

In the Appellate Tribunal for Electricity,
New Delhi
(Appellate Jurisdiction)

Appeal No. 53 of 2016 and I.A. No. 138 of 2016

Dated: 23rd September, 2016

Present: Hon'ble Mrs. Justice Ranjana P. Desai, Chairperson
Hon'ble Mr. I.J. Kapoor, Technical Member

In the matter of

- 1. Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO)**
No.144, Anna Salai,
Chennai- 600 002.
- 2. The Chief Financial Controller/Revenue.**
Tamil Nadu Electricity Board,
144, Anna Salai,
Chennai - 600 002.
- 3. The Superintending Engineer,**
CEDC/Central
TANGEDCO
Chennai- 600 034.
- 4. The Superintending Engineer,**
Tamil Nadu Electricity Board,
Udumalpet Electricity Distribution Circle,
Udumalpet, 603 002

.... Appellants

Versus

- 1. M/s. Century Flour Mills Ltd,**
Indian Chamber Building, First Floor,
6, Esplanade,
Chennai- 600108.
- 2. Tamil Nadu Electricity Commission, (TNERC)**
19-A, Rukmani Lakshmipathy Salai,

.... Respondent No 1

(Marshalls Road), Egmore,
Chennai - 600 008

.... Respondent No 2

Counsel for the Appellant(s): Mr. G. Umapathy
Mr. S. Vallinayagam
Mr. Aditya Singh

Counsel for the Respondent(s): Mr. Anand K. Ganesan
Ms. Swapna Seshadri
Mr. Rahul Balaji
Ms. Neha Garg
Mr. Sandeep Rajpurohit for R-1

JUDGMENT

PER HON'BLE MR. I. J. KAPOOR, TECHNICAL MEMBER

1. The present Appeal is filed by M/s. Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as the “**Appellant**”) under Section 111 of the Electricity Act, 2003 against the Impugned Order dated 19.01.2015 passed by the Tamil Nadu State Electricity Regulatory Commission (hereinafter referred to as the “**State Commission**”) in D.R.P.No.19 of 2013 filed by M/s Century Flour Mills Limited (hereinafter referred to as “**Respondent No.1**”) in relation to adjustment of the energy generated from the Wind Energy Generators (“**WEG**”).
2. The Appellant, Tamil Nadu Generation and Distribution Corporation Limited (hereinafter called “**TANGEDCO**”) is the Distribution Licensee in the State of Tamil Nadu.

3. The Respondent No 1, M/s Century Flour Mills Limited (hereinafter called '**Generating Company**') is a company registered under Companies Act 1956 and a Wind Generator in the State of Tamil Nadu.
4. The Respondent No. 2 is the Electricity Regulatory Commission for the State of Tamil Nadu exercising jurisdiction and discharging functions in terms of the Electricity Act 2003.
5. Aggrieved by the Order dated 19.01.2015 passed by the State Commission, the Appellants have preferred the present appeal on the sole ground that in the Impugned Order, the State Commission has wrongly applied the doctrine of efficacy and ordered that the Appellant shall first adjust the wheeled energy generated from the Respondent's WEG under REC scheme which has an adjustment or banking period of one month and then adjust the energy generated from other captive/third party generators which have a banking period of one year.
6. **Facts of the present Appeal:**
 - i. The Respondent No 1 has installed Wind Energy Generators of varying capacities which were commissioned on various dates during the year 2002 till 2010. All the wind mills set up prior to April, 2011 are for captive consumption with adjustment through wheeling agreements except one 1.65 MW Wind Turbine Generator [HTSC No.1723] which was commissioned in 2010 for direct sale of power to TANGEDCO.

- ii. In respect of wind energy sold to the TANGEDCO, the Respondent No 1 gets paid in terms of the applicable wind tariff order of the State Commission.
- iii. The State Commission issued Tariff Order on Wind Energy on 31.07.2012. In the order with regard to banking facility in respect of WEGs availing REC, it was stated that one month adjustment period is allowed as permitted for conventional power. The unutilized energy will get lapsed as in case of conventional power.
- iv. For implementing the above Order TANGEDCO vide order dated 01.09.2012, instructed that if a consumer wheeled energy for adjustment from more than one wind mill, which is commissioned in different dates, the priority for first adjustment shall be given to the wind mill commissioned in later date. The energy generated from the wind mill commissioned in earlier date shall be adjusted in later date.
- v. The Chief Financial Controller of TANGEDCO vide letter dated 14.09.2012 has clarified to the Superintending Engineer, Chennai EDC/Central, Chennai that the wind energy generated by wind mill with banking facility shall be adjusted first and the wind energy generated from wind mills under REC shall be adjusted later.
- vi. The Respondent No 1, the wind generator filed DRP No. 19 of 2013 before the State Commission seeking to set aside above circular dated 14.09.2012 of the Appellant with an alternative prayer for refund of Rs 25,04,461/- being the sum due and payable to it by the Appellant for the units that were treated as sold to TANGEDCO.

- vii. The State Commission by order dated 19.01.2015 allowed the prayer of the Respondent No 1 holding that it has to follow the doctrine of efficacy and give meaning to the contract without adverting to rules and regulations and declared TANGEDCO's letter dated 14.09.2012 as arbitrary and not legally valid.
- viii. Aggrieved by the Impugned Order, the Appellant has preferred the present Appeal.

7. QUESTIONS OF LAW

As per Appellants, the following questions of law arise in the present Appeal;

- a) Whether the State Commission can pass an order specifying mode of adjustment, when there is no such provision in the Wind Energy Regulations?**
- b) Whether the State Commission is required to amend the Regulations relating to procurement of wind energy and related issues?**
- c) Whether the State Electricity Commission is justified in directing adjusting the wind energy from WEG under REC scheme first and then to adjust wind energy from other WEGs?**
- d) Whether the State Commission appreciated the fact that the said adjustment will result in undue benefit to REC wind generators and loss to distribution licensee?**
- e) Whether under the Regulatory regime, private interest could be given preference over public interest under the guise of promoting green energy?**

- f) Whether under the Regulatory regime, cost incurred by the distribution licensee is required to be minimised?**
 - g) Whether the State Commission appreciated the facts of the case in the right perspective?**
8. We have heard at length Mr. G. Umapathy, the learned counsel for the Appellants and Mr. Anand K. Ganesan, the learned counsel for Respondent No. 1 and considered the arguments put forth by the parties and their respective written submissions on various issues identified in the present Appeal. Gist of the same is submitted hereunder.
9. On the specific issues raised in the present Appeal, the learned counsel for the Appellants has made the following submissions for our consideration;
- a) The State Commission without applying the provisions of its own Renewable Purchase Obligation Regulations wrongly held the Appellant's letter dated 14.09.2012 as arbitrary. The State Commission directed the Appellant to first adjust the energy wheeled from REC wind generator of the Respondent No 1 and then adjust the non-REC wind energy generated by the Respondent No.1 to the captive consumer of the Respondent No.1.
 - b) The REC wind generators and Non-REC (Preferential Tariff Category) Wind Generators being two different categories arising out of two different concepts cannot be compared with each other.

A wind generator chooses to come under either of the above two categories depending on the market trend.

- c) The captive wind energy generators under preferential tariff with banking facility bank most of their generation during peak wind season. Their captive consumers consume the banked units throughout the year. The unit to unit adjustment is done from power purchased from exchange in the no-wind season, approximately for eight months in a year. In this process of adjustment, the total loss to the Distribution Licensee in case of non-REC wind generator is Rs. 19.25 per Unit. Revenue earned per unit from the wheeling charges is just Rs 0.07 per unit.
- d) In case of REC Wind generators, the distribution licensee is required to purchase the left over power at the end of the billing cycle [usually a month] @ Rs.2.65/- per unit.
- e) In the above circumstances, adjustment of non-REC wind energy first will discharge the costlier liability of Rs 19.25 per unit in the accounts of the distribution licensee at the earliest point of time reducing the impact on the general tariff it collects from the consumers. On the contrary, adjustment of REC wind energy first will discharge the cheaper liability of Rs.2.65/- per unit in the accounts of the distribution licensee.
- f) The above adjustment of non – REC wind energy is strictly in accordance with the Merit Order Dispatch order of the State Commission in the Tariff Order, which directs the distribution licensee to reduce the burden on the consumers by purchasing cheaper power first. Discharge of costlier liability first and purchase of cheaper power first contribute to reduction in cost of

supply which in turn will reduce the cross subsidy and eventually the general tariff of consumers.

- g) Section 42 of the Electricity Act, 2003 mandates that it shall be the duty of the distribution licensee to develop and maintain an efficient, coordinated and economical distribution system in the area of its supply.
- h) The RPO regulations specifically state that the unutilized REC wind generation will get lapsed. To comply with the provisions of the Regulations, the REC availing wind generator is required to fully utilize the energy generated under the REC category by planning sale of its electricity to third party purchasers or by selling to the Distribution licensee.
- i) The distribution licensee is operating on public money in public interest and the RE generator is on private money operating only for profit.
- j) The unutilized energy/sale to the Appellant with or without captive adjustment is nothing but sale of power to the Appellant.
- k) Until 15.05.2006 the wind energy generation was paid at Rs.2.75 per unit and subsequently after 15.05.2006 as two tariff rates were involved, in the absence of any specific Regulation/Tariff order in the matter, instructions were issued vide circular dated.11.12.2007 that the higher tariff unit have to be adjusted first. For the surplus sale after adjustment, the lower tariff has to be paid the generator at the Generating end based on the principle of Merit order Power Purchase.
- l) Similarly during the subsequent Tariff period similar arrangements for adjustment of higher tariff generation was

followed duly abiding to purchase of the Wind energy/payment towards unutilized towards wind energy at a lower cost.

- m) It is very clear that the Higher cost energy under Preferential tariff [with banking facility] has been adjusted first and balance energy after adjustment which is sold to TANGEDCO is purchased at lower cost keeping in mind the public/general consumers' money.
- n) There is a substantial financial loss to the Appellant if power from REC generators is adjusted first as per the directions of the State Commission in the Impugned Order. Furthermore any change to the priority in the principle of Merit order power purchase will also affect TANGEDCO's finances. This is clearly detrimental to the interest of general consumers.
- o) The adjustment of injected energy has disproportionate wind generation capacity against their captive consumption by virtue of banking facility which is the reason to accumulate in the banking. In fact, while the Wind Energy Generators withdrawing the banked energy; the Appellant is forced to purchase power from the open market at much higher cost or payment has to be made for the unutilized energy at the higher purchase tariff at end of the financial year. Thereby also, the Distribution Licensee is made to suffer financially which deserves the priority of adjustment issued vide its letter 14.09.2012 in order. However, the State Commission had not considered these issues and not even discussed at all in the Impugned Order which resulted in giving the said double benefits to Respondents thereby causing serious prejudice to Government exchequer.

- p) The REC certificate, once issued, shall remain valid for 3 years from the date of issuance, which is more than banking period of wind energy captive generation under preferential tariff. In this connection, it is relevant to state that REC certificates are issued for total adjusted units i.e. the units that were adjusted against captive consumption excluding auxiliary consumption. Such REC certificates are tradable in power exchange between the floor price @ Rs.1.50 and forbearance price @ Rs.3.30. Therefore, instead of banking facility, the wind energy generators under REC scheme have other facility as above. Therefore, the contentions of the State Commission in its Impugned Order that the Appellant shall first adjust the wheeled energy generated from the respondent's WEG under REC scheme which has an adjustment or banking period of one month is not sustainable .
- q) The Impugned Order is contrary to Regulations 75(1) of TNERC (Terms and Conditions for Determination of Tariff) Regulations, 2005 which states as
- "75. Cost of Power Purchase
1. The Distribution Licensee shall procure power on least cost basis and strictly on Merit Order Despatch and shall have flexibility to procure power from any source in the Country".
- r) Even in terms of the order of the TNERC dated 31.03.2016 which has permitted the banking of energy from REC generators and payment of unutilized energy @ 75% of the APPC tariff. If the priority of adjustment based on the principle of Merit Order is not adopted by the Appellant, the very duty of the Distribution licensee to develop and maintain and efficient coordinated and economical

distribution system as per section 42 of the Electricity Act, 2003 will be jeopardized.

- s) During the pendency of the above appeal, the State Commission passed an order dated 31.03.2016 in RA No. 6 of 2013, wherein it has inter-alia allowed the banking facility for a period of 12 months as against one month which was prevailing at the time of passing the Impugned Order. It held inter-alia as under:

“(viii) Encashment of lapsed unit by REC captive users: As per directions of the Hon'ble APTEL one year banking facility benefit applicable to non REC captive users is extended to REC Captive Users as well and the encashment of lapsed unit may be made at 75% of the applicable rate for REC users.”

In the light of the further development viz., the order dated 31.03.2016 passed by the State Commission, keeping both type of WEGs at par with regard to banking facility, the Appellant has to re compute the consequential relief payable to the Respondent and other similarly placed WEGs. However, the adjustment of energy has to be reconsidered by the State Commission in the light of its order dated 31.03.2016 where the shelf period has been kept at par for both REC captive users and non-REC captive users (preferential scheme).

10. The learned counsel for the Respondent No 1 has made following submissions on the issues raised in the Appeal for our consideration;

- a) The State Commission in its Impugned Order has only held that the consumption by the consumer from REC generator should be accounted for first before accounting for the electricity from non-REC generator. This is on account of the fact that for REC generators, the shelf life for electricity banking is only one month whereas for other renewable generators it is one year. In the circumstances, it is only logical that the electricity banked which has a shorter shelf life is first adjusted as against the electricity banked which has a longer shelf life.
- b) Further, the Appellant is the distribution licensee who provides the use of its network (wheeling) for the electricity procured by the Respondent No 1 from open access, after collecting applicable charges as determined by the State Commission. The ownership of the electricity supplied by the REC generator or non-REC generator always remained with the Respondent and hence, the right of adjustment priority also vests with the Respondent.
- c) The real purpose of the methodology followed by the Appellant and the challenge to the Impugned Order by the Appellant is evidently that the Appellant seeks to take advantage of the excess electricity which would lapse, to utilize it for its own purpose and not pay any consideration for the same.
- d) One of the basic objectives of the Electricity Act, 2003 is to provide the freedom of choice to the consumers to procure electricity from a source of its choice. The distribution licensee cannot be permitted to dictate the electricity being procured from third parties or the order of supply being taken by the consumers from various parties including the distribution licensee.

- e) The REC Scheme was first introduced in August 2011. At such point of time, there was no banking available under the REC scheme. In view of the above, in terms of the Agreement signed by the REC generators, the surplus energy supplied from REC machines not consumed by the consumers shall be eligible for payment by the Appellant at Average Pooled Power purchase Cost (APPC) tariff approved by the State Commission. This ensured that the surplus electricity which was actually utilized by the Appellant had some consideration.
- f) In the Wind Tariff order passed by the State Commission on 31.07.2012, it was specifically stated that the power generated from REC generators, one month adjustment period is allowed as permitted for conventional power and any surplus unutilised energy remaining at the end of the month would be treated as lapsed as in the case of conventional power. As after one month the electricity would lapse, the Appellant issued the Circular dated 14.09.2012 which provided that the generation from Non-REC generator be adjusted first and then the generation from REC generators be adjusted. By this, the REC generator was adjusted later and the surplus energy after one month was taken free of cost by the Appellant. Hence the condition of adjustment of REC generator subsequently inserted by the Appellant for the first time vide its circular dated 14.09.2012 was set aside by the State Commission in its Impugned Order.
- g) The Impugned Order was passed as far back as on 19.01.2015. The Appellant has not implemented the direction of the State

Commission and is seeking to take advantage of free electricity which is impermissible.

- h) The Appellant being only the system provider for open access supply cannot dictate the priority list of the open access supplies being taken.
- i) Assuming that the Appellant has the right to prioritise the order of adjustment of energy wheeled from multiple sources, going by the Appellant's own adjustment priority of adjusting conventional power first, the non bankable power generated from REC machine should be adjusted first. By not doing this, the Appellant had discriminated the adjustment methodology within the non bankable power. While the non bankable conventional source of power was given priority over bankable wind power when it came to adjustment, the non bankable power from REC machine alone discriminated by not following the adjustment method as done for conventional power, thus rendering a huge quantum of power generated from REC to be lapsed.
- j) The State Commission has recently by order dated 31.03.2016 permitted the banking of electricity from REC generators on slot to slot basis for the entire year and further held that the surplus electricity shall be compensated at the rate of 75% of the APPC tariff. Even in terms of the order dated 31.03.2016, since the REC generator's power is at a cheaper cost to the Appellant, the adjustment criteria fixed by the Appellant would only result in undue benefit to the Appellant and restricting the freedom of the consumers.

11. After having a careful examination of all the issues brought before us for our consideration, our observations are as follows:-

a) On the first issue for our consideration i.e. **whether the State Commission can pass an order specifying mode of adjustment, when there is no such provision in the Wind Energy Regulations?, we observe as follows;**

i. The Section 86 of the Electricity Act, 2003 specifies the functions of the State Electricity Regulatory Commissions. One of the functions of the State Commission as per Subsection 86 (1) (e) is as follows:-

“promote co-generation and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, a percentage of the total consumption of electricity in the area of a Distribution Licensee;”

Hence State Commissions have been given the responsibility to identify measures to promote generation of electricity from renewable sources of energy and provide suitable measures for grid connectivity of such renewable energy generation sources.

ii. The State Commission vide notification dated 07.12.2010 has notified the Tamil Nadu Electricity Regulatory Commission (Renewable Energy Purchase Obligation) Regulations, 2010, in line with the CERC regulations and “draft model regulations for SERCs” recommended by the Forum of Regulators.

These Regulations also provide that “the certificates issued under the Central Electricity Regulatory Commission (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010 shall be the valid instruments for the discharge of the mandatory obligations set out in these regulations for the obligated entities to purchase electricity from renewable energy sources.”

- iii. As per Regulation 3 of the “Power Procurement from New and Renewable Sources of Energy Regulations” notified by the State Commission, minimum percentage of electricity from new and renewable energy sources to be procured by the Distribution Licensee shall be as stipulated in State Commission’s orders issued from time to time.
- iv. The State Commission has in exercise of the powers conferred by Sections 181, 61 (h) and 86 (1) (e) of the Electricity Act, 2003, read with the National Electricity Policy, the Tariff Policy and the Power Procurement from New and Renewable Energy Sources Regulations, 2008 of the State Commission passed comprehensive tariff order on wind energy on 31.07.2012 which was effective from the 1st August, 2012. In the order with regard to banking facility in respect of Wind Energy Generators availing REC adjustment period of one month was allowed as permitted for the conventional power. The unutilized energy will get lapsed as in case of conventional power.

- v. The Chief Financial Controller, TANGEDCO on 14.09.2012 issued clarification on the implementation order dated 01.09.2012 that the wind energy generated by Wind Mill with banking facility shall be adjusted first and the wind energy generated from Wind Mills under REC shall be adjusted later.
- vi. The Comprehensive Tariff Order on Wind Energy dated 31.07.2012 under Clause 8.8 specifies the mechanism for adjustment of generated energy, which shall be done as per the Commission's open access regulation in force. The Clause 8.8 is reproduced as :
- "8.8 Adjustment of generated energy**
- Section 9(2) of the Electricity Act, 2003 confers on the captive generator the right to open access for the purpose of carrying electricity from the captive plant to the destination of his use.
- Adjustment of generated energy shall be done as per the Commission's open access regulation in force."**
- vii. In the Impugned Order, the State Commission has held the letter issued by CFC TANGEDCO on 14.09.2012 as arbitrary and not legally valid. Further the State Commission in the Impugned Order has observed that it has not issued any specific instruction for fixing the priority of adjustment at the user end for the energy generated from WEGs under REC scheme and WEG's under normal captive / third party scheme. In the absence of expressed law, the best option for the TANGEDCO should have been approaching the State Commission for issuance of such orders. Since such decision

of the TANGEDCO affects the electricity charges to be paid by the consumers/open access consumers, the TANGEDCO's letter dated 14.09.2012 is not legally valid as mandated by Section 45 of the Electricity Act, 2003.

- viii. Regulation 8 of the "Power Procurement from New and Renewable Sources of Energy Regulations 2008" provides for the issues related to captive use and third party sale as:

"8. Issues related to captive use and third party sale

While issuing the general or specific tariff order, the Commission may consider appropriate criteria/procedure/parameters/charges for each type of new and renewable source, on the following issues, for sale of power to distribution licensee, captive use and third party sale of power by the new and renewable source generators,

- 1) Applicable demand charges
- 2) Applicable energy charges
- 3) Grid availability charges
- 4) Scheduling and system operation charges
- 5) Transmission & wheeling charges and line losses
- 6) Reactive power charges
- 7) Adjustment of peak and off peak power
- 8) Power factor incentive / disincentive
- 9) Payment of security deposit by the captive/third party user

- 10) Billing and payment to the generators by distribution licensee
- 11) Applicable open access registration fee and open access agreement fee
- 12) Any other related issues.”

From the above, it becomes clear that while Regulation 8 specifies various aspects of captive use and third party sale, there is no specific mechanism of adjustment priority of REC and Preferential mechanism of Wind Energy. However, the State Commission can address such mode of adjustment matter under category (12) i.e. any other related issues.

- ix. As per the provisions of the Section 61(h) and Section 86(1)(e) of the Act, one of the functions of the State Commission is to provide measures for promotion of renewable energy. Considering the facts specified in the Impugned Order and the provisions of the Act, we are of the considered opinion that the State Commission has rightly held that the communication dated 14.09.2012 issued by CFC, TANGEDCO regarding adjustment priority is not legally valid. Further on the question that whether the State Commission can pass an order specifying the mode of adjustment, we reply in affirmative. The State Commission in its Impugned Order has specified the mode of adjustment which is in line with the Regulation 8 of the “Power Procurement from New and Renewable Sources of Energy Regulations 2008.

- x. Hence this issue is decided against the Appellant.
- b) **On the second issue for our consideration i.e. Whether the State Commission is required to amend the Regulations relating to procurement of wind energy and related issues?, we observe as follows;**
- i. The State Commission in the Impugned Order acknowledged that there is no specific instruction regarding adjustment of energy from Wind Generators under REC and preferential mechanism. The State Commission has further stated that in the absence of expressed law, the Appellant must have approached the State Commission for further orders.
 - ii. We have already held that the Regulation 8 of the “Power Procurement from New and Renewable Sources of Energy Regulations 2008” gives power to the State Commission to decide on the issue of mode of adjustment of wind energy of REC and Preferential mechanism.
 - iii. In view of above, this issue is decided against the Appellant.
- c) **On the third issue for our consideration i.e. Whether the State Electricity Commission is justified in directing adjusting the wind energy from WEG under REC scheme first and then to adjust wind energy from other WEGs?, we observe as follows;**
- i. The State Commission while fixing the priority for adjustment of energy generated by WEGs decided that the Appellant shall first adjust the wheeled energy generated from the WEG

under REC scheme which has an adjustment or banking period of one month and then adjust the energy generated from other captive/third party generators which have a banking period of one year.

- ii. The Wind Tariff order passed by the State Commission on 31.07.2012, specifically states that for the power generated from REC Wind generators, one month adjustment period is allowed as permitted for conventional power and any surplus unutilised energy remaining at the end of the month would be treated as lapsed as in the case of conventional power.
 - iii. Considering the above, we do not find any infirmity in the view taken by State Commission in this regard.
 - iv. In view of above, this issue is decided against the Appellant.
- d) **On the fourth issue for our consideration i.e. Whether the State Commission appreciated the fact that the said adjustment will result in undue benefit to REC wind generators and loss to distribution licensee?, we observe as follows;**

- i. The State Commission while following the doctrine of efficacy to decide on the adjustment priority has referred the judgment of this Tribunal in Appeal No.38 of 2010, and has referred the following observation of the Hon'ble Supreme Court in the matter of Union of India vs D.N.Revri & Company reported in (1976) 4 SCC 147 as hereunder;

“7. It must be remembered that a contract is a commercial document between the parties and it must be interpreted in such a manner as to give efficacy to the contract

rather than to invalidate it. It would not be right while interpreting a contract, entered into between two lay parties, to apply strict rules of construction which are ordinarily applicable to a conveyance and other formal documents. The meaning of such a contract must be gathered by adopting a common sense approach and it must not be allowed to be thwarted by a narrow, pedantic and legalistic interpretation.....”

- ii. While deciding on the issue of priority, we have held our decision in favour of the view taken by the State Commission. Any such adjustment will have a commercial impact. However any party of the contract should not be benefitted with un-due gains. Considering a scenario when this adjustment priority is not available with the REC Wind Generator, then this energy after one month shall be available to the Appellant at free of cost giving un-due benefit to the Appellant.
 - iii. Hence this issue is also decided against the Appellant.
- e) **On the fifth issue for our consideration i.e. Whether under the Regulatory regime, private interest could be given preference over public interest under the guise of promoting green energy?, we observe as follows;**
- i. The State Commissions have the responsibility of providing measures to promote Renewable Sources of Energy under Section 61(h) and 86(1) (e) of the Electricity Act, 2003.
 - ii. The guiding factors for determination of tariff for Appropriate Commission under Section 61 (c) of the Electricity, 2003 Act

are the factors which would encourage competition, efficiency, economical use of the resources, good performance and optimum investments; while factors under Section 61 (d) of the Electricity Act, 2003 are safeguarding of consumers' interest and at the same time, recovery of the cost of electricity in a reasonable manner;

- iii. Provisions of the Act do not discriminate between the Public and the Private interest.
- iv. Considering above, we do not find any merit in the questions raised by the Appellant.
- v. This issue is also decided against the Appellant.

f) **On the sixth issue for our consideration i.e. Whether under the Regulatory regime, cost incurred by the distribution licensee is required to be minimised?, we observe as follows;**

- i. The Regulation 75 (1) of the terms and conditions for determination of tariff regulations, the State Commission provides for cost of power purchase , as follows:

“75. Cost of Power Purchase

(1) The Distribution licensee shall procure power on least cost basis and strictly on merit order despatch and shall have flexibility to procure power from any source in the country.

A two-part tariff structure shall be adopted for all long term contracts to facilitate merit order dispatch.

(2) ..

..

..

(5) In case of power purchased from Captive Generators and other non conventional energy sources, the cost shall be worked out as per the policy approved by the Commission.

...”

Hence the need for optimization of power purchase cost has been established by the State Commission identifying principles and methodologies.

- ii. However considering other provisions of the Act like promotion of New and Renewable energy sources, RPO obligation etc., there will be an additional cost element on the Distribution licensee, which will have to be passed on to the end consumers.
 - iii. Hence in our view under the Regulatory regime, the cost incurred by the distribution licensee is required to be optimized considering various provisions of Act, Applicable Regulations and Regulatory directions.
 - iv. Hence this issue is also decided against the Appellant.
- g) **On the last issue for our consideration i.e. Whether the State Commission appreciated the facts of the case in the right perspective?, we observe as follows;**
- i. The last issue raised now is that whether the State Commission has appreciated the facts of the case in right perspective.
 - ii. After having deliberated all the issues raised above in detail, we find that the State Commission has decided the issues in the Impugned Order in right perspective.
 - iii. Hence this issue is decided against the Appellant.

ORDER

We are of the considered opinion that the issues raised in the present Appeal have no merits and Appeal and I.A. are hereby dismissed.

The Impugned Order dated 19.01.2015 passed by the State Commission is hereby upheld.

No order as to costs.

Pronounced in the Open Court on this **23rd day of September, 2016**

(I.J. Kapoor)
Technical Member

(Mrs. Justice Ranjana P. Desai)
Chairperson

✓
REPORTABLE/~~NON-REPORTABLE~~

mk