Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Dated:20th Jan, 2016

Present: HON'BLE MR. JUSTICE SURENDRA KUMAR, JUDICIAL MEMBER
HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

Appeal No. 332 of 2013

In the Matter of:

M/s. Lanco Kondapalli Power Limited
Plot No.4, Softsol Building,
Sofrware Units Layout,
HITEC City, Madhapur,
Hyderabad -500 081

… Appellant

Versus

1) **Andhra Pradesh Electricity Regulatory Commission**
4th and 5th Floors, Singareni Bhavan, Red Hills,
Hyderabad 500 004

2) **Andhra Pradesh Power Coordination Committee**
Vidyut Soudha,
Khairatbad, Hyderabad-500 082
Andhra Pradesh Power Coordination Committee
Vidyut Soudha,
Khairatbad, Hyderabad-500 082

3) **M/s. Transmission Corporation of Andhra Pradesh Ltd.,**
Vidyut Soudha, Kairatabad,
Hyderabad-500 082

4) **Central Power Distribution Company of Andhra Pradesh ltd.,**
11-5-423/1/A,
First Floor,
Singareni Collieries Bhavan,
Lakdi-ka-Pul, Hyderabad-506 001

5) Southern Power Distribution Company of Andhra Pradesh Ltd.,
Upstairs, Hero Honda Showroom,
Renigunta Road,
Tirupati-517501

6) Northern Power Distribution Company of Andhra Pradesh Ltd.,
11-4-423/1/A, First Floor,
1-7-668, Postal Colony,
Hanamkonda, Warangal-506 001

7) Eastern Power Distribution Company of Andhra Pradesh Ltd.,
Sai Shakti, Opp Saraswati Park, Daba Gardens,
Visakhapatnam-530 020

… Respondent(s)

Counsel for the Appellant(s) : Mr. Jayant Bhusan, Sr Advocate
Mr. Sakya Singh Choudhuri
Mr. Avijeet Lala
Ms. Esha Shekhar

Counsel for the Respondent(s): Mr. Anand K Ganesan
Ms. Swapna Seshadri
Ms. Akshi Seem
Mr. Ishan Mukherjee for R-2 to R-7
Mr. K V Mohan
Mr. K V Balakrishanan for APERC

J U D G M E N T

PER HON'BLE MR. T MUNIKRISHNAIAH, TECHNICAL MEMBER

1. The present Appeal has been filed by the Appellant u/s 111 (1) of the Electricity Act, 2003 against the Impugned Order dated 7.2.2013 passed by the Respondent No.1- Andhra Pradesh Electricity Regulatory Commission (Respondent Commission) in OP No.9 of

2011. In the Impugned Order, the State Commission disallowed the claim of the Appellant on the issue of the quantum of incentive payable by the Respondent.

2. The Appellant M/s. Lanco Kondapalli Power Limited is a company incorporated under the provisions of the Companies Act, 1956 and is a generating Company within the meaning of the Electricity Act, 2003.

3. Respondent No.1 is Andhra Pradesh State Electricity Regulatory Commission and Respondent No.2 is Andhra Pradesh Power Coordination Committee constituted vide GO Ms.No.59 dated 7.6.2005. As per the terms of constitution of the Committee, all the four distribution companies were bound by a common contract with respect to, inter alia, generation of electricity.

4. Respondent No.3 is a company incorporated under the provisions of the Companies act, 1956 and is governed by the provisions of A.P Electricity Reforms Act, 1998 and Electricity Act, 2003.

5. The Respondent No.3 (formerly known as Andhra Pradesh State Electricity Board) was previously purchasing electricity from the generating Companies including the Appellant for supply to the consumers. Pursuant to the Electricity Act, 2003 coming into force, the Respondent No.3, by virtue of Section 39 of the said Act has been notified as a State Transmission Utility.

6. Respondents No.4 to 7 are the Distribution Licensees in the State of Andhra Pradesh pursuant to unbundling of the erstwhile ASPEB. The

Third Transfer Scheme notified by the State Government by GO Ms. No.58 Energy (Power-III) dated 7.6.2005 transfers to, and vests in, the Respondent Nos. 4 to 7 herein the rights and obligations and contracts relating to procurement and bulk supply of electricity or trading of electricity to which the Respondent No.3 is a party with effect from 9.6.2005.

7. **Brief facts of the Case**:

7.1 M/s. Lanco Kondapalli Power Limited was awarded 368.144 MW Combined Cycle Power Project at Kondapalli Industrial Development Areas through tariff based international competitive bidding by Government of Andhra Pradesh/Andhra Pradesh State Electricity Board. The project was awarded to the Appellant on a Build, Own & Operate basis. The project had set up a 368.144 MW Combined Cycle Power Project at Kondapalli Industrial Development Areas, Krishna District, Andhra Pradesh.

7.2 The erstwhile Andhra Pradesh State Electricity Board (Respondent No.3) entered into a Power Purchase Agreement (PPA) with the Appellant on 31.3.1997. The Respondent Andhra Pradesh Electricity Board agreed to purchase all the available capacity and corresponding electricity generated by the project.

7.3 As per the Power Purchase Agreement, if the project achieves a Plant Load Factor greater than 80% in a tariff year, then the Appellant

is entitled for an incentive as per Article 3.7 of the Power Purchase Agreement.

7.4 For the year 2009 i.e. from 1.1.2009 to 31.12.2009, the Appellant achieved a PLF of 83.98% i.e. 3.98% higher than the specified PLA of 80%. Accordingly, the Appellant is eligible for an incentive as per Article 3.7 of the PPA.

7.5 The Appellant raised a supplementary bill dated 29.1.2010 to the Respondent No.2 claiming Rs.9,80,81,976/- towards incentive payment for the period 1.1.2009 to 31.12.2009. However, the Respondent paid Rs.46, 24,702/- through RTGS made on 1.3.2010 against the claim of Rs.9, 80, 81,976/-.

7.6 The Appellant vide its letters dated 11.3.2010, 29.3.2010 and 16.4.2010 informed Respondent No.2 regarding the methodology adopted by it in arriving at the incentive amount which was not in conformity with the terms of the PPA, but the Respondent No.2 vide its letter dated 13.5.2010, refused to pay the amount claimed by the Appellant.

7.7 Aggrieved by the action of the Respondent No.2, the Appellant on 11.8.2010, filed Petition No.9 of 2011 with the then State Commission u/s 86(1) (f) of the Electricity Act, 2003 against Respondent No.2.

7.8 The State Commission, after hearing the Petition, passed the Impugned Order on 7.2.2013 dismissing the Petition filed by the Appellant.

7.9 Aggrieved by the Impugned Order dated 7.2.2013, the Appellant filed the present Appeal and IA No.158 of 2015 praying for the following reliefs:

(a) Set aside the Impugned Order dated 7.2.2013 passed by the Respondent Commission in OP No.9 of 2011;

(b) Declare that the Appellant is entitled to incentive payment of Rs.9,80,81,976 as per Article 3.7 of the PPA for the Tariff Year 2009, and accordingly direct Respondent No.2 to pay the balance amount;

(c) Declare that the Appellant is entitled to be paid interest amount by Respondent No.2 for the delay in payment of incentive as claimed in Supplementary Bill dated 29.1.2010 as per the terms of the PPA; and

(d) Pass such other and further orders and/or directions, in the facts and circumstances of the case, as the Tribunal may deem just, fit and proper.

8. We have heard Mr. Jayant Bhusan, Sr Advocate learned Counsel for the Appellant and Mr Anand K Ganesan, learned Counsel for the Respondents and have gone through the material on record including Written Submissions filed by the contesting parties and the Impugned Order, the following questions would arise for our consideration:

Issue No.1: **Whether the State Commission is right in dismissing the Petition filed by the Appellant regarding**

payment of incentive as per Article 3.7 of the Power Purchase Agreement?

<u>**Issue No.2:**</u> **Whether the Petitioner/Appellant is entitled for a sum of Rs.9,80,81,976/- towards incentive for the tariff year,2009 together with interest from the Respondent No.2 or not?**

9. Since the above issues are inter-related, hence both the issues will be taken up together.

10. The following **submissions have been made on behalf of the Appellant M/s. Lanco Kondapalli Power Limited on these issues:**

10.1 that the Respondent Commission has not appreciated that from a plain reading of Article 3.7 of the PPA, it is abundantly clear that the incentive is payable as a percentage of other fixed charges for the relevant year, and not based on a percentage of the OFC rate based on the number of additional units. The Respondent Commission has failed to appreciate that the incentive has to be worked out on the total amount of other fixed charges payable for the year.

10.2 that the State Commission has failed to take note of the manner of computation of incentive provided in Article 3.7 of the PPA. The method of computation provided in the PPA clearly provides that the incentive payment is to be worked out not as a charge per unit of electricity produced but as a percentage of the Other Fixed Charge payable in that Tariff Year. The Respondent Commission has erred

in not applying the formula specified in the PPA, and proceeding on a basis that is inconsistent with the terms of PPA.

10.3 that the Respondent Commission has erred by selectively relying on a portion of Article 3.7 in paragraph 10 of the Impugned Order by referring to the words ***"....incentive for additional units***" to arrive at the conclusion that under Article 3.7 incentive is to be provided only for *eligible units* in excess of 80% PLF (I). The Respondent Commission erred by not construing the language of Article 3.7 in its entirety and the scope and purport thereof, having regard to the manner of computation of PLF provided therein. The interpretation adopted by the Respondent Commission is, therefore, clearly erroneous.

10.4 that the Respondent Commission failed to appreciate that the Clause 3.7 when read in its entirety, clearly suggests that the words *"an incentive for the addition units of actual generation in excess of a PLF (I) of 80%"* only indicates the rationale for the grant of incentive in line with the definition of PLF (I). However, the methods of computation are clearly based on the PLF as indicated in the computation formula, which excludes any reference to the actual additional units generated by the Appellant.

10.5 that the Respondent Commission has failed to consider the implication of the words "for a Tariff Year" and "Other Fixed Charges in <u>such</u> Tariff Year" used in Article 3.7. These words when read as part of Clause 3.7 in its entirety, clearly indicate that the computation

of incentive has to be done as a percentage of the OFC payable for the tariff year for which the incentive is payable. While the rate of Other Fixed Charges is fixed for the entire term of the PPA, the "***Other Fixed Charges in such Tariff Year***" may vary from year to year. The erroneous interpretation adopted by the Respondent Commission renders the specific words "Other Fixed Charges in such Tariff Year" used in Article 3.7 as nugatory.

10.6 that the Respondent Commission has failed to consider that the disincentive and incentive in Articles 3.6 and 3.7 of the PPA (respectively) are to be worked out on the same basis and the method of computation in both Articles is relatable to the PLF as a percentage and not on an unit wise basis. The disincentive/incentive will be calculated as a percentage of Other Fixed Charges for such Tariff Year and not at the rate of other Fixed Charges.

10.7 that the Impugned Order being based on an incorrect construction of the PPA, is bad in law and liable to be set aside.

10.8 that the Respondent Commission has, while agreeing to the computation adopted by Respondent No.2, failed to consider the pittance of incentive amount of Rs.0.037 paisa per unit so determined. As a result, while an incentive of Rs.46.24 lacs has been paid by the Respondent No.2, it has admittedly claimed a rebate of Rs.84.24 lacs on the additional units supplied by the Appellants. Therefore, this has resulted in outflow of revenue to the Appellant instead of earning incentive from excess generation. The law is well

settled that the terms of the contract have to be construed in a manner that makes the contract implementable. The approach adopted by the Respondent Commission is clearly contrary to the very intent and purport of providing for an incentive.

10.9 that the Respondent Commission erred in proceeding on the basis that in order to work out the quantum of incentive, the per unit rate of incentive needs to be worked out. This is misreading of the relevant clauses of the PPA. The actual additional generation in excess of PLF (I) is relevant to work out the actual PLF(I) achieved by the Appellants. However, it is clear from the formula provided in Clause 3.7 that the incentive is worked out on the extent of PLF which is then correlated to the percentage of OFC payable in such tariff year. Therefore, there was no requirement for working out the per unit rate of incentive.

11. **Per Contra,** Mr. Anand K Ganesan, learned Counsel for the Respondent-2 to 7 has made following submissions in support of his arguments:

11.1 That the reference point for the calculation and payment of incentive for the additional units cannot be taken on an aggregate basis. While the fixed charges are provided to be recovered on per unit basis, it is calculated to cover the total fixed charges at the PLF of 80%.

11.2 That in the present case, the PPA in clear terms, provides for other fixed charges (OFC) to be 47.76 paise per unit. The incentive to be

paid on the additional units over 80% as a percentage of OFC has to also be as a percentage of 47.76 paise. This is the plain language of the terms of the PPA.

11.3 That going by the objective of payment of incentive, the claim of the Appellant is misconceived. The paramount object is to pay incentive on additional units of electricity after the Appellant has recovered its full fixed charges. In no event, can the incentive be more than the fixed charge itself on per unit basis, which fixed charges is fully recovered at 80% PLF.

11.4 that the purpose of incentive is to provide some payment to the Generator even after the full fixed charges are recovered. A Generator, after recovering the full fixed charges at 80% should be given some incentive to generate higher. The incentive is provided as a percentage of the fixed charges.

11.5 That the fallacy in the contention raised by the Appellant is evident from the fact that while the other fixed charges per unit which is payable by the Respondents itself is 0.4776 per unit, the incentive amount as claimed by the Appellant for the additional energy unit works out to about 0.75 per unit to 0.80 per unit. The incentive amount therefore, works out to be much higher than other fixed charges on per unit basis. By no stretch of imagination, can be incentive be higher than fixed charges itself.

11.6 That the interpretation sought to be placed by the Appellant is contrary to the plain wordings of the PPA. The incentive is payable on actual per unit generation higher than 80%. The incentive is payable as a percentage of Other Fixed Charges, which itself is provided on per unit basis. When the OFC itself is on per unit basis, the incentive as a percentage of OFC also has to only be on per unit basis.

11.7 That the interpretation advanced by the Appellant is contrary to the very concept of the principle of payment of incentive in the regulatory set up. The argument of the Appellant that the words "**In such Tariff Year**" in Article 3.7 of the PPA must be read as the aggregate or total OFC paid by the Respondents in the tariff Year is contrary to the principle of payment of incentive. Incentive is paid for higher generation over and above normative PLF and is provided with the objective of incentivizing the Generator to generate electricity over and above the normative PLF. If Generator generates over and above the normative PLF, the Generator is only entitled to a percentage of the OFC as an incentive and not the OFC itself. This is to ensure that while the Generator is given an incentive to maximize its generation, the Purchaser and the consumers who have contributed to the fixed charges which recovers the entire cost and expenses of the Generator, also get excess energy over and above the PLF at a lower cost.

11.8 The Counsel for the Respondent has relied on the judgment of Hon'ble Supreme Court in the case of Rajasthan State Industrial development & Investment Corporation Vs Diamond & Gem Development Corporation (2013) 5 SCC 470 inter alia, wherein it has been held as under:

> ***"IV Interpretation of the Terms of Contract***
>
> *23. A party cannot claim anything more than what is covered by the terms of contract, for the reason that contract is a transaction between the two parties and has been entered into with open eyes and understanding the nature of contract. Thus, contract being a creature of an agreement between two or more parties, has to be interpreted giving literal meanings unless, there is some ambiguity therein. The contract is to be interpreted giving the actual meaning to the words contained in the contract and it is not permissible for the court to make a new contract, however reasonable, if the parties have not made it themselves. It is to be interpreted in such a way that its terms may not be varied. The contract has to be interpreted without any outside aid. The terms of the contract have to be construed strictly without altering the azure of the contract, as it may affect the interest of either of the parties adversely. [Vide United India Insurance Co. Ltd V Harchand Rai Chandan Lal [(2004) 8 SCC 644: AIR 2004 SC 4794] and Polymat India (P) Ltd v National Insurance Co. Ltd. [(2005) 9 SCC 174: AIR 2005 SC 286]]"*

11.9 That the attempt made by the Appellant namely to read Article 3.7 in selective manner would render the incentive payment to be much higher than the OFC itself on per unit basis which is misconceived and liable to be rejected.

12. <u>Our Considerations and Discussions on the Issue:</u>

12.1 The contention of the Appellant is that they have achieved a PLF (I) of 83.98% i.e. 3.98% higher than a PLF (I) of 80%. Consequently, the Respondent is liable to pay an incentive amount of Rs.9,80,81,976/- in accordance with Article 3.7 of the PPA. However, the Respondents paid only Rs.46,24,702/-. Further, the incentive payment is not expressed to be a charge per unit electricity but is a percentage of the other Fixed Charges payable in that Tariff Year. Further, the Respondent wrongly interpreted the Article 3.7 of the PPA.

12.2 The details of the claim of the Appellant/Petitioner are given below:

OFC Paid by A.P DISCOMs in the Tariff Year	Rs.123,21,85,625
Actual percentage (%) of PLF achieved	83.98%
Excess PLF achieved over and above 80%	3.98%
As per the provisions of PPA 2% for every 1% increase in PLF i.e. the incentive will be 2% of the OFC is 2x3.98%	7.96%
Claim of LANCO (7.96% x 123,21,85,625)	***Rs.9,80,81,976.00***

12.3 Whereas, the argument of the Respondents is that as per Article 3.7, in case a project achieves a PLF (I) of greater than 85% for a Tariff Year, the Respondents will pay to the Company an incentive on additional units of actual generation in excess of PLF (I) of 80% as a percentage of other fixed charge in such a Tariff Year. Accordingly, the incentive has been worked out as follows:

Units at 80% PLF	2579953152 (kWh)

Actual units generated by M/s. Lanco at 83.8758% (kWh)	2704945088
Additional units achieved above 80% PLF	124991936 (kWh)
Incentive rate for PLF of 83.8758%	(3.8758x2x0.4776)=0.037/unit 100
Incentive amount payable for additional (kWh) (units) (124991936x0.37)	***Rs.46,24,702/-***

12.4 The real controversy between the Appellant and Respondents is the interpretation of Article 3.7 and 3.2 of the Power Purchase Agreement entered into between the Appellant and Respondents regarding incentive amount.

12.5 Let us now examine the method of billing done for the Generation of Power based on the Plant Load Factor and components of Fuel utilized for the generation regarding capacity charges, energy charges and incentive etc. The relevant Articles of the PPA are Article 3.2, Article 3.3, Article 3.7 and Article 5.7.

12.6 The Articles which deals with Capacity Charges and Energy Chares are as under:

*"**Article 3.2 Computation of Capacity Charge***

The Capacity Charge will be the sum of the following amounts, in Rupees, estimated in accordance with Article 5.2 (b) for purposes of monthly billing and adjusted pursuant to Article 5.2 (c) for each Tariff Year, and subject in either case to the limitation that the total of such amounts shall not exceed an amount corresponding to a PLF of 80%:

*(i) **Foreign Debt Service Charge** (FDSC) of US$ 0.01628 per unit Cumulative Available Energy payable in rupees converted at the Current Rate of Exchange; provided that such Foreign Debt Service Charge shall be payable only in respect of the period ending on the 12th (twelfth) annual anniversary of the COD of the last generating unit.*

*(ii) **Other Fixed Charges** (OFC) of Rs.0.4776 per unit of Cumulative Available Energy, which shall be fixed for the term of this Agreement.*

12.7 Thus, Article 3.2 defines the methodology for working out the capacity/fixed charges of the Generation Plant.

12.8 The procedure for monthly billing is specified in Article 5.2 (b) which reads as under:

"*Article 5.2: Monthly Tariff Bills*

(a) *On or before each Billing Date, commencing with the first Billing Date following the Commercial Operation Date of the first Generating Unit, the Company shall furnish a monthly tariff bill to the Board, in the form specified in Schedule H, for the Billing Month, which bill will include monthly Capacity Charges and Energy charges (including fuel price adjustment charges, duly supported by supporting data) and shall show where applicable any adjustments as specified in relevant clauses of this Agreement. Each bill for a Billing Month shall be payable by the Board on the Due Date of Payment.*

(b) *The Company shall calculate the monthly Capacity Charge for each Billing Month as follows:*

Monthly Capacity Charges=FDSC Payment + OFC Payment where:

*FDSC Payment =FDSC *(installed capacity*0.8* Monthly Settlement Period *1000) * Current Rate of Exchange*

*OFC Payment=OFC *(installed capacity*0.8* Monthly Settlement Period *1000)*

Installed capacity shall mean the sum of installed capacities of each unit the commercial operation ate for which has occurred, adjusted in respect of the occurrence of the Commercial Operation Date of one or more units in the Billing Month on a time and megawatt weighted proportionate basis.

*Monthly Settlement Periods shall mean the total number of Settlement Periods in the Billing Month (i.e. 24 hours *no. Of days), reduced however by the Settlement Periods (if any) during which an event of Political Force Majeure affecting either Party or a Non-Political Force Majeure event affecting the Board or a Force Majeure event affecting the Fuel Supplier under Article 10.5 (e) has been declared (in respect of which the payment due shall be calculated in the manner set forth. In Article 10.5 and paid as supplementary bill).*

(c) At the end of each Tariff Year, in case the PLF is less than 80% for the Tariff year, the Company shall refund to the Board as a credit against the amounts due in the next monthly tariff bill(s), an amount which shall be the sum of the Monthly Capacity Charges paid during such tariff Year pursuant to Article 5.2 (b) multiplied by a fraction, the numerator of which shall be the percentage by which the PLF was less than 80% and the denominator of which is 80%".

12.9 The formula given in the Article 5.2 (b) clearly indicates the importance of Plant Load Factor. As per the Formula, the Fixed Charges are arrived based on 80% Plant Load Factor. Accordingly, if the Generator achieves a Plant Load Factor of 80%, the Generator is eligible to receive the 100% fixed charges.

12.10 According to Article 3.3, the Energy Charges are computed for the units recorded by the Meter at the inter connection point. Thus, the Generator will get the energy charges for the total units Generated over and above the 80% Plant Load Factor also.

12.11 Further the Formula specified for calculation of Energy Charges will take care of the elements of fuel utilized for the Generation of the Power which is as under:

"3.3 Energy Charge

(a) Computation of Energy Charge:

The Energy Charge will be computed based on the following formula:
U = EU (hC)/{g(1-A/100)}*
Where:
U is the Energy Charge in Rs. In respect of a Billing Month (or in the case of any bill for Energy Units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates);
EU is the total number of Energy Units delivered at the Inter Connection Point in respect of such Billing Month measured on the Metering Date for such Billing Month (or in the case of any bill for Energy Units generated by a Generating Unit prior to its COD, in respect of the period to which such bill relates):
H is the Station Heat Rate in Kcal/KWH as per Article 1.1 (57);
C is the cost of Fuel in Rs. Per unit of Fuel; as delivered at the Fuel metering point at the site
G is the GCV of Fuel in Kcal/unit of Fuel;
A is a number equal to the Auxiliary Consumption expressed as a percentage of gross generation as per Article 1.1 (4).

Provided that the cost of Fuel "C" shall be calculated in Rupees (with any amount denominated in any other

currency being converted into rupees at the current rate of exchange (actual) and shall equal the sum of

(i) Basic weighted average cost of Fuel in case of indigenous fuel and in case of imported fuel, the weighted average CIF value plus in each case, finance and procurement costs.

(ii) Taxes, duties, cesses and other Government Agency levies; and

(iii) Handling, storage, transportation and importation charges;

Provided that the Board has the right to review and approve the Fuel Supply Agreement through the Fuel Supply Committee in accordance with and subject to Schedule I.

12.12 Thus, the Article takes care of Station Heat (h), Cost of Fuel (C) and GCV of the Fuel (g) and Auxiliary Consumption (A). Accordingly, the Generator will receive the Energy Charges for all the units including the components of the Fuel utilised for generation. Thus, at 80% PLF, the Generator will be paid 100% Fixed Charges and Energy Charges based on the actual generations.

12.13 Let us discuss the Incentive Part of the PPA.

12.14 The Generator in the Tariff Year, 2009, achieved a PLF of 83.98% for the period from 01.01.2009 to 31.12.2009. Thus, the Appellant is eligible for Incentive as per Article 3.7 of the PPA. The relevant Article is quoted below:

***Article 3.7 of the PPA**: Incentives*

In case the Project achieves a PLF (I) greater than 80% for a Tariff Year, then the Board will pay to the Company an incentive for the additional units of actual generation in excess of a PLF (I)

of 80% as a percentage of the Other Fixed Charge in such Tariff Year as given below:

PLF(I) (%)	***Incentive (%)***
80%	*Nil*
Above 80% unto 85%	*2% for every 1% increase in PLF (I) (i.e. for a PLF (I) of 85%, the incentive Will be 10% of the Other Fixed Charge)*
Above 85% up to 90%	*3% for every 1% increase in PLF (I) (i.e. for a PLF (I) of 90%, the incentive Will be 10% + 15% =25% of the other Fixed Charge)*
Above 90%	*Same as for 90% i.e. 25% of the Other Fixed Charge*

Article 3.2 (ii) Other Fixed Charges *(OFC) of Rs.0.4776 per unit of Cumulative Available Energy, which shall be fixed for the term of this Agreement.*

<u>Definition of PLF (I)</u>

(45) Plant Load Factor (Incentive) or PLF (I): *means the ratio, expressed as a percentage of the number of KWH of generation as computed at the generator terminals in any Tariff Year, by adding the Auxiliary Consumption to the Net Electrical Energy as metered at the interconnection Point, to the maximum of KWH energy that could theoretically be generated by the project during that Tariff Year based on 8760 hours multiplied by the installed Capacity, computed at the Generator terminals:*

$$PLF\ (I) = \frac{\dfrac{NEE \times (1)}{[1-(A/100)]}}{8760 \times 1C \times 1000}$$

Where:

NEE: Net Electrical Energy (kwhr)
A: Auxiliary Consumption (%)
IC: Installed Capacity (MWs)

12.15 The Appellant submitted that the Supplementary bill towards incentive for the extra PLF attained during the Tariff Year 2009 for the period 1.12.2009 to 31.12.2009 as per Article 3.7 and claimed Rs.9,80,81,976/-.

12.16 In our opinion, according to Article .37 of PPA, the incentive is for the additional units generated in the excess of PLF (I) 80%. The Appellant has to arrive additional units generated in excess of 80% PLF and then, it has to be multiplied with the rate at which the incentive is to be calculated for the arrived excess unit. The rate of incentive as per Article 3.7 is 2% for every 1% increase in PLF above 80% i.e. 7.96% (3.98% x 2) which needs to be multiplied by the OFC rate i.e. Rs.0.4776 per unit as per Article 3.7 and 3.2.

12.17 According to the Appellant, the incentive amount is to be a lump sum amount i.e. the percentage arrived with respect to incentive over and above 80% PLF(I) to be multiplied with the lump sum amount of the other fixed charges (Rs.0.4776 x cumulative energy of the Tariff Year). This interpretation is not satisfying the incentive Article 3.7. The Article clearly specifies the incentive has to be paid for the excess units generated above 80% PLF. To arrive the rate per unit, the rate specified in the other fixed charges i.e. Rs.0.4776 per unit has to be multiplied with the percentage of incentive arrived in excess of 80% PLF (i.e. 7.96% of Rs.0.4776).

12.18 It is pertinent to mention here the incentive is for the excess units generated in excess of 80% PLF and the incentive amount has to be worked as shown in Para 12.3.

12.19 We feel that the Respondent No.2 has introduced the incentive to encourage the Generator to utilize the equipment for generating the power over and above the threshold level of 80% PLF, and thereby the Respondent will get extra power. This will lead to reduction in generation cost per unit and it finally reflects in the consumer tariff, which leads to reduction in Power Purchase Cost and the benefit will be passed on to the consumer. Further, the Generator is not at loss while Generating Excess power over and above 80% PLF, because he is benefitted with 100% fixed charges plus incentive amount. The excess fuel utilised for the excess generation is taken care of by the Formula specified in the Article 3.3 of the PPA. We find there is no ambiguity in the Articles 3.7 and Article 3.2 of PPA.

12.20 The Commission's view in the Impugned Order dated 7.2.2013 is quoted below:

> "*The methodology adopted by the Respondents is based on adopting the per unit rate of Other Fixed Charges (OFC) of Rs.0.4776 per unit as prescribed in Article 3(2)(ii) as the basis for applying the percentage given in Article 3.7 to arrive at the quantum of incentive for the "additional units" in excess of PLF (I) of 80%".*

Thus, we finally conclude that the methodology used for calculation of incentive amount by the Respondent is correct and there is no ambiguity in interpretation of the Article 3.7 of the PPA.

12.21 Accordingly, the amount paid by Respondent as Rs.46,24,702/- is correct and the Respondent No.2 is not liable to pay the amount arrived by the Appellant i.e. Rs.9,80,812,976/-. Accordingly, we affirm the order of the State Commission in the Impugned Order dated 7.2.2013

12.22 Accordingly, these issues are decided against the Appellant.

O R D E R

12.23 The Instant Appeal No.332 of 2013 captioned as Lanco Kondapalli Power Limited Vs Andhra Pradesh Electricity Regulatory Commission is hereby dismissed.

12.24 There is no order as to costs.

12.25 Pronounced in the Open Court on this **20th day of Jan, 2016**.

(T Munikrishnaiah)
Technical Member

(Justice Surendra Kumar)
Judicial Member

Dated, the 20th Jan'2016

REPORTABLE / ~~NON-REPORTABLE~~