



नई दिल्ली
NEW DELHI

याचिका संख्या./ Petition No. 201/MP/2019

कोरम/ Coram:

श्री आई. एस. झा, सदस्य/ Shri I. S. Jha, Member
श्री अरुण गोयल, सदस्य/ Shri Arun Goyal, Member
श्री पी. के. सिंह, सदस्य / Shri P. K. Singh, Member

आदेश दिनांक/ Date of Order: 21st of October, 2022

IN THE MATTER OF:

Petition under Section 79(1)(f) of the Electricity Act, 2003 seeking directions against the respondents for payment of differential tariff for the period from January 2011 to May 2014

AND IN THE MATTER OF:

Weizmann Limited
Empire House,
214, Dr. D. N. Road, ENT. A. K. Nayak Marg,
Fort, Mumbai – 400 001

... Petitioner

Versus

1. **Andhra Pradesh Power Coordination Committee,**
Vidyut Soudha, Khairatabad,
Hyderabad – 500 082.
2. **Telangana State Power Coordination Committee,**
Vidyut Soudha,
Hyderabad – 500 082,
3. **Southern Power Distribution Company of Andhra Pradesh Limited,**
Kesavayanigunta, Tiruchanoor Road,
Tirupati -517 503,

4. **Telangana State Southern Power Distribution Company Limited,**
6-1-50, Mint Compound,
Hyderabad – 500 063

... Respondents

Parties Present: Shri M. G. Ramachandran, Sr. Advocate, WL
Ms. Dipali Sheth, Advocate, WL
Shri Shubham Mehta, Advocate, WL
Shri T. V. Subramanian, WL
Shri Harsha Peechara, Advocate, TSPCC & TSSPDCL

आदेश/ ORDER

The Petitioner, Weizmann Limited, has filed the present Petition seeking payment of differential tariff of Rs. 1.685 per unit for the period from January 2011 to May 2014.

2. The Respondent No. 1, Andhra Pradesh Power Coordination Committee (APPCC) is a committee constituted vide G.O.Ms. No. 59 dated June 07, 2005 to advise the four distribution companies in the State of Andhra Pradesh prior to reorganization under the Andhra Pradesh Reorganization Act, 2014 and continuing its activities in the State of Andhra Pradesh post such reorganization.
3. The Respondent No. 2, Telangana State Power Coordination Committee (TSPCC) is a committee in the State of Telangana, which is responsible for ensuring coordination between the distribution companies in the State of Telangana.
4. The Respondent No. 3, Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL) is a distribution licensee in the State of Andhra Pradesh.
5. The Respondent No. 4, Telangana State Southern Power Distribution Company Limited (TSSPDCL) is a distribution licensee in the State of Telangana and it was formerly known as the Central Power Distribution Company of Andhra Pradesh Limited (APCPDCL) prior to the State reorganization.
6. The Petitioner has made the following prayers:
 - a) *Declare the action of the Respondents in withholding the differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014 payable to the Petitioner in*

pursuance of the Tariff Order, 2014 as arbitrary, illegal and contrary to the terms of the PPAs;

- b) Direct Respondents to pay the differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014;*
- c) Direct the Respondents to pay the short fall amounts along with interest @ 14% p. a from January 2011 to May 2014 till all the payments are made; and*
- d) Pass such other order or orders as this Hon'ble Commission deem fit and proper in the interest of justice.*

Brief Background:

- 7. The Petitioner has submitted as under:
 - a. The Petitioner had developed a 7.5 MW wind power plant in three phases in Ramagiri/ Tallimadugulla, Anantapur district, Andhra Pradesh. The Petitioner entered into a Power Purchase Agreement (PPA) for 3 MW with erstwhile Andhra Pradesh State Electricity Board (APSEB) on 07.09.1995, and it was commissioned on 13.09.1995 (Phase I). Following that, the Petitioner entered into another PPA with APSEB on 29.10.1995 for 3 MW, which was commissioned on 30.09.1996. (Phase II). Furthermore, the Petitioner asserted that there is no PPA in place for the remaining 1.5 MW wind power project, which was completed on 26.09.1998 (Phase III).
 - b. According to Clause 3.2 of the PPAs executed by the Petitioner with APSEB, the tariff was fixed at Rs.2.25 per unit for a period upto the end of one year from the date of commercial operation of the project's last wind mill, subject to annual escalation from the second year as per the formula provided therein.
 - c. Later, in a suo-motu petition bearing O.P. No.1075 of 2000, Andhra Pradesh Electricity Regulatory Commission (APERC/State Commission) issued an Order dated 20.06.2001 directing that generators of non-conventional energy, supply power generated to APTRANSCO / DISCOMS of Andhra Pradesh only. As a result, the Petitioner only supplied power to the State utilities.
 - d. APERC had also initiated suo-motu proceedings to determine the tariff applicable to non-conventional energy projects in Andhra Pradesh vide R.P. No. 84 of 2003 in O.P No.

1075 of 2000, and had fixed the tariff for wind power projects at Rs.3.37 per unit vide order dated 20.03.2004 (Tariff Order, 2004).

- e. The Andhra Pradesh government promulgated the Andhra Pradesh Electricity Reforms Act, 1998, and the former APSEB was unbundled into one generating company (APGENCO), one transmission company (APTRANSCO), and four distribution companies (APDISCOMs). From February 1999 to June 2005, APTRANSCO continued to be the only buyer in the State, buying power from different generators and selling it to DISCOMs in accordance with the terms and conditions of each PPA at bulk supply tariff rates.
- f. On 2006, Government of Andhra Pradesh notified the transfer of Bulk Supply Undertaking and PPAs from APTRANSCO to the four DISCOMs in the State of Andhra Pradesh with effect from 09.06.2005 vide G.O. Ms No. 58, Energy (Power-III).
- g. On 12.09.2005, APPCC intimated the Petitioner that the Petitioner's PPAs with APTRANSCO stand transferred to and vested in APCPDCL.
- h. Following this, APCPDCL filed several petitions before APERC in 2006, bearing O.P. Nos. 14 to 18 of 2006, for determination of tariff that will take effect after ten (10) years from the date of commissioning of the Respondent's projects. The Petitioner was made a Respondent in O.P. No. 17 of 2006 filed by APCPDCL under Sections 62 and 94(2) of the Electricity Act, 2003 (EA, 2003) for tariff determination, in which it was contended that the Petitioner had completed ten (10) years of operation in the matter of one of the PPAs by 30.08.2005, and thus APCPDCL proposed to fix tariff at Rs.1.43 per unit.
- i. The monthly power purchase invoices submitted by the Petitioner until December 2010 were paid by APCPDCL at the full tariff rate of Rs. 3.37 per unit for all phases, two of which had PPAs and one of which did not. For effecting payment, the quantum of power supplied is to be known and the same is certified by the concerned officer of the State utility in the form of issuance of Joint Meter Reading Report and tariff is fixed by APERC. However, from January, 2011 there was considerable delay in the payments.
- j. As certain amounts were credited to the Petitioner on 13.07.2011 and 01.08.2011 without providing details of payment, the Petitioner vide its letter dated 13.09.2011 requested APPCC to provide the breakup of the payments and to expedite remittance of the outstanding payment.
- k. On 31.12.2011, the Petitioner informed Director Finance of APCPDCL regarding the communication from APCPDCL officials regarding short payments due to deduction of

SLDC charges and that only 50% of the tariff amount (i.e. Rs.1.69 per unit) was being released due to the pending petitions before APERC seeking review of the tariff rate. Since the petitioner was supplying power only to APCPDCL, SLDC charges are not applicable to it. Furthermore, because the Tariff Order, 2004, is still in effect, payments should not be withheld solely because proceedings are pending before APERC.

- l. Due to Petitioner's constant follow-ups, APCPDCL decided to pay the monthly bills on an ad hoc basis, i.e. at 50% of the tariff of Rs.3.37 per unit as determined by APERC in its Tariff Order 2004 on the grounds that the petition for revision was pending before APERC, and informed the Petitioner of this decision. It is pertinent to mention here that in the absence of APERC, no party can unilaterally reduce tariff simply because a petition for tariff revision is pending, and that such unilateral action violates the terms of the PPAs.
- m. On 16.11.2012, APERC vide its interim order in I.A. No. 8 of 2006 in O.P. No. 17 of 2006 (Interim Order), directed APCPDCL to pay Rs.1.69 per unit for power supplied by the Petitioner beyond the tenth year, pending determination of the final tariff applicable beyond the tenth year.
- n. Following this, IL&FS Wind Farms Limited and Nile Limited, who were respondents in the group of petitions with O.P. Nos. 14 to 18 of 2006 filed by APCPDCL for determination of tariff post completion of ten (10) years from date of commissioning of the projects, appealed to the Appellate Tribunal for Electricity (APTEL) against such determination of interim tariff without concluding the petitions in full.
- o. In its order dated 12.08.2013, APTEL set aside similar interim orders passed by APERC in which a tariff of Rs.1.69 per unit was fixed for power supplied by IL&FS Wind Farms Limited and Nile Limited. Since, O.P. No. 17 of 2006 was still pending before the State Commission, the Petitioner had not moved the APTEL against the Interim Order.
- p. On 02.06.2014, the Government of India enacted the Andhra Pradesh Reorganization Act, 2014 (Act) in 2014, creating two new States of Andhra Pradesh and Telangana. Following the formation of the State of Telangana, APCPDCL was renamed TSSPDCL. TSSPDCL's operational area was reduced to 5 (five) districts of the former State of Andhra Pradesh, with the districts of Kurnool and Anantapur remaining in the current State of Andhra Pradesh. As the Petitioner's power plants were in the district of Anantapur, they were under the jurisdiction of APSPDCL.

- q. Vide its order dated 06.09.2014 in O.P. Nos. 14 to 18 of 2006 (Tariff Order, 2014), APERC decided that the current single tariff of Rs. 3.37 per unit should remain in effect until the expiration of PPAs.
- r. On 25.09.2014, the Petitioner wrote to APTRANSCO requesting an urgent release of the balance amount of Rs.1.685 per unit and instructions to the relevant officials to complete the process of signing the PPA for Phase III of the project. All invoices dating back to January 2011 were submitted to APTRANSCO with a covering letter dated 09.10.2014. The Petitioner also informed that there was discrimination in payment release, wherein other wind farm developers, such as Nile Limited and IL&FS, who had approached the APTEL, were being paid Rs.3.37 per unit.
- s. On 29.10.2014, APPCC, forwarded to TSPCC, the invoices submitted by the Petitioner because the Petitioner's relevant records are with TSPCC and the said arrears must be paid by TSSPDCL. Regarding the implementation of Tariff Order, 2014, APPCC stated in an internal letter dated 22.01.2015 that because the power supplied prior to 02.06.2014 was consumed by TSSPDCL, TSSPDCL is obligated to pay the arrears.
- t. On 27.02.2015, TSPCC informed APPCC that because the Petitioner company's assets, are located in the State of Andhra Pradesh, the liability, if any, has to be discharged by APPCC and the invoices of the Petitioner company were returned to APPCC.
- u. On 27.03.2015, the Petitioner drew TSPCC's attention to notifications bearing Nos. G.O.Ms. 20 of 08.05.2014 and G.O.Ms. 24 of 29.05.2014, which were issued in the context of the State of Andhra Pradesh's impending bifurcation and the Twelfth Schedule of the Act. The Notifications, along with the Twelfth Schedule, State unequivocally that the districts of Ananthapur and Kurnool, which were previously under the jurisdiction of APCPDCL, will now be reassigned to APSPDCL, and power allocation between the States of Andhra Pradesh and Telangana will be based on the actual energy consumption of the relevant DISCOMS in the respective successor State over the last 5 (five) years. Furthermore, the Notifications stated that the average consumption of power in the Ananthapur and Kurnool districts over the last 5 (five) years was 17.45% of the APCPDCL share of power.
- v. On 15.04.2015, TSPCC reiterated, in letter No. Dy.CCA/TSPCC/F.NO./D.NO.24/2015 that the liability for the differential tariff belongs to APSPDCL. Furthermore, in a letter dated 22.04.2015, addressed to TSPCC, the Petitioner submitted that APSPDCL is responsible for 17.45% of the payment, while TSSPDCL is responsible for 82.55%. On

24.04.2015, APPCC informed TSPCC that Section 53(1) of the Act shall not be applicable in the present situation and relying on G.O.M. 58 of 07.06.2005, G.O.M. 53 of 28.04.2008, and G.O.M. 29.05.2014, that amounts due to non-conventional energy projects prior to the appointed date of State bifurcation i.e. 02.06.2014, are payable by TSSPDCL (formerly APCPDCL).

- w. On 06.05.2015 and 11.05.2015, the Petitioner requested Transmission Corporation of Telangana Limited (TSTRANSCO) for release of the remaining 50% of dues, i.e. Rs.1.685 per unit, for the period from April, 2011 to May, 2014. On 11.06.2015, TSPCC informed TSSPDCL about the Petitioner's contentions, particularly seeking payment at 82.55% of 50% of the differential payment pending for the period from January 2011 to May 2014.
- x. The Petitioner consistently followed up with APPCC and TSPCC vide letters dated 18.09.2015, 19.09.2015, and 22.09.2015, regarding the release of payment of their share of the differential tariff. Following that, APPCC finally admitted its share of liability of 17.45% in its letter No. GM/APPCC/SAO/PP&S/D.No.636/15 dated 26.11.2015, subject to TSPCC committing to its share of 82.55%. On 30.11.2015, the Petitioner requested TSPCC that it may commit to its liability of 82.55% in order to resolve the issue.
- y. APPCC did not release the payments, forcing the Petitioner to file a petition with APERC, bearing O. P. (SR) No. 31 of 2016, seeking payment of the differential tariff as well as interest at 14% p.a., as stipulated in Clause 4.4.3 of the PPAs. However, the Petitioner's Petition was rejected by APERC in an order dated 18.02.2017 on the grounds that, due to the formation of the Telangana State Electricity Regulatory Commission (TSERC), APERC lacks jurisdiction to adjudicate any dispute between the Petitioner, TSPCC, and TSSPDCL.
- z. The Petitioner challenged the Order in Writ Petition No. 14033 of 2017 before the Hon'ble High Court of Hyderabad, seeking a writ of mandamus declaring that APERC has jurisdiction to adjudicate on the issue raised by the Petitioner in O.P. (SR) No. 31 of 2016. The Hon'ble High Court of Hyderabad dismissed the Writ Petition in its order dated 31.12.2018 on the grounds that when a payment direction is to be issued to two distribution companies, one in Telangana and the other in Andhra Pradesh, such direction can only be issued by this Commission.
- aa. The Hon'ble High Court's Order dated 31.12.2018 was a combined order in several Writ Petitions involving the issue of jurisdiction of APERC, TSERC, and this Commission

due to the State of Andhra Pradesh's bifurcation. Some of the Petitioners in W.P. Nos.15848 of 2015, 7965 of 2016, and 35039 of 2016 filed Special Leave Petitions (SLPs) bearing Nos. 8016-8018 of 2019. The Supreme Court, in an order dated 08.04.2019, directed that the parties maintain status quo. The SLPs are still pending before the Hon'ble Supreme Court.

- bb. The Petitioner claims that it has met its obligations. However, despite consistent follow-up, APSPDCL and TSSPDCL are depriving the Petitioner of its rightful dues by attempting to shift liability onto one another.
- cc. The Petitioner further contends that APCPDCL, the state utility of the State of Andhra Pradesh prior to bifurcation, used the power supplied by the Petitioner and even paid 50% of the power tariff, i.e. Rs.1.685 per unit, for the period from January, 2011 to May, 2014 for all three phases aggregating to 7.5 MW, and that it cannot now be deprived of its rightful dues of the balance 50% of the tariff merely on technical grounds that the power plant of the Petitioner is located in the State of Andhra Pradesh whereas the utility which used the power prior to the bifurcation is now within the State of Telangana.
- dd. The Respondents have failed to recognize that G.O.Ms.No.20 dated May 08, 2014 clearly states that the average consumption over the last 5 years in Ananthapur and Kurnool districts is 17.45% of APCPDCL's share of power, and thus a proportionate amount of power should be transferred from APCPDCL to APSPDCL. As a result of the bifurcation, the liability of the state of Telangana is 82.55%, while the liability of the state of Andhra Pradesh is 17.45%.
- ee. The erstwhile APCPDCL (now TSSPDCL) ignored the order dated 12.08.2013 passed by APTEL in the matter of IL&FS Wind Farms Limited vs. APERC & Ors and Nile Limited vs. APERC & Ors. bearing Appeal Nos. 31 of 2013 and 8 of 2013, respectively, wherein the APTEL set aside interim orders passed by the APERC whereby the APERC had decided the ad hoc rate of Rs.1.69 per unit for power supplied by the Appellants therein to APCPDCL beyond 10th year, pending fixation of the final tariff applicable beyond 10th year. APTEL also held that until the determination of the tariff effective from 11th year of operation of wind energy plants the distribution licensees have to pay the generators at the rate of Rs.3.37 per unit.
- ff. In the present case, the former APCPDCL (now TSSPDCL) began paying the Petitioner an ad hoc amount of Rs.1.69 per unit even before the Interim Order was issued. Furthermore, even after the APERC issued the Tariff Order in 2014, establishing a rate

of Rs.3.37 per unit, the former APCPDCL (now TSSPDCL) did not pay the outstanding 50% of the tariff. Despite the Petitioner's persistent follow-up, the remaining 50% of the tariff is still due and pending. The Petitioner is approaching this Commission against these outstanding dues which have been inordinately delayed.

Hearing dated 27.08.2019:

8. The case was called out for virtual hearing where the Learned counsel for the Petitioner submitted that the present Petition has been filed for direction to the Respondents to pay the differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014 payable to the Petitioner in pursuance of the Tariff Order, 2014 issued by the APERC along with interest @ 14% p.a till all the payments are made. Subsequently, this Commission admitted the Petition and issued notice to the Respondents. The Petitioner was directed to serve copy of the Petition on the Respondents immediately, if not served already. The Respondents were directed to file their replies by 20.09.2019 with an advance copy to the Petitioner who may file its rejoinder, if any, by 04.10.2019.

Reply on behalf of APPCC:

9. APPCC has filed its reply on 11.02.2020 in which it has submitted as under:
 - a. The petition is barred by limitation since it pertains to the period from January 2011 to May 2014 in a petition filed on 04.07.2019. APPCC submitted that the Petitioner cannot make a belated claim from the answering respondent after five years.
 - b. As a result of the splitting of Andhra Pradesh State on June 2, 2014, the districts of Ananthapur and Kurnool were amalgamated into the APSPDCL from the former APCPDCL (now TSSPDCL), and the Wind Power Project was placed under the control of the APSPDCL. In the case of the respondent, the obligation to pay arises only from June 2, 2014.
 - c. The Petitioner at Ananthapur District had PPA with APTRANSCO. Subsequently, the same were entrusted to the then Central Power Distribution Company Limited of Andhra Pradesh and was delivering the energy to APCPDCL (Now TSSPDCL). In the undivided AP State, there were 4 DISCOMS engaged in Distribution Business, viz.:

DISCOM	% of Share in AP state	Revised % of share in New AP	Remarks
APCPDCL	46.06%	Now in Telangana with title as TSSPDCL after bifurcation. TWO Districts were detached and entrusted to APSPDCL	
APNPDCL	15.87%	As it is taken by Telangana state and with Title TSNPDCL	
APSPDCL	22.27%	30.31%	Continuing with new AP state with same title (**)
APEPDCL	15.80%	15.80%	Continuing with new AP state with same title

(**) % of share increased for APSPDCL due to merging of two Districts Kurnool & Ananthapur having business of 17.45% of business in entire APCPDCL business, which worked out to overall % of 8.037% in entire undivided state

- d. The Petitioner's wind farm is in the district of Ananthapur in Andhra Pradesh and APCPDCL was the agreement holder at the time, since Ananthapur District fell under APCPDCL's territorial jurisdiction. Later, when the newly bifurcated State of Andhra Pradesh was formed, two districts, Kurnool and Ananthapur, were separated from APCPDCL and retained in New Andhra Pradesh, as the APCPDCL Company was taken over by Telangana State. As a result, these two districts were merged into APSPDCL.
- e. In the facts and circumstances stated above, there is no liability on the answering respondent to make any payment to the petitioner since the claim is time barred as per Supreme Court finding dated 16.10.2015 in C.A. No. 6036 of 2012 which held that:
- “Hence we hold that a claim coming before the Commission cannot be entertained or allowed if it is barred by limitation prescribed for an ordinary suit before the civil court.”*
- f. The present petition be dismissed with cost.

Reply on behalf of Respondent Nos. 2 (TPSCC) and 4 (TSSPDCL):

10. The Respondents No.2 and 4 have filed their reply on 20.06.2020 in which they have submitted as under:
- a. The interpretation of Section 53(1) of the Andhra Pradesh Reorganization Act, clearly establishes the liability towards the Petitioner, based on the location of the plant is on the residual State of Andhra Pradesh. The power generated from these units are exclusively utilized in the districts which are located in the residual State of Andhra Pradesh and further it is explicitly stated in the Act that where the operation of such undertaking become interstate by virtue of provisions of part 2, the assets and liabilities of the

operational units shall be apportioned between the two successor States on location basis. Further in the instant case the power generated out of this plant is not shared with Telangana Distribution companies. Therefore the liability is identifiable with the residual state of Andhra Pradesh after transferring Ananthapur and Kurnool to APSPDCL.

- b. On referring to the 2nd request of the Petitioner, it is explicitly stated that the liability, if any, has to be discharged by APPCC/APSPDCL since the liability and assets of the amount receivable from the consumers of a circle would also be attributable to APSPDCL, since Ananthapur also comes under APSPDCL.
- c. Section 53(1) of the AP Reorganization Act and the general principle of law provides that liability of due payments arises to successive entities, regardless of where they are located. It is therefore proposed that, in light of the regulatory mechanism of recovering the differential power purchase cost over the approved price of the previous years for the station located in the geographical area, utilities filed the same before the State ERCs for PP cost true up. It is claimed that because the plant is in Andhra Pradesh, the differential cost should be paid by Anantapur and Kurnool consumers.
- d. Additionally, all the liabilities arising out of the orders of courts/quasi-judicial authorities, are liabilities of the succeeding company i.e. APSPDCL, since Section 53(1) of the A.P. Reorganization Act categorically reiterates that the operational units of the undertaking shall be apportioned between the two successor states on location basis and Section 53(2) envisages that the apportionment of the assets and liabilities shall be transferred in physical form on mutual agreement or by making payment or adjustment through any other mode as may be agreed to by the Successor State. Pertinently, the Power generated by the Petitioner is supplied only to APSPDCL, even though the PPA is with TSSPDCL. Therefore, the payment liability to the Petitioner solely rests on the APSPDCL only.
- e. While the matter was pending before various jurisdictions, the Respondents felt that there was no need to make any provision for the liability that may not be materializing in the court of law, since the rate fixed by APERC was considered to be reasonable. Therefore, it is submitted that the Distribution Companies did not make any provision for any liability in their books of account in respect of the present claims of the Petitioner.
- f. After demerger of Ananthapur and Kurnool, TSSPDCL has neither any financial interest nor is obtaining any benefit under the provisions of the PPA. Therefore, TSSPDCL distinctly should not be a party of the present litigation proceedings.

- g. G.O.M.S. No. 20, dated 08.05.2014 wherein the ratio allocated to TSSPDCL after demerging of Ananthapur and Kurnool to the residual state of Andhra Pradesh is for the plants/generation stations connected at 132 KV or power allocated from Central Generating Stations.
- h. The plants located in the geographical area of Ananthapur and Kurnool, connected to 66 or 33 KV are totally allocated to Ananthapur and Kurnool and PPAs are transferred to APSPDCL in the Third transfer Scheme and after bifurcation of the State.
- i. Under the general law that, if the plants are specifically located in APSPDCL, the liability for the previous years where liability is not provided, but arisen now is the sole liability of APSPDCL, i.e. liabilities arisen pertaining to prior to merger which is not provided in books of accounts or liabilities arisen after merger is the liability of the succeeding company, the doctrine of inheritance of liability or benefits after the transfer of PPA.
- j. The present dispute with regard to the claim for which there is no liability outstanding payable to the Petitioner that has arisen after transfer of PPA to APSPDCL, the liability solely rests on APSPDCL.

Rejoinder to APPCC's reply:

11. The Petitioner has filed the Rejoinder to APPCC's reply, on 18.02.2020. The Petitioner has submitted as under:
- a. while the claim is for payment of differential tariff from January, 2011 to May, 2014, there have been several intervening events since the time APCPDCL, now known as TSSPDCL, began withholding payments against the power supplied to it by the Petitioner till the date of filing of the present petition before Tribunal on July 09, 2019. It ensures that the Petitioners' claim is well within the limitation period. Furthermore, the judgement of the Hon'ble Supreme Court dated October 16, 2015 in C.A. No. 6036 of 2012 relied on by the APPCC does not support their contention; rather, it states that the APPCC's appeal was dismissed, which challenged the Order of the APTEL dated 02.07.2017 wherein it was held that the claim is not barred by limitation of the Appellant in Appeal No. 128 of 2011 under Section 14 of the Limitation Act.
 - b. During the time the Interim Order was in effect, from 16.11.2012 to 05.09.2014, the Petitioner could not file a motion in any court seeking payment of pending dues. The cause of action was revived only after the passing of the Tariff Order in 2014. It is further argued that when the APPCC admitted its share of liability to be 17.45% of the

pending dues in a letter dated November 26, 2015 (annexed to the Petition at page No.113), such a written acknowledgment begins a new period of limitation to be computed from that date forward in accordance with Section 18 of the Limitation Act, 1963.

- c. The Petitioner filed a petition before the APERC for assessing the claims well within the limitation period and the APERC ruled in its order dated 18.02.2017 that it had no jurisdiction to assess the Petitioner's claim. Despite the fact that the aforementioned Order of the APERC was challenged before the Hon'ble High Court on 18.04.2017, the Hon'ble High Court directed the Petitioner to approach this Commission. It is argued that the time spent in good faith by the Petitioner litigating on the same issue before the APERC and the Hon'ble High Court is excluded from the limitation period under Section 14.
- d. Prior to bifurcation, APCPDCL, the state utility of the State of Andhra Pradesh used the power supplied by the Petitioner and even paid 50% of the power tariff, i.e. Rs.1.685 per unit, for all three phases of the Petitioner's power plants totaling 7.5 MW from January, 2011 to May, 2014. Even after bifurcation, the state of Telangana's liability is 82.55%, while the State of Andhra Pradesh's liability (i.e. of APSPDCL) is 17.45%. APPCC was established by G.O.Ms. No. 59 dated June 07, 2005 to advise and coordinate the distribution companies of erstwhile Andhra Pradesh and is still operating in the current State of Andhra Pradesh following such reorganization. Hence, APPCC is jointly and severally liable for the dues payable by APSPDCL.
- e. The obligation to pay APPCC in addition to APSPDCL arises only on 02.06.2014. It is submitted that the APPCC is feigning ignorance of the intent behind notifications bearing Nos. G.O.Ms. 20 of 08.05.2014 and G.O.Ms. 24 of 29.05.2014, which were issued in the context of the impending bifurcation of the State of Andhra Pradesh, read in conjunction with the Twelfth Schedule of the Andhra Pradesh Reorganization Act, 2014.
- f. APSPDCL is obligated to pay 17.45% of the outstanding dues for power consumed by the Kurnool and Ananthapur districts prior to bifurcation. It is argued that the Petitioner cannot be denied its rightful dues of the remaining 50% of the tariff on technical grounds because the Petitioner's power plant is in the State of Andhra Pradesh, whereas the utility that used the power prior to the bifurcation is now in the State of Telangana.

Rejoinder on behalf of the Petitioner to the reply of Respondent Nos. 2 and 4:

12. In response to the contention of Respondent No.2 and 4 regarding the distribution of liabilities under PPAs after the bifurcation of the State, the Petitioner has filed its reply on 24.06.2020 and has submitted as under:
- a. Subsequent to the bifurcation of the erstwhile State of Andhra Pradesh, the Wind Power Plant comes within the jurisdiction of Southern Power Distribution Company of Andhra Pradesh (APSPDCL) and is presently connected to the grid of APSPDCL. However, the present Petition is for dues pending for a period prior to the bifurcation of the State of Andhra Pradesh when the Wind Power Plant was within the jurisdiction of APCPDCL i.e. the present TSSPDCL/Respondent No.4.
 - b. The Respondents have wrongly interpreted the aforesaid sections of the Act along with G.O.Ms. 20 dated 08.05.2014 (G.O.Ms. 20). The Twelfth Schedule of the Act unambiguously provides that with respect to power, the allocation between the states of Andhra Pradesh and Telangana would be based on the actual energy consumption of the last 5 (five) years of the relevant DISCOMS in the respective states. Further, G.O.Ms. 20 clarified that the average consumption of power over the last 5 (five) years in respect of Ananthapur and Kurnool districts has been 17.45% of the APCPDCL share of power.
 - c. Additionally, G.O.Ms. No.24 dated 29.05.2014 (G.O.Ms. No. 24) issued by the Energy Department, dealing with the transfer of Ananthapur and Kurnool districts from APCPDCL to APSPDCL unambiguously laid down that amounts pertaining to the period prior to the bifurcation shall be paid by APCPDCL i.e. the present day TSSPDCL/Respondent No.4.
 - d. The submissions made by Respondent Nos. 2 and 4 that the power generated by the Wind Power Plant is not shared with the Distribution companies in Telangana and is exclusively utilized in the districts which are located in the residual State of Andhra Pradesh holds true for the scenario post bifurcation which is not subject matter of the present petition. However, prior to the bifurcation, the power generated by the Petitioner's Wind Power Plant was undisputedly supplied to APCPDCL, the State utility of the erstwhile state of Andhra Pradesh and APCPDCL has even paid 50% of the power tariff i.e. Rs.1.685 per unit for the period from January, 2011 to May, 2014 for all the three phases of the Petitioners' Power Plant aggregating to 7.5 MW.

- e. The bills for energy supplied during the period from January 2011 to May 2014 were raised on Respondent No. 1 who in turn allocated the units to different Distribution companies . The Twelfth Schedule of the Act read with G.O.Ms. 20 and G.O.Ms. No. 24 makes it clear that after bifurcation the liability of the state of Telangana (i.e. of erstwhile APCPDCL and which has now been renamed as TSSPDCL) translates to 82.55% whereas the liability of the state of Andhra Pradesh (i.e. of APSPDCL) is 17.45%
- f. The consumption of energy supplied by it during the period from January, 2011 to May, 2014 was not restricted only to the consumers in Anantapur and Kurnool. It is indisputable that APCPDCL (i.e. TSSPDCL/ the present Respondent No.4) received the power during the period from January, 2011 to May, 2014 and has also admittedly paid 50% of the charges for the said period. However, for the period from January 2011 APCPDCL (i.e. TSSPDCL/ the present Respondent No.4) suo moto paid only 50% of the tariff amount (i.e. Rs.1.69 per unit) citing the pendency of the petitions bearing O.P. Nos. 14 to 18 of 2006 before APERC for determination of tariff that will take effect on completion of ten (10) years from the date of commissioning of the projects of the Respondents therein. The Petitioner herein was the respondent in O.P. No. 17 of 2006 filed by APCPDCL (i.e. TSSPDCL/ the present Respondent No.4).
- g. Until the passing of an order in the aforementioned petitions, APCPDCL (i.e. TSSPDCL/ the present Respondent No.4) had no right to withhold payments due to the Petitioner herein. It was only vide interim order dated 16.11.2012 in I.A. No. 8 of 2006 in O.P. No. 17 of 2006 that APERC directed APCPDCL to pay Rs.1.69 per unit for the power supplied to it by the Petitioner, beyond 10th year, pending fixation of final tariff applicable beyond 10th year.
- h. However, since the bifurcation occurred shortly before the Tariff Order, 2014, Respondents Nos. 2 and 4 are using it as a cover to refuse to release the Petitioner's rightful dues. The Petitioner claims that after the bifurcation, the distribution business of the two districts of Ananthapur and Kurnool was assigned to APSPDCL. However, the remaining districts that used the power supplied by the Petitioner to APCPDCL (i.e. TSSPDCL/the current Respondent No.4) from January 2011 to May 2014 are still with TSSPDCL (i.e. Respondent No.4). The Twelfth Schedule of the Act, read with G.O.Ms., establishes unequivocally that the average consumption of power in the Ananthapur and Kurnool districts prior to bifurcation was 17.45% of the APCPDCL

(i.e. TSSPDCL/ the present Respondent No.4) share of power. Thus, the remaining 82.55% was consumed by districts that are still under TSSPDCL's jurisdiction (i.e. Respondent No.4).

- i. The PPAs were transferred to APSPDCL following the bifurcation of the state of Andhra Pradesh on 02.06.2014. In addition, the Petitioner argues that for the period beginning in June 2014, Respondents Nos. 1 and 3 were also required to pay 100 % of the tariff, and that the Petitioner has been receiving this amount from them.
- j. The current Petition is only about payments made from January 2011 to May 2014, when the PPAs were undeniably vested in APCPDCL (i.e. TSSPDCL/the present Respondent No.4). As a result, it is incorrect for Respondents 2 and 4 to state that the payment liability to the Petitioner is solely on APSPDCL (i.e. Respondent No. 3).

Hearing dated 28.06.2022:

13. The matter was called out for virtual hearing, and during the course of hearing, learned senior counsel for the Petitioner circulated a note of arguments and made detailed submissions in the matter. Learned counsel for the Respondents 2 & 4 submitted that he has been discharged from the present matter and has been instructed to seek a week's time for the Respondents to engage another counsel in the matter. None was present on behalf of the other Respondents. In view of the fact that the matter has been pending since long and the pleadings have already completed, the Commission permitted the Respondents to file their written submissions in the matter, if any, within two weeks. The Petitioner was also allowed to upload its note of arguments within a week. Subject to the above, the Commission reserved the matter for order.

Note of submissions filed by Petitioner:

14. The Petitioner submitted a 'note of submissions' which was relied upon during the hearing dated 28.06.2022, reiterating the factual background of the case and the relief sought for by the Petitioner viz. the payment of amount due to it by the Respondents.

Analysis and decision:

15. We have heard the learned counsels for the Petitioner and the Respondents and have carefully perused the records.

16. Before going into merit of the case, we think it appropriate to first deal with the preliminary objections raised by the Respondents. APPCC has submitted that the present petition is barred by limitation.

17. We observe that relevant Sections of the Limitation Act, 1963 stipulates as under:

“14 Exclusion of time of proceeding bona fide in court without jurisdiction. —
(1) *In computing the period of limitation for any suit the time during which the plaintiff has been prosecuting with due diligence another civil proceeding, whether in a court of first instance or of appeal or revision, against the defendant shall be excluded, where the proceeding relates to the same matter in issue and is prosecuted in good faith in a court which, from defect of jurisdiction or other cause of a like nature, is unable to entertain it.*
...”

“18. Effect of acknowledgment in writing.—
(1) *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.*
.....”

18. APERC vide order dated 06.09.2014 in O.P. Nos. 14 to 18 of 2006, *inter-alia*, held as under:

*“.....the Commission has determined that present single tariff of **Rs.3.37 per unit should be continued for all these projects till the expiry of the respective PPAs. This would be a single part tariff and subject to the same terms and conditions as indicated in the Commission’s order of 2004 and 2009 and inclusive of all tax.**”*

19. Letter No. GM/APPCC/SAO/PP&S/D.No.636/15 dated 26.11.2015 from APPCC to the Petitioner *inter-alia* states as under:

“In the reference 1st & 3rd cited, M/s. Weizmann Ltd., has requested to pay the differential tariff arrears payable on account of change in tariff to Rs. 3.37 fixed by Hon’ble APERC.

In this regard it is to inform that since the G.O.MS. 24 governs only the admitted liabilities. APPCC decided to pay arrears only i.e., from 02.06.14 to 24.09.14, Further it is requested to claim the balance arrears from TSPCC/ TSSPDCL for the period from 24.01.11 to 01.06.14 since it has received the power from your power plant.

After admitting the arrears payable by TSSPDCL/TSPCC, APPCC will release its share of 17.45% of the liability i.e., proportionate share towards the area of Ananthapur & Kurnool Districts in the area of the then APCPDCL.”

20. From the above, we observe that a fresh period for computation of limitation starts from the time when there is an acknowledgment by the party against whom such liability is claimed. Further, time during which the Petitioner has been prosecuting with due diligence another civil proceeding relating to same matter is also excluded in computation of limitation. In the instant case we observe that APERC vide its order dated 06.09.2014 in O.P. Nos. 14 to 18 of 2006, held that the current single tariff of Rs. 3.37 per unit will remain in effect until the expiration of PPAs (including Petitioners PPAs). Therefore, the new cause of action arose on 06.09.2014. Further, APPCC vide its letter dated 26.11.2015 admitted its share of liability to be 17.45% of the pending dues. Hence, the fresh period for computation of limitation starts from 26.11.2015 i.e. the time when APPCC admitted its liability in writing. Further, as the Respondents failed to make payments for the invoices, on 13.10.2016, the Petitioner filed a petition being O.P. (SR) No. 31 of 2016 before the APERC for assessing the claims. APERC vide its order dated 18.02.2017 ruled that it had no jurisdiction to assess the Petitioner's claim. Subsequently, the Petitioner preferred to challenge the aforesaid Order of APERC before the Hon'ble High Court of Andhra Pradesh and filed the Writ Petition 14033 of 2017 on 18.04.2017. The Hon'ble High Court vide Order dated 31.12.2018 dismissed the Writ Petition on the ground that when direction to make payment is to be issued to two distribution companies, one located in Telangana and another located in Andhra Pradesh, such direction can be issued only by the Commission. We are of the view that if the time spent by the Petitioner in litigation before APERC and the Hon'ble High Court of Andhra Pradesh is excluded from the computation of the limitation period then the present Petition is squarely within the limitation period and is not barred by limitation. Therefore, the claim of APPCC that the Petition is time-barred is rejected.
21. The main issues that arise for consideration before the Commission in the present matter are as under:

Issue No.1: *Whether the action of the Respondents in withholding the differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014 payable to the Petitioner in pursuance of the Tariff Order, 2014 contrary to the terms of the PPAs?*

Issue No. 2: Whether Respondents should be directed to pay the differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014?

Issue No. 3: Whether the Respondents should be directed to pay the short fall amounts along with interest @ 14% p. a from January 2011 to May 2014 till all the payments are made?

22. We now take issues one by one for discussion.

Issue No.1: Whether the action of the Respondents in withholding the differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014 payable to the Petitioner in pursuance of the Tariff Order, 2014 contrary to the terms of the PPAs?

AND

Issue No. 2: Whether Respondents should be directed to pay the differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014?

AND

Issue No. 3: Whether the Respondents should be directed to pay the short fall amounts along with interest @ 14% p. a from January 2011 to May 2014 till all the payments are made?

23. Since Issue No. 1, Issue No. 2 and Issue No. 3 are juxtaposed, hence are taken together for discussion. The Petitioner has submitted that the Respondents are withholding the differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014 payable to the Petitioner and they should be directed to pay the same. **Per contra**, APPCC has submitted that as a result of the splitting of Andhra Pradesh State on 02.06.2014, the districts of Ananthapur and Kurnool were amalgamated into the APSPDCL from the former APCPDCL (now TSSPDCL) and the Wind Power Project was placed under the control of the APSPDCL, which began paying bills on 02.06.2014 as its obligation to pay arises only on 02.06.2014. TPSCC and TSSPDCL have submitted that since the power generated out of Petitioner's plant is not shared with Telangana Distribution companies, therefore the liability is identifiable with the residual State of Andhra Pradesh after transferring Ananthapur and Kurnool to APSPDCL. TSSPDCL has further submitted that G.O.M.s. No. 20, is for the plants/generation stations connected at 132 KV or power allocated from Central Generating Stations. Since, the plants are located in the geographical area of Ananthapur and Kurnool and are connected to 66 or 33 KV, therefore, the PPAs stand transferred back to APSPDCL in the Third transfer Scheme.

24. We observe that in the instant petition, the Petitioner had developed a 7.5 MW wind power plant in three phases in Ramagiri/ Tallimadugulla, Anantapur district, Andhra Pradesh and

entered into PPAs with the erstwhile Andhra Pradesh State Electricity Board (APSEB). The details are as under:

	Quantum	PPA executed on	Commissioned on
Phase I	3 MW	07.09.1995	13.09.1995
Phase II	3 MW	29.10.1995	30.09.1996
Phase III	1.5 MW	Yet to be signed	26.09.1995

25. The tariff was initially approved on 20.06.2001 by APERC at Rs. 2.25/- per unit for the first year at an annual escalation of 5%. Subsequently, APERC in suo-motu proceedings fixed the tariff for wind power projects at Rs.3.37 per unit vide order dated 20.03.2004 in R.P. No. 84 of 2003 in O.P No. 1075 of 2000 (Tariff Order, 2004). Meanwhile, APSEB was unbundled and all PPAs were transferred to the APTRANSCO under Third Transfer Scheme as notified by GoAP. Subsequently, APTRANSCO transferred the Petitioner's PPAs to APCPDCL on 12.09.2005. APCPDCL, filed O.P. No. 17 of 2006, for determination of tariff with respect to the Petitioner.

26. Until December 2010, APCPDCL paid monthly power purchase invoices at the full tariff rate of Rs. 3.37 per unit for all three phases. However, pending litigation, APCPDCL started paying the monthly bills at 50% of the tariff of Rs.3.37 per unit as determined by APERC in its Tariff Order 2004. APERC vide its Interim Order dated 16.11.2012 in IA No. 8 of 2006 in O.P. No. 17 of 2006 held as under:

*"It is a matter of fact, that the DISCOMs are presently paying an ad-hoc tariff of 50% of Rs.3.37 per unit (the tariff determined in 20-03-2004 order) working out to around Rs.1.69 per unit. **The prayer of the petitioner, to fix an interim rate of Rs.1.43 per unit is not reasonable since it is lesser than the rate of Rs.1.69 per unit, which is 50% of the rate paid for the 10 th year (Rs.1.69 per unit is being presently paid on ad-hoc basis by the petitioner). The petitioner is therefore directed to pay Rs.1.69 per unit for the power supplied to them by the developer, beyond 10th year, pending fixation of final tariff applicable beyond 10th year.**"*

27. APERC vide its order dated 06.09.2014 in O.P. Nos. 14 to 18 of 2006 (Tariff Order, 2014), held as under:

*"91. For the above five reasons, the Commission has **determined that present single tariff of Rs.3.37 per unit should be continued for all these projects till the expiry of the respective PPAs.** This would be a single part tariff and subject to the same terms*

and conditions as indicated in the Commission's order of 2004 and 2009 and inclusive of all tax."

28. From the above, we note that APERC has determined that single tariff of Rs.3.37 per unit should be continued for the projects of the respective PPAs. Meanwhile, on 02.06.2014, the Government of India created two new States of Andhra Pradesh and Telangana and accordingly APCPDCL was renamed TSSPDCL. Subsequent to the bifurcation of the erstwhile State of Andhra Pradesh, the Wind Power Plant comes within the jurisdiction of APSPDCL and is presently connected to the grid of APSPDCL. TSSPDCL have also submitted that as per G.O.M.s. No. 20, the Petitioners PPAs stand transferred back to APSPDCL in the Third transfer Scheme since the Petitioners projects are located in the geographical area of Ananthapur and Kurnool and are connected to 66 or 33 KV. From 02.06.2014, APPCC is making payments @ 3.37 paise per Unit as determined by the APERC. Hence, the directions of APERC given in Tariff Order, 2014 stands complied with meticulously after June, 2014.
29. We note that only issue remains for adjudication is about the payment of pending differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014 prior to the bifurcation of the State of Andhra Pradesh when the Petitioner project was within the jurisdiction of APCPDCL i.e. the present TSSPDCL/Respondent No. 4.
30. We observe that the relevant provisions of the A.P. Reorganization Act, 2014 stipulates as under:
- "2. —In this Act, unless the context otherwise requires,—*
(a) "appointed day" means the day which the Central Government may, by notification in the Official Gazette, appoint*
**2nd June, 2014, vide notification No. S.O. 655(E), dated 4th March, 2014, see Gazette of India, Extraordinary, Part II sec. 3(ii).*
-
- 53. Assets and liabilities of State undertakings.—(1) The assets and liabilities relating to any commercial or industrial undertaking of the existing State of Andhra Pradesh, where such undertaking or part thereof is exclusively located in, or its operations are confined to, a local area, shall pass to the State in which that area is included on the **appointed day**, irrespective of the location of its headquarters:*
Provided that where the operation of such undertaking becomes inter-State by virtue of the provisions of Part II, the assets and liabilities of—
(a) the operational units of the undertaking shall be apportioned between the two successor States on location basis; and

(b) the headquarters of such undertaking shall be apportioned between the two successor States on the basis of population ratio.

(2) Upon apportionment of the assets and liabilities, such assets and liabilities shall be transferred in physical form on mutual agreement or by making payment or adjustment through any other mode as may be agreed to by the successor States.

31. The Twelfth Schedule of the Andhra Pradesh Reorganization Act, 2014 stipulates as under:

“5. Transmission lines of APTRANSCO of 132 KV and higher voltage cutting across the successor States shall be deemed as Inter-State Transmission System (ISTS) lines. The transmission lines falling within the territory of each successor State shall be transferred to the respective State Transmission Utilities. The maintenance of ISTS lines shall also be done by successor States in their respective jurisdictions.

6. The power of the Central Generating Stations will be allotted in such ratio to the State of Telangana and the State of Andhra Pradesh based on the actual energy consumption of the last 5 years of the relevant DISCOMS in the respective successor State.

7. For a period of ten years, the successor State that has a deficit of electricity shall have the first right of refusal for the purchase of surplus power from the other successor State.

8. The districts of Anantapur and Kurnool which fall within the jurisdiction of the AP Central Power Distribution Company Ltd. will now be reassigned to the AP South Power Distribution Company Ltd.”

32. G.O.Ms. 20 dated 08.05.2014 issued by the Energy (Power-III) Department stipulated as given below:

“2. As per section 92 read with the Twelfth Schedule of the Andhra Pradesh Reorganisation Act, 2014, (Central Act No.6 of 2014) the districts of Ananthapur and Kurnool which fall within the jurisdiction of **Andhra Pradesh Central Power Distribution Company Limited (APCPDCL)** will now be reassigned to the **Andhra Pradesh Southern Power Distribution Company Limited (APSPDCL)**. Accordingly, the proportionate share of power has to be transferred from allocated share of APCPDCL to APSPDCL.

3. The Chairman & Managing Director, APTRANSCO has informed that **17.45 % of APCPDCL share of power is average consumption over the last 5 years in respect of Ananthapur and Kurnool districts.** Accordingly, he has informed that 8.037 % (17.45 % of allocated share of 46.06 %) of power should be transferred from APCPDCL to APSPDCL.”

33. Further, G.O.Ms. No.24 dated 29.05.2014 issued by the Energy (CC) Department stipulates as under:

“XVII Adjustments:

- a. The demand raised in Kurnool and Ananthapur circles in the month of June, 2014 in respect of areas where the monthly billing is followed and half of the demand raised in July 2014 in respect of areas where bi monthly billing is followed, will have to be

transferred by APSPDCL to APCPDCL, since these amounts pertain to power consumption of May, 2014 which is to be paid for by APCPDCL to the generators.

- b. In respect of O&M bills pending for payment as on 01.06.2014 for the period prior to 02.06.2014, APSPDCL shall pass the bills and arrange payment at their end. APCPDCL shall reimburse this amount to APSPDCL.**
- c. In respect of the bills for capital works relating to the period prior to 2.6.2014, the payment shall be arranged by APSPDCL.”**

34. From the above, we observe that the bifurcation of liabilities and assets between the two states viz. Andhra Pradesh and Telangana had taken effect on 02.06.2014 (the appointed day), and that the legislation does not have a retrospective effect. As per Section 53 (2) of the Act stipulates that assets and liabilities shall be transferred in physical form on mutual agreement or by making payment or adjustment through any other mode as may be agreed to by the successor States.
35. We note that as per the Twelfth Schedule of the Andhra Pradesh Reorganization Act, 2014, the power of the Central Generating Stations was allotted to the State of Telangana and the State of Andhra Pradesh based on the actual energy consumption of the last 5 years of the relevant DISCOMS viz. TSSPDCL. Further, the districts of Anantapur and Kurnool falling within the jurisdiction of TSSPDCL was reassigned to the APSPDCL. We further note that G.O.Ms. 20 indicates that share of power of former APCPDCL (now TSSPDCL) is 17.45 % of the average consumption over the last 5 years in respect of Ananthapur and Kurnool districts. Further, to facilitate the reassignment of the distribution business of Ananthapur and Kurnool districts to APSPDCL, it has been stipulated vide G.O.Ms. No. 24, that in respect of pending bills TSSPDCL shall reimburse the amount to APSPDCL and APSPDCL shall pass the bills and arrange payment at their end. Further, TSSPDCL, is obligated to pay sums pertaining to the period preceding the bifurcation.
36. In view of the above it is clear that on re-assignment of the districts of Anantapur and Kurnool falling within the jurisdiction of TSSPDCL to the APSPDCL, the liability of APSPDCL is 17.45% and the balance liability is of TSSPDCL. It is pertinent to mention here that, in the instant case, vide Letter dated 26.11.2015, APPCC has admitted its share of liability of 17.45% subject to TSSPDCL admitting its share of arrears. Further, on 30.11.2015, the Petitioner had requested TSPCC for commitment to its liability of 82.55%. However, as per Petitioner APPCC and TSPCC have not released the payments. Accordingly, we hold that the payment

of pending differential tariff of Rs.1.685 per unit for the period from January 2011 to May 2014 prior to the bifurcation of the State of Andhra Pradesh should be made to the Petitioner by TSPCC/ TSSPDCL (82.55% of the total amount) and APPCC (17.45% of the total amount) along with interest of 14% p.a. *pendent lite and future*. As per Clause 4.4.3 of the PPAs from the date of Tariff Order, 2014 i.e. 06.09.2014, within a period of six weeks of this order. The issues are disposed of accordingly.

37. The Petition no. 201/MP/2019 is disposed of in terms of the above.

Sd/-
पी. के. सिंह
(सदस्य)

Sd/-
अरुण गोयल
(सदस्य)

Sd/-
आई. एस. झा
(सदस्य)