



ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION
4thFloor, Singareni Bhavan, Red Hills, Hyderabad 500004

**WEDNESDAY, THE THIRD DAY OF JANUARY,
TWO THOUSAND AND TWENTY FOUR**

:Present:

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

ORIGINAL PETITION NO.25 of 2023

Between:

Eastern Power Distribution Company of Andhra Pradesh Limited,
Rep. by its Chairman &, Managing Director,
P&T Colony, Seethammadhara, Visakhapatnam - 530013.

....Petitioner

And:

None

.... Respondent.

This Original Petition has come up for final hearing before us, in the Camp Court at Visakhapatnam, on 04-11-2023 in the presence of Sri P. Shiva Rao, learned Standing Counsel for the petitioner-APEPDCL; that after hearing the learned Standing Counsel for the petitioner and on consideration of the material on record, the Commission passed the following:

ORDER

This Original Petition is filed by the Eastern Power Distribution Company of Andhra Pradesh Limited (petitioner) with the prayer to grant

five more years of time to meet the leftover Renewable Power Purchase Obligation (RPPO) for the years 2012-13 to 2018-19.

Section 86(1)(e) of the Electricity Act, 2003 (for short “the Act”) enjoins on the State Commission to specify, for purchase of electricity from renewable sources of energy, a percentage of the total consumption of electricity in the area of distribution licensee. Under Section 61(h) of the Act, the appropriate Commission shall be guided by the promotion of cogeneration and generation of electricity from renewable sources of energy while specifying the terms and conditions for determination of tariff. Under sub-Section (1) of Section 3 of the Act, the Central Government, while preparing the National Electricity Policy and Tariff Policy, should have renewable sources of energy also, as a basis, among other things. Under Section 66 of the Act, the appropriate Commission shall be guided by the National Electricity Policy to promote the development of a market in power.

In consonance with the above statutory provisions, the Central Electricity Regulatory Commission framed the Regulations called the CERC (Terms and Conditions for recognition and issuance of Renewable Energy Certificate for Renewable Energy Generation) Regulations, 2010. In line with the said CERC Regulations, 2010, this

Commission also framed the APERC Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy/Renewable Energy Certificates) Regulations, 2012 (Regulation No. 1 of 2012), under which the Commission prescribed that every distribution licensee has to mandatorily purchase from renewable energy sources, a quantum of not less than 5% of its consumption of energy, during each of the years from 2012-13 to 2016-17. The Commission also made the purchase of Renewable Energy Certificates issued under the Central Regulations, 2010, as amended from time to time, as fulfilment of the RPPO prescribed herein. Under these Regulations, a minimum of 0.25% out of 5% RPPO shall be procured from solar generated energy. The last Proviso to Clause 3.1 of Regulation 1 of 2012 reserved liberty with the Commission to revise the percentage targets for any year, as deemed appropriate, either on its own motion or on the recommendation of the State Agency or on receipt of an application from the obligated/eligible entity.

The petitioner earlier filed OP No.19 of 2014 praying this Commission to cause the following amendments to the RPPO Regulation 1 of 2012:

- “(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; and
- (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 tariffs”.

By order dated 05-6-2015 this Commission disposed of OP No.19 of 2014. The relevant conclusions drawn and the findings rendered are as under:

- “4. It should be stated that in fact the Government of Andhra Pradesh in replacement of its earlier policies have declared their wind and solar power policy, 2015 for the next 5 years by G.O.Ms.Nos.9 & 8 of E, I&I Department, dated 13-02-2015 and 12-02-2015 the contents of which run counter to the request made by the petitioners herein, while 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.

5. A brighter side of the issue has been presented by Sri P. Shiva Rao, learned Standing Counsel, who in all fairness submitted that the position of the petitioners is better by today in complying with the renewable power purchase obligations within a reasonable short time in tune with the regulations in force. Hopefully the compliance with the mandatory regulations will be brought to the notice of the Commission soon and subject to the same, the petitioners should fail. Accordingly, the petition is dismissed. The petitioners shall bear their own costs”.

Seeking review of the said order, the petitioner herein filed R.P.No.19 of 2015, whereunder it has requested for exemption from purchase of Renewable Energy Certificates for the years 2012-13 to 2016-17 and to reduce the RPPO targets for the petitioner from FY 2015-16 to FY 2021-22 as prayed therein. It was specifically pleaded therein that if the reliefs sought for are not granted, the purchase of Renewable Energy Certificates will increase the retail tariff burden on the consumers. After issuing a public notice of the petition and considering the objections from various stakeholders, this Commission, by order dated 28-5-2016, *inter alia*, held as under:

“34. The Regulation 1 of 2012 is of application for the years from 2012-13 to 2016-17 and an appropriate regulation for compliance with the obligation to purchase Renewable Energy or Renewable Energy Certificates will be made by this Commission in accordance with law without leaving any vacuum between the end of the Multi Year Tariff/Control Period and the beginning of next such period.

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. Any default will attract the penal consequences prescribed by Regulation 1 of 2012 or its successor regulation. If such arrangement of carry forward were permitted, it will be in the interests of justice on an overall view of the facts and circumstances including the interests of the petitioner, the consumers, the Renewable Energy generators and the environment.

35. Therefore, the deficit in meeting the Renewable Power Purchase Obligation under Regulation 1 of 2012 of this Commission by the petitioner for the years 2012-13 to 2016-17 shall be met by purchase of Renewable Energy or Renewable Energy certificates in each corresponding year from 2017-18 to 2021-22 respectively. This carry forward of the Renewable Power Purchase Obligation is in addition to the Renewable Power Purchase Obligation which the petitioner has to discharge each year under the corresponding regulation of this Commission to be made in succession to Regulation 1 of 2012 for the years 2017-18 to 2021-22. Any default by the petitioner in discharging the Renewable Power Purchase Obligation concerning any of the years from 2012-13 to 2021-22 will result in the petitioner becoming liable for the prescribed consequences for such default under Regulation 1 of 2012 or its successor regulation of this Commission. The petition is ordered accordingly. No costs".

While the petitioner has not questioned the said order, the Indian Wind Power Association, one of the Objectors in R.P.No.19 of 2015, filed Appeal N0.203 of 2016, wherein it has, *inter alia*, called in question the correctness or otherwise of the said order in review passed by this

Commission on multiple grounds. It appears that the said Appeal is still pending.

Be that as it may, the present petition is filed to further postpone RPPO for the years 2012-13 to 2018-19. In support of this petition, the petitioner, *inter alia*, listed out the following reasons for nonfulfilment of RPPO during the aforementioned years as under:

- a. Only a few NCE Generators are existing in APEPDCL jurisdiction. Only 4 Nos Solar Power Projects with a capacity of 12 MW and 9 Nos Non-Solar Projects (18 Nos. Non Solar PPAs existing out of which, 4 Nos PPAs are closed, 5 Nos PPAs have no generation and remaining 9 Nos PPAs are active) with a capacity of 51 MW are existing in the jurisdiction of APEPDCL.
- b. No wind power projects are existing in APEPDCL area and no wind developers are coming forward to set up power projects.
- c. The major portion of the existing as well as upcoming RE capacity (as per NREDCAP) is located in APSPDCL jurisdiction.
- d. APEPDCL could not meet its annual energy requirement from its share of 36.22% of the total conventional energy & 100% geographical NC Energy due to which APEPDCL is purchasing energy from APSPDCL under D to D transaction. At present, the D to D transactions for a particular financial year are being carried out duly considering the RPPO target of APEPDCL for that Financial year only.
- e. Purchase of REC certificates will result in increase of retail supply tariff, burdening the consumers”.

The petition was placed on the public domain, inviting views/objections from the general Public. Sri M.Venugopala Rao, Senior Journalist, and Sri B.N.Prabhakar, President, Society for Water, Power & Natural

resources conservation Awareness and Monitoring, Guntur, submitted their views. Both of them have supported the plea of the petitioner for scheduling the timelines for compliance of RPPO.

We have heard Sri P.Shiva Rao, learned Standing Counsel for the petitioner. During the hearing, no Objectors were present. Accordingly, the case was reserved for orders on 04-11-2023.

The main point that arises for consideration is - whether the petitioner is entitled to any relief?

From the facts noted above, it could be seen that, while rejecting various requests of the petitioner regarding RPPO compliance, this Commission has passed final orders on 05-6-2015 in OP No.19 of 2014. Not satisfied with the said order, the petitioner filed a review, by way of RP No.19 of 2015, *inter alia*, seeking exemption from the RPPO. This Commission while not acceding to the said prayer, however, revised the timelines for compliance of RPPO for the period from 2012-13 to 2016-17. As per the said revision, the RPPO for each year from 2012-13 to 2016-17 shall be met by purchase of renewable energy or renewable energy certificates in each corresponding year from 2017-18 to 2021-22 respectively. The petitioner has allowed this order to attain finality *qua* itself while only the Indian Wind Power Association has filed an appeal

challenging the correctness of the decision of this Commission in revising the RPPO schedule. Thus, having allowed the order to reach finality and much after completion of the period relating to revised timelines, the petitioner has leisurely approached this Commission for further extension of time of five more years to meet the leftover RPPO. In our opinion, this petition is in the teeth of order dated 28-5-2016 passed in the Review Petition (RP No.19 of 2015) as far as the period from 2012-13 to 2016-17 is concerned. If the petitioner had any grievance against the said order, it ought to have filed an appeal, which it did not. Though this petition is termed as OP, in reality the petition is seeking review of the Order dated 28-5-2016 in RP No.19 of 2015. In other words, the petitioner is seeking review of an Order passed in a Review Petition.

The question which we shall now consider is - whether such a Review is maintainable?

Under Section 94 of the Act, the appropriate Commission shall, for the purposes of any inquiry or proceedings under the Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (CPC) in respect of the matters mentioned in Clauses (a) to (g). Clause (f) relates to review of its decisions, directions and orders. Under Order 47, Rule 9 of the CPC, no application to review an order made on

an application for a review shall be entertained. Thus, even if the petitioner had filed a Review Petition, instead of the present OP, the same would have been dismissed as non-maintainable. When the Review Petition itself is not maintainable, it is axiomatic that a fresh petition cannot be maintained, for when the order in an earlier petition has become final, it is not permissible for a party to apply for passing an order at variance with an order already passed except by way of a review petition. As already noted above, such a review petition is not maintainable. Equally, a fresh OP is also barred. On the above analysis, the Commission is of the view that the OP to the extent of the period from 2012-13 to 2016-17 is not maintainable.

Coming to the period of 2017-18 and 2018-19, the said period is covered by the APERC Renewable Power Purchase Obligation (Compliance by purchase of Renewable Energy / Renewable Energy Certificates) Regulations, 2017 (Regulation 1 of 2017) wherein revised targets have been fixed, both for solar and non-solar energy. From the Table shown in Para-7 of the petition it is evident that only for the above mentioned two years there was some deficit compliance. For the year 2017-18 there was a deficit in non-solar target, while for 2018-19 there was deficit in solar and non-solar targets.

As regards the reasons mentioned in (a) to (e) of para 12 of the petition, as set out supra, the same reasons existed when OP and Review Petition were disposed of. While rejecting the request for exemption, this Commission, in the Review Petition, revised the schedule for RPPO compliance. The petitioner cannot be allowed to reiterate the same reasons again and again. With a view to enable the licensees to tiedover the problems arising in purchasing renewable energy, in the Regulations framed by, both, CERC as well as this Commission, an alternative is provided by permitting the licensees to purchase Renewable Energy Certificates. Only ground pleaded by the petitioner for not purchasing such Renewable Energy Certificates is that such a course will burden the consumers. This plea is not acceptable because when the Regulation itself provides for purchase of Renewable Energy Certificates in the larger interest of protecting and preserving the environment, the licensee cannot contend that it has not exercised the said option to avoid burden on the consumers. When the burden is inevitable, the licensee is bound to adopt the alternative course of buying Renewable Energy Certificates, as provided under the Regulations.

It is undeniable that Global Warming is threatening the very existence of life on the Planet Earth. In order to protect the environment

from further degradation by use of fossil fuels, the Act has made it obligatory on the consumers and licensees to purchase prescribed quantities of electricity from renewable sources of energy. Accordingly, extant Regulations have been made. In the competing interest between Human Survival and Economic Considerations, the former should always outweigh the latter. By not adhering to the prescribed RPPO, the consumer/licensee will be avoiding its obligation to protect the environment by reducing the use of fossil fuels. By postponing the RPPO, the very object of prescription of RPPOs will be made nugatory. This Commission has already shown indulgence once in favour of the petitioner. The petitioner cannot, time and again, seek further indulgence. There are number of entities, such as the petitioner, which are to comply with RPPO. Once any lenience or indulgence is shown, we are afraid we will be opening the floodgates. In the present scenario, where Global Warming is developing into Global Boiling, “survival” should be the first principle to be adopted; lest, we will be doing grave injustice to our posterity.

There is one other reason to reject this petition *in limine*. The revised timelines expired in 2021 itself. The petitioner failed to approach the Commission on the expiry of each year, when it failed to comply with

RPPO for that year. It only filed the petition two years after expiry of the entire revised block period. The petition, thus, suffers from uncondonable laches.

For the above mentioned reasons, the Commission is not inclined to accept the prayer for rescheduling the RPPO.

In the result, the OP is dismissed.

Order passed on this the third day of January, 2024.

**Sd/-
P.V.R.Reddy
Member**

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

**Sd/-
Thakur Rama Singh
Member**

