
**13TH UPES DR. PARAS DIWAN MEMORIAL INTERNATIONAL ‘ENERGY
LAW’ MOOT COURT COMPETITION, 2023**

CASE RECORD

IN THE MATTER

BETWEEN

Zeruvian Through Neplev Power Corporation Limited v. Republic of Cyfia & others

10th February – 13th February, 2023

ORGANIZED BY:

UPES SCHOOL OF LAW, DEHRADUN

In association with:

Knowledge Partners



ACKNOWLEDGMENT

The case record for the 13th UPES – Dr. Paras Diwan Memorial International ‘Energy Law’ Moot court competition has been drafted by Dr. Mayank Mishra.

Dr. Mayank Mishra is an Assistant Professor at School of Law, UPES. A legal academician with proven experience in litigation, with not just deep theoretical understanding of subjects but also well versed with the practical implementation of laws. He has thorough knowledge about the field of energy laws and the more niche areas you'd only expect an expert to know.

He has previously been a practicing litigator in the Jharkhand High Court, sessions courts of various districts while practicing civil law, banking law, matrimonial law amongst others - gathering expertise in oral advocacy and research. He has also been a frequent guest faculty at the Indian Institute of Coal Management, Ranchi.

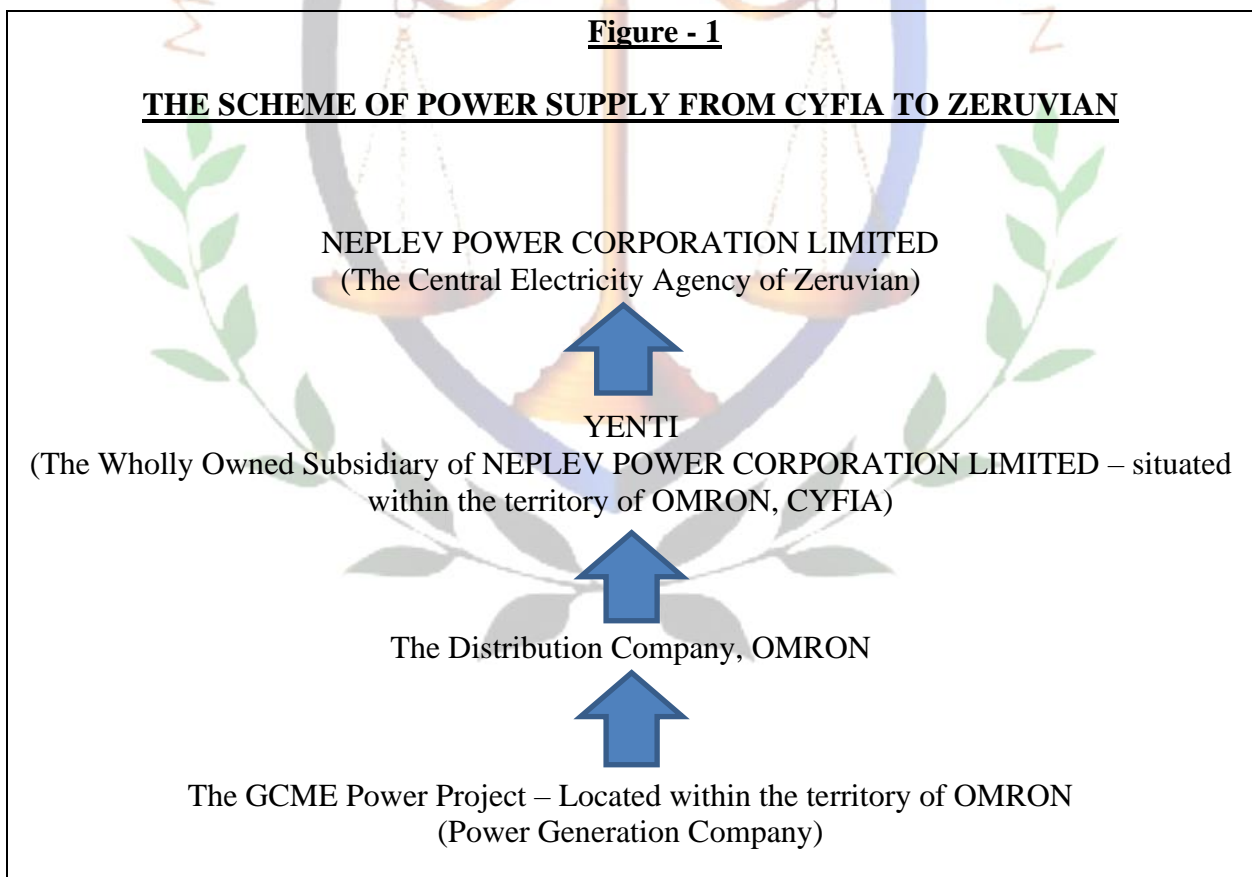
We would like to extend our heartiest gratitude towards Dr. Mayank Mishra, the drafter of the 13th edition of UPES Dr. Paras Diwan Memorial International "Energy Law" competition, 2023.

Lastly, we would also like to extend our sincere thanks to Mr. Parag Diwan, s/o late Dr. Paras Diwan, and Ms. Peeyushi Diwan for their constant support in conducting the UPES- Dr. Paras Diwan Memorial International ‘Energy Law’ Moot Court Competition.

1. The REPUBLIC OF CYFIA (CYFIA) is a federal country located in the SOUTH NISIAN continent of the world. CYFIA being a signatory of the International Energy Charter, 2015 ('The Charter') [ANNEXURE - 1] has expressed its firm commitment towards enhancing the national renewable energy capacity which was reflected in an ambitious resolution passed by the Central Government of CYFIA. The resolution declared 2030 Renewable Energy Target: "To achieve 700 GW of electricity to be produced from Renewable Energy, which shall amount to twice the installed capacity from the nation's 2020 levels." Consequently, the government passed numerous favorable framework documents, schemes, policies, guidelines, standards and certification procedures, and relevant regulations to achieve aggressive renewable energy targets.
2. On 15th June, 2019 the National Wind Energy Journal (NWEJ) of CYFIA published a report highlighting the abundant non - utilized wind energy potential present in various states of CYFIA. The report mentioned that OMRON, the eastern coastal state of CYFIA alone accounts for almost 10 GW potential in terms of wind energy which could be commercially harnessed.
3. CEFPER ENERGY, a German Private Company came across this report and decided to enter in a Joint Venture Arrangement with ASCO PVT. LTD., a CYFIAN private company to establish 2 GW capacity Mega Wind-Solar Hybrid Power Project named as "GCME Power Project" ('The Project') in the state of OMRON in accordance with the existing "National Wind-Solar Hybrid Policy, 2018". (The Joint Venture may be referred to as 'CEFCO' for reference which was incorporated under CYFIAN Laws on 17th December, 2020.)

4. After obtaining necessary approvals and clearances, the construction of entire mega project was aggressively completed within a time span of 13 months (20th December 2021) from the date of CEFCO being incorporated. The project cost approval and tariff fixation for the project was done by the State Electricity Regulatory Commission (SERC) of OMRON as per the statutory requirement for CGME Power Project. The SERC approved the project cost and allowed CEFCO to commission the Project (from 1st January, 2022) vide order dated 20th November 2021 (**ANNEXURE - 2**).
5. CYFIA had been constantly receiving requests for electricity supply from ZERUVIAN, a neighboring country of CYFIA and another signatory to the International Energy Charter, 2015. The Central Government of CYFIA perceived a golden profit-making opportunity by electricity trading with ZERUVIAN in the background of establishment and commissioning of the mega power project at OMRON. Accordingly, a round table conference was organized at the Capital city of CYFIA wherein all the relevant stakeholders actively participated and a detailed scheme and arrangement for renewable source generated electricity supply to ZERUVIAN was formulated in the form of a Memorandum of Power Supply (MOPS). The MOPS mentioned that – (i) The sovereign states of CYFIA and ZERUVIAN shall execute a Bilateral Energy Investment Cooperation and Trading and Supply Treaty to culminate the understanding into a long-term and legally binding document; and, (ii) ZERUVIAN through NEPLEV POWER CORPORATION LIMITED (NPCL – The Central Electricity Agency of ZERUVIAN) shall execute Power Purchase Agreements and other legal documents with CEFCO and the Power Distribution Company, OMRON according to the applicable laws of CYFIA.
6. All the parties to the Memorandum agreed to abide by certain important terms and conditions which are as follows: The **CEFCO - GCME Power Project (Power Generation Company)** consented to always supply 1700 MW of electricity annually with

a committed project capacity of 85% throughout the calendar year and ensured for an uninterrupted electricity supply as agreed except for inadvertent technical failures. **The Republic of CYFIA along with the State Government of OMRON** agreed to ensure availability, accessibility and capacity addition in the necessary transmission and distribution infrastructure through their concerned agencies or instrumentalities within their territory for supply of electricity to NPCL through YENTI, a company wholly owned and controlled by NPCL situated within the territory of OMRON. **ZERUVIAN** unequivocally consented to ensure timely payment for the electricity obtained by NPCL, which is the Central Electricity Agency of the nation. The electricity supply scheme, as agreed by all the parties are provided in Figure 1.



7. Finally, on 5th April, 2022 a bilateral treaty was entered into by the sovereign states of CYFIA and ZERUVIAN for “Cross Border Energy Investments, Cooperation and Trading Treaty, 2022” (‘The Investment Treaty’) culminating the Memorandum of Power Supply with other important energy trading related provisions. The investment treaty provided that any transboundary electricity trading arrangement shall adhere to CYFIAN Electricity Laws and appropriate Power Purchase Agreements must be duly executed for any electricity purchase/procurement. The treaty provided that: “Any electricity trading between CYFIA and ZERUVIAN shall happen on a flat rate of tariff at CYFIAN Rupee 5.80 applicable for per unit of electricity. However, the applicable rates may be changed with consent of both the parties to the agreement”. It was also provided that such purchase/procurement shall be done in accordance with the permitted mode of transaction under CYFIAN Electricity Laws. A separate Power Purchase Agreement under the CYFIAN Electricity Act, 2003 was also entered into between NPCL, CEFCO and OMRON Power Distribution Company immediately after execution of the investment treaty i.e., 10th April 2022. The date for commissioning of electricity supply to NPCL was fixed from 1st May 2022 along with a flat tariff of CYFIAN Rupee 5.80 per unit of electricity which tariff (as mentioned under the Investment Treaty and PPA) stood higher and in negation of the tariff order passed by the State Electricity Regulatory Commission, OMRON (ANNEXURE - 2) for a period of 30 Years concerning the mega power project. As per the agreed terms and conditions CEFCO started supplying electricity to NPCL through YENTI from the said date.
8. In the month of July 2022, a severe earthquake hit ZERUVIAN and resulted into annihilation of infrastructure, assets and properties of NPCL which led to constrained transmission capacity, down by 50% from the original capacity near the borders of OMRON. Abiding the terms and conditions of investment treaty and PPA, the NPCL

immediately wrote to the Central Government of CYFIA, CEFCO and the Distribution Company, OMRON. A joint response on behalf of the electricity suppliers from CYFIA through the Central Government was sent stating that, ZERUVIAN can purchase the contracted electricity by availing the flexibility of dynamic pricing model from CYFIAN ENERGY EXCHANGE (CE-EX) which could be delivered to ZERUIVIAN through another alternative route till the destroyed transmission infrastructure could be restored back to normalcy on the originally contracted route. ZERUVIAN agreed to the proposal and directed NPCL to get listed on the CE-EX to carry out the contracted electricity purchase. Accordingly, NPCL got listed and received permission to trade electricity on CE-EX from 19th July, 2022.

9. From 20th July 2022 onwards ZERUVIAN started purchasing contracted electricity through CE-EX. Due to surplus availability of green energy in the market ZERUVIAN purchased 25 Million Units of electricity at a discounted price than the contracted tariff structure within a time span of two months from the date of NPCL listing on CE-EX. Greedy over purchase of electricity led to payment default by ZERUVIAN to the CEFCO and CE-EX. On 7th September, 2022. CE-EX sent demand notice of outstanding dues to the NPCL marking a copy to the Prime Minister of ZERUVIAN and urged to make the payment on priority basis preferably within 21 days from the date of receipt of the notice, but ZERUVIAN failed to honor the demand notice.
10. The Central Electricity Regulatory Commission of CYFIA noting that the outstanding dues by power consumers and traders through Energy Exchanges has reached to an alarming rate of 1 Trillion CYFIAN Rupees in the month of September, 2022. Compelled by such situation and acting in consultation with the Central Energy Ministry of CYFIA, the Commission vide order dated 15.09.2022 directed the CE-EX and other Power Exchanges that, all the defaulting companies, agencies or institutions should be immediately delisted

from the Energy Exchanges of the Country. In compliance with the said order CE-EX published a notification dated 17th September 2022 outlining the list of defaulting agencies and ordered for immediate delisting of all the institutions including NPCL.

11. ZERUVIAN immediately made a written representation to the Central Government of CYFIA for honoring the Investment Treaty and relist NPCL back on the CE-EX allowing it to undertake the electricity trading activities. ZERUVIAN also mentioned that the country is ready to pay 50% of the outstanding dues immediately in lieu of relisting of the corporation. CYFIA disagreed with the proposal and asserted for full payment of outstanding dues and declined for relisting of NPCL till full outstanding payment is made by ZERUVIAN. Aggrieved by the said response from CYFIA, ZERUVIAN filed a case in International Court of Justice alleging violations of the provisions of International Energy Charter, 2015 to which both the countries are signatories. CYFIA represented themselves before the forum and in the preliminary hearing itself both the parties agreed to withdraw from the case and get it resolved as per CYFIAN Law through the Supreme Court of CYFIA. Accordingly, the case is withdrawn, and a case is registered by NPCL against the respective parties before the Supreme Court of CYFIA wherein the case is registered as W.P. No. – 2573/2022.

12. The state Government of OMRON on the other hand constituted a High-Powered Review Committee (HPRC) to review the working of all Renewable Energy Power Plants within the territory of OMRON and submit an assessment report of the commissioned projects. The Committee submitted its Report dated 17th October 2022 to the State Government of OMRON and highlighted the following aspects related to GCME Power Project:

- i. A partial portion of land appertaining the mega power project has encroached 200 Acres of agricultural land belonging to private parties which was legally disputed in civil litigations before the competent forum and the matters are still pending.

- ii. The Wind Turbines installed for the project does not confirm to IECRE/GL Certifications. The size of wind turbine generators are also larger than the size mentioned in the project framework documents.
- iii. The project has not followed the metering and grid connection requirements and energy output manipulations are being done by the developer by installing controlling electronic equipment.
- iv. The Project has failed to make complete technical disclosure regarding commissioned capacity wherein the actual functioning capacity is 2.3 GW as against 2 GW on which project approval is sought from State Regulatory Commission, OMRON.
- v. The Project sought environmental clearances from the respective government institutions by misrepresenting the actual project size, capacity and the concerned impact of the project on nearby environment and residential areas. The State Pollution Control Board, OMRON is already investigating such matter for the alleged legal violations.

13. Based on the HPRC report, the State Government of OMRON vide order dated 31st October 2022 passed the following directions:

- ❖ All PPAs executed by CEFCO shall be stayed till further orders by the State Government.
- ❖ CEFCO shall stay all its operations and shall not produce and supply electricity in the market till the State Government decides upon the illegalities committed by CEFCO in GCME Project.
- ❖ All assets, properties, bank accounts are confiscated and shall not be used by the company till such properties are released in accordance with the CYFIAN law.

❖ Levied a fine of Rupees 50 Crores on CEFCO for the alleged illegalities.

14. The Report of HPRC along with the order dated 31st October 2022 is sent to the Central Government, CYFIA and the State Electricity Regulatory Commission, OMRON after which the Central Government released an order dated 10th November 2022 directing the Central Transmission Utility, Grid Operators and other entities/companies involved in re-establishing the contracted transmission lines destroyed due to earthquake to stay their work till further orders. The State Electricity Regulatory Commission also vide order dated 12th November 2022 stayed the operation of PPA entered between NPCL and CEFCO.
15. ZERUVIAN came to know about the legal developments and actions taken against CEFCO coupled with staying the operation of PPA for electricity purchase from CEFCO. Immediately a petition is filed against the illegal and unconstitutional actions of the State Government of OMRON challenging the order passed by the State Government, OMRON dated 31st October 2022 along with the orders passed by the Central Government and SERC, OMRON dated 10th and 12th November 2022 respectively. The High Court, OMRON vide order dated 24th November 2022 refused to interfere with the concerned impugned orders. NPCL being aggrieved by the order dated 24th November 2022 challenged such order in the Hon'ble Supreme Court of CYFIA which matter is registered as W.P. No. – 3124/2022.
16. Now, NPCL has mentioned both the filed matters in Supreme Court before the bench of Hon'ble Chief Justice of CYFIA who has agreed to club W.P. Nos. – 2573/2022 and 3124/2022 for hearing against 'The Republic of CYFIA & Others'. Upon preliminary hearing of the matter, the Court has formulated the following issues after which the matter is fixed under the head of "Arguments" for hearing before the bench:

- I. Whether establishment of HPRC and consequently orders dated 31st October 2022, 10th and 12th November 2022 passed by the State Government of OMRON, Central Government CYFIA & State Regulatory Commission, OMRON respectively based on the report of HPRC is valid according to the provisions of Electricity Act, 2003 and the CYFIAN Constitution?
- II. Whether the Tariff order passed by the State Electricity Regulatory Commission, OMRON will prevail over the tariff decided by CYFIA and ZERUVIAN pursuant to the bilateral investment treaty according to Regulation 3 of Central Electricity Regulatory Commission (Cross Border Trade of Electricity) Regulations, 2019 and the relevant PPA dated 10th April 2022?
- III. Whether the notification dated 17th September 2022 issued by the CE-EX to delist NPCL legally valid?
- IV. Whether the REPUBLIC OF CYFIA has violated the provisions of “The International Energy Charter, 2015” and therefore liable to compensate ZERUVIAN? Also, whether ZERUVIAN is also entitled for any damages or compensation under CYFIAN Laws?

NOTE : The Laws of Cyfia shall stand *pari materia* to that of Laws of India.

ANNEXURE-1

CONCLUDING DOCUMENT

OF THE MINISTERIAL ("THE HAGUE II")

CONFERENCE ON THE INTERNATIONAL ENERGY CHARTER

The Ministerial ("The Hague II") Conference on the International Energy Charter was held in The Hague on 20th and 21st May 2015 to adopt the International Energy Charter as an update of the European Energy Charter. At that Conference, the high representatives of the signatories of the European Energy Charter of 1991, as well as non-signatories of the European Energy Charter of 1991, signed or expressed their consent to the International Energy Charter. The signatories of the International Energy Charter who signed it or expressed their consent at the Conference, or will do so after, are hereinafter referred to as the "signatories".

INTERNATIONAL ENERGY CHARTER

The representatives of the signatories meeting in The Hague on 20th and 21st May 2015;

Desirous to better reflect the new realities of the energy sector, especially the growing weight from developing countries, including emerging economies, and to serve the interests of the existing and potential participants of the Energy Charter constituency:

Having regard to the European Energy Charter adopted in the Concluding Document of the Hague Conference on the European Energy Charter signed at The Hague on 17 December 1991 signature of which allows States and Regional Economic Integration Organizations to accede to the Energy Charter Treaty of 1994 and which will continue to exist for this purpose.

Recalling the Decision adopted by the Energy Charter Conference in its 23rd Meeting in Warsaw in 2012 to engage in a process that could lead to the adoption of an updated version of the European Energy Charter,

Aware that the concept of the International Energy Charter aims at enhancing international cooperation in order to meet common challenges related to energy at national, regional and international levels, including the evolution of global energy architecture.

Recalling the objectives of the International Energy Charter:

- to support the Charter's policy of Consolidation, Expansion and Outreach with the aim to facilitate the expansion of the geographical scope of the Energy Charter Treaty and Process;
- to engage in a structured dialogue with non-signatories of the European Energy Charter in order to promote the principles of the Charter and its framework for cooperation on the global scale;
- to modernize the European Energy Charter as the basic political declaration of the Energy Charter Process;
- to support active observership in the Energy Charter Conference, aiming at close political cooperation and early accession of observer countries to the Energy Charter Treaty:

Whereas the International Energy Charter is a declaration of political intention aiming at strengthening the energy cooperation between the signatories and does not bear any legally binding obligation;

Having regard to the principles of the UN Charter and to the outcome documents of various energy-related regional and international conferences and other events as well as initiatives listed in the Annex to this declaration;

Recognizing the sovereignty of each State over its energy resources, and its rights to regulate energy transmission and transportation within its territory respecting all its relevant international

obligations;

Recognizing the global challenge posed by the trilemma between energy security, economic development and environmental protection, and efforts by all countries to achieve sustainable development;

Recognizing the importance of energy security of energy producing, transit and consuming countries, regardless of their state of economic development, as well as access to modern energy services, which needs to be based on environmentally sound, socially acceptable and economically viable policies, with emphasis on mutual responsibilities and benefits;

Anxious to give a new impulse to the desire for enhanced regional and global cooperation based on mutual respect and confidence;

Resolved to promote long-term energy cooperation at regional and global levels within the framework of a market economy and based on mutual assistance and the principle of non-discrimination, being understood as most-favored nation treatment as a minimum standard;

Aware that account must be taken of the problems of construction and restructuring faced by a considerable number of countries, and that it is desirable for the signatories to participate in joint efforts aimed at facilitating and promoting market- oriented reforms and modernization of energy sectors in these countries;

Certain that taking advantage of the complementary features of energy sectors in the markets represented by the signatories will benefit the world economy; Acknowledging that enhanced energy trade is a powerful catalyst for strengthening regional and international cooperation in energy security and for sustainable use of energy among all stakeholders, including energy producing, transit and consuming countries;

Persuaded that broader energy cooperation among signatories is essential for economic progress and more generally for social development, energy poverty alleviation, and a better quality of life;

Convinced of the signatories' common interest in problems of energy security, safety of industrial plants, including nuclear facilities, and environmental protection;

Wiling to do more to attain the objectives of energy security and efficient management and use of resources, and to utilize fully the potential for environmental improvement, in moving towards sustainable development;

Willing to develop cooperation with regional and international organizations for sharing experience and specific examples from national practice in the area of sustainable development, access to modern energy services, energy poverty reduction, green economy, clean energy, energy efficiency, as well as development, introduction and broader use of new clean technologies;

Convinced of the essential importance of efficient energy systems in the production, conversion, transport, distribution and use of energy for energy security and for the protection of the environment;

Convinced that investing in energy efficiency and renewable energies can enhance energy security and contribute to sustainable economic growth;

Encouraging synergies among energy-related multilateral fora;

Aware of the obligations under major relevant multilateral agreements, of the wide range of international energy cooperation, and of the extensive activities by existing international organizations in the energy field and willing to take full advantage of the expertise of these

organizations in furthering the objectives of this Charter;

Recognizing the role of entrepreneurs, operating within a transparent and equitable legal framework, in promoting cooperation under this Charter;

Determined to promote closer, mutually beneficial commercial relations and investments in the energy field;

Affirming the importance of freedom of movement of energy products, and of developing an efficient international energy infrastructure in order to facilitate the development of stable and transparent trade in energy.

Aware of the need to promote technical and technological cooperation among signatories;

Affirming that the energy policies of signatories are linked by common interests of all countries and that they should be implemented, including by taking the consequent action and applying the principles set out below;

HAVE ADOPTED THE FOLLOWING:

TITLE I

Objectives

The signatories are desirous of sustainable energy development, improving energy security and maximizing the efficiency of production, conversion, transport, distribution and use of energy, to enhance safety in a manner which would be socially acceptable, economically viable, and environmentally sound.

Recognizing the sovereignty of each State over its energy resources, and its rights to regulate energy transmission and transportation within its territory respecting all its relevant international obligations, and in a spirit of political and economic cooperation, they decide to promote the development of efficient, stable and transparent energy markets at regional and global levels based on the principle of non-discrimination and market-oriented price formation, taking into account environmental concerns and the role of energy in each country's national development. They are determined to create a climate favorable to the operation of enterprises and to the flow of investments and technologies to achieve the above objectives.

To this end, and in line with these principles, they will take action in the following fields:

1. Development of trade in energy consistent with major relevant multilateral agreements such as the WTO Agreement and its related instruments, where applicable, and nuclear non-proliferation obligations and undertakings, which will be achieved by means of:

- an open and competitive market for energy products, materials, equipment and services;
- access to energy resources, and exploration and development thereof on a commercial basis;
- access to national, regional and international markets;

- providing transparency for all segments of international energy markets (production/export, transit, consumption/import);
- removal of technical, administrative and other barriers to trade in energy and associated equipment, technologies and energy-related services;
- promoting the compatibility of national and regional energy systems and to create a common energy space;
- promotion of the harmonization of rules, regulations and standards in the field of energy;
- promoting the realization of infrastructure projects important for providing global and regional energy security;
- modernization, renewal and rationalization by industry of services and installations for the production, conversion, transport, distribution and use of energy;
- promoting the development and interconnection of energy transport infrastructure and the regional integration of energy markets;
- promoting best possible access to capital, particularly through appropriate existing financial institutions;
- facilitating access to transport infrastructure, for international transit purposes in line with the objectives of this Charter;
- access on commercial terms to technologies for the exploration development, conversion and use of energy resources.

2. Cooperation in the energy field, which will entail:

- coordination of energy policies, as necessary for promoting the objectives of this Charter;
- exchange of information and experiences relevant for this Charter;

- enhancing capacity building of the countries involved;
- mutual access to technical and economic data, consistent with proprietary rights;
- formulation of stable and transparent legal frameworks creating conditions for the development of energy resources in the context of sustainable development;
- coordination and, where appropriate, harmonization of safety principles and guidelines for energy products and their transport, as well as for energy installations, at a high level;
- facilitating the exchange of technology information and know-how in the energy and environment fields, including training activities, research, technological development, demonstration projects and their commercialization;
- creating a favorable environment for investments, including venture investments, for design, construction and operation of energy installations.

3. Energy efficiency and environmental protection, which will imply:

- creating mechanisms and conditions for using energy as economically and efficiently as possible, including, as appropriate, regulatory and market-based instruments;
- encouraging the clean and efficient use of fossil fuels;
- promotion of a sustainable energy mix designed to minimize negative environmental consequences in a cost-effective way through:
 - i. market-oriented energy prices which more fully reflect environmental costs and benefits;
 - ii. efficient and coordinated policy measures related to energy:
 - iii. use of renewable energy sources and clean technologies. including clean fossil fuel technologies;
- achieving and maintaining a high level of nuclear safety and ensuring effective cooperation in this field;

- promotion of cooperation to reduce, as much as possible, gas flaring and venting;
- sharing of best practices on clean energy development and investment;
- promotion and use of low emission technologies.

TITLE II

Implementation

In order to attain the objectives set out above, the signatories will, without prejudice to the sovereignty of each State over its energy resources, and its rights to regulate energy transmission and transportation within its territory respecting all its relevant international obligations, take coordinated action to achieve greater coherence of energy policies, which should be based on the principle of non-discrimination and on market-oriented price formation, taking due account of environmental concerns.

They underline that practical steps to define energy policies are necessary in order to intensify cooperation in this Lector and further stress the importance of regular exchanges of views on action taken, taking full advantage of the experience of existing international organizations and institutions in this field.

The signatories recognize that commercial forms of cooperation may need to be complemented by intergovernmental cooperation, particularly in the area of energy policy formulation and analysis, as well as in areas which are essential and not suitable to private capital funding.

They decide to pursue the objectives of this Charter by strengthening and integrating regional energy markets and enhancing the efficient functioning of the global energy market by joint or coordinated action under this Charter in the following fields:

- access to and development of energy sources;
- access to energy markets;

- liberalization of trade in energy;
- promotion and protection of investments in all energy sectors;
- safety principles and guidelines;
- research, technological development technology transfer, innovation and dissemination;
- energy efficiency, environmental protection and sustainable and clean energy;
- access to sustainable energy;
- education and training;
- diversification of energy sources and routes.

In implementing this joint or coordinated action, they decide to foster private initiative, to make full use of the potential of enterprises, institutions and all available financial sources, and to facilitate cooperation including through technical cooperation, between such enterprises or institutions from different countries, acting on the basis of market principles.

The signatories will ensure that the international rules on the protection of industrial, commercial and intellectual property are respected.

1. Access to and development of energy sources

Considering that efficient development of energy resources is a sine qua non for attaining the objectives of this Charter, the signatories decide to facilitate access to and development of resources by the interested operators. To this end, they will ensure that relevant rules are publicly available and transparent in consistence with domestic legislation and international obligations; they recognize the need to formulate such rules wherever this has not yet been done, and to take all necessary measures to coordinate their actions in this area. Development of energy resources should take place in economic and environmentally sound conditions.

With a view to facilitating the development and diversification of resources, the signatories decide to avoid imposing discriminatory rules on operators, notably rules governing the ownership of resources, internal operation of companies and taxation.

2. Access to markets

The signatories will strongly promote access to national, regional and international markets for energy products for the implementation of the objectives of this Charter. Such access to markets should take account of the need to facilitate the operation of market forces, and promote competition.

3. Liberalization of trade in energy

In order to develop and diversify trade in energy, the signatories decide progressively to remove the barriers to such trade with each other in energy products, equipments and services in a manner consistent with the provisions of the WTO Agreement and its related instruments, where applicable, and nuclear non-proliferation obligations and undertakings.

They will work together in view of the further development of market-oriented energy prices. The signatories recognize that transit of energy products through their territories is essential for the liberalization of trade in energy products. Transit should take place in economic and environmentally and commercially sound conditions.

They stress the importance of the development of international energy transmission networks and their interconnection, including cross-border oil and gas networks and power grids. They recognize the need to intensify efforts to coordinate among themselves, and to encourage cooperation among relevant entities in view of their development, the compatibility of technical specifications governing the installation, and the operation of such networks.

4. Promotion and protection of investments

In order to promote the international flow of investments, the signatories will make every effort to remove all barriers to investment in the energy sector and provide, at national level, for a stable, transparent legal framework for foreign investments, in conformity with the relevant international laws and rules on investment and trade.

They affirm that it is important for the signatory States to enter into bilateral and/or agreements on promotion and protection of investments which ensure a high level of legal security and enable the use of investment risk guarantee schemes.

The signatories affirm the importance of full access to adequate dispute settlement mechanisms, including national mechanisms and international arbitration in accordance with national laws and regulations, including investment and arbitration laws and rules, all the relevant bilateral and multilateral treaties and international agreements.

Moreover, the signatories recognize the right to repatriate profits or other payments relating to an investment and to obtain or use the convertible currency needed.

They also recognize the importance of the avoidance of double taxation to foster private investment.

5. Safety principles and guidelines

Consistent with relevant major multilateral agreements, the signatories will:

- cooperate to implement safety principles and guidelines, designed to achieve and/or maintain high levels of safety standards and the protection of health and the environment;

- develop such common safety principles and guidelines as are appropriate and/or concur on the mutual recognition of their safety principles and guidelines.

6. Research, technological development technology transfer, innovation and dissemination

The signatories decide to promote exchanges of technology and cooperation on their technological development and innovation activities in the fields of energy production, conversion, transport, distribution and the efficient and clean use of energy, in a manner consistent with nuclear non-proliferation obligations and undertakings.

To this end, they will encourage cooperative efforts on:

- research and development activities;
- pilot or demonstration projects;
- the application of technological innovations;
- the dissemination and exchange of know-how and information on technologies.

7. Energy efficiency, environmental protection and sustainable and clean energy

The signatories confirm that cooperation is necessary in the field of efficient use of energy, development of renewable energy sources and energy-related environmental protection.

This should include:

- ensuring, in a cost-effective manner, consistency between relevant energy policies and environmental agreements and conventions;
- ensuring market-oriented price formation, including a fuller reflection of environmental costs and benefits
- the use of transparent and equitable market-based instruments designed to achieve energy objectives and reduce environmental problems;

- the creation of framework conditions for the exchange of know-how regarding environmentally sound energy technologies, renewable energy sources and efficient use of energy;
- the creation of framework conditions for profitable investment in energy efficiency and environmental friendly energy projects

8. Access to sustainable energy

The signatories underline the importance of access to sustainable, modern, affordable, and cleaner energy, in particular in developing countries, which may contribute to energy poverty alleviation.

To this end, the signatories confirm that they will make efforts to strengthen their cooperation and to support initiatives and partnerships at international level which are conducive to these goals.

9. Education and training

The signatories, recognizing industry's role in promoting vocational education and training in the energy field, decide to cooperate in such activities, including:

- professional education;
- occupational training;
- public information in the energy efficiency and renewable energy field.

10. Diversification of energy sources and supply routes

The signatories confirm that in order to enhance energy security, energy generation from a diverse set of sources and diversification of supply routes is of significant importance

TITLE III

Specific agreements

The signatories decide to pursue the objectives and principles of this Charter and implement and broaden their cooperation, including in the following areas:

- horizontal and organizational issues;
- energy efficiency, including environmental protection;
- prospecting, production, transportation and use of oil and oil products and modernization of refineries;
- prospecting, production and use of natural gas, interconnection of gas networks and transmission via high-pressure gas pipelines;
- all aspects of the nuclear fuel cycle including improvements in safety in that sector;
- modernizations of power stations, interconnection of power networks and transmission of electricity via high-voltage power lines;
- development of integrated regional energy markets;
- all aspects of the coal cycle, including clean coal technologies;
- development of renewable energy sources;
- access to sustainable energy;
- transfers of technology and encouragement of innovation;
- cooperation in dealing with the effects of major accidents, or of other events in the energy sector with transfrontier consequences.

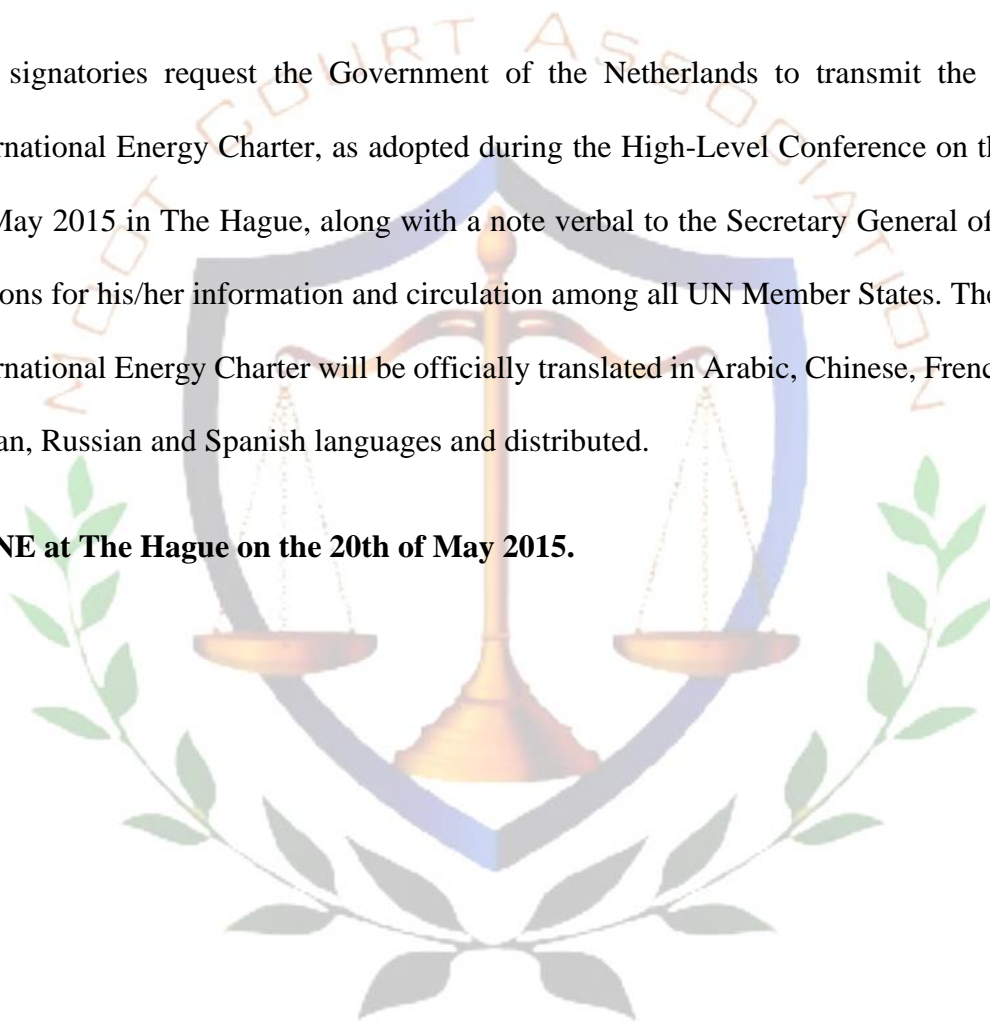
TITLE IV

Final provisions

The original of this Charter will be transmitted to the Government of the Netherlands which will retain it in its archives. Each of the signatories will receive from the Government of the Netherlands a true copy of the Charter.

The signatories request the Government of the Netherlands to transmit the text of the International Energy Charter, as adopted during the High-Level Conference on the 20th and 21 May 2015 in The Hague, along with a note verbal to the Secretary General of the United Nations for his/her information and circulation among all UN Member States. The text of the International Energy Charter will be officially translated in Arabic, Chinese, French, German, Italian, Russian and Spanish languages and distributed.

DONE at The Hague on the 20th of May 2015.



ANNEX

OUTCOME DOCUMENTS OF ENERGY-RELATED REGIONAL AND INTERNATIONAL CONFERENCES AND OTHER EVENTS AS WELL AS INITIATIVES REFERRED TO ON PAGE 2

- The Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects which entered into force on 16 April 1998 establishing an international framework encouraging cooperation in the field of energy efficiency in a way compatible with sustainable development;
- The Plan of Implementation of the World Summit on Sustainable Development adopted in Johannesburg on 4 September 2002, calling for enhancing International and regional cooperation to improve access to reliable, affordable, economically viable, socially acceptable and environmentally sound energy services, as an integral part of poverty reduction programmes, by facilitating the creation of enabling environments and addressing capacity- building needs, with special attention to rural and isolated areas, as appropriate;
- The declaration Global Energy Security of the Summit of the G8 in St. Petersburg on 16 July 2006 where the G8 Leaders expressed their support for the principles of the Energy Charter and the efforts of participating countries to improve international energy cooperation;
- The "Riyadh Declaration" of the Third OPEC Summit of 18 November 2007 in which the heads of State and Government underscored the interrelationships between global security of energy supply and security and predictability of demand. They also expressed their decision to strengthen and broaden the dialogue between energy producers and consumers through the relevant/competent international and regional fora, for the benefit of all;

- The Statute of the International Renewable Energy Agency (IRENA), signed at the Conference on the Establishment of the IRENA in Bonn on 26 January 2009, in which the parties express their desire to promote the increased adoption of renewable energy with a view to sustainable development and their firm belief in the vast opportunities offered by renewable energy for addressing and gradually alleviating problems of energy security and volatile energy prices;
- The Joint Statement by the G8 Energy Ministers Meeting in Rome on 25 May 2009, where the G8 Energy Ministers, the European Commissioner for Energy, and the Energy Ministers of Algeria, Australia, Brazil, China, Egypt, India, Indonesia, Korea, Libya, Mexico, Nigeria asked the Energy Charter Secretariat and International Financial Institutions to prepare a strategy for the development of energy networks and corridors assuring transit towards the integration of national energy markets in Africa, while identifying financing mechanisms;
- The Rome Statement adopted by the Energy Charter Conference on 9 December 2009 to address global energy challenges in the framework of the modernization of the Energy Charter Process;
- The Agreements of the United Nations Climate Change Conference reached in Cancun on 11 December 2010, in which the international community agreed on a set of significant decisions to address the long-term challenge of climate change collectively and comprehensively and that the parties should take urgent action to meet this long-term goal with a view to reducing global greenhouse gas emissions so as to hold the increase in global average temperature below 2°C above pre-industrial levels;
- The International Energy Forum Charter approved and signed at the IEF Ministerial Meeting held in Riyadh on 22 February 2011 demonstrating a reinforced political commitment to an open global energy dialogue among the energy consuming and energy

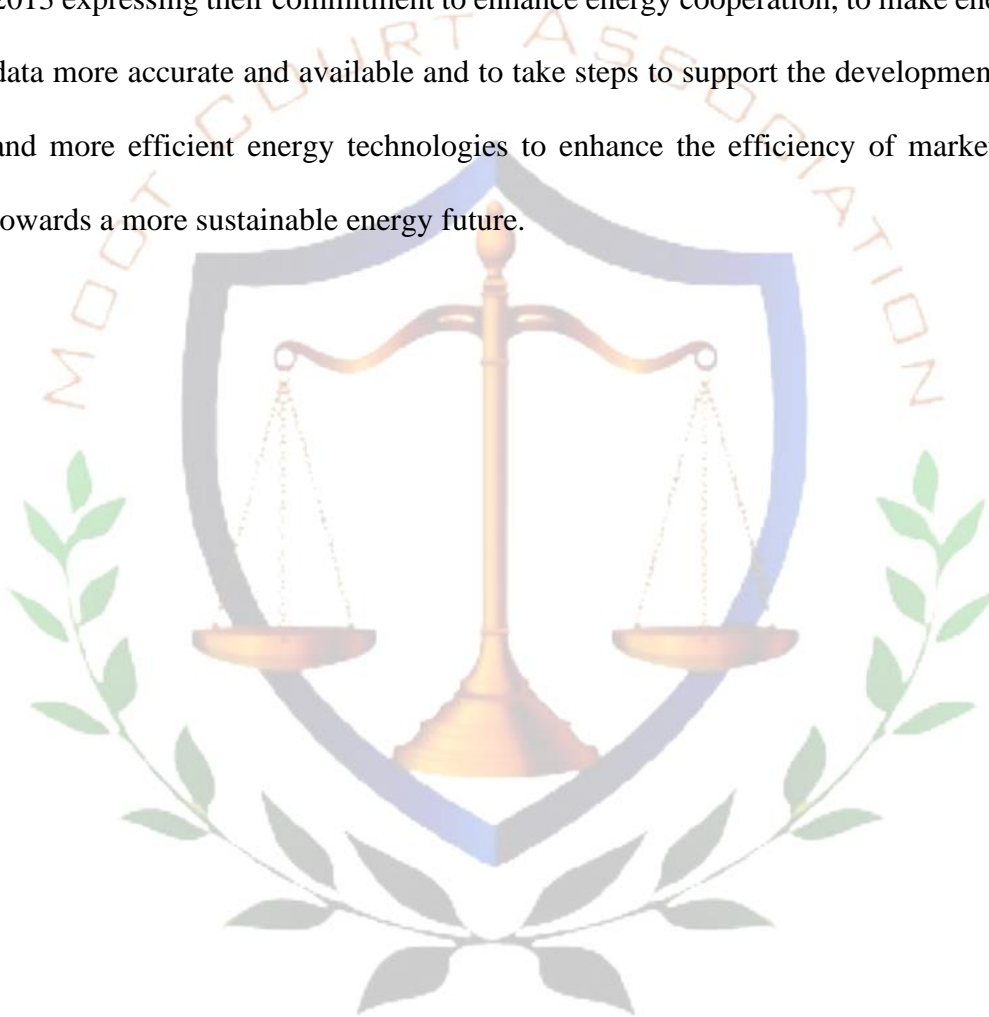
producing members of the IEF, including transit States, in order to ensure global energy security;

- The objectives under the global "Sustainable Energy for All" (SE4A) initiative of the UN of September 2011 and the 2014-2024 World Decade for Sustainable Energy" aiming to achieve universal energy access, improve energy efficiency and increase the use of renewable energy;
- The objectives under the "EU-Africa Energy Partnership":
- The Doha Declaration adopted at the First Summit of the Gas Exporting Countries Forum on 15 November 2011, which called for promotion and development of new and effective channels of dialogue between natural gas producers and consumers, through international and regional energy organizations and for a, for the purpose of ensuring technology transfer, market transparency, stability, and growth for the benefit of all;
- The conclusions of the Council of the European Union of 24 November 2011 on strengthening the external dimension of the EU energy policy where EU called for a need of geographical enlargement of Energy Charter Treaty which will aim at strengthening the role of the Treaty as a global instrument, recognized as the basis for international energy regulation in its main fields of competence;
- The Outcome Document entitled "The Future We Want" which was endorsed by the UN Conference on Sustainable Development of 22 June 2012 and was annexed in the UN General Assembly Resolution 66/288, which recognized the critical role that energy plays in the development process, as access to sustainable modern energy services contributes to poverty eradication, saves lives, improves health and helps provide basic human needs;
- "The St. Petersburg Resolution" of the 2012 APEC Energy Ministerial Meeting on 24-25 June 2012, in which APEC Energy Ministers recognize that enhancing energy security

- requires concerted action in many areas and commit to continue their efforts to improve the sustainability, efficiency, predictability and transparency of traditional energy markets;
- The OSCE Parliamentary Assembly Resolution "Promotion and use of new and renewable sources of energy adopted at the 21 OSCE PA Annual Session in Monaco on 9 July 2012, stressing the crucial role of energy security in the new security environment and the imperative need for fairness and transparency, in accordance with international law and the European Energy Charter;
 - The Final Document of the 16th Summit of Heads of State or Government of Non-Aligned Movement, which took place on 26-31 August 2012 in Teheran, in which the Heads of State or Government stressed the importance of enhancing international Cooperation through partnership in all forms of energy including clean and renewable Energy. They called upon the developed countries to transfer more efficient and environmentally sound technologies to developing countries, and for the United Nations to promote and facilitate this;
 - The Concluding Declaration of the Rabat Energy Forum of 21 September 2012 in which the Energy Charter was recognized as an efficient instrument to contribute and strengthen energy cooperation in the MENA region;
 - UN General Assembly Resolution 67/263 Reliable and stable transit of energy and its role in ensuring sustainable development and international cooperation adopted on 17 May 2013, noting that stable, efficient and reliable energy transportation, as a key factor of sustainable development, is in the interest of the entire international community, and welcoming the efforts at the national, bilateral, sub-regional, regional and international levels in building energy transportation systems and facilitating the trade of energy resources to promote sustainable development;
 - The Ministerial declaration on regional cooperation for enhanced energy security and the sustainable use of energy in Asia and the Pacific adopted on the Asian and Pacific Energy

Forum in Vladivostok, Russian Federation, on 30 May 2013 where energy security is recognized as a key development issue for all countries in the Asia-Pacific region and the crucial importance of energy as a prerequisite to poverty eradication and ensuring economic growth is stressed;

- The Leaders' Declaration of the Summit of the G20 in St. Petersburg on 5-6 September 2013 expressing their commitment to enhance energy cooperation, to make energy market data more accurate and available and to take steps to support the development of cleaner and more efficient energy technologies to enhance the efficiency of markets and shift towards a more sustainable energy future.



ANNEXURE -2

STATE ELECTRICITY REGULATORY COMMISSION, OMRON

Order No.43 of 2021 dated 20-11-2021

Present: Justice Mayank Mishra	- Chairman
Dr. Kajal Baghel	- Member
Sri. P. Rama Sohan	- Member

In the matter of notifying the generic preferential tariff applicable from 1st January 2022 till 31th March 2023 in respect of Wind-Solar Power Projects in the State of OMRON pursuant to Regulation 6 of Regulation No.1 of 2021.

In compliance with the statutory mandate of Section 61 (h) and Section 86 (1) (e) of the Electricity Act, 2003 and in accordance with the State Electricity Regulatory Commission (Terms and Conditions for Tariff Determination for Wind-Solar Power Projects) Regulations, 2022 (Regulation No.1 of 2022) in general and Regulation No.6 thereof in particular and the principles and parameters prescribed therein for determination of generic preferential tariff for wind power projects and in exercise of the powers conferred under Regulation No.24 of the said Regulations and Regulation No. 55 of the State Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (Regulation No.2 of 1999) and all other powers hereunto enabling, the State Electricity Regulatory Commission makes the following order:

As per Regulation 6 of the State Electricity Regulatory Commission (Terms and Conditions for Tariff Determination for Wind Power Projects) Regulations 2021, the generic preferential tariff applicable for FY2022-23 shall be notified soon after the publication of the regulations in the Official Gazette to be applicable with effect from the date of the regulations coming into force.

Before making Regulation No. 1 of 2022, public notice was given and after considering all the suggestions and objections received from the public and the stakeholders, the said Regulation has been notified. The parameters for fixation of tariff specified therein work themselves out in arriving at the generic preferential tariff for the FY2022-23 as a necessary consequence, which is hence, a matter of mere arithmetical computation in implementation of and in compliance with the provisions of Regulation No. 1 of 2022.

Accordingly, the parameters taken into consideration as per the Regulation No. 1 of 2021 for determination of tariff are as hereunder:

	Parameter	Value
A	Tariff Period	25 years
B	Useful Life	25 years
C	Capital Cost	`600 lakhs / MW (including evacuation cost)
D	O & M Expenses	`8.57 lakhs / MW
E	O&M Expenses' Escalation	7.52% p.a.
F	Depreciation for the first 10 years	7% p.a.
G	Depreciation for the remaining useful life of the plant	1.33 % p.a.
H	Capacity Utilization Factor (CUF)	23.5%
I	Return on Equity	16%
J	Interest Cost on Debt	13%
K	Tenure of Loan	10 years
L	Interest on Working Capital	13.5%
K	Debt Equity Ratio	70 : 30
L	Discount Rate	10.81%

Based on the above parameters and considering the useful life of the Wind Power Plants as 25 years, the levelized generic preferential tariff works out to `4.83 / unit without considering the accelerated depreciation and 4.25 with accelerated depreciation. The Commission, accordingly, notifies the levelized generic preferential tariff as follows:

Tariff without AD benefit	Tariff with AD benefit
`4.83	`4.25

This tariff shall be applicable for all the new wind power projects entering into Power Purchase Agreements (PPA) on or after the date of notification of the Regulations in the Official Gazette of the State Govt. of OMRON i.e., 31-07-2015.

The Solar Power component in the Hybrid Power Plant shall function according to the under mentioned tariff determination process:

a) kW scale SRTPV projects (1 kW to 2000 kW and 1kW to 10kW):

Parameters for Kilowatt scale		
Cost/kW- in Rs.	1kW to 10kWRs. 46,500 per kW as base	1 kW to 2000kWRs 35,046 per kW as base
Useful life of the plant in years	25	25
Debt: Equity Ratio	70:30	70:30
Debt- in Rs.	32,550	24,532
Interest Rate on Debt-%	9.30	9.30
Debt Repayment in Yrs.	13	13
CUF in %		19
Equity- in Rs.	13,950	10,514
ROE-%	14	14
Auxiliary consumption		
O & M expenses in Rs. /kW	670	670
O & M Escalation p.a. (%)	5.72	5.72
WC interest (one month's receivables in %	10	10
Depreciation in %	5.38% p.a for first 13 years and remaining depreciation spread equally over balance years of the plant useful life.	5.38% p.a for first 13 years and remaining depreciation spread equally over balance years of the plant useful life.

b) MW scale Solar Power Projects (Ground Mounted)

Parameters for Megawatt scale solar projects	
Cost/MW- Rs. Lakhs	350.46
Useful life of the plant in years	25
Debt: Equity Ratio	70:30
Debt-Rs. Lakhs	245.32
Interest Rate on Debt-%	9.30
Debt Repayment in Yrs.	13
CUF	19
Equity- Rs. lakhs	105.14
ROE-%	

Auxiliary consumption	0.25
O & M expenses in Rs. Lakhs/MW	5.03
O & M Escalation p.a. (%)	5.72
WC interest (two months' receivables	
Depreciation in %	5.798% p.a for first 13 years and remaining depreciation spread equally over balance years of the lant useful life.

(By order of the commission)

**Sd/-
Dr. Akshat Jain
Commission Secretary (i/c)**