



## **ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

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

FRIDAY, THE TWENTY FOURTH DAY OF SEPTEMBER  
TWO THOUSAND AND TWENTY ONE

:Present:

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

O.P.No.36 of 2020

Between :

Dalmia Cement (Bharat) Limited,  
Plant at Chinnakomerla village,  
Mylavaram Mandal,  
YSR Kadapa District,  
Andhra Pradesh 516433.

.. Petitioner

And

1. Transmission Corporation of Andhra Pradesh Limited (APTRANSCO), Vidyut Soudha, Gunadala, Eluru Road, Vijayawada, Andhra Pradesh.
2. Andhra Pradesh Southern Power Distribution Company Limited, D.No.19-13-65/A, Tiruchanuru Road, Tirupati, Chittoor District, Andhra Pradesh.
3. Andhra Pradesh Eastern Power Distribution Company Limited, Sai Shakti, Opp. Saraswati Park, Daba Gardens, Visakhapatnam-530020.

.. Respondents

This Original Petition having come up for hearing on 04-08-2021 in the presence of Sri Manu Seshadri, learned Counsel for the petitioner and Sri G.V. Brahmananda Rao, Counsel representing Sri P. Shiva Rao, Standing Counsel for the respondents and upon hearing the arguments of both the Counsel, the Commission made the following :

**ORDER :**

This Original Petition is filed under Section 86(1)(e) of the Electricity Act 2003 (for short “the 2003 Act”) r/w. Clauses 9 and 10 of the APERC (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulations 2017 and Clause 57 of the APERC (Conduct of Business) Regulations 1999 seeking exercise of power to issue directions to remove difficulty in implementation of the RPO Regulations in respect of capping of Renewable Power Purchase Obligation (RPPO) and for a direction that the RPPO targets notified by this Commission for the captive power plants for FY 2015-16 (5%) would be applicable to the petitioner for all the subsequent years till such time there is capacity addition by the petitioner.

The petitioner pleaded that it is a company incorporated under the Companies Act 1956 and is in the business of manufacturing of cement and sugar and also generating power; that to meet its power requirements it has set up two thermal based power plants, each of 27

MW at Ariyalur in Tamilnadu and Belgaum in Karnataka, on captive basis during FY 2015-16; that it is wheeling the power from the said plants to its cement factory in Kadapa District, Andhra Pradesh; and that it is also purchasing power from the Exchange. It was further pleaded that respondent No.1-AP Transco discharges the functions of State Load Despatch Center (SLDC) under Section 31 of the 2003 Act in the State of Andhra Pradesh and under Section 2(67) it is also the State Transmission Utility (STU). That the Commission has designated respondent No.1 as the State Agency for the purposes of accrediting and recommending RE projects.

The petitioner further pleaded that under Section 181 of the 2003 Act, the Commission has framed the APERC (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulations 2012, prescribing the obligation for purchase of renewable power by purchase of renewable energy certificates; that the said Regulations obligated an entity including a captive power plant to purchase renewable energy from different types of RE sources at the generic tariff determined by the Commission equivalent to 5% of its consumption during the respective control periods from 2012-13 to 2016-17; and that the petitioner had complied with the terms of the 2012 Regulations during the period

2012-13 to 2016-17. It was further pleaded that on 31-03-2017, the Commission has notified APERC (Compliance by Purchase of Renewable Energy/Renewable Energy Certificates) Regulations 2017 with the object of notifying the obligation for purchase of renewable power and its compliance by purchase of Renewable Energy/Renewable Energy Certificates; that the 2017 Regulations were notified by the Commission pursuant to the National Tariff Policy framed under Section 3 of the 2003 Act by the Ministry of Power, Government of India on 28-01-2016 and under paragraph 6.4(1)(i) thereof, with an intention to encourage consumption of electricity through renewable sources on long term basis RPPO growth trajectory was provided for instead of notifying such targets on a year-to-year basis and that the percentage of non-solar and solar power which were to be purchased as part of the trajectory are as under :

Long Term Trajectory	2016-17	2017-18	2018-19
Non-Solar	8.75%	9.50%	10.25%
Solar	2.75%	4.75%	6.75%
Total	11.50%	14.25%	17.00%

That keeping in view the above trajectory, under the 2017 Regulations, the Commission has substantially enhanced the RPPO compliance to be

met by the distribution licensees, open access consumers and captive generating plants for the years 2017-18 to 2021-22 as under :

Year	2017-18	2018-19	2019-20	2020-21	2021-22
Non-Solar	6%	7%	8%	9%	10%
Solar	3%	4%	5%	6%	7%
Total	9%	11%	13%	15%	17%

It was further pleaded that the for the years 2019-20 to 2021-22, the long-term trajectory of RPPO was notified as under :

Long Term Trajectory	2019-20	2020-21	2021-22
Non-Solar	10.25%	10.25%	10.50%
Solar	7.25%	8.75%	10.50%
Total	17.50%	19.00%	21.00%

The petitioner further pleaded that since 1 MW is the threshold capacity for RPPO compliance, the petitioner was required to comply with the RPPO notified under the 2017 Regulations; that as there was substantial increase in the RPPO targets and such costs cannot be factored into by captive power plants unlike the other obligated entities such as distribution licensees and open access consumers, the notification of

high RPPO trajectory was causing severe hardship to captive power plants; that upon a detailed representation made to it, the Ministry of Power vide Lr.No.30/04/2018-R&R, dated 01-02-2019, clarified that insofar as the RPO for captive power plants is concerned, the same shall be pegged at the level applicable in the year in which the captive power plant was commissioned; and that in case of capacity addition, an additional RPO in the year in which such capacity was added should be prescribed. That as per the provisions of Section 3 of the 2003 Act and the Judgments of the Hon'ble Supreme Court, the clarification letter issued by the Ministry of Power is a statutory document and as such the same ought to be implemented by this Commission and that notwithstanding the same, the high RPO trajectory is expected to apply only to other obligated entities such as distribution licensees and open access consumers and not the petitioner. It was further pleaded that taking cognizance of the letter dated 01-02-2019 of the Ministry of Power, several Electricity Regulatory Commissions have made necessary amendments to the respective RPO Regulations. The petitioner has relied upon the amendments made by the Uttar Pradesh and Haryana Electricity Regulatory Commissions in this regard and pleaded that on a conjoint reading of the letter dated 01-02-2019 and the

said amendments, the RPO targets notified by this Commission for the FY 2015-16, when the captive power plants of the petitioner achieved the commercial operation, would continue to apply for all the years as there was no capacity addition in respect of the petitioner's captive power plants.

The petitioner further pleaded that upon the concerns raised by various stakeholders and after due consultation with the MNRE, CEA and CERC, the Ministry of Power, vide its Letter No.30/04/2018-R&R, dated 01-10-2019, further clarified with respect to letter dated 01-02-2019 that for the captive power plants commissioned before 01-04-2016, the RPO should be at the level as mandated by the Appropriate Commission for FY 2015-16 whereas for the captive power plants commissioned from 01-04-2016 onwards, the RPO level as mandated by the Appropriate Commission or the Ministry of Power, whichever is higher, for the year of commissioning of the captive power plant, shall be applicable. The petitioner relied upon the amendment issued by the Odisha Electricity Regulatory Commission in this regard. The petitioner has referred to Clauses 9 and 10 of the 2017 Regulations and pleaded that this Commission has inherent powers under the said Clauses to remove difficulties in the implementation of the Regulations,

either suo motu or on an application of any person generating electricity from RE sources or an entity mandated under clause (e) of sub-section (1) of Section 86 of the 2003 Act to fulfil the RPO obligation by reviewing, adding, amending or altering the Regulations and to pass appropriate orders for removing any difficulty in implementing the provisions of the Regulations to meet the ends of justice or to prevent abuse of process of the Commission. The petitioner has also referred to Clause 57 of the Conduct of Business Regulations 1999 which conferred power on the Commission to relax any of the provisions in the facts and circumstances. Reliance was also placed on the Judgment of the Hon'ble APTEL in **NTPC Ltd. Vs. Madhya Pradesh State Electricity Board<sup>1</sup>** and **Ratnagiri Gas and Power Pvt. Ltd. Vs. CERC<sup>2</sup>**.

Respondent No.1 filed a counter affidavit. In para-4 of the counter, it was pleaded that as per the Regulations, 'State agency' means the State Load Despatch Centre of the State of Andhra Pradesh as defined under Section 2(66) of the 2003 Act or the agency so designated by the Commission under Clause 5.4 of the Regulations to act as the agency for accreditation and recommending the renewable energy projects for registration and to undertake functions under the Regulations. In para-5

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<sup>1</sup> 2007 ELR (APTEL) 7

<sup>2</sup> 2011 ELR (APTEL) 532



it was pleaded that as per Clause 5.1, the State Agency shall function in accordance with the directions issued by the Commission and shall act consistent with the procedures/rules laid down by the Central Agency for discharge of its functions under the CERC (Terms and Conditions for recognition and issue of Renewable Energy Certificate for Renewable Energy Generation) Regulations 2010 as amended from time to time. That as per Clause 5.2, the State Agency shall submit quarterly status to the Commission in respect of compliance of the RPPO by the obligated entity(s) in the format stipulated by the Commission and may suggest appropriate action to the Commission if required for compliance of the RPPO.

In paras 8 to 10 of the counter, it was pleaded that with an object to achieve the targets of RE of 1,75,000 MW by March 2022, the MoP has notified the long term growth trajectory of RPO for the years 2016-17 to 2018-19 uniformly to all the States and Union Territories and as such the MNRE has directed the SERCs to notify the RPOs for the respective States and that in discharge of the functions specified in Section 86 of the 2003 Act, the Commission has notified the targets vide Regulation No.1 of 2017 for the FY 2017-18 to 2021-22. It was further pleaded that

there is no distinction between the consumers availing their captive power under open access and others availing power from the market.

In paras-11 to 13 of the counter, it was pleaded that the purpose of the RPPO Regulation is to limit the use of fossil fuel and encourage open access consumers to purchase renewable power by meeting the RPPO obligation; that by way of RPPO obligation, every single unit generated out of fossil fuel power plant is accounted for to meet the RPPO and fixed by RECs and that therefore the request of the petitioner, if accepted, the same will be in deviation of the uniform policy already adopted. That the petitioner is seeking exemption from complying with the RPPO trajectory as the same requires additional expenditure to be incurred and that the petitioner cannot claim exception on the said ground to achieve the compliance of the RPPO obligation.

With reference to the petitioner's plea that the clarification issued by the MoP is a statutory document which needs to be accepted by this Commission and amend the RPPO Regulation by way of an order for removal of difficulties in implementing the same, respondent No.1 averred that as per the terminology employed in Section 86(1) of the 2003 Act, the State Commission alone has powers to specify the

percentage of the RPPO and that other orders of any authority including the Government are only recommendatory but do not bind the Commission.

In paras-15 and 16, it was further averred that if exemption is given to the generators some more fossil power will be generated and supplied which pollutes the environment and thereby the object of imposition of RPPO will be defeated. That there is absolutely no necessity to amend the Regulation on the ground that the Regulatory Commissions of Uttar Pradesh and Haryana have amended the RPO Regulation in their States and that the petitioner has to fulfil the RPPO as stipulated by this Commission under Regulation Nos.1 of 2012 and 1 of 2017; that no capping as requested by the petitioner should be allowed and that the petitioner has to comply with the amended Regulations from time to time by this Commission.

The petitioner filed a rejoinder. In reply to para-8 of the counter affidavit, the petitioner sought to clarify that the MoP in exercise of its powers conferred in para 6.4(1) of the revised National Tariff Policy notified on 28-01-2016, notified the long term growth trajectory of RPO for FY 2016-17 to 2018-19 by order dated 22-07-2016 and subsequently

for the control period 2019-20 to 2021-22 by order dated 14-06-2018 and that the State Regulatory Commissions were directed to notify the RPO for their respective States in exercise of powers under the 2003 Act.

In reply to para-11 of the counter affidavit, the petitioner denied that the RPO should be adopted for all classes of consumers as a uniform policy. It was further pleaded that there are two types of consumers – one captive consumers who carry electricity to destination for their own use and others are consumers and licensees who get supply of electricity; that captive users get electricity from their own plants and hence they form a class by themselves; and that unlike other eligible entities such as distribution licensees and open access consumers, the captive consumers are not in a position to pass on the costs or absorb the cost.

In reply to para-12 of the counter affidavit, it was pleaded that the petitioner is seeking relaxation in its RPO compliance and not exemption from RPO as alleged by respondent No.1; that the petitioner is seeking relaxation on the ground that captive users are facing severe hardship due to the increase in the RPO trajectory over years and they are unable to factor in the costs; that in view of the same the MoP, upon detailed

representation made to it, issued clarifications in respect of long term growth trajectory of RPO notified on 01-02-2019 and 01-10-2019 wherein it was clarified that the captive power plants commissioned before 01-04-2016 be pegged at the level mandated by the respective State Commissions for FY 2015-16 by considering captive power plants as separate category and that taking cognizance of the said clarification issued, several State Commissions viz., Uttar Pradesh Electricity Regulatory Commission, Odisha Electricity Regulatory Commission and Haryana Electricity Regulatory Commission have made necessary amendment to the RPO Regulations.

The petitioner denied the contents of para-13 of the counter affidavit as incorrect and sought to clarify that captive users and other obligated entities like distribution licensees and open access consumers must be treated equitably and that captive users being a separate class by themselves, they must be treated differently. That considering the financial hardships being faced by the captive power plants, their RPO compliance target must be pegged at the level mandated by this Commission for FY 2015-16.

The petitioner denied the contents of para-14 of the counter affidavit as incorrect. It was further pleaded that SERCs were to notify RPO for their respective States in line with the aforesaid uniform long term RPO trajectory notified by the MoP on 22-07-2016 and 14-06-2018; that taking the long term trajectory into consideration, this Commission in the 2017 Regulations has substantially enhanced the RPO compliance to be met by the distribution licensees, open access consumers as well as captive generation plants; that the MoP issued the aforementioned clarifications in furtherance of the long term growth trajectory of RPO notified by it and that therefore this Commission must take into consideration the clarification issued by the MoP and provide relaxation to the captive generation plants.

While denying the contents of para-15 as incorrect, the petitioner sought to clarify that it is seeking relaxation in the application of RPO and not exemption for its RPO compliance; and that notwithstanding the relief sought by it and granted by this Commission, the petitioner shall be obligated to fulfil its RPO compliance at the level mandated by this Commission for FY 2015-16 i.e., 5%. The petitioner denied the contents of para-16 of the counter affidavit.

We have heard Mr. Manu Seshadri, learned Counsel appearing for the petitioner and Sri P. Shiva Rao, learned Standing Counsel for the respondents.

The learned Counsel for the petitioner submitted that having regard to the peculiar features of the captive power plants, the Government of India has issued clarification to its earlier orders dated 22-07-2016 and 14-06-2018 regarding long term growth trajectory of RPO for solar and non-solar, that as per the said clarification, the RPO of a captive power plant may be pegged at the RPO level applicable in the year in which the captive power plant was commissioned and that as and when the company adds to the capacity of the captive power plant, it will have to provide for additional RPO as obligated in the year in which the new capacity is commissioned. Based on this clarification, the learned Counsel submitted that as the National Tariff Policy (NTP) is a statutory document as held by the Hon'ble Supreme Court in **Energy Watchdog Vs. CERC and others**<sup>3</sup>, this Commission needs to follow the same by pegging the RPO at the level applicable in the year in which the captive power plant was commissioned. The learned Counsel further submitted that the petitioner has commissioned its captive power plant in FY 2015-16 during which the RPO was 5% and that as the petitioner has not added any further capacity, its RPO should be pegged at the said level.

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<sup>3</sup> (2017) 14 SCC 80

Opposing the above submission, Mr. P. Shiva Rao, learned Standing Counsel for the respondent submitted that the clarification issued by the Ministry of Power, Government of India does not bind this Commission as the latter has independent power to specify and stipulate the RPO under Section 86(1)(e) of the 2003 Act. He further submitted that in the matter of fixing the RPO, the petitioner is similarly situated as private generators and Open Access consumers and that if the RPO level is reduced that will have direct adverse impact on the environment, since to that extent additional power has to be generated through conventional methods such as thermal generation.

We have carefully considered the respective submissions of the learned Counsel for the parties with reference to the material on record including the written submissions filed on behalf of the petitioner.

In line with the international conventions and decisions on environment with a view to prevent discharge of green house gases which cause adverse climate changes, the Ministry of Power, Government of India has been encouraging exploitation of non-conventional sources in a big way. Following the revised National Tariff Policy which was published in the Gazette of India dated 28-01-2016, on 22-07-2016, the Ministry of Power has issued an order containing guidelines for long term RPO growth trajectory for non-solar as well as solar power. On its part, this Commission has also framed APERC Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy/Renewable Energy Certificates) Regulation 2017, dated 31-03-2017 (Regulation No.1 of 2017). The growth



trajectory declared by Government of India and that by this Commission are shown in the Tables below :

Government of India:

Long Term Trajectory	2016-17	2017-18	2018-19
Non-Solar	8.75%	9.50%	10.25%
Solar	2.75%	4.75%	6.75%
Total	11.50%	14.25%	17.00%

AP State Electricity Regulatory Commission :

Year	2017-18	2018-19	2019-20	2020-21	2021-22
Non-Solar	6%	7%	8%	9%	10%
Solar	3%	4%	5%	6%	7%
Total	9%	11%	13%	15%	17%

As could be seen from the above, for the years upto 2018-19 till which period only the Ministry of Power has issued the RPO long term growth trajectory, the RPO obligation fixed by the Commission is far lower than that fixed by the Government of India. Under Regulation No.1 of 2017, every distribution licensee, open access consumer and every consumer owning a captive generating plant of installed capacity of 1 MW and above and connected to the grid are the obligated entities which shall comply with the RPO as per the percentages fixed under the Regulation. In the above

background, the Ministry of Power, Government of India has issued the above mentioned clarification based on which the petitioner has filed the present O.P.

The fulcrum of the petitioner's case is that the clarification issued by the Ministry of Power being a statutory document, the same is binding on this Commission and consequently it is under an obligation to modify the RPO percentage in tune with National Tariff Policy. In other words, the petitioner is treating the clarificatory letter addressed by the Under Secretary to the Government of India albeit with the approval of the Hon'ble MoS (I/c) for Power and NRE as the National Tariff Policy issued under Section 3 of the 2003 Act. In this context, reference to Section 3 becomes relevant. This provision, to the extent it is relevant, reads as under :

### 3. National Electricity Policy and Plan :

(1) The Central Government shall, from time to time, prepare the National Electricity Policy and tariff policy, in consultation with the State Governments and the Authority for development of the power system based on optimal utilization of resources such as coal, natural gas, nuclear substances or materials, hydro and renewable sources of energy.

(2) The Central Government shall publish the National Electricity Policy and tariff policy from time to time.

(3) The Central Government, may, from time to time in consultation with the State Governments and the Authority, review or revise the National Electricity Policy and tariff policy referred to in sub-section (1).

Sub-section (2) of Section 3 as extracted above mandates that the Central Government shall publish National Electricity Policy and tariff policy from time to time. While the National Tariff Policy was published in the Gazette of India on 28-01-2016, the order dated 22-07-2016 of the Government of India, Ministry of Power, contained guidelines for long term RPO growth trajectory. The National Tariff Policy has left fixation of RPO entirely to the respective State Commissions as per Section 86(1)(e) of the 2003 Act. However, the Ministry of Power has issued the aforementioned order dated 22-07-2016 prescribing long term RPO growth trajectory. Be that as it may, as rightly described, the said order only contained guidelines for consideration by the respective State Commissions while exercising their powers under Section 86(1)(e) of the 2003 Act. It is not the pleaded case of the petitioner that the said order has been published in the India Gazette as part of the National Tariff Policy. That it is not a part of the National Tariff Policy is evident from the very description of the order as “guidelines for long term RPO growth trajectory”. In fact, the said order itself refers to the revised National Tariff Policy and its publication. Significantly, despite the said order of the Government of India, this Commission has fixed long term RPO growth trajectory at lesser percentages than that indicated in the Government of India guidelines. This clearly shows that this Commission has independently exercised its power conferred on it under Section 86(1)(e) of the 2003 Act

instead of adopting the guidelines contained in the order dated 22-07-2016 of the Ministry of Power, Government of India.

Coming to the clarificatory order dated 1-2-2019, the same was issued in clarification of the said order dated 22-7-2016 and the subsequent order dated 14-6-2018 only. The petitioner has also not pleaded that this clarification was published as part of the National Tariff Policy as mandated under Section 3(2) of the 2003 Act. These facts would clearly establish that neither order dated 22-7-2016 and that dated 14-6-2018 or the clarificatory order dated 1-2-2019 constitute a part of the National Tariff Policy. On the contrary, they are only either guidelines or clarification to the guidelines in specifying and implementing the RPO by the State Commissions. In this context, Section 86(1) needs to be noted. This provision, to the extent it is relevant, reads as under :

86. Functions of the State Commission : (1) The State Commission shall discharge the following functions, namely :

(a) .....

(b) .....

(c) .....

(d) .....

(e) promote cogeneration and generation of electricity from renewable sources of energy by providing suitable measures for connectivity with the grid and sale of electricity to any person, and also specify, for purchase of electricity from such sources, percentage of the total consumption of electricity in the area of a distribution licensee.

(2) .....

(3) .....

(4) In discharge of its functions the State Commission shall be guided by the National Electricity Policy, National Electricity Plan and tariff policy published under sub-section (2) of Section 3.

The above reproduced provision without any pale of doubt conferred absolute power on the State Electricity Regulatory Commissions to specify the RPOs in the area of a distribution licensee. This provision is not made subservient to any other provision under the Act, including Section 3 which envisaged National Electricity Policy and National Tariff Policy to be prepared and published by the Central Government. Section 86(4) however envisages that in discharge of its functions, the State Commission shall be guided by the National Electricity Policy and the National Electricity Plan and tariff policy published under sub-section (2) of Section 3.

This Commission had an occasion to examine the MNRE's Memo dated 11-12-2017 requesting the State Governments to take up the issues with the State Regulators for provision of surplus power beyond 1 MW capacity on net metering basis in respect of rooftop solar units vide its order dated 31-08-2020 in O.P.No.10 of 2020. In that context, this Commission has considered the words "shall be guided" in Section 61 of the 2003 Act. It has relied upon the Judgment of the Apex Court in **A.P. Transco Vs. Sai Renewable Energy Pvt.**

**Ltd.**<sup>4</sup> wherein it was held that the Commission is not bound by the policy directives of the State Government which are not consistent with the objectives sought to be achieved by the Electricity Reform Act 1998. This Commission also referred to the Judgment of the Hon'ble APTEL in **Polyplex Corporation Vs. Uttarakhand Electricity Regulatory Commission**<sup>5</sup> wherein it was held that the State Commission is an independent statutory body and that therefore the policy directions issued by the State Government are not binding on the State Commission as those directions cannot curtail the power of the State Commission in the matter of determination of tariff. With reference to the above Judgments, this Commission held as under :

“The above judgments crystallized legal position to the effect that the in discharge of its statutory functions, the Commission is only guided, but not bound by the policy directions of the State and that the powers of this Commission are not hampered or in any manner cut-down by such policy directions.”

This Commission further held that the ratio in **A.P. Transco Vs. Sai Renewable Energy Pvt. Ltd. (4-supra)** and **Polyplex Corporation Vs. UERC (5-supra)** on the interpretation of the provisions relating to the policy directions of the State Government equally applies for interpretation of Section 61 as both the provisions used the words “shall be guided”.

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<sup>4</sup> (2011) 11 SCC 34

<sup>5</sup> Appeal Nos.41, 42 and 43 of 2010

As noted hereinabove, even with reference to the MoP order dated 22-07-2016 containing the guidelines for long term RPO growth trajectory, this Commission has applied its mind independently and fixed different percentages in Regulation No.1 of 2017 from those indicated in the MoP order. When this Commission has not adopted the order containing guidelines, the petitioner cannot insist that it should change its Regulation based on the clarification issued to the said guidelines. When the tariff policy itself is only a guidance to the State Commissions, the order containing guidelines or the subsequent clarificatory order cannot be placed on a higher pedestal.

As regards the Judgment of the Hon'ble Apex Court in **Energy Watchdog Vs. CERC and others (3-supra)** it is no doubt true that the tariff policy was held to be a statutory document. The Hon'ble Apex Court however has not gone further and held that all such statutory documents are binding on the State Commissions. Whether a statutory document binds the Commission or not depends upon the statutory environment under which the Commissions are created. Had the Parliament intended that the National Tariff Policy should be binding on the Commissions, instead of using the expression "shall be guided" in Section 86(4), a different phraseology, such as, "shall be bound" would have been used. Indeed, such a question does not arise in the instant case because neither the order dated 22-07-2016 nor the present clarificatory

order in question are part of National Tariff Policy. They are only guidelines and clarificatory order to the guidelines, respectively. Hence, they cannot be elevated to the status of statutory documents.

With regard to the amendments made by some of the Regulatory Commissions, if those Regulatory Commissions have amended their Regulations in tune with the clarificatory order issued by the Government of India, the same cannot persuade this Commission to fall in line with their views. Each Regulatory Commission being an independent body, is entitled to take its own views having regard to the circumstances prevailing in its jurisdictional State. As mentioned earlier, the long term RPO growth trajectory is more liberal in the State of Andhra Pradesh compared to the trajectory indicated by the Ministry of Power, Government of India. After earnest consideration, this Commission is of the view that there is no need to place a cap on the long term RPO growth trajectory as regards captive consumers in the State of A.P. as there is every need to protect the environment. Any reduction in RPO which was fixed liberally in favour of the obligated entities in the State of Andhra Pradesh will be against public interest. Even if there is some hardship being faced by the captive consumers, the competing interests to protect the environment outweighs such hardship, if any.



For the foregoing reasons, the O.P. is dismissed, however, without costs.

Sd/-  
**Thakur Rama Singh**  
Member

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

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

