



**TELANGANA STATE ELECTRICITY REGULATORY COMMISSION**  
**5<sup>th</sup> Floor, Singareni Bhavan, Red Hills, Hyderabad-500 004**

O. P. No. 62 of 2015

Dated 29.06.2017

**Present**

Sri. Ismail Ali Khan, Chairman  
Sri. H. Srinivasulu, Member

Between:

1. M/s. Central Power Distribution Company of  
Andhra Pradesh Limited, 6-1-50, Mint Compound,  
Hyderabad – 500 063.
2. M/s. Southern Power Distribution Company of  
Andhra Pradesh Limited, Beside Srinivasa Kalyana Mandapam,  
Tiruchanoor Road, Tirupathi – 517 501.
3. M/s. Northern Power Distribution Company of  
Andhra Pradesh Limited, H. No. 1-1-503 & 504,  
Opp. “NIT” Petrol Pump, Chaitanyapuri,  
Hanamkonda, Warangal – 506 004.
4. M/s. Eastern Power Distribution Company of  
Andhra Pradesh Limited, P & T Colony,  
Seetammadhara, Vishakhapatnam – 530 020. ... Petitioners

And

-Nil - ... Respondent.

This petition came up for hearing on 04.02.2015, 20.04.2015, 25.06.2015, 15.07.2015 and 07.06.2017. There is no representation on behalf of the petitioner on 07.06.2017. Sri. Y. Rama Rao, Counsel for the respondents along with Sri. B. Vijay Bhaskar, Advocate is present. The petition alongwith interlocutory application having stood for consideration to this day, the Commission passed the following:

## ORDER

The petitioners had originally filed petition before the erstwhile Andhra Pradesh Electricity Regulatory Commission under section 86 (1) (e) of the Electricity Act, 2003 in O. P. No. 19 of 2014. The original petition was pending consideration till October, 2014.

2. Consequent upon passage of A. P. Reorganisation Act, 2014 (Central Act, 6 of 2014), the State of Telangana came into being and this Commission became functional on 03.11.2014. The pending litigation as on the date of functioning of this Commission has been requisitioned from the present APERC and the instant case has been renumbered as above.

3. The distribution companies at the relevant time have raised the following contentions in the petition.

4. The petitioners stated that the Commission in exercise of the powers conferred under Section 61, 66, 86(1)(e) and 181 of the Electricity Act 2003 passed Regulation No.1 of 2012 by orders dated 21.03.2012 as mentioned below:

- i) Every Distribution Licensee shall be required to purchase Electricity, not less than 5% of his consumption of energy, from Renewable Energy (RE) sources as RPPO (Renewable Power Purchase Obligation) during each of the years 2012-13 to 2016-17 (each year commencing on 1<sup>st</sup> April of the Calendar Year and ending on 31<sup>st</sup> March of the subsequent Calendar Year) at the rates applicable for purchase of electricity from such RE sources as per the orders of the Commission in force from time to time.
- ii) A minimum of 0.25 percentage point out of the 5% Renewable Power Purchase Obligation (RPPO) specified above, shall be procured from Solar Power Generation.

5. The petitioners stated that the pooled cost of power purchase applicable for the period from the date of publication of these Regulations in the Andhra

Pradesh Gazette till 31.05.2012 shall be Rs.2.00 per unit, which shall be treated as ad-hoc notional pooled cost of power purchase of the previous year. Pooled cost of power purchase' means the weighted average pooled price at which the distribution licensee has purchased electricity in the previous year from all the long-term energy suppliers excluding the purchases based on liquid fuel. However, it is provided that the purchases from traders, short-term purchases and purchases from renewable sources shall not be taken into account while determining pooled cost of power purchase.

6. The petitioners stated that in the light of the above orders, they are submitting the details of the purchased electricity in the previous year 2011-12 from all the long-term energy suppliers, excluding the purchases based on liquid fuel purchases, the purchases from the traders, short-term purchases and purchases from the renewable sources.

7. The petitioners stated that they requested the Commission to pass necessary orders to the effect that they enter into agreement with the NCE developers for supply of electricity at average pooled cost of power purchase that is Rs.2.93 for the projects coming up in the year 2012-13 in their jurisdiction, provided that they have fulfilled the RPPO obligation capacity. APCPDCL on behalf of all the petitioners filed the petition before APERC for computation of pooled cost for FY 2011-12 to be considered for the year 2012-13.

8. The petitioner stated that as per the directions issued by Commission during a meeting held on 29.09.2012, the CGM/Comml & RAC/APCPDCL proposed average pooled cost is as Rs.2.96 per unit which includes all the cost like fixed, variable, income tax and incentives paid during the FY 2011-12 and excluding short term power purchase, NCE and generation from liquid fuels as approved by APPCC. As per clause 9 of in Regulation 1 of 2012, the Commission has power to remove difficulties.

## 9 Power to remove difficulties

The Commission, suo-Motu or on an application from any person generating electricity from renewable sources or an entity mandated under clause (e) of sub-section (1) of section 86 of the Act to fulfil the Renewable Power Purchase Obligation (RPPO), may review, add, amend or alter these regulations and pass appropriate orders to remove any difficulty in exercising the provisions of these regulations.

9. The petitioners stated that the Commission vide Regulation 1 of 2012 has also fixed the penal charges for non compliance of the RPPO obligation as extracted below.

“Consequences of default:

7.1 If the obligated entity(s) does not fulfil the Renewable Power Purchase Obligation as provided in clause (3) of these regulations during any year, the Commission may direct the obligated entity (s) to deposit into a separate fund, to be created and maintained by the State Agency, such amount as the Commission may determine on the basis of the shortfall in units of Renewable Power Purchase Obligation (RPPO) and the forbearance price decided by the Central Commission.

Provided that the fund so created shall be utilized, for purchase of the certificates or as may be directed by the Commission;

Provided further that the Commission may empower an officer of the State Agency to procure from the Power Exchange the required number of certificates to the extent of the shortfall in the fulfilment of the obligations, out of the amount in the fund.

7.2 Where any obligated entity(s) fails to comply with the obligation prescribed in clause (3) of these Regulations, it shall, in addition to the compliance of the directions under clause (7.1) above, be liable for penalty as may be decided by the Commission under section 142 of the Act.

10. The petitioners stated that at present, APCPDCL is meeting 1.5 to 2% of the RPPO obligation fixed by the Commission and for the balance percentage, APCPDCL has to purchase Renewable Energy Certificates from the Power Exchanges which involves huge financial burden on APCPDCL which is nearly Rs.700 crores for the financial year 2012-13 which is nothing but a transfer mechanism of public money and increasing debits to DISCOM and paying consumers money as interest of loan to banks. The projections of Commission for NCE generation as per the tariff order 2012-13 and amount estimated towards purchase of REC certificates for shortfall of units is stated in detail in the petition.

11. The petitioners stated that most of the NCE developers are going to set up plants under REC mechanism and not willing to enter PPA with regulated / preferential tariff. The state government by G.O. Ms.No.39, dated 26.09.2012 has also issued solar power policy – 2012 wherein it had facilitated the solar developers to set up under REC mechanism only. It also stated the DISCOM wise NCE power purchases for FY 2011-12 in the petition.

12. The petitioners stated that so far they have meet only 1.5% to 2% only as the NCE capacity additions are not commensurate with the load growth of DISCOMs, which is around 10%. It is stated that presently as per CERC by orders dated 23.08.2011 has determined the Forbearance and Floor Price for the REC framework to be applicable from 1<sup>st</sup> April 2012 which is extracted below.

	Non solar REC (Rs/MWh)	Solar REC (Rs/MWh)
Forbearance Price	3480	13690
Floor Price	1400	9880

13. The petitioner stated that Commission has issued orders dated 15.11.2012 determining tariff at Rs. 4.70 per unit for the projects entering PPA with DISCOMs between the date of order and 31.03.2015. However, commissioning of the new wind power projects may take considerable period.

It is stated that the anticipated REs capacity addition in the state during the 12<sup>th</sup> plan communicated to PGCIL is filed as annexure. As seen from the statement, most of the capacity addition is proposed from the Wind power, which is mostly concentrated in the jurisdiction of APCPDCL and some part of APSPDCL. The ban imposed by Commission on new bio mass based projects is still continued.

14. The petitioner stated that due to the non-uniformity of the available resources of RE potential among them, it is difficult to meet the 5% RPPO specified by the Commission every year. The gestation period of establishing RE power projects have also to be taken into jaccount for fulfilment of RPPO. The petitioner has sought the following prayer in the petition

- i) To consider the actuals of NCE generation for FY 2012-13 as base year, and 0.5% increased for every year in the control period of Regulation 1 of 2012.
- ii) To reduce the minimum limit of percentage of energy to be procured from NCE sources, keeping in view of the capacities for which PPAs are already entered into, provision for future development and burden on consumers.
- iii) To permit recovery of the penalty to be paid by utilities to APERC from consumers as green energy cess/charges, in monthly bills and file the same in ARR 2013-14.
- iv) To differ the penal provisions for not fulfilling the obligation at least for next 3 years as APDISCOMs is not rejecting any proposal from NCE generators to enter PPAs at preferential tariff.

15. The matter was listed on several dates in the year 2015 and was adjourned from time to time. The plea taken by the petitioners was that the matter involved the issue of jurisdiction of the Commission. As the Commission has already decided the issue of jurisdiction, by order dated 31.10.2016 in O. P. No. 25 of 2015 and batch, the matter has been again listed for hearing on 07.06.2017.

16. Though several issues and contentions have been raised in the context of the Regulation No. 1 of 2012 issued by the erstwhile APERC, the same are of no consequence due to bifurcation of the erstwhile State of Andhra Pradesh and alteration of boundaries of the licensees pursuant to Central Act, 6 of 2014. Moreover, the regulation, which is sought to be modified with regard to renewable energy procurement and renewable energy certificates has already worked out itself with the closure of validity period of the regulation in March, 2017.

17. The counsel for the petitioners stated that the petition was filed for modification of the regulation on renewable power purchase obligation. The petition was filed in the erstwhile APERC. The regulation itself has lost its sanctity as the time period specified in the regulation has lapsed. He further informed the Commission that the present APERC has already dismissed the original petition on its file on the same subject insofar as APDISCOMs are concerned. Therefore, he requests for disposal of this petition also.

18. We are in agreement with the submissions of the counsel for the petitioners, though the issues raised in the petition may be germane to the licensees, the same cannot be adjudicated due to efflux of time. Therefore, we deem it appropriate to dismiss the petition as keeping it pending for want of jurisdiction or any other issue would be a futile exercise.

19. Before we part with the case, as a passing reference, we notice the observations made by the Andhra Pradesh Electricity Regulatory Commission in the part matter, which remained with it in respect of similar issue insofar as DISCOMs of Andhra Pradesh. The original order is passed by the said Commission on 05.06.2015 in O. P. No. 19 of 2014. The relevant observations are reproduced hereunder.

“4. ....the reasons for proposing the amendment to Regulation 1 of 2012 for reducing the renewable power purchase obligation waiving the penalties for non-compliance thereof do not appear convincing or strong

enough to override or ignore the statutory mandate of Section 86 (1) (e) or the National Policy or National Plan of Action or decisions of Forum of Regulators and Ministry of Government of India concerned or decisions of Appellate Tribunal for Electricity. Prevailing public opinion and public policy uniformly throughout the nation is for encouragement of production of electricity from Renewable Energy Sources both as an anti-pollutant measure protecting environment and as a safe and secure manner of production of energy and the request of the petitioner to the contrary does not appear to deserve acceptance. There is no reason to override the persuasive decisions of the other State Electricity Regulatory Commissions or the binding views of the Appellate Tribunal for Electricity in this regard. Consequently the reliefs sought for cannot be granted.”

Further to the above order in the review petition filed by one of the DISCOMs vide R. P. No. 19 of 2015 in O. P. No. 19 of 2014 dated 28.05.2016, it has been observed by the said Commission as follows.

“33. .... While the availability of Renewable Energy certificates for complying with the mandatory obligations is a significant ground to question the petitioner’s failure to comply with the RPO in the relevant years themselves, the same need not be deemed as conclusive foreclosing any other options for the petitioner, which is also suffering along with the State, the unsettling consequences of the bifurcation of the State and consequently the electricity industry. The division of the assets and liabilities or the rights and obligations following the bifurcation is still unconcluded. The difficulty of the petitioner in meeting the Renewable Power Purchase Obligation from purchase of Renewable Energy certificates arising from or attributable to such extraneous factors over which the petitioner had no control also can be taken note of. The financial condition of the petitioner is undoubtedly extremely difficult if not miserable due to causes over which it has no control. As the language of Regulation 1 of 2012 does not make non-availability of Renewable Energy certificates, an unexceptionable pre-condition for carrying

forward, the request of the petitioner can receive sympathetic consideration, more so when it relates to a past default, does not specifically prejudice the rights or interests of any specific stake holder or Renewable Energy generator and promotes production of more green energy in the coming 5 years, .....

34. .... Whatever obligation is created by such a regulation has to be unexceptionally complied with by the petitioner each year without seeking any excuses in view of various submissions made now, whereas any deficit in meeting Renewable Power Purchase Obligation each year from 2012-13 to 2016-17 shall also be met in each year of the next such period of 5 years commencing from 2017-18. ....”

Though we may not completely subscribe to the view expressed by the said Commission, at the same time, we are not making any comments on the merits of the case as the counsel for the petitioners chooses to and seeks dismissal of the case in limine and for the reasons explained in the earlier paragraphs.

20. Accordingly, the original petition is dismissed, but without any costs.

***This order is corrected and signed on this the 29<sup>th</sup> day of June, 2017.***

**Sd/-  
(H. SRINIVASULU)  
MEMBER**

**Sd/-  
(ISMAIL ALI KHAN)  
CHAIRMAN**

**//CERTIFIED COPY//**