



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION

4th Floor, Singareni Bhavan, Red Hills, Hyderabad 500 004

FRIDAY, THE 21st DAY OF APRIL

TWO THOUSAND TWENTY THREE

PRESENT

Justice C.V. Nagarjuna Reddy, Chairman

Sri P. Rajagopal Reddy, Member

Sri Thakur Rama Singh, Member

Original Petition Nos. 3, 16 and 17 of 2020

Eastern Power Distribution Company of AP Ltd. (APEPDCL) ... Petitioner

Original Petition Nos. 4 and 5 of 2020

Southern Power Distribution Company of AP Ltd. (APSPDCL) ... Petitioner

These five Original Petitions (O.Ps) have come up for final hearing on 15-03-2023 in the presence of Sri P. Shiva Rao, learned standing counsel for the petitioners; Smt G.Sulekha Rani, General manager (Solar)/APEPDCL; Sri Deepak Chowdary, learned counsel representing the learned objectors Sri Lakshmi Ganapathi Engineering works, Repal Renewables Pvt. Ltd., Arkha Solar Power Pvt. Ltd., Jyotirmaye Textiles Pvt. Ltd., and KCP Ltd., and Sri M. Venugopala Rao, learned objector. Upon carefully considering the material available on record and after hearing the arguments of the learned counsel for the petitioners and objectors and also the learned objector, the Commission passed the following:

COMMON ORDER

1. These O.Ps raise issues related to the amendments to Regulations 2 of 2005 (Terms and Conditions of Open Access) and 2 of 2006 (Interim Balancing and

Settlement Code for Open Access Transactions). Hence, they are heard and being disposed of together. The case of the petitioners is briefly as follows:

In these O.Ps, the petitioners sought withdrawal of the following exemptions/incentives (paras A to D and G below) provided to open access users in Regulations 2 of 2005 and 2 of 2006 (as amended from time to time) and amend clauses 4.1 and 10.5 (paras E and F below) of Regulation 2 of 2006 (as amended from time to time) to settle the energies of solar, wind and mini-hydel open access generators on par with conventional and other Renewable Energy generators.

- A) The transmission and wheeling charges shall be exempted for wheeling of power generated from such Solar and Wind Power Projects and for such operative periods as mentioned in GO.Ms.No.8, Dated 12-02-2015 and G.O.Ms.No.9, Dated 13-02-2015 respectively for only captive use/third party sale within the State (second proviso to clause 17.1 (i) of Regulation 2 of 2005).
- B) The Distribution losses shall be exempted for such Solar Power Projects and for such operative period as mentioned in G.O.Ms.No.8, Dated 12-02-2015 injecting at 33 kV or below irrespective of the voltage level of the delivery point within the DISCOM (third proviso to clause 17.1 (i) of Regulation 2 of 2005)
- C) The Cross Subsidy Surcharge and Additional Surcharge shall be exempted for third-party sale if the source of power is from such Solar Power Projects set up within the State as mentioned in G.O.Ms.No.8, Dated 12-02-2015 for a period of five (5) years from the date of commissioning of such projects (second proviso to clause 17.1 (iii) of Regulation 2 of 2005).
- D) The energy injected into the grid from such Solar and Wind Power Projects as mentioned in GO.Ms.No.8, dated 12-02-2015 and G.O.Ms.No.9, dated 13-02-2015 from the date of synchronisation to the Commercial Operation

Date(COD) shall be considered as deemed banked energy (2nd para of Appendix -3 in Regulation 2 of 2006).

- E) The Wind, Solar or Mini-Hydel based open access generators shall not be required to provide a day-ahead wheeling schedule and the actual electricity injected by them shall be deemed to be the scheduled energy (second proviso to clause 4.1 of Regulation 2 of 2006).
- F) In the case of Wind, Mini-Hydel and Solar OA Generators, the actual generation during the month shall be deemed as Scheduled Energy. For the purpose of settlement in respect of scheduled/OA consumer availing supply from these OA Generators, the actual generation during the month will be apportioned for each time block of the month and deviations reckoned accordingly (clause 10.5 of Regulation 2 of 2006).
- G) Banking facility provided to the Wind, Solar and Mini Hydel power plants in Regulation 2 of 2006(Appendix-3 of Regulation 2 of 2006).
2. After taking on record these O.Ps, the Commission prepared draft amendments to Regulations 2 of 2005 and placed them on its website inviting the stakeholders to send their suggestions/comments/objections so as to reach the Commission's office by 05.00 PM on 09-03-2020. The first public hearings in O.P.No.3 of 2020 and O.P.Nos. 4, 5 and 16 of 2020 were conducted on 10-03-2020 and 17-03-2020 respectively. Due to the Covid pandemic, the Commission deferred the public hearing in these O.Ps twice after 17-03-2020 and eventually heard them on 12-06-2020 along with O.P.No.17 of 2020. Since that date, the Commission heard all these five O.Ps together as all the amendments sought in them are with respect to Regulations 2 of 2005 and 2 of 2006. During the hearings of these O.Ps on 16-09-2020, the learned counsel for the petitioners and the learned counsel for the objectors informed the Commission that the Hon'ble High Court of AP granted an interim order suspending G.O.Ms. No.35, dated 18-11-2019 based

on which these O.Ps. were filed. Therefore, the Commission deferred the hearing of these O.Ps sine die with liberty given to either party to move the Commission for hearing the O.Ps based on the result of the case pending before the Hon'ble High Court of AP.

3. On 02-01-2023, Sri P. Shiva Rao, the learned counsel for the petitioners filed a Memo requesting the Commission for listing these O.Ps in view of the disposal of the batch cases related to Go.Ms.Nos.1,2,3 and 35 of 2019 by the Hon'ble High Court of AP on 16-08-2022. Therefore, the Commission placed a public notice on its website informing the stakeholders that a public hearing in these O.Ps will be conducted on 15-03-2023. Accordingly, the Commission conducted the public hearing on 15-03-2023 and reserved the cases for order.
4. From the O.Ps filed, it is seen that the exemptions/incentives which the petitioners sought to withdraw mainly relate to the solar and wind power plants mentioned in GO.Ms.No.8, dated 12-02-2015 and G.O.Ms.No.9, dated 13-02-2015 issued by the GoAP. GO.Ms.No.8, dated 12-02-2015 relates to solar power plants and G.O.Ms.No.9, dated 13-02-2015 relates to wind power plants and the operative periods of the policies specified under them are applicable for a period of 5 years from the date of issuance of the respective GOs or till such time, new policies are issued. Further, as per the said GOs, the exemptions/incentives mentioned in paras 1(A) to 1 (D) of this order are applicable to only those solar and wind power plants commissioned during the above operative periods. Subsequently, the GoAP issued G.O.Ms.Nos.1 & 2 dated 03.01.2019 revising the policies related to solar and wind power plants respectively. Further, the GoAP specified in these G.Os that they supersede GO.Ms.No.8, dated 12-02-2015 and G.O.Ms.No.9, dated 13-02-2015. Therefore, the incentives/exemptions mentioned in paras 1(A) to 1 (D) of this order are no longer applicable to the solar and wind power plants commissioned on and after the issuance of G.O.Ms.Nos.1 & 2, i.e., w.e.f.

03.01.2019 (including the energy injected into the grid between synchronisation and COD). Regarding the treatment of energy injected into the grid between synchronisation and COD subsequent to 03.01.2019, it may be noted that the Commission, vide Regulation 4 of 2019 dated 11.03.2019, inserted a clause in Regulation 2 of 2006 that allowed the energy injected into the grid from the date of synchronization to COD in respect of all solar, wind and mini power plants to be considered as deemed banked energy without any distinction.

5. As regards the incentives/exemptions that are already being availed by the solar and wind power plants under GO.Ms.No.8, dated 12-02-2015 and G.O.Ms.No.9, dated 13-02-2015, it may be noted that the GoAP committed in the additional affidavit filed before the Hon'ble High Court of AP in Writ Petition Nos. 13374 of 2020 and batch that they have decided to honour the various incentives made available to the developers under the various agreements signed as per Wind, Solar and Solar Hybrid Policies of 2015 and 2018 which precede the issuance of G.O.Ms.No.35, dated 18.11.2019. The incentives/exemptions mentioned in para 1(A) to 1 (D) of this order form part of the above commitment. Sri P. Shiva Rao, learned counsel for the petitioners reiterated the above mentioned undertaking on exempting the Renewable Energy projects which were in existence prior to the issue of G.O.M.S.35 from the application of the proposed amendments. Even otherwise, any changes/amendments to Regulations come into effect for the prospective period only. Therefore, the incentives/exemptions mentioned in para 1(A) to 1 (D) of this order are valid for such wind and solar power plants and for such operative periods as mentioned in GO.Ms.No.8, dated 12-02-2015 and G.O.Ms.No.9, dated 13-02-2015.

6. In view of the above position, the prayers of the petitioners to withdraw the incentives/exemptions mentioned in para 1(A) to 1 (D) of this order have become infructuous. As regards the prayers of the petitioners mentioned in para 1(E) and

1 (F) of this order, the Commission will consider the same while issuing a comprehensive Deviation Settlement Mechanism (DSM) Regulation in due course of time following a regulatory process as stated in the order dated 21-04-2023 in O.P.No.52 of 2022.

7. As regards the issue of withdrawal of the banking facility (as mentioned in para 1(e) of this order), the petitioners in their O.Ps stated that the banking facility is causing disturbance to the planned schedules in the grid management and the costs incurred (due to the payment of 100% of Pooled Cost of Power Purchase for the banked energy) in the day-to-day management of the grid due to this disturbance have to be ultimately borne by the consumers. That unplanned utilization of banked energy by HT consumers under Open Access causes forced backing down of generation, leading to disturbing balancing costs in grid management. That the banking facility is forcing the petitioners to maintain the open access transactions continuously till the end of the financial year which is making the transactions complicated and prone to disputes. The objections/suggestions/comments received from various stakeholders on this issue and the replies of the petitioners to the same are summarised below. The common point of contention among most of the objectors is that any amendments should only apply prospectively and not retrospectively. The list of objectors is as per Annexure.

8. **Objections/suggestions/comments**

Andhra Pradesh Solar Power Developers Association

Only solar developers having an aggregated capacity of 100 MW capacity which is just 2.5% of the overall solar power capacity in the State are being targeted. Out of this 100 MW capacity, 33 MW capacity is for captive usage and the balance 67 MW capacity is for third-party sale. Therefore, the banking facility as per the A.P.Solar Power Policy 2015 should be continued as it would be very difficult to

schedule the power to open access consumers without the banking facility since solar power is available only for 8 hours in a day and 60% of the generated power from the solar power plant will remain unutilised if there is no banking facility resulting in huge financial losses to the existing solar power developers.

Atria Wind Power Private Limited

The contention of the petitioners that the banking facility is causing disturbance to the planned schedules in the grid management is not correct as the petitioners are scheduling the energy in line with the extant forecasting and scheduling Regulations.

Indian Energy Exchange

All exemptions including the banking facility, if provided, should be extended to the open access consumers buying power from the Power Exchanges and other sources to provide a level playing field for all participants and for promoting market development in the State in a rational manner.

ITC Limited

As per the extant Regulation, the open access generators are required to communicate the anticipated generation and planned utilization for subsequent months seven days prior to the commencement of the utilization date. This data is expected to aid the petitioners in planning their grid management. Therefore, the proposal of APEPDCL to withdraw the banking facility should not be allowed.

Jyothirmaye Textiles Private Ltd. and other companies

The Commission has evolved the concept of "banking" which is in line with the provisions of the Electricity Act, 2003, the National Electricity Policy, and the National Tariff Policy through Regulation 2 of 2006 recognizing that the potential of wind and hydel energy being seasonal in nature can be harnessed only through the provision of the annual banking facility and that it would be impossible to set up the hydropower plants without the banking facility. Further, the banking facility

is essential for the renewable energy generators as held by the APTEL in its Judgment dated 18.03.2011 in Appeal No. 98 of 2010 titled TNEB vs. TNERC & Ors, wherein the Tribunal explained the concept of banking. The proposed amendments including the withdrawal of the banking facility are hit by the Principle of Promissory Estoppel and the Doctrine of legitimate expectation which also operates in the delegated legislative field. As regards the contention of the petitioners that the HT Consumers are underutilizing the banked units and are later drawing them from the grid, though the banking facility is provided throughout the year, the Regulations impose restrictions on the drawal of energy during the peak demand months, i.e., from February to June of every year and also during the peak hours of the day. The pooled cost for banked energy paid by the petitioners is much cheaper than the variable costs of thermal power and the said payments are compensatory in nature and do not reflect the actual value of the energy. Except for making a bald assertion that generation is being backed down to accommodate the banked energy, the petitioners have not cited specific instances including the backed-down capacity, periods of back down and the financial loss, if any, caused due to the backdown. As the open access users submit a prior withdrawal cycle schedule to the petitioners before each billing cycle, i.e., at least 10 days in advance, the load profile of the grid is not disturbed and also there will not be any billing issues. The banking facility is completely regulated by the Commission through its Regulations. The petitioners without placing any material cannot make vague and obscure allegations and thereby seek withdrawal of the banking facility. As the Regulations are in the nature of subordinate legislation made in exercise of powers under Section 86(1)(e) read with Section 181, the Commission cannot bring in the proposed amendments as they are hit by the Principle of Promissory Estoppel as held by the Hon'ble Supreme Court in a catena of decisions.

Sri M. Venugopla Rao and others

The generators selling power under open access are competitors to the petitioners causing revenue loss to them and as if this is not enough, imposing additional burden on the petitioners and their consumers in the form of banking facilities goes against the canons of free trade. As the petitioners and their consumers are forced to bear the burden of fixed charges to accommodate the banked energy, the Commission may withdraw the banking facility.

SEI Sriram Power Private Limited

It is a settled position of law that the legislative jurisdiction of the Commission cannot be invoked on the judicial/quasi-judicial side of the Commission by moving a petition. Notifying Regulations is a legislative function of the Commission as provided under Section 181 of the Electricity Act, 2003 which cannot be invoked by the petitioners by filing a petition under Section 42(2), 66 and 94(2) of the Electricity Act, 2003. Therefore, the prayer of the petitioner to abolish the banking facility is illegal and untenable.

Small Hydro Developers Association

The abolishment of the banking facility will have an adverse financial impact on all Small Hydro Energy Generators and on the viability of their investments. Since the maximum generation from hydropower plants in Andhra Pradesh is seasonal and occurs from September to December, the small hydropower plants are experiencing difficulties in finding permanent consumers. As result, they are left with no other option except to bank the energy with the petitioners. As such, the withdrawal of the banking facility would lead to the bankruptcy of small hydropower developers.

The Visakhapatnam Port Trust

The Commission may direct APTRANSCO and APEPDCL to continue the erstwhile incentives including energy banking to its solar power plant which was commissioned in 2017 under the AP Solar Power Policy, 2015.

9. Replies of the petitioners

The banking facility extended to the open access generators and consumers is forcing them to incur financial losses as well as making day-to-day working procedures complicated due to the reasons stated below:

- A. A number of consumers are underutilizing the energy generated for several months and utilizing the banked units later in some other months.
- B. Some of the open access consumers are not able to utilize the total banked units resulting in the payment for the unutilized banked units by the petitioners to the generators. In support of their argument, the petitioners indicated through tables the quantum of unutilized banked units and the amounts paid for the same over the years.
- C. The irrational and irregular behaviour of most of the HT consumers under open access transactions is leading to an increase in the banked units from month to month. As a result, the petitioners are being forced to pay for the unutilized banked energy.
- D. The unplanned utilization of energy by HT consumers under open access is sometimes resulting in the forced back down of generation and is leading to disturbing the balancing cost in grid management. Similarly, the utilization from banked units is also unplanned utilization from a grid management point of view.
- E. The banking facility is causing disturbance to the planned schedules in the grid management and is bringing indiscipline and irregularity from a technical point of view in the day-to-day grid management.

F. The banking facility is forcing open access transactions to be maintained continuously till the end of the financial year for final adjustments which make the transactions complicated and prone to disputes.

Commission's analysis and decision

10. The Commission carefully considered the objections/suggestions/comments received from the stakeholders on the banking issue, the replies furnished by the petitioners and submissions made by learned counsels for the petitioners and the learned counsel for the objectors. In the hearing held on 15.03.2023, Sri P. Shiva Rao submitted that the petitioners are not pressing for the amendment related to banking. However, Sri M. Venugopala Rao, learned objector, seriously objected to the submission of Sri P. Shiva Rao and requested the Commission that the proposed amendment doing away with banking may be allowed, in order to avoid undue liability on the petitioners and eventually on the consumers. All the objectors other than Sri M. Venugopala Rao and others strongly requested for continuation of the banking facility. The Commission will now examine the issue on its merits. As the energy from solar, wind and hydel power plants is intermittent in nature and depends on the weather/seasons/time of the day, this energy can not be treated on par with the generation from conventional sources. Therefore, the Commission finds rationale in the submissions advanced by the generators in this regard. Further, section 86(1)(e) of the Electricity Act, 2003 enjoins the State Commissions to promote co-generation and generation of electricity from renewable sources of energy. The rate payable by the petitioners for unutilised banked energy in respect of solar and wind power plants commissioned during the operative periods specified under GO.Ms.No.8, dated 12-02-2015 and G.O.Ms.No.9 dated 13-02-2015 is 100% of Pooled Cost of Power Purchase determined for that financial year. The above rate is applicable till 10.03.2019. Similarly, the rate payable by the petitioners for unutilised banked energy in

respect of solar, wind and mini hydel power plants, other than those mentioned above, is 50% of Pooled Cost of Power Purchase determined for that financial year. However, w.e.f. 11.03.2019, the rate payable by the petitioners for the unutilised banked energy in respect of all solar, wind and mini hydel power plants has become 50% of Pooled Cost of Power Purchase determined for that financial year without any distinction. Evidently, this rate benefits the petitioners as well as the consumers since it is far lower than the per unit average price incurred by petitioners for their total power purchases and the per unit price of power purchases from the Exchanges. Further, as per para 3(c) under Appendix-3 of Regulation 2 of 2006, the draws from banked energy are not permitted from April to June and February to March of each financial year and also during peak hours specified in the Retail Supply Tariff Orders. Moreover, since the share of banked energy of APEPDCL and APSPDCL (as seen from replies submitted by the petitioners) in the total energy purchased by the petitioners from solar, wind and mini-hydel power plants is meagre, its impact on grid management is insignificant. One more advantage to the petitioners in this regard is that since the unutilized energy from the wind, solar, and mini-hydel power plants is mostly consumed locally, the petitioners are not required to draw this energy from the grid resulting in the reduction of network losses. In view of the above, Commission is not inclined to withdraw the banking facility provided to the wind, solar, and mini-hydel power plants.

11. Summary of findings

A. The incentives/exemptions mentioned in para 1(A) to 1 (D) of this order ended on 02.01.2019. However, the same are valid for such wind and solar power plants and for such operative periods as mentioned in GO.Ms.No.8, dated 12-02-2015, and G.O.Ms.No.9, dated 13-02-2015.

B. The Commission will consider the prayers of the petitioners mentioned in para 1(E) and 1 (F) of this order while issuing a comprehensive Deviation Settlement Mechanism (DSM) Regulation in due course of time following a regulatory process as stated in the order dated 21-04-2023 in O.P.No.52 of 2022.

C. The Commission is not inclined to withdraw the banking facility provided to the Wind, Solar, and Mini Hydel power plants.

12. In light of the above findings, the Commission is of the view that there is no need to amend Regulations 2 of 2005 and 2 of 2006 as prayed for by the petitioners. In the result, the O.Ps are disposed of in terms of the above.

Sd/-
Thakur Rama Singh
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
P. Rajagopal Reddy
Member

Annexure

S.No.	Name of the objector
1	AMPLUS Andhra Power Private Limited
2	Andhra Pradesh Chambers of Commerce & Industry Federation
3	Andhra Pradesh Solar Power Developers Association
4	AP Textile Mills Association
5	Arka Renewable Energy Private Limited
6	Arkha Solar Power Private Limited
7	Atria Wind Power Private Limited
8	Cyber Village Solutions Private Limited
9	Federation of Andhra Pradesh Chambers of Commerce and Industry
10	Gajavelli Spinning Mills Private Limited
11	Hetero Wind Power Limited
12	Indian Energy Exchange
13	ITC
14	Jyothirmaye Textiles Private Limited
15	The KCP Limited
16	Narasimha Swamy Solar Generations Private Limited
17	National Solar Energy Federation of India
18	Odysseus Logos LLP
19	Orient Green Power Company Limited
20	Pioneer Spinning & Weaving Mills Limited
21	The Pragathi Group
22	Praveen Spinners (India) Private Limited
23	Rambhadra Industries Private Limited
24	Ranganayaka Spinning Mills Private Limited
25	Repal Renewable Private Limited
26	SEI Sriam Power Private Limited

27	Slylandro Power Private Limited
28	Small Hydro Developers Association
29	Sri Anantha Lakshmi Spinning Mills Private Limited
30	Sri Lakshmi Ganapathi Engineering Works
31	Sri Lakshmi Ganapathi Mills & Ors
32	Sri M. Venugopala Rao and others
33	Sri Subramanya Solar Power Projects LLP
34	Srinivasa Cotton & Oil Mills Private Limited
35	SSR Agro Energy
36	SVR Corporation Private Limited
37	Tirumala Cotton & Agro Products Private Limited
38	Tirumala Tirupati Devasthanams
39	Ushodaya Enterprises Private Limited
40	Vasundhara Cotton Mills Private Limited
41	VEH Global India Private Limited
42	Visakhapatnam Port Trust
43	Viswateja Spinning Mills Private Limited