

**Before the Appellate Tribunal for Electricity
(Appellate Jurisdiction)**

Appeal Nos. 7 & 11 of 2006

Dated: March 7, 2007

1. Transmission Corporation of
Andhra Pradesh Ltd. (A.P. Transco),
Vidyut Soudha, Hyderabad. Rep. by
Its Chairman and Managing Director

2. A.P. Eastern Power Distribution Co. Ltd.
(APEPDCL) rep. by its Chairman and Managing Director,
Visakhapatnam, Andhra Pradesh ... Appellants

Versus

1. A.P. State Electricity Regulatory Commission
Rep., by its Secretary, 5th Floor,
Singareni Bhavan,
Red Hills, Hyderabad.

2. M/s. GMR Technologies & Industries Ltd.
Corporate Office at 6-3-866/1/G2, Greenlands,
Begumpet, Hyderabad – 500 016 rep. by its
Managing Director, Mr. K. Narayan rao,
S/o Mr. K. Samba Murthy aged 49 years ... Respondents

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

Counsel for the appellant (s) : Mr. Sanjay Sen with Mr. Vishal Anand
Mr. A.T.M. Rangaramanujam, Sr.
Advocate with Ms. Gauri K. Dass & Ms.
Anu Gupta for APTRANSCO

Counsel for the respondent (s) : Mr. Challa Kodanda Ram

JUDGMENT

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

1. These two Appeals are being disposed of together as the points in issue are identical. While Appeal No. 7 of 2006 is directed against the order of the Andhra Pradesh Electricity Regulatory Commission (for short 'APERC') dated July 17, 2004 in O.P. No. 21/2004, Appeal No. 11/2006 is directed against the order of the APERC dated November 17, 2004 in R.P. (SR) No. 59 of 2004 in O.P. no. 21 of 2004. The appellant in these appeals challenges the aforesaid orders of the APERC to the extent it directs the appellant to purchase all the surplus power delivered by the second respondent, M/s. GMR Technologies & Industries Ltd. at the inter-connection points.

2. The second respondent applied to the Non-conventional Energy Development Corporation of Andhra Pradesh Limited (for short 'NEDCAP') for setting up a Bagasse based co-generation plant of 16 MW capacity at Sankili Village, R. Amadalavalasa Mandal, Srikakulam District Andhra Pradesh. The NEDCAP accorded approval to the proposal by its letter dated November 11, 1999 and 'Revised Proceedings' dated January 27, 2001. The appellant, Transmission Corporation of Andhra Pradesh Ltd. and second respondent, M/s. GMR Technologies & Industries Ltd. entered into a Power Purchase Agreement (for short 'PPA') on August 14, 2001. The PPA is in accordance with the orders of the APERC dated April 1, 2000 and July 13, 2001. Copies of these orders have been incorporated in the agreement as Schedules 4 and 5.

3. According to clause 2.1 of the PPA, the appellant is required to purchase all the delivered energy at the interconnection point at the tariff provided for in Article 2.2 from and after the date of Commercial Operation of the project of the second respondent. Clause 2.1 reads as follows:

“2.1. All the Delivered Energy at the interconnection point for sale to APTRANSCO will be purchased at the tariff provided for in Article 2.2 from and after the date of Commercial Operation of the Project. Title to Delivered Energy purchased shall pass from the Company to the APTRANSCO at the Interconnection Point”.

Clause 2.2 of the Agreement lays down the tariff for the energy delivered by the second respondent at the interconnection point for sale to APTRANSCO. Clause 2.2 reads as follows:

“2.2. The Company shall be paid the tariff for the energy delivered at the interconnection point for sale to APTRANSCO at Rs. 2.25 paise per unit with escalation at 5% per annum with 1994-95 as base year and to be revised on 1st April of every year upto the year 2003-04. Beyond the year 2003-2004, the purchase price by APTRANSCO will be decided by Andhra Pradesh Electricity Regulatory Commission. There will be further review of purchase price on completion of ten years from the date of commissioning of the project, when the purchase price will be reworked on the basis of Return on Equity, O&M expenses and the Variable cost”.

4. It is significant to note that the Power Purchase Agreement does not make any mention of the extent of captive and auxiliary consumption for the purposes of the plant of the second respondent.

5. The APERC by its letter dated January 6, 2003 to the Chief Engineer, APTRANSCO, Hyderabad, *inter alia*, directed the amendment of the standard draft PPA to modify the provisions in Preamble-2 and Schedule-1 thereof with the addition to the effect that the proposed captive consumption could be reduced by

the company and additional surplus power could be sold to the APTRANSCO, in case of exigencies or otherwise.

6. The APERC vide its letter dated Feb. 6, 2004 informed the appellant that whenever a Non-Conventional Energy Developer intimates in advance regarding reduction in its captive consumption due to exigencies or otherwise, the surplus power is also to be treated as a capacity agreed to be exported to the grid.

7. Again by letter dated August 9, 2004, APERC directed the APTRANSCO to purchase surplus energy exported by the NCE developers on their reduction in captive consumption.

8. It is not in dispute that the APERC, on an application filed by APTRANSCO, issued a general direction interdicting the co-generation plants from selling their surplus energy to any one other than APTRANSCO.

9. The letters of the APERC dated Jan. 6, 2003, Feb. 6, 2004, August 9, 2004 and the aforesaid interdiction of the Commission and clause 2.1 of the PPA, when read together clearly require the appellant to purchase all the surplus energy delivered by the second respondent at the interconnection point. Therefore, the appellant is bound to discharge its obligation under the agreement. Having said that we hasten to add that delivered energy cannot exceed the installed capacity of the plant. This view finds support from the decision rendered by us on September 28, 2006 in Rithwik Energy Systems Limited vs. Transmission Corporation of Andhra Pradesh Ltd. etc. (Appeal Nos.

90, 91, 92 etc. of 2006), wherein it was held that the PLF is required to be calculated on monthly basis to arrive at the purchasable energy limiting to 100% PLF after deducting auxiliary and captive consumption, if any of the cogeneration plant. In the circumstances, therefore, APERC was not wrong in directing the appellant to purchase all surplus power generated by second respondent.

10. It cannot be disputed that the APTRANSCO is not able to meet the demand of energy. When additional power is available and at its instance the Commission had interdicted the co-generation plants based on renewable sources of energy from selling power to anybody else except the APTRANSCO, it cannot be allowed to decline the purchase of delivered energy to it by the second respondent.

11. In the circumstances, we do not find any illegality or error in the order passed by the Andhra Pradesh State Electricity Regulatory Commission dated July 17, 2004 and November 17, 2004. Accordingly, the appeals are dismissed.

(Anil Dev Singh)
Chairperson

(A.A. Khan)
Technical Member

Dated the March 07, 2007