unit.
- aa) The Respondent in its Memo dated 22nd July, 2021 besides objecting to the averment made in the petition, has further submitted that in case the Commission decides to fix the tariff from 11th year onwards as per Clause 5.2 of the PPA, and if the Respondent is in disagreement with such a tariff set by this Commission, the Respondent will issue NOC to the Petitioner to sell power to third parties as per Clause 5.2 of the PPA.
- ab) The Respondent has submitted that, the petition filed by the Petitioner in seeking an increase in tariff for the energy supplied from their power plant, as illegal and untenable and requests for rejecting the same.
4. The Petitioner, in the rejoinder statement against the objections filed by the Respondent, has denied and disputed, all the averment made by the Respondent defying all the objections raised by the Petitioner.
- a) It is submitted that the Tariff for the Petitioner's power Project for the first ten years of Rs. 3.40 per unit was not fixed after taking into

consideration the actual capital cost involved in setting up the project and has not sought the revision of the said tariff affixed for the first ten years as per the terms incorporated in the PPA and this cannot lead to denial of the Petitioner's right to receive return on his investment in the form of tariff. The Petitioner has referred to Clause 8.2.7 of the National Tariff Policy issued by the Ministry of Power, Government of India on 28.01.2016 and stipulation under Section 61 of the Electricity Act, 2003 that the Appropriate Commission, shall not only ensure safeguarding of consumer's interest but also ensure the recovery of the cost of Electricity in a reasonable manner and therefore is entitled to capitalize the non-recovered portion for the first the ten years and seek tariff on that capitalized amount. The Petitioner has also referred the provisions of Clause 5.11 (g) of the Tariff Policy that Renovation and Modernization of generation plant need to be encouraged for higher level efficiency. The Petitioner further submits that the tariff or purchase price agreed to in the PPA, is subject to revision based on the contractually and / or statutorily permissible changes, as has been held by the Hon'ble Supreme Court in *Transmission Corporation of Andhra Pradesh Limited and Another V. Sai Renewable Power Private Limited and Others*.

- b) The Petitioner has submitted that the Commission is empowered to revise the tariff on the basis of material changes in circumstances from when the tariff was last determined and revision of the same by this

Commission is statutorily permissible. The tariff towards the capital cost of the power plant, as certified by the Chartered Accountant by considering the approved parameters, works out to Rs. 4.50 per unit, as against Rs. 3.40 per unit allowed in the first ten years. Thus, Rs. 1.10 per unit of annual generation for 10 years with a 16% return comes to Rs. 288.12 lakhs per MW. This translates to Rs. 2.25 per unit after ten years. Additionally, the renovation cost of Rs. 450 lakh comes to Rs. 272.73 lakhs per MW which translates to Rs. 2.16 per unit. (Annexure M to the Original Petition). Thus, the Petitioner has sought the tariff for eleventh year onwards to be fixed at Rs.4.41 per unit.

- c) The Petitioner in its rejoinder has referred the Clause 8.2.7 of the National Tariff Policy issued by the Ministry of Power, Government of India that the Commission shall not only ensure safeguarding of consumer's interest but also ensure the recovery of the cost of electricity in a reasonable manner and prayed for revision of tariff on account of renovation. The Petitioner has disputed the contention of the Respondent that the costs of modernization work have to be borne by the Petitioner is untenable and requested the Commission to revise the Tariff to Rs. 4.41 per unit by considering the renovation and modernization costs as per Clause 5.11 (g) of the Tariff Policy.
- d) Further, Petitioner has raised the objections to the Respondents reliance on Clause 4.1 of the PPA, as the Article pertains only to construction and maintenance of interconnection facilities as against

the substantial portion of the renovations proposed to be carried out on the power plant pertains to the turbine and other parts of the power plant other than the interconnection facilities.

- e) The Petitioner has raised the objections to the averment made by the Respondent about the provisions relating to Prudent Utility Practice in the PPA dated 31.01.2008 with reference to the Clause 5.11 (g) of Tariff Policy, which provides renovation and modernization as a factor to be taken into consideration when fixing tariff. Accordingly, towards the cost to be incurred on the Renovations and Modernization of the 1.65 MW Wind Power Plant at the cost of Rs. 450 lakhs (Rs.272.73 lakhs per MW), they have putting additional burden of Rs. 2.16 per unit, which is to be included in the Tariff determined for eleventh year onwards.
- f) The Petitioner has referred the Commission Order dated 05.12.2014 in O.P. No.48/2012 (Annexure P to the Original Petition), wherein revised the tariff of Rs. 3.40 per unit during the first ten years of an already subsisting PPA. The said fixation is similar to the prayer sought by the Petitioner herein as much as it relates to a similarly placed plant and hence entitled to a revision of the tariff to demonstrate that similarly placed power producers are receiving a higher tariff than the Petitioner and similarly place plants must not to be treated unequally, as the Petitioner has incurred substantially higher costs.

5. We have gone through the written submission of the Petitioner as well as the Respondent and after hearing the rival contentions of both the petitioner and the Respondent, the following issues would arise for our consideration and decision:

Issue No.1: Whether the claim for revision of tariff from Rs. 3.40 per unit to Rs.4.41 per unit to be paid by the Respondent for the next ten years' period is supported by the provisions of concluded agreement i.e. the PPA?

Issue No. 2: Whether the Petitioner is entitled for the proposed Renovation and Modernization cost and if so, is he entitled for the consequential tariff of Rs. 2.16 per unit as claimed by from 11th year onwards?

Issue No.3: If there is no provision for increasing the tariff from 11th year, what is the remedy provided to the generator in terms of the PPA?

Issue No.4: What Order?

6. After examining each of the above issues in the light of the submissions made by the parties to the petition and the material placed on record, our findings on the above issue are as follows:

7. Issue No.1: Whether the claim for revision of tariff from Rs. 3.40 per unit to Rs.4.41 per unit to be paid by the Respondent for the next ten years' period is supported by the provisions of concluded agreement i.e. the PPA?

a) Admittedly, the Petitioner has entered into PPA with the Respondent (HESCOM) on 30.01.2008 for the supply of energy from its wind power

plant having a capacity of 1.65 MW, located at Devanakatti Village, Chikkodi Taluk, Belgaum District. As per the terms of the PPA under Clause 5.0 and 5.2, the tariff payable to the petitioner's wind power plant is Rs.3.40 per unit without any escalation for the energy delivered, for the first 10 years from the commercial operation date i.e. 31st March, 2008. The tariff from 11th year onwards from the Commercial Operation Date, HESCOM shall pay to the Company, for the energy delivered at the Metering Point at a rate determined by the Commission and if the Respondent is unwilling to purchase the power at the rates determined by the Commission, the petitioner is permitted to sell the energy to third parties and enter into Wheeling & Banking Agreement. The relevant Clause in the PPA with reference to the tariff reads as under:

"Article 5

5.1. Monthly Energy Charges

HESCOM shall for the Delivered Energy pay, for the 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.3.40 (Rupees Two and Eighty Paise only) per Kilowatt-hour without any escalation for energy delivered to the HESCOM at the Metering Point.

5.2 From the 11th year onwards, from the Commercial Operation Date HESCOM shall pay to the Company for the energy delivered at the Metering Point at a rate determined by the Commission. In case, HESCOM is unwilling to purchase the power at the rates determined by the Commission, the

Company shall be permitted to sell the energy to third parties and enter into Wheeling & Banking Agreement with HESCOM / Corporation to sell power for which it shall pay transmission and other charges to HESCOM's / Corporations at the rates applicable from time to time as approved by the Commission.

- b) Admittedly, as per the terms of PPA signed by both the petitioner and the Respondent, the Petitioner, without raising any dispute or raising any objection, has accepted the energy bill amount every month from the Respondent, at the tariff of Rs.3.40 per unit, during the last 10 years' period. After the expiry of ten years, the petitioner has requested the Respondent to enhance the tariff from Rs.3.40 per unit to Rs. 4.41 per unit from 11th year onwards for the next ten years' period, by claiming the shortfall in recovery of tariff during the first ten years and the additional tariff on the proposed cost of Renovation.
- c) The Respondent after the expiry of first 10 years' period, on the receipt of letter from the Petitioner has communicated the tariff of Rs.3.40 per unit, being the tariff at the end of 10th year for the next 10 years' period without any escalation in pursuance of the Commission's Generic Tariff Order dated 11.12.2009 and subsequent Commission's letter C/S/F-52/M-17/14-15/1445 dated 30.11.2015.
- d) The Commission, in its Generic Tariff Order dated 11.12.2009, while fixing the tariff for wind and mini-hydel power project had considered the issue of fixing tariff which will be applicable for a period after the completion of 10 years has held as under:

“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) This Commission, while issuing the Generic Tariff Order, 2009 dated 11.12.2009 has concluded that the debt portion of 70% of the project cost would have been serviced and an equal amount of depreciation, have been recovered during the first 10 years’ period. The interest on capital loan must have been completely paid for. Consequently, from 11th year onwards, the tariff payable will be only to meet the required O&M expenses, RoE, 30% of the remaining depreciation amount and interest on working capital expenses. However, at the same time, considering the opportunity cost of power that the generator would have got by selling the power outside the PPA, the Commission has allowed the tariff equal to the rate at the end of 10th year without any escalation for the next ten years for all the renewable projects. Thus, after the completion of initial 10 years, the Commission has determined the 11th year tariff of the Wind Power

Project which is equal to the 10th year tariff, to be paid for the next 10 years i.e., from 11th year to 20th year.

Accordingly, the applicable tariff for the petitioner's project is Rs.3.40 per unit from the 11th year onwards for next 10 years' period.

- f) Further the above decision of the Commission was reiterated in Commission's letter No. KERC/S/F-52/M-17/14-15 dated 30.11.2015 which reads as under:

"Inviting reference to your letter cited above. I am directed to clarify that, in case of the wind and mini hydel projects which have entered into PPA up to 31.12.2009 and that have completed ten years' period from the date of commissioning, the tenth year tariff would be applicable for the next ten years of the term of the PPA without any escalation."

- g) The Petitioner has objected to the 11th year tariff of Rs.3.40 per unit payable for the next ten years and has filed this Petition before this Commission. In its petition he has worked out the revised ten-year average tariff of Rs. 4.50 per unit on the capital cost of Rs. 11,40,51,938/- for the first ten-year period, as allowed to the similarly placed other wind power plants (Annexure-C). As against this, it is submitted that, the Petitioner has received Rs.3.40 per unit as per the PPA and has now claiming the difference of unrecovered capital cost of Rs.475 lakhs on the 1.65 MW wind power plant at the rate of Rs.1.10 per unit. The Petitioner has carried forward this unrecovered capital cost on the wind power project and has carried out reworking of the

average tariff of Rs.2.25 per unit for the next ten years from 11th year onwards (Annexure-G). The Petitioner also has considered Rs. 450 Lakhs as the Renovation cost on the 1.65 MW wind power plant at the rate of Rs.272.73 lakhs per MW and has computed the tariff of Rs. 2.16 per unit (Annexure-H) to be received from 11th year onwards for the next ten year's periods towards the supply of power to the Respondent. Thus, the Petitioner has claimed Rs.4.41 per unit (Rs.2.25+Rs.2.16) as the revised tariff as against the Respondent tariff of Rs.3.40 per unit without any escalation for the next 10-year period from 11th year onwards.

- h) The Petitioner, in the present petition has claimed the revision of tariff of Rs.4.41 per unit as against the Commission approved tariff of Rs.3.40 per unit from 11th year onwards for the reasons that they have incurred higher capital cost than that of Rs.425 lakhs as considered by the Commission in its Generic Tariff Order dated 18.01.2005. The Petitioner in its submission made on 13th August, 2021 has also reiterated the same contentions as made out in its petition and rejoinder to the statement of objections filed by the Respondent.
- i) We note that the Petitioner has produced the Chartered Accountant Report in support of the projected cost of the project and has also produced a Technical Report from expert, who have recommended the requirement of renovation and modernisation of the plant. Against this contention, the Respondent has objected that the higher costs

have been projected in the experts' report and also in the Chartered Accountant's Report and that the report is not given by any authorised agency. Further the report is only a proposal to undertake the renovation and modernisation work on the plant and has not actually incurred.

- j) We note that this Commission, while determining the Generic Tariff Order for different control period i.e. 2005, 2009 and 2015 has considered the capital cost and various other costs and parameters as per the prevailing rates which were decided after giving opportunity and after consulting all the stakeholders duly following the due process of law. Only after considering the comment/views/suggestions from various stakeholders and holding public hearings, the costs and various parameters were determined by this Commission as indicated in the tariff orders issued by this Commission from time to time.
- k) During the course of the determination of generic tariff in the year 2005, this Commission has analysed the capital cost proposed by various stakeholders which was in the range of Rs.425 lakhs per MW to Rs.500 lakhs per MW. The Commission by considering the view that the cost of the project varies from project to project depending upon various factors including location of the project, size of the project, type of technology, source of plant and machinery and source of funding etc., a reasonable capital cost was determined. The

Commission in determination of Capital cost of the wind plant had also considered the information published by the Ministry of New and Renewable Energy Sources that there is significant progress in development of technology in respect of wind power project that has resulted in higher capacity machines with large rotar diameter and higher hub height and accordingly the project costs would fall as a result of economies of scale, due to expansion of the renewable energy market. Thus, this Commission keeping these factors in view, has decided to consider the capital cost on uniform basis for Rs.425 lakhs per MW to determine the generic tariff of Rs.3.40 per unit. It is pertinent to note here that the generic tariff is applicable to all the generators irrespective of the actual costs incurred and that there is no scope for revisiting the capital cost or the generic tariff considering the actual costs of the individual/ specific projects.

- 1) Further, we are of the considered opinion that, once the PPA is executed by the power generator with the ESCOMs at the generic tariff rates, as approved by this Commission and the power is supplied by the generator, the question of revision of tariff at a later date on the concluded contract, is neither permissible nor maintainable under the provisions of settled law and decisions of the Appellant/ Higher Courts thereon. Therefore, the Petitioner before executing the PPA was required to examine the viability of his investments made on the power project. If Petitioner was not satisfied with the rates as determined by

the Commission as per the Generic Tariff, he should have not have executed the PPA (contract). In the present case, since the Petitioner has executed the PPA without raising any objections on the generic tariff for the first ten years, the question of allowing the request for revision of the tariff from the date of commissioning of the project, would not arise, since the same would amount to revisiting the concluded contract which is against to the settled principles relating to concluded contract. If this is done, the Commission would be opening floodgates for such requests from several hundred such investors.

m) The Commission notes that the Petitioner has prayed for re-determination of the PPA tariff at Rs.4.50 per unit for the first ten years from the date of COD, stating that the Generic Tariff Order 2005, had not considered the capital cost of the Petitioner's project. The Commission also notes that, relying on the Judgement of this Commission dated 05.12.2014 in OP no. 48 of 2012 and the Hon'ble Supreme Court's judgement in C.A. No.5875/2012, the Petitioner has claimed that the Commission has power to re-fix the tariff after the PPA is executed. In this context the Commission notes the following:

- (i) In OP No. 48/2012, after signing of the PPA, there was a delay in commissioning of the Project, as the Government of Karnataka based on the reports of KREDL had extended the completion of the project, which was recognised by the Commission. As such, keeping in view the commissioning date of the Project, the tariff

as per the applicable Generic Tariff Order, 2009 was allowed by the Commission. As pointed out by the Respondent, the Commission has considered the time period during which the project was completed and the applicable tariff during such time period is allowed, in OP No.48/2012.

(ii) In view of the above, applying the same reasoning for the present case, the tariff as determined in the Generic Tariff Order,2005 would be applicable for the Petitioner's power plant which was commissioned on 31.03.2008. Hence, the Petitioner cannot rely on the decision of this Commission in O.P. No. 48/2012, as the facts of the present case are not similar to that of the case in OP No. 48/2012.

(iii) Similarly, the facts of the case in C.A. No.5875/2012, Gujarath Urja Vikas Nigam Limited Vs. Tarini Infrastructure Limited and Ors., are different from the present case for the following reasons:

- There was material change in the scope of the work mainly pertaining to the length of the transmission line. As per the concession agreement the power producer namely, Tarini Infrastructure had to lay transmission line for a distance of 4 kms. which was later on revised to 23 kms. that too after signing of the PPA.
- The power producer had applied, within reasonable time to the State Regulatory Commission, for re-determination of the Tariff agreed in the PPA, due to the increased cost, which was refused by the State Commission on the ground that once the Tariff is determined and incorporated in the PPA, there was no scope for re-determination.

- n) In view of the above, the Commission in the present case notes that, after entering into the PPA, which was approved by the Commission, incorporating the tariff as per the generic tariff order, 2005, the Petitioner has not placed any record to show that the Petitioner had brought to the notice of the Respondent that, after the plant was commissioned in 2008, there was a material change in the project cost in comparison to cost considered by the Commission as per the 2005 order. The Petitioner, has not filed any Petition before this Commission seeking revision of Tariff on account of increased cost during the first 10-year period from the date of Commercial Operation Date. As pointed out by the Respondent, the Petitioner, after accepting the tariff of Rs.3.40 per unit, has not protested the tariff during the 10-year period and as such, the Petitioner is barred by limitation to claim for compensation for the purported tariff, it did not seek for revision in the last 10-years.
- o) The Commission also notes that, the tariff determined by GERC in its 2007 Order, which was issued after the Electricity Act, 2003 was notified, is based on MNRE guidelines and not as per the provisions of Electricity Act, 2003. However, when the KERC Tariff Order, 2005 was issued on 18.01.2005, neither National Electricity Policy nor Tariff Policy was notified. Also, there were no guidelines of CERC to determine tariff at that point of time. Thus, the Commission in terms of KERC (Power procurement from Renewable Sources by Distribution Licensee)

Regulations, 2004, which was issued under the provisions of the Electricity Act, 2003, invited petitions from stakeholders namely generators and after following the due process of inviting comments/views/suggestions from stakeholders and holding public hearing, issued the above Order. During the course of the determination of generic tariff in the year 2005, this Commission has analysed the capital cost proposed by various stakeholders which was in the range of Rs.425 lakhs per MW to Rs.500 lakhs per MW. The Commission, in determination of the capital cost of the wind projects, has considered the view that the cost of the project varies from project to project depending upon various factors as made out in pre paras and also considered the information published by the Ministry of New and Renewable Energy Sources. Thus, this Commission, keeping these factors in view, has decided to consider the capital cost on uniform basis for Rs.425 lakhs per MW to determine the generic tariff of Rs.3.40 per unit. It is pertinent to note here that the generic tariff is applicable to all the generators irrespective of the actual costs incurred and that there is no scope for revisiting the capital cost or the generic tariff considering the actual costs of the individual/ specific projects. Hence, the Petitioner cannot rely on the decision of the Hon'ble Supreme Court in C.A. No.5875/2012, as the facts of the present case are not similar.

p) We also note the submission of the Respondent in the Memo dated 22nd July, 2021, submitting that they are not agreeable for any revision of tariff with higher rate fixed from the 11th year onwards and that if the Petitioner is not satisfied with the tariff as determined by the Commission, the Respondent would issue a 'No Objection Certificate' to the Petitioner to sell the power to third parties under Open Access.

q) For the foregoing reasons, we hold that since there is no provision in the Power Purchase Agreement for revision of the Generic Tariff already fixed by the Commission, the Petitioner is not entitled to seek any revision of tariff for the first ten years and also for the subsequent period from 11th year to 20th year. We hereby reaffirm that the Petitioner is only entitled to the tariff of Rs.3.40 (Rupees Three and Paise forty only) per unit without any escalation for the energy delivered at the metering point, for the first ten years from the Commercial Operation Date. The Petitioner is also entitled to the tariff of Rs.3.40 (Rupees Three and Paise forty only) per unit without any escalation for the energy delivered at the metering point for the next ten years' period from 11th year onwards from the Commercial Operation Date. Therefore, Issue No. (1) is answered accordingly.

8. Issue No. 2: Whether the Petitioner is entitled for the proposed Renovation and Modernization cost and if so, is he entitled for the consequential tariff of Rs. 2.16 per unit as claimed by from 11th year onwards?

a) The Commission notes the submission made by the Petitioner that, they are supplying power from their plant as per the Power Purchase Agreement (PPA) entered into with HESCOM and getting a tariff of Rs.3.40 per unit in the last ten years, whereas similarly placed Wind Power Plant are getting Rs.4.50 per unit. The Petitioner, in its petition has worked out revised ten-year average tariff of Rs.4.50 per unit on the capital cost of Rs.11,40,51,938 as certified by the Chartered Accountant for the first ten-year period as allowed to the similarly placed other wind power plants as in 'Annexure C'. As against this, the Petitioner has received Rs.3.40 per unit as per the PPA and claimed the difference of unrecovered capital cost of Rs.475 lakhs for 1.65 MW at the rate of Rs.1.10 per unit. The petitioner has carried forward this unrecovered capital cost of the subject wind plant and reworked the tariff of Rs.2.25 per unit expected to be recovered for the next ten years from 11th year onwards as in 'Annexure G'. The Petitioner has also considered Rs. 450 Lakhs as the Renovation cost of the 1.65 MW wind plant, at the rate of Rs.272.73 per MW and computed the tariff of Rs. 2.16 per unit as in 'Annexure H', to be receivable for the next ten-year period from 11th year onwards for the supply of power to the Respondent. Thus, the Petitioner has claimed Rs.4.41 per unit (Rs.2.25+ Rs.2.16) as the revised tariff, as against the tariff of Rs.3.40 per unit, without any escalation for the next 10-year period, to be allowed to the Respondent, from 11th year onwards.

- b) The Commission also notes the Petitioner's request to take into consideration the unrecovered capital cost and renovation cost also while revising the Tariff to this power Plant. It is further submitted that they are yet to receive Rs.1.10 per unit in the Tariff for the first 10 years. This translates to Rs.4.75 Crore on account of non-recovery of required Tariff for the period from April 2009 to March 2019 as per 'Annexure - H'.
- c) The Commission notes the submission made by the Petitioner that the project has completed 10 years and has not undergone any major overhaul of main machineries such as Wind Turbine and cost of increase in hub height of the plant. The renovation had to be carried out in accordance with the report received from Expert Engineer and Chartered Accountant and requested the Commission to consider the cost of renovation while setting the Tariff of 11th year and onwards. As per Tariff Policy issued by Government of India on 28th January 2016, Renovation and Modernization of Generation Plant need to be encouraged for higher efficiency level even though they might not have completed their useful life. The impact of renovation as arrived of Rs. 2.16 per unit of generation as detailed in the calculation sheet is in 'Annexure - I' and the Renovation Report is in 'Annexure J'. The Petitioner has referred to the tariff of Rs.4.50 per unit as in the KERC Order 2015 which is applicable for purchased from Wind Plant and requested for considering this tariff as per 2015 Order while fixing Tariff

to this Plant. The Petitioner has also contended that the tariff fixed for petitioner's wind power plant is much lesser than the tariff required and worked out the tariff of Rs. 4.41 per unit (Rs.2.25 per unit Annexure G + Rs.2.16 per unit) for the next ten years as per 'Annexure G and I'.

- d) The Commission notes the Respondent submission that the Petitioner has claimed revision of tariff on the ground that costs of proposed renovation have to be compensated through the process of determination of tariff for the next ten years. The Petitioner's claim for such revision of tariff is based on the costs that are yet to be incurred and the Petitioner cannot appear before this Commission and seek revision of tariff.
- e) The Commission note that the Petitioner has submitted report for Renovation & Modernisation prepared by individual expert engineer who have recommended the requirement of renovation and modernisation of the plant along with a cost estimate prepared by Chartered accountant, amounting to Rs.450 lakhs for 1.65 MW wind plant (Rs.272.73 lakhs per MW), translating to a tariff of Rs.2.16 per unit. Against this contention, the Respondent has objected that the higher costs have been projected in the experts' report and also in the Chartered Accountant's Report and that the report is not given by any authorised agency. Further the report is only a proposal to undertake the renovation and modernisation work on the plant and has not actually incurred.

- f) The Respondent referring to the provisions of the PPA under Article 4.1 has submitted that the entire cost of Renovation & Modernisation has to be borne by the Petitioner. The Respondent has also raised doubts about the veracity of the report submitted by the Petitioner and has stated that several items included in the report, does not come under Renovation and Modernisation.
- g) The Commission notes that as per terms of the PPA, from the 11th year onwards the tariff has to be determined by the Commission and in case the Respondent is unwilling to purchase the power at the rates determined by the Commission, the generator shall be permitted to sell the energy to the third parties by entering into a wheeling and banking agreement. In this context the HESCOM in the present proceedings has submitted that as per Generic Tariff Order dated 11.12.2009, the 10th year tariff is payable for the next 10-years for all renewable projects and as per the clarification issued by the Commission on 03.11.2016, all wind and mini-hydel projects which have entered into PPA up to 31.12.2009 and that have completed 10-years period from the date of Commissioning, the 10th year tariff would be applicable for the next 10-years of the PPA, without escalation. Further, the Commission also notes the submission made by the Respondent vide affidavit dated 22.07.2021 that, if the Commission decides to increase the tariff from 11th year onwards and if the Respondent is in disagreement with such higher tariff, they would issue

No Objection Certificate (NOC) to the Petitioner to sell power to third parties as per Article 5.1 of the PPA.

- h) As per the submission made by the Respondent, the Commission notes that the Respondent is unwilling to bear the additional cost of Renovation and Modernisation. Thus, without the willingness of the Respondent who is the procurer of power, the determination of additional tariff for the expenditure proposed to be incurred on Renovation and Modernisation would reduce to a mere academic exercise.
 - i) As such the Commission is of the view that before taking up the tariff exercise on the additional cost of Renovation and Modernisation, both the Petitioner and the respondent have to arrive at consensus regarding the need for Renovation and Modernisation and the associated cost. Thereafter, after execution of the Renovation and Modernisation work, the petitioner can approach the Commission for determination of additional tariff.
 - j) In the light of the above, at this stage, the approval of additional tariff towards Renovation and Modernisation cost proposed by the Petitioner does not arise. Therefore, Issue No. (2) is answered accordingly.
9. Issue No.3: If there is no provision for increasing the tariff from 11th year, what is the remedy provided to the generator in terms of the PPA?

- a) The determination of the 11th year tariff by this Commission, has been done in accordance with its Order dated 11th December, 2009, which is in force since the year 2009. As per Clause 5.2 of the PPA executed by the Petitioner and the Respondent, the petitioner is bound to supply the energy at the Commission determined Tariff. The Commission, in its Order dated 11th December, 2009, has given specific reasons for fixing the 11th year tariff. There is no specific provision in the PPA to increase the tariff from 11th year. The Respondent has submitted that if the Petitioner is not willing to supply energy at the Commission determined tariff, it is willing to issue 'No Objection Certificate' (NOC) to the Petitioner to enable it to sell the energy in the open market through open access.
- b) In view of the above facts, if the Petitioner is not willing to supply the energy at the Commission determined tariff in terms of Clause 5.2 of the PPA, he is at liberty to sell the energy through open access, after obtaining a NOC from the Respondent HESCOM.

10. Issue No.4: What Orders?

For the foregoing reasons, we pass the following:

ORDER

- a) The Petitioner shall be entitled to the tariff of Rs. 3.40 (Rupees Three and Paise forty only) per unit without any escalation for the energy delivered at the Metering Point, for the first ten years from the Commercial Operation Date. The Petitioner shall also be entitled to

the tariff of Rs.3.40 (Rupees Three and Paise forty only) per unit without any escalation for the energy delivered at the Metering Point from for the next 10 years' period from 11th year onward from the Commercial Operation Date.

- b) Before taking up the tariff exercise on the additional cost of Renovation & Modernisation, both the Petitioner and the Respondent have to arrive at consensus regarding the need for Renovation & Modernisation and the associated costs to be incurred thereof and thereafter, after execution of the Renovation and Modernisation work, the Petitioner may approach the Commission for determination of additional tariff, duly obtaining certificate from Indian Institute of Engineers and Chartered Accountant. Therefore, at this stage, the approval of Renovation & Modernisation cost proposed by the Petitioner does not arise.
- c) In case the Petitioner is not willing to supply energy, he may sell the energy in the open market through open access, after obtaining NOC from the Respondent HESCOM.
- d) If the parties are willing to abide by the terms of the PPA and Orders of the Commission, they shall enter into a Supplemental PPA to regulate the supply of energy and payment thereof at the 10th year tariff, as already determined by the Commission.

Sd/-

(SHAMBHU DAYAL MEENA)
Chairman

Sd/-

(H.M. MANJUNATHA)
Member

Sd/-

(M.D. RAVI)
Member