



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

4<sup>th</sup>Floor, Singareni Bhavan, Red Hills, Hyderabad 500004

FRIDAY, THE SIXTH DAY OF AUGUST  
TWO THOUSAND AND TWENTY ONE

:Present:

**Justice C.V. Nagarjuna Reddy, Chairman**  
**Sri Thakur Rama Singh, Member**  
**Sri P. Rajagopal Reddy, Member**

I.A.No.34 of 2020 & I.A.No.1 of 2021  
In  
O.P.No.30 of 2016

Between :

M/s. Siflon Drugs,  
Sy.No.25-4, Rachanapalli (v),  
Anantapur, A.P. - 515404  
Represented by its Managing Partner  
Sri R. Ananthaiah s/o. Late Pedda Anjaiah .. Applicant

And

1. Transmission Corporation of Andhra Pradesh Ltd.,  
Vidyut Soudha, Gunadala, Eluru Road,  
Vijayawada, Andhra Pradesh - 520004,  
Represented by its Chairman & Managing Director
2. Southern Power Distribution Company of  
Andhra Pradesh Limited, # 19-13-65/A,  
Srinivasapuram, Tiruchanoor Road, Tirupati,  
A.P.-517503, Represented by its  
Chairman & Managing Director .. Respondents

These applications have come up for hearing finally on 16-06-2021 in the presence of Sri Challa Gunaranjan, Counsel for the applicant in

I.A.No.34/2020 and respondent in I.A.No.1/2021 and Sri P. Shiva Rao, learned Standing Counsel for the respondents in I.A.No.34/2020 and the applicant in I.A.No.1/2021, and upon hearing the arguments of the learned Counsel for both the parties, the Commission passed the following :

**ORDER:**

As these two applications are inter-related, they are heard and disposed of together. For convenience, the applicant in I.A.No.34/2020 is referred to as the “applicant” and the respondents in the said I.A. are referred to as the “respondents”.

The applicant filed I.A.No.34 of 2020 under Section 142 of the Electricity Act 2003 r/w Regulation 55 of the APERC (Conduct of Business) Regulation 1999 complaining violation and disobedience of order dated 31-03-2018 of this Commission in O.P.No.30 of 2016. The brief facts pleaded by the applicant are stated hereunder.

The applicant is a partnership firm engaged in the business of manufacture of drugs. Originally, in the year 1995, M/s. ITW Signode had set up a 1.0 MW capacity Wind Power Project at Ramagiri, Anantapur District for its captive consumption and had entered into a Wheeling Agreement dated 31-03-1995 with the A.P. State Electricity Board (APSEB) and the same was valid till 22-05-2015. The wind farm was subsequently transferred in favour of M/s. Signode India Ltd. and the applicant acquired the same on 23-03-2015

for the purpose of captive consumption by wheeling the power generated from the plant to the applicant's unit at Rachanapalli, Anantapur District. Pursuant to the acquisition of the plant, the applicant, immediately on 23-05-2015 had sought for No Objection Certificate (NoC) from the NREDCAP and the same was accorded on 13-04-2015. However, respondent No.1 had advised the applicant to submit a fresh application after transfer of title in the name of the applicant. Due to the inordinate operational delays on one cause or the other, the respondents have taken more than sixteen months (i.e., period from 23-03-2015 to 14-06-2016) to approve the sanction of Long Term Open Access (LTOA) and signing the LTOA with the applicant. During the said period, the applicant had fed over 1.2 MU into the Grid and the same was evidenced in the monthly readings. The applicant made a representation to respondent No.2 to give credit of the said units by treating them as banked units which respondent No.2 had refused on the ground that there was no agreement between the applicant and respondent No.2 for the period between 23-03-2015 and 14-06-2016. Having no other alternative remedy, the applicant filed O.P.No.30 of 2016 before this Commission under Section 86(1)(f) of the Electricity Act 2003 r/w. Regulation 8 of APERC (Conduct of Business) Regulation 1999 seeking directions for giving credit of the power supplied into the Grid during the said period, amounting to about/approximately 1.2 MU by treating them as banked units. The O.P. was

allowed on 31-03-2018. After receiving the order in the O.P., the representative of the applicant gave representations to respondent Nos.1 and 2 on 30-05-2018, 20-09-2018, 26-10-2018, 22-11-2018 and 12-04-2019, requesting for implementation of the order of this Commission, but the respondents have not made any efforts to comply with the same. Hence the applicant filed the present application under Section 142 of the Electricity Act 2003 r/w. Clause 55 of the APERC (Conduct of Business) Regulation 1999 to punish respondent Nos.1 and 2 for not complying with the order dated 31-03-2018 of this Commission passed in O.P.No.30 of 2016.

During the hearing of I.A.No.34 of 2020 on 21-10-2020, Sri P. Shiva Rao, learned Standing Counsel for the respondents has undertaken to comply with the order of this Commission within two weeks and also offered to file an affidavit explaining the reasons for non-compliance of the order for more than two years. On 19-12-2020, the learned Standing Counsel reported during the hearing that in compliance with the order of this Commission, the respondents made a deposit of Rs.18,28,039/- and also filed an affidavit explaining the reasons for the delay in complying with the order.

Sri Challa Gunaranjan, learned Counsel for the applicant seriously disputed the claim of the respondents with regard to the compliance of the order. According to him, the respondents have to pay an amount of

Rs.38,36,938/-. He has requested for time for filing additional pleadings in that regard. Accordingly, the applicant filed a Memo on 9-3-2021 as per which the respondents have to pay a total sum of Rs.36,73,932-13 ps. and that as the respondents have paid Rs.18,28,039/- they are liable to pay the balance amount of Rs.18,45,893-13 ps.

On 7-4-2021, the learned Standing Counsel for the respondents submitted that as per the extant Regulation framed by this Commission, the applicant is entitled to payment of 50% of the pooled cost, that if the applicant is interested in utilizing its banked energy, the respondents have no objection for such utilization subject to the Regulations. Both the parties have sought time for instructions in that regard.

On behalf of the respondents, the CGM/Projects, APCPDCL has filed an affidavit wherein he has inter alia stated that the respondents have no objection for the applicant to draw the energy supplied into the Grid subject to the Regulations in force regarding drawal period of the relevant year and that if any unutilized power remains, the same will be paid @ 50% of the pooled cost of the relevant year, provided the applicant shall pay back the sum of Rs.18,28,039/- received by it from the respondents.

After the case was adjourned on 5-5-2021, the respondents have filed I.A.No.1 of 2021 under Clause 55 of the APERC (Conduct of Business) Regulation 1999 r/w. Section 152 of the Code of Civil Procedure 1908 seeking amendment/modification of the order dated 31-03-2018 in O.P.No.30 of 2016 pleading that as per the Regulation which was in force during 2015-16 the deemed purchase of banked energy shall be at 50% of the pooled power purchase cost which was determined by this Commission, that although the intention of the Commission was to accept the request of the applicant to give credit of deemed purchase of banked energy, by accidental omission the effect of the Regulation in force about such deemed purchase of banked energy was not clearly stated in the order; that there was also no specific order to the effect that the deemed purchase of banked energy shall be de hors the Regulation in force as to the price payable to such banked units and that in para-7 of the order it was clearly stated that as per the Regulation in force the price payable to deemed purchase of the banked units shall be 50% of the pooled cost. It is further pleaded that every order of the Commission needs to be read in consonance with the Regulation in force and since the Commission had specifically referred to Regulation No.2 of 2016 as amended, which was in force during the relevant period, the respondents have applied the price payable @ 50% of the pooled cost of that relevant year and

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paid the same to the applicant and that the said action of the respondents is absolutely in consonance with the Regulation in force. That from paras 7, 10 and 11 of the order dated 31-03-2018 of the Commission it is clear that there occurred accidental omission in giving effect to the Regulation in vivid terms and that therefore the same deserves to be amended to prevent abuse of the process of law.

On 15-06-2021, the case was finally heard. Sri Challa Gunaranjan, the learned Counsel for the applicant submitted that pending entering into the LTOA, the applicant has supplied power, that they have never intended to bank such power, that if the respondents offered to permit the applicant to utilize the power dispatched into the Grid during the current period, his client has no objection for accepting the same unconditionally and that there is no justification to subject the applicant to the Regulations which govern the utilization of banked energy. The learned Counsel further submitted that if the respondents seek to deviate from the order of this Commission and suggest an alternative, it is unjust to impose restrictions on utilization of the energy fed into the Grid in lieu of receipt of its value. He further submitted that the applicant is agreeable for the respondents' offer of utilizing its energy only if such utilization is not subjected to any restrictions under Regulation No.2 of 2006.

Both the applications were finally heard on 16-06-2021.

Having regard to the respective pleadings of the parties, the following Points emerge for adjudication :

1. Whether respondent No.2 has not complied with the order dated 31-03-2018 in O.P.No.30 of 2016 ?
2. Whether the order dated 31-03-2018 in O.P.No.30 of 2016 requires any amendment/modification ?
3. Whether the respondents are liable for any penalties, and if so, to what extent ?

**Re Point Nos.1 & 2:** The undisputed facts are that M/s. ITW Signode India Ltd./Signode India Ltd. had a power wheeling agreement with the erstwhile APSEB having been entered on 31-03-1995 and valid till 22-05-2015. Before the expiry of the said agreement, the applicant entered into a MoU with M/s. Signode India Ltd. With the No Objection from respondent No.3, the applicant requested respondent No.2 on 18-4-2015 to transfer the wheeling agreement in their name and start giving credit to the power generated and the unutilized banked units. Only on 27-07-2015, respondent No.2 has approved the transfer by which time the wheeling agreement has expired. The applicant

first applied on 1-5-2015 to respondent No.1 for Long Term Intrastate Open Access. On being advised, it again applied on 29-07-2015. It is only on 15-06-2016 that the application was accepted and LTOA was granted. Respondent No.2 however received power between 23-03-2015 and 14-03-2016 which was not paid for. The applicant has therefore approached this Commission by way of O.P.No.30 of 2016 for a direction to the respondents to give credit to 1.2 MU of wind power generated between 23-03-2015 and 14-06-2016 in the energy bills of the applicant by banking the said wind power units.

After serious contest by the respondents, this Commission allowed the O.P. on 31-03-2018. The operative part of the directions given by this Commission is as hereunder :

“Therefore, the respondents 1 and 2 shall give credit to the wind power generated during the period between 23-03-2015 and 14-06-2016 and evacuated into the grid by the petitioner’s captive wind power unit and the said unutilized banked energy shall be considered as determined by the Andhra Pradesh Electricity Regulatory Commission for the applicable years with the energy settlement being done on monthly basis and the purchase price shall be paid by respondents 1 and 2 to the applicant accordingly.”

Having initially agreed to comply with the above order of this Commission, respondent No.2 has however shifted its stand by filing I.A.No.1 of 2021.

According to the respondents, the order of this Commission directing payment at full pooled cost, instead of 50% of the pooled cost is a mistake falling under Section 152 CPC. It is therefore necessary to consider the scope of Section 152 CPC. The said provision reads as under :

Amendment of judgments, decrees or orders - Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.

It is clear from the above reproduced provision that amendment of judgments, decrees or orders can be made only if there exists any clerical or arithmetical mistakes or errors arising therein from any accidental slip or omission. From the reading of the entire order dated 31-03-2018 of this Commission, we do not find any clerical or arithmetical mistake or error arising therein from any accidental slip or omission. According to Sri P. Shiva Rao, as Regulation No.2 of 2016 provides for payment of 50% of the pooled energy in respect of unutilized banked energy, the direction to pay full pooled cost is obviously a mistake or error arising out of accidental slip. We are afraid, we cannot accept this submission. This Commission has thoroughly examined the case and recorded detailed reasons for directing payment of pooled power purchase cost. These detailed reasons are contained in paragraph-9 of the

order. The obvious reason for this Commission in allowing the pooled cost is the fact that for no fault on the part of the applicant, its application for LTOA was kept pending till 14-06-2016 and that therefore it is entitled to pooled power purchase cost as determined by this Commission for the applicable years. Regulation No.2 of 2016 lays down that in cases of unutilized banked energy, the developer is entitled to payment of 50% of the average pooled cost. This means that the developer should have had an opportunity of utilizing the banked energy and only in case of its failure to utilize any part of such banked energy that it will be entitled to payment of 50% of the average pooled cost of that year. In the instant case, no such opportunity was given to the applicant during the relevant period when the power was evacuated by it into the Grid of respondent Nos.1 and 2. Therefore, the question of applying Regulation No.2 of 2016 to the applicant's case should not arise.

The respondents have claimed to have complied with the order in O.P.No.30 of 2016 by paying 50% of the average pooled cost. In our opinion, it does not constitute full compliance. The applicant is entitled to receive the average pooled cost as per the order in the O.P. and not 50% thereof. These Points are accordingly answered in favour of the applicant.

**Re Point No.3:** Though this Commission has directed payment of average pooled cost of energy evacuated by the applicant into the Grid between

23-03-2015 and 14-06-2016, the respondents have not even partly complied with the same till after the applicant has filed I.A.No.34 of 2020 and the case was taken up for hearing. Even while purporting to comply with the said order, the respondents have paid only 50% of the average pooled cost. Instead of making such compliance, they have filed I.A.No.1 of 2021 seeking amendment/modification of this Commission's order. Though this Commission has not stipulated a specific time limit for payment of the amount in its order passed in O.P.No.30 of 2016, it is an accepted legal principle that the order should be complied within a reasonable time frame. Having allowed the order of this Commission to attain finality, respondent No.2 has no justification whatsoever for not complying with the order for more than three years. The conduct of respondent No.2 therefore needs to be viewed with all the seriousness it deserves, more so despite this Commission giving an opportunity to it to comply with the order during the hearing of I.A.No.34 of 2020, respondent No.2 has adopted an unrealistic approach by taking a stand contrary to the order passed by this Commission and also raising a specious plea that the said order suffers from accidental error requiring amendment. The conduct of respondent No.2 is therefore not bona fide. Therefore, respondent No.2 is liable to pay for appropriate penalty. Though respondent No.2 has committed a serious lapse, the Commission is inclined to show lenience by imposing a token penalty of Rs.1,000/- in the hope that

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respondent No.2 will not repeat such conduct in future. The penalty amount shall be deposited to the credit of this Commission. Respondent No.2 is permitted one month's time to pay the balance sum of Rs.18,45,893-13 ps to the applicant. If such payment is not made, respondent No.2 shall continue to pay penalty of Rs.6,000/- per every day during which the failure continues from the expiry of one month from today. This Point is accordingly answered.

In the result, I.A.No.34 of 2020 is allowed to the extent indicated above and I.A.No.1 of 2021 is dismissed.

Sd/-  
**Thakur Rama Singh**  
Member

Sd/-  
**Justice C.V. Nagarjuna Reddy**  
Chairman

Sd/-  
**P. Rajagopal Reddy**  
Member

