

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

