Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)

Execution Petition No. 1 of 2006,
I.A. No. 192 of 2006 in Execution Petition No. 2 of 2006,
Execution Petition No.2 of 2006 and
I.A. 175 of 2006 in Appeal No. 47 of 2006

Dated: January 22, 2007

Present: Hon'ble Mr. Justice Anil Dev Singh, Chairperson
Hon'ble Mr. A.A. Khan, Technical Member

The RPP Limited
H.No. 1-B, (New No.618),
Arora Colony, Road No.3,
Banjara Hills,
Hyderabad 500034 ...Appellant

V/s.

1. **Transmission Corporation of A.P. Ltd.,**
   Rep. by its Chairman & Managing Director,
   Vidyut Soudha,
   Hyderabad 500082

2. **Central Power distribution Company of A.P.Ltd.,**
   Rep. by its Managing director, 11-5-423/1/A,
   First Floor, Singareni Collieries Bhavan Lakdi-ka-pul,
   Hyderabad 506 001.

3. **Southern Power Distribution Company of A.P. Ltd.,**
   Rep. by its Managing Director, Upstairs,
   Hero Honda Showroom, Renigunta Road,
   Tirupati 517 501.

4. **Northern Power Distribution Company of A.P. Ltd.,**
   Rep. by its Managing Director, 11-5-423/1/A,
   First Floor, 1-7-668, Postal Colony, Hanamkonda,
   Warangal 506 001

5. Eastern Power Distribution Company of A.P. Ltd.,
Rep. by its Managing Director, Sai Shakti,
Opp Saraswati Park, Daba Gardens,
Visakhapatnam 530 020.

6. Andhra Pradesh Electricity Regulatory Commission,
Singareni Bhavan, Red Hills, Hyderabad,
Rep. by its Chairman

...Respondents

(6th Respondent is a proforma party and not a necessary party in this application)

Counsel for the Appellant(s) : **Mr. K. Gopal Choudary**

Counsel for the Respondents: **Mr. A. Subba Rao**

JUDGMENT

Per Hon'ble Mr. Justice Anil Dev Singh, Chairperson:

By this order we propose to dispose of the Execution Applications No. 1 of 2006 and 2 of 2006; I.A. Nos. 175 of 2006 and 192 of 2006.

2. By Order dated May 11, 2006, we had disposed of appeal No. 47 of 2006 with the following observations and directions with the consent of the parties:-

> "*Having regard to the aforesaid statements of the learned counsel for the parties, we direct that the aforesaid banked energy shall be permitted to be supplied to the aforementioned parties in addition to existing parties for whom permission has*

already been given to the appellant for supply of the banked energy. The embargo for the months of April, May, June and July of 2006, will not apply in the case of the appellant and there shall be no banking charges. Insofar as the question as to how much balance energy to the credit of the appellant stands banked with the respondents 1 to 5 shall be determined by the parties with mutual consultation and agreement.

We also direct the respondents 1 to 5 to decide all applications by the generators for addition of parties to the schedule of the existing consumers, within a period of three weeks, positively, from the date of receipt of such applications.

With the aforesaid observations and directions, the appeal is disposed of."

3. On August 23, 2006, the appellant filed a Petition, being Execution Petition No. 1 of 2006, for execution of the aforesaid order. In the petition, the appellant has basically alleged that the respondent had failed to decide most of the applications for addition of parties to the schedule of the existing consumers within a period of three weeks from the date of receipt of such applications from the appellant.

4. In the petition, the appellant has referred to his applications dated January 25, 2006; July 11, 2006; July 22, 2006 and August 1, 2006 to the concerned respondents, seeking addition of certain consumers to the schedule of the existing consumers.

5. By aforesaid application dated January 25, 2006, the appellant had sought addition of M/s International Crops Research Institute for the Semi-Arid Tropics (ICRISAT) falling within the area of supply of the second respondent, to the schedule of the existing consumers. The third respondent by its letter dated June 3, 2006 informed the appellant that the wheeling of power to ICRISAT was not technically feasible. The grievance of the appellant is that the order of the third respondent does not provide any reasons for rejection of the application of the appellant.

6. By application dated July 11, 2006, the appellant requested for addition of South Asia LPG Co., falling in the area of supply of the fifth respondent; M/s Manjira Estates Pvt. Ltd. and

M/s Manjira Hotels and Resorts Ltd., both falling under the supply area of the second respondent, to the schedule of the existing consumers. The grievance of the appellant is that the application was required to be decided within three weeks, but the respondent nos. 1, 2 & 5 have failed and omitted to decide the application.

7. By an application dated July 22, 2006, the appellant had requested for inclusion of the names of M/s Maya Bazar, and M/s Ocean Parks, consumers falling in the area of supply of the second respondent, in the schedule of the existing consumers. The grievance of the appellant is that the second respondent has failed to decide the application.

8. By an application dated August 1, 2006, the appellant requested for inclusion of M/s Ramoji film city, a consumer in the areas of supply of the second respondent in the schedule of the existing consumers. It is alleged by the appellant that the respondent has omitted to decide the application.

9. According to the appellant, the respondent has failed to comply with the order of the Tribunal dated May 11, 2006.

Therefore, the appellant in the Execution Petition No. 1 of 2006 has prayed that since the respondents have wilfully failed to carry out the order of the Tribunal dated May 11, 2006 with reference to the aforesaid applications, they should be arrested and detained in civil prison. Having regard to the allegations of the appellant, notice was issued in Execution Petition No 1 of 2006.

10. In response to the notice, which was issued in Execution Petition No. 1 of 2006, an Affidavit was filed by Shri K. Raghuma Reddy, Chief General Manager (Comml. & RAC), APCPDCL, Hyderabad. In the Affidavit, it was, inter-alia, stated that the order dated May 11, 2006 directing the respondents to dispose of the applications, within 3 weeks from the date of receipt of such applications, for addition of the parties to the schedule of the existing consumers cannot be treated as mandatory direction at all. It was also stated that the provisions of the Electricity Act, 2003 do not provide for any period for disposal of the applications of the NCE developers and only PPAs provide for addition of parties to the agreements depending upon certain specified conditions. At the same time, it was admitted that during the course of

arguments in Appeal No. 47/2006, the counsel for the respondent had agreed to the passing of the aforesaid directions, but it was stated that this does not mean that the period prescribed by the Tribunal is a mandatory one.

11. It, prima facie, appeared to us that the conduct of the Chief General Manager of the CPDCL was such that it fell within the provisions of Section 146 of the Electricity Act, 2003. In the circumstances, therefore, on October 18, 2006, we were constrained to issue notice to the Chief General Manager, CPDCL as to why action should not be taken again him under Section 146 of the Electricity Act, 2003.

12. In response to the notice, the Chief General Manager of the CPDCL, Hyderabad appeared before us on November 6, 2006 and tendered an unconditional apology. An affidavit affirmed by him on November 4, 2006 was also filed in which it was stated that he had no intention to denigrate the Tribunal or disobey its order. He stated that the applications of the appellant which were subject matter of Execution Petition 1 of 2006 have already been disposed

of by the APCPDCL. Having regard to the Affidavit and unconditional apology tendered by Mr. K. Raghuma Reddy, Chief General Manager, CPDCL, Hyderabad, the rule was discharged by us.

13. During the course of the proceedings of November 6, 2006, it was brought to our notice that one of the applications had been rejected. In order to see the reasons for such rejection, we directed the APCPDCL, Hyderabad to present the contemporaneous record relating to disposal of the applications.

14. The appellant has filed another petition being Execution Petition No. 2 of 2006, wherein it is alleged that the second respondent together with the first and third respondents have not complied with the order of the Tribunal dated May 11, 2006. The appellant alleges that he had also made applications to the respondents on August 21, 2006, September 9, 2006 and September 16, 2006 for addition of the proposed consumers, within the areas of supply of second, third and fifth respondents, to the schedule of the existing consumers but the applications have not been decided within three weeks from the receipt of the

applications by the respondents. In the circumstances, the appellant seeks appropriate directions for enforcement of the order dated May 11, 2006 by arrest and detention of the CMDs of the second, third and fifth respondents in civil prison.

15. On November 14, 2006, notice was issued to the respondents in Execution Petition 2/2006. In response to the notice, Mr. Subbarao, appearing for the respondents submitted that all the applications of the appellant except one, have been disposed of by the respondents.

16. Counter affidavits have also been filed in response to the Execution Petition Nos. 1/2006 and 2/2006 to show that order dated May 11, 2006 has been complied with. The following chart has also been filed by the respondents to show the manner of disposal of the applications filed by the appellant before the concerned respondents:

Developer request letter dated: 11-07-2006				
S. No.	**Consumer Name**	**Consumer No.**	**Respective Discom**	**Remarks**
1	M/s South Asia LPG Co.	VSP-429 (HT Cat-II)	APEPDCL	Feasible
2	M/s.Manjeera Estates (P) Ltd.,	HDN-744 (HT Cat-II)	APCPDCL	Not Feasible

3	M/s.Manjeera Estates (P) Ltd.,	HDN-774 (HT Cat-II)	APCPDCL	Not Feasible
4	M/s.Manjeera Estates (P) Ltd.,	HDN-996 (HT Cat-II)	APCPDCL	Not Feasible
Developer request letter dated: 22-07-2006				
5	M/s.Maya Bazar	HDC-747 (HT Cat-II)	APCPDCL	Not Feasible
6	M/s.Ocean Park	RRS-771 (HT Cat-II)	APCPDCL	Not Feasible
Developer request letter dated: 01-08-2006				
7	M/s.Ramoji Film City	RRS-705 (HT Cat-II)	APCPDCL	Not Feasible

Execution Petition No.2 of 2006

Developer request letter dated: 21-08-2006/09-09.2006				
S. No.	**Consumer Name**	**Consumer No.**		**Remarks**
1	M/s. Reliance Comunications	RRN-965 (HT Cat-II)	APCPDCL	Not Feasible
2	M/s. Reliance Communications	MDK-774 (HT Cat-II)	APCPDCL	Feasible
3	M/s. Hyderabad Central	HDN-879 (HT Cat-II)	APCPDCL	Not Feasible
4	M/s. Reliance Comunications	GNT-617 (HT Cat-II)	APSPDCL	Feasible
5	M/s. Reliance Comunications	RJY-442 (HT Cat-II)	APEPDCL	Feasible
Developer request letter dated: 16-09-2006				
6	M/s. Big Bazaar	HDC-708 (HT Cat-II)	APCPDCL	Not Feasible
7	M/s. Big Bazaar	VSP-484 (HT Cat-II)	APEPDCL	Feasible
				Feasible
8	M/s Bhimas Residency Hotels	TPT-226 (HT Cat-II)	APSPDCL	The consumer dropped the idea of availing power.

17. It is apparent from the charts that the request of the appellant for addition of the consumers in the schedule of the existing consumers, except the request for including M/s Bhimas Residency Hotels, have been disposed of by the respondents. It is

pointed out by the learned counsel for the appellant that the appellant has already challenged the determination of the concerned respondents as regards the rejection of the requests of the appellant for inclusion of the names of certain consumers in the schedule of the existing consumers before the State Regulatory Commission.

18. In so far as the application of the appellant for inclusion of M/s Bhimas Residency Hotels in the schedule of the existing consumers is concerned, the consumer has written a letter to the APSPDCL, which reflects that consumer was not interested in availing electricity from the appellant.

19. The learned counsel for the appellant, however, pointed out that the respondents have not taken any decision with regard to Bhimas Residency Hotels, rather APCPDCL has been instrumental in obtaining a letter from Bhimas Residency Hotels for conveying that it was not interested in availing electricity under third party sale from the appellant.

20. There is no cogent material on record to show that it was the APCPDCL which was responsible for Bhimas Residency Hotels' action to withdraw its willingness to avail electricity under third party sale from the appellant. Therefore, we cannot make much of Bhimas Residency Hotels' letter to the APCPDCL and APTRANSCO indicating their unwillingness to avail electricity from the appellant.

21. Thus, the position is that all the applications of the appellant moved before the concerned respondents, have been disposed of and the appellant has challenged the decision of the concerned respondent before the Regulatory Commission, where the applications have been rejected. Notwithstanding the disposal of the applications, the learned counsel for the appellant however, submitted that the applications were not disposed of within the period prescribed by the order dated May 11, 2006.

22. While it true that the applications were not disposed of by the concerned respondents within a period of three weeks from the date of receipt of the applications of the appellant for inclusion of new consumers in the schedule of the existing consumers, we

decline to take action under Section 146 of the Electricity Act, 2003 against the respondents for not adhering to the time schedule set by us in our order dated May 11, 2006, as we would like to give them a chance to improve their performance and curtail the administrative delay in moving the papers for execution of our orders. At the same time it is clarified that this shall not serve as a precedent.

23. While, we are condoning the delay in disposing of the applications, we must deal with the submissions of the respondents which stem from misconception of the legal position.

24. The learned counsel for the respondent submitted that the appellant is making frequent applications for change in the list of scheduled consumers. It was pointed out that the respondents are not allocating electricity to the existing HT-1 consumers and are adding more HT-2 consumers. According to the learned counsel for the respondents, approval of the Board is required for change in the list of scheduled consumers subject to system exigencies and the Board reserves the right to reject the revised list and its decision in this regard is final. It was further contended that the appellant is

resorting to coercive measures in spite of the fact that the agreement specifically provides that the respondents have exclusive right to decide the applications. It was also submitted that the appellant is not entitled to make applications for inclusion of names of the consumers in the list of scheduled consumers more than twice a year. The learned counsel referred to Article 1.16 and Explanation 3 thereto in support of his submissions. Article 1.16 and Explanation 3 thereto reads as under:-

> *"1.16: Scheduled Consumer: means the consumers of the Board listed in Schedule 4 attached to this agreement, and any other high tension (voltage) consumers of the Board located in the State of Andhra Pradesh receiving power from the Board at a voltage of 11 Kilo volts (KV) and above; to whom Wheeled energy is desired by the Company to be Wheeled by the Board, as per the prior approval of the Board."*
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> "*Explanation 3*: *If the developer wants any change in the list of scheduled consumers, during the term of agreement, he shall submit such a list to Board and get approval. Board accords such approval taking into system exigencies. Board reserves the right to reject the revised list of scheduled consumers and decision of Board in this regard is final."*

25. Though the explanation provides that Board reserves the right to reject the revised list of scheduled consumers and its decision in this regard is final, the finality referred to in the explanation is not such that it cannot be challenged before the appropriate forum. It is well settled that where an authority is required to come to a decision, its decision must be a reasoned one. Simply rejecting the application seeking to include the name of a consumer in the list of scheduled consumers by stating that it is not technically feasible to include the name of the consumers in the list of scheduled consumers does not amount to stating a discernible reason. Therefore, the discom, while rejecting the request of a developer for change in the schedule of the existing consumers must give reasons, so that it is possible for the appropriate forum to consider whether or not the reasons given by the concerned discom were legally tenable. When a discom agrees to include the name of a consumer in the schedule of the existing consumers in the wheeling agreement between the licensee and the developer, to whom the banked energy is to be supplied, it essentially implies

that open access for transmission/ or wheeling of electricity will be made available. In case of rejection of the request it obviously implies that the open access and wheeling shall not be made available. It is one of the most important objects of the Act to provide open access. In spite of the fact that the Act provides for open access, which needs to be encouraged for the development of the electricity industry, there still appears to be some reservations in certain quarters for allowing open access and wheeling of electricity. The argument that the application for change in the schedule of the existing consumers can be permitted only twice in a year cannot be countenanced in law. Such a submission is not in conformity with the Explanation 3 of Clause 1.16 on which reliance was placed by the learned counsel for the respondent nor the same is in keeping with the spirit of the Act, which requires fillip to be given to open access and wheeling of electricity to generate competition. Learned counsel for the respondent also invited our attention to clauses 16.1 and 16.2 of the APERC (Terms and Conditions of Open Access) Regulations, 2005.

26. Clauses 16.1 & 16.2 reads as follows:

"16.1: The long term users shall have the flexibility to change entry and/ or exit points twice a year subject to the results of system impact studies to be carried out by the concerned Licensees at the behest of such users. All expenses incurred by the Licensees to carry out such studies shall be reimbursed in full by such users.

16.2: A short term user availing of open access for one full year may also change entry and/ or exit points twice, subject to feasibility."

27. It merely gives flexibility to change entry and/ or exit points twice a year. On the basis of these clauses it is difficult to deduce that a developer cannot ask for addition of consumers in the Schedule of the existing consumers to the wheeling agreement.

I.A. No. 175 of 2006

28. We will now take up IA No. 175 of 2006, which has been filed by the respondents 1 to 5, for seeking modification of order dated May 11, 2006, and grant of ten weeks time for disposal of the applications, from the date of receipt of the applications, for addition in the list of the schedule of the existing consumers. In the

application, it is stated that the appellant is making frequent applications for change in the schedule of consumers. For amendment of the schedule of the existing consumers a detailed procedure is involved. It is pointed out that in case a NCE developer is in the area of one discom (say APSPDCL) and wants to wheel power to a consumer in another discom (say APCPDCL), a detailed procedure has to be followed. First the generator will apply to the APSPDCL that it wants to wheel power to the consumer of the other discom, say for example the APCPDCL. The application will be processed by the APSPDCL for finding out whether it is technically feasible to wheel power to the consumer of the APCPDCL. After the application has been processed by the APSPDCL, the same shall be transmitted to the APCPDCL, where the application will be processed first in the Division and thereafter in Sub-division and finally in the concerned Section depending upon the location of the consumer. At the Section level, the concerned officer examines the request in the context of the local conditions and sends the report to the corporate office through proper channel. Thereafter the report is circulated among the directors and CMD and the necessary

approval is obtained. It is only after the necessary approval has been accorded by the APCPDCL, the same is sent to the APSPDCL. For all this process to be completed, the respondents seek ten (10) weeks time. In response, it is submitted by the learned counsel for the appellant that in case seventy days are granted to the respondents to decide the application to include the name of a consumer in the schedule of the existing consumers for wheeling of the banked energy, the consumer will certainly not wait for such a long time and will feel disinterested in securing electricity from the generator.

29. We do not find any justification for the demand of the respondent to enlarge the time for consideration of the applications for change in the schedule of the existing consumers. In todays' time and age, the application which is given to a discom should not take long for disposal. It needs to be mentioned that a chart given in the application of the respondent, given to justify the time taken for processing of the application, does not impress us. The chart illustrates the apathy of the system. For example a time of 5 days

has been mentioned for the application to reach the concerned officer in the APSPDCL and to process the same. In order to collect the technical feasibility report of the proposed consumer located in other discoms, postal time and holidays is taken as 4 days. It takes another 5 days to reach the application from the APSPDCL to the APCPDCL. The postal delays are unthinkable in these days in view of the technical advancement. We are sure that there is computerization in all the discoms. It takes no time in transmitting all information from one discom to another. No one can claim extra time for its tardiness or its way of functioning. It is for the discoms to expedite the matters. Lethargy and tardiness cannot be a ground for extending the time. In the circumstances, we find no reason to modify the order dated May 11, 2006.

30. There is yet another application, being IA No. 192 of 2006 filed by the appellant, for filing documents and papers on record. The application was not opposed by the respondents and there was no objection to bringing these documents on record.

31. In view of the aforesaid discussion, the following order is passed:-

i) Execution application Nos. 1 and 2 of 2006 are disposed of as having been rendered infructuous;

ii) I.A. No. 175/2006 filed by the respondent is rejected;

iii) I.A. No. 192/2006 for placing the documents on record is allowed.

(Justice Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member

Dated: the January 22, 2007