



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

MONDAY, THE 30th DAY OF OCTOBER
TWO THOUSAND AND TWENTY-THREE

Present

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

O.P.No.12 of 2020 along with I.A. No. 3 of 2020 & I.A. No. 1 of 2021
In the matter of the charges for drawl of power by the solar power generating
stations for their auxiliary consumption.

Between:

1. Aarohi Solar Private Ltd.
2. Dayanidhi Solar Power Private Limited
3. Vishwatma Solar Energy Pvt Limited
4. Niranjana Solar Energy Pvt Limited
5. ACME Jaisalmer Solar Power Private Limited

... PETITIONERS

And

The Southern Power Distribution Company of AP Limited

... RESPONDENT

This original petition has been filed under Section 86(l)(f) of the Electricity Act, 2003 by Aarohi Solar Private Ltd, Dayanidhi Solar Power Private Ltd, Vishwatma Solar Energy Pvt Ltd, Niranjana Solar Energy Pvt Ltd, and ACME Jaisalmer Solar Power Private Limited (hereinafter referred to as "**The Petitioners**") for adjudication of dispute arising out of the Power Purchase Agreement dated 05.12.2014 executed with Southern Power Distribution Company of Andhra Pradesh Limited (hereinafter referred to as "**The Respondent**"). This Common Petition after several adjournments at the request of both the petitioners and the respondent has come up for final hearing on 21.06.2023 in the presence of Sri Aniket Prasoon, learned counsel for the petitioner; and Sri P.Shiva Rao, learned standing counsel for the Respondent. After carefully considering the material available on record and hearing the arguments of the learned counsel for both parties, the Commission passes the following:

ORDER

The Petition is filed praying the following Reliefs:

- “ a. *Declare and hold that the power drawn by Petitioner for its auxiliary consumption up to 0.1 % of PPA capacity shall be netted off against delivered energy as per article 2.8;*
- b. *Refund the differential amount recovered by Respondents towards import energy drawn by the Petitioner with interest;*
- c. *Declare and hold that no additional consumption deposit is required as the auxiliary consumption drawl by Petitioner is netted off against the delivered energy and direct the Respondents to withdraw the invoice raised towards drawl of such auxiliary consumption by Petitioner;*
- d. *Grant such order, further relief(s) in the facts and circumstances of the case as this Hon'ble Commission may deem just and equitable in favour of the Petitioner.”*
2. The case of the petitioners, in brief, is that they are generating companies in terms of Section 2 (28) of the Electricity Act, 2003 and are primarily engaged in the business of setting up solar power plants and generation of electricity. The ACME Clean Tech Solutions Limited participated in the competitive bidding process conducted by the Respondent under the Andhra Pradesh Solar Power Policy 2015 issued in G.O.MS.No.8 dated 12.02.2015 for procurement of solar power from the solar power projects and was declared as a successful bidder. Accordingly, a Letter of Intent was issued by the Respondent to ACME Clean Tech Solutions Limited. Post issuance of the LOI, ACME Clean Tech Solutions Private Limited set up Petitioners as Special Purpose Vehicles (SPVs) to execute the project. Petitioners entered into five (5) separate Power Purchase Agreements dated 05.12.2014 with the Respondent for supplying all the electricity generated from their Solar PV Plants in the State of Andhra Pradesh. The details of the capacities, connected substations and locations are shown in the table below.

SPV Name	Substation	PPA Capacity (MW)	District
Aarohi Solar Private Limited	132/33 kV Hindupur	50	Anantapur
Dayanidhi Solar Power Private Limited	132/33 kV Shantipuram	40	Chittoor

SPV Name	Substation	PPA Capacity (MW)	District
Vishwatma Solar Energy Pvt Limited	132/33 kV Yemmiganur	30	Kurnool
Niranjana Solar Energy Pvt Limited	132/33 kV Pathikonda	20	Kurnool
ACME Jaisalmer Solar Power Private Limited	132/33 kV Dharmavaram	20	Anantapur

In terms of Article 2.8 of the PPA, the petitioners are entitled to draw power for their plants' auxiliary consumption and this article provides a netting-off mechanism with the delivered energy generated by the Petitioners' Solar Plant. In case the net delivered energy in the above calculation is negative, the payment is to be made to the Respondent at the applicable tariff of HT-1 category consumers for the drawal of power by the Petitioners for their plants' auxiliary consumption. Accordingly, the Respondent is accounting and billing the auxiliary consumption of the petitioners' solar plants up to 01.04.2018 since their commissioning. After 01.04.2018, the Respondent arbitrarily and contrary to the provisions of PPA started levying charges for auxiliary consumption at the tariff of Rs. 11.77 per unit and that subsequently, the said tariff was revised and adjusted from the invoices of delivered energy by the petitioners at the interconnection points up to 02.10.2018/01.01.2019/31.03.2019. Afterwards, the Respondent started raising separate invoices for the auxiliary consumption of the petitioners' plants at the tariff determined by the APERC in Retail Supply Tariff Orders under the start-up power category of consumers. Further, the Respondent in complete contravention of the terms of the PPA raised demand notices dated 20.07.2019, 17.10.2019, and 15.10.2019 and asked Petitioners to provide security equivalent to 3 months' average consumption charges in terms of Andhra Pradesh Electricity Regulatory Commission (Security Deposit) Regulation, 2004 and its amendments thereof inspite of the terms in the PPA that netting off mechanism has to be made applicable while raising bills against the Respondent. That the raising of security deposit notices is bad in law on account of the fact that the conditions requisite in the issuance of monthly bills provided under Article 5.1 of the PPA have not been adhered to

by the Respondent. The Petitioner entered into PPA with the Respondent on the conditions mutually agreed therein. In view of the aforesaid, the Respondent is in complete violation of the provisions of the PPA. Therefore, the Respondent cannot act contrary to the provisions of the PPA. Aggrieved by the action of the Respondent, the present petition is filed.

3. The petitioners in support of their case stated that the Respondent is in clear breach of its obligations arising out of Clause 2.8 of the PPA and the procedure provided under the law or as agreed between the parties to a contract has to be strictly adhered to, in the absence of which, no party is entitled to claim its right as provided under the said law or a contract. The sanctity of the contract cannot be allowed to be lost to unilateral action that would promote breaches of contract. The petitioners relied on the Hon'ble Supreme Court judgments in the cases of ONGC Ltd. Vs. Saw Pipes Ltd (2003) 5 SCC 705, Barauni Refinery Pragatisheel Shramik Parishad Vs. Indian Oil Corporation Limited (1991) 1 SCC 4, and J.P. Builders Vs. A. Ramadas Rao (2011) 1 SCC 429 on the sanctity of the contract.
4. The petitioners further stated that the Security Deposit Regulation, 2004 has been framed in terms of Section 43 and Section 47 of the Electricity Act, 2003. However, in the instant case, they are supplying electricity to the Respondent in terms of PPA under which auxiliary power consumption shall be netted off against delivered energy. That, solar power plants do not import power from distribution licensees for starting up power plants. Respondent has mistakenly relied upon Start-up power provisions and billed the Petitioner for its auxiliary consumption. For that, it is an established principle of law that generating stations drawing electricity from distribution licensees for their auxiliary consumption cannot be termed as consumers. Therefore, since the Petitioners herein are not consumers, the Security Deposit Regulation, 2014 will not be applicable in the present case.
5. The Petitioner also filed an Interlocutory Application dated 17.01.2020 under Section 94(2) of the Electricity Act, 2003 to seek a stay on the demand notices and invoices issued by the Respondent in connection with charges for the drawal of power by their generating stations for its auxiliary consumption. That the balance of convenience lies in favour of the Applicants/Petitioners and the prima facie case is also in favour of the Applicants/Petitioners since material aspects have not been considered by

the Respondent in issuing the demand notices and invoices. That irreparable loss will be caused to the Applicants/Petitioners in the event the demand notices and invoices are not stayed.

6. The Respondent filed a counter affidavit dated 02.07.2020 wherein it is contended that the petition is not maintainable as each of the petitioners is a separate legal entity and has a separate cause of action having received separate invoices for different periods from it towards payment for auxiliary consumption. Therefore, the Petition may be dismissed for misjoinder of all five Petitioners together.
7. The Respondent further submitted that the APERC issued Regulation 3 of 2017 on Evacuation from Captive Generation, Cogeneration and Renewable Energy Source Power Plants. Clause 17 of Regulation 3 of 2017 says that “APTRANSCO/Discoms shall extend power supply to all these generating plants either at Low Tension (LT) or at High Tension(HT) as desired by the power producers/Developers for maintenance, start-up operations and lighting purposes. The tariff for these plants for the FY 2017-18 shall be charged at the rate of Rs. 11.77 per unit without any fixed charges and minimum charges. The Discoms shall file Tariff proposals under Section 62 of the Electricity Act 2003 in the ARR proposals of FY 2018-19 for the supply of electricity to this type of generating Plant”.
8. The Respondent submitted that prior to the issue of Regulation 3 of 2017 dated 05.06.2017, the procedure of netting-off had been followed for the Auxiliary Consumption of the developers. As per the Principle of law settled by the Hon’ble Supreme Court holding that the Regulations intervene and prevail over the existing agreements, after the issue of the above regulation the procedure of netting off auxiliary consumption ceased to exist. The applicable tariff as determined by the Commission under HT category-IIF is being adopted from time to time. It was specifically mentioned vide clause 5.2.6 item 6 of the Tariff order for the FY 2018-19 under HT category-IIF that this category is also applicable to all the Wind and Solar Plants that have PPAs with the Licenses.
9. The Respondent further submitted that the Additional Consumption Deposit (ACD) notices to the petitioners were issued based on the yearly consumption as per Regulation 6 of 2004 and Regulation 2 of 2019 of the APERC read with Regulation 3 of 2017 dated 05.06.2017.

10. The Respondent relied on the judgments of the Hon'ble Supreme Court in the cases PTC India Ltd vs C.E.R.C. reported in 2010(4) SCC 603, and Trimbak Damodar Raipurkar vs Assaram Hiranman Patil reported in AIR 1966 SC 1758, and Regulation 3 of 2017 of the Commission in support of its contentions. Hence, requested the Commission to dismiss the plea of the petitioners.
11. The Petitioners in their rejoinder dated 19.10.2020 to the counter filed by the Respondent, on the maintainability of the petitions, relied on the seminal case of Shambhoo Dayal vs. Chandra Kali Devi & Ors. [AIR 1979 Bom 298] and Paikanna Vithoba Mamidwar & Ors. vs. Laxminarayan Sukhdeo Dalva & Ors [AIR 1964 All 350] wherein it has been observed that it is not necessary anymore that there must be the identity of interest or identity of causes of action. What is necessary is the involvement of common questions of law or fact. In the instant petition similar factual and legal issues were involved i.e., the entitlement of the petitioners to net off export power with import power. That the Hon'ble Appellate Tribunal for Electricity in Appeal No. 279 of 2013 titled Gujarat Urja Vikas Nigam Limited vs Gujarat Electricity Regulatory Commission and Ors held that strict rules of the Code of Civil Procedure, 1908 do not apply to the proceedings before the State Commission and the State Commission is free to decide on its own procedure which satisfies two aspects i.e. (i) Principles of Natural Justice and (ii) Transparency.
12. The Petitioners further submitted that the Electricity Act, 2003 is an exclusive code which is not bound by the procedure contemplated under the Civil Procedure Code, 1908 implying that the Commission is free to devise its own procedure to meet ends of justice. Therefore, the present Petition is maintainable, and the Commission has the lawful jurisdiction under Section 86(l)(f) of the Electricity Act, 2003 to adjudicate the present Petition. That the Hon'ble Supreme Court in Keshavan Madhava Menon v. State of Bombay [AIR 1951 C 128] & The State of Madhya Pradesh and Ors. vs. Manoj Sharma and Ors. [AIR 2018 SC 1148] held that it is a cardinal principle of construction that every statute is prima facie prospective unless it is expressly or by necessary implication made to have a retrospective operation. This principle of law follows from the legal maxim "Nova constitutio futuris formam imponere debet non praeteritis", i.e. a new law ought to regulate what is to follow, not the past. The same viewpoint has

been taken in *Monnet Ispat & Energy Ltd. V. Union of Indian & Ors.* [2012 (6) SCALE 650] where the Hon'ble Supreme Court held that this principle operates until and unless there is an express provision in the statute stating/indicating retrospective applicability of the statutes. Therefore, Regulation 3 of 2017 does not cover the instant case in its ambit as the Regulation came into force on 05.06.2017, whereas the PPAs were executed between the Petitioners and the Respondent on 05.12.2014 on the conditions mutually agreed therein for supplying all electricity generated from its Solar PV Plant in the State of Andhra Pradesh, issued under the same RFS by the Respondent on 06.09.2014.

13. The Petitioners filed an additional affidavit dated 29.06.2021 which was permitted to be withdrawn by the Commission in its Orders dated 30.06.2021
14. The Petitioners also filed Interlocutory Applications dated 29.06.2021 to issue appropriate orders/ directions to the Respondent to keep in abeyance any energy/demand charges that have been raised upon the Petitioners herein in lieu of the energy imported by them and not to issue any fresh invoices upon them till the final outcome of the present petition and also taking any precipitative and/ or coercive actions, including disconnection of their plants by the Respondent. The Petitioner relied on the Hon'ble High Court's interim Order dated 25.02.2021 in WRIT PETITION NO:4614 OF 2021.

Commission's decision

15. The Commission carefully examined the contentions of rival parties. The following aspects need to be decided by the Commission.
 - A. Whether the Petitions are maintainable ?;
 - B. Whether the Auxiliary consumption and Start-up power are different ?;
 - C. Whether the Petitioner's plants' auxiliary consumption shall be accounted for and billed for as per the PPA or be billed as envisaged in Regulation 3 of 2017 ?; and,
 - D. Whether notices issued by the Respondent demanding a security deposit from the Petitioners for their solar plants' auxiliary consumption are correct ?.

Re: A

16. The Petitioners have relied on the Hon'ble Supreme Court judgments and Hon'ble APTEL Orders on the maintainability of the Petitions. On the preliminary objection raised by the respondent about the maintainability of a common petition by five different entities, the Commission in its Order dated 01.12.2021 directed the petitioners to pay separate fees as prescribed under the Regulations to consider the case as an exception. Accordingly, the Petitioners paid the separate fee and has accepted the same by the Commission. Hence, the objection regarding the maintainability of common OP does not survive.

Re: B

17. The contention of the petitioner that Regulation 3 of 2017 does not deal with auxiliary consumption and hence the said Regulation is without any merit. Para 43 and 44 of APTEL's Order and the definition of Auxiliary consumption in CERC Regulations dated 17.04.2017 are extracted herein:

Para 43 and 44 of APTEL's Order:

"43 Before proceeding, further let us understand what startup power is and for what purpose it is required.

44 Startup Power has not been defined in the Electricity Act 2003 or in the Rules and Regulations framed there under. It has also not been defined in the repealed Acts viz., Indian Electricity Act 1910, Electricity (Supply) Act 1948 and Electricity Regulatory Commission Act 1998. Thus we have to go by its general meaning. In general parlance, word 'Startup' means to start any machine or motor. In terms of electricity, Startup Power is power required to start any machine. Thus Startup Power is power required to start a generator. Next question is why it is required. Thermal generating units, (to some extent large hydro generating units also) have many auxiliaries, such as water feed pump, coal milling units, draft pumps etc.,. These auxiliaries operate on electrical power and are essentially required to run before generating unit starts producing power of its own. These auxiliaries would draw power from grid till unit start producing power and is synchronized with the grid. Once unit is synchronized, requirement of 'startup power' vanishes. Thus 'startup power' is required only when all the generating units in a generating station are under shutdown and first unit is required to startup. Once any one unit in a generating station is synchronized, power generated by the running unit is

used to startup other units. Period of requirement of startup would vary from few minutes to few hours depending upon the size of unit.”

CERC definition of Auxiliary consumption in Regulations 17.04.2017:

“b) 'Auxiliary energy consumption' or 'AUX' in relation to a period in case of a generating station means the quantum of energy consumed by auxiliary equipment of the generating station, and transformer losses within the generating station, expressed as a percentage of the sum of gross energy generated at the generator terminals of all the units of the generating station;”

Though Regulation 3 of 2017 did not define Auxiliary consumption, it is beyond any doubt that the power consumed by Petitioner’s solar plants for its auxiliaries including the lighting from the Grid during the absence of their generation falls under auxiliary consumption. Hence, the Commission is not inclined to accept the contention of the Petitioners on this aspect.

Re: C

18. Whether the auxiliary consumption drawn by the petitioner’s plants shall be accounted for and billed for as per the PPA or be billed as envisaged in Regulation 3 of 2017. Article 2.8 and Schedule I of the PPA are extracted herein:

*"2.8 The Solar Power Developer is entitled to draw the power for its auxiliary consumption, the limit of which is specified in Schedule-I from DISCOM. The energy supplied by the DISCOM to the Solar Power Developer through a bilateral arrangement, to maintain the Auxiliaries of the power plant in situations of non-generation power, in any billing month shall be adjusted from the Delivered Energy, as indicated below:
Net Energy = Delivered Energy by the developer at Interconnection Point - Energy Drawl from DISCOM for auxiliaries. However, in case Net energy in the above calculation is negative, i.e. there is NO Delivered Energy by the SPD at the Interconnection Point, then the Energy Drawl from the DISCOM shall be billed at the applicable tariff of HT-1 category consumers."*

“ Schedule I

Particulars of the project

(Referred to in the Preamble to the Agreement)

<i>NAME OF THE PROJECT AND ADDRESS</i>	<i>Location</i>	<i>33/ 11 kV Substation or 132kV/ 33 kV Substation</i>	<i>Interconnection point</i>	<i>Type of Project</i>	<i>Capacity of the Project (MW)</i>
<i>M/s Dayanidhi Solar Power Private Limited, Plot No.152, Sector-44 Gurgaon, Haryana - 122002</i>	<i>132/33 KV SS Shanthipuram</i>	<i>132/33 KV SS Shanthipuram</i>	<i>At 132 KV voltage level of 132/33 KV SS Shanthipuram</i>	<i>Solar Photo Voltaic</i>	<i>40MW</i>

* Out of 20 MW, 0.02 MW is for Auxiliary Consumption and 19.98 MW is for export to the grid for sale to DISCOM.

* Note: Auxiliary Consumption is 0.1 % of capacity for Solar PV.”

The Respondent is relying on Regulation 3 of 2017, subsequent tariffs fixed by the Commission for the Startup power category under the Commercial II-F category in RST Orders issued from time to time and Hon’ble Supreme Court judgement dated 15.03.2010 in the case of PTC India Ltd.Vs.Central Electricity Regulatory Commission. A Constitution Bench of the Hon’ble Supreme Court in its judgement dated 15.03.2010 held that regulation under Section 178, as a part of the regulatory framework intervenes and,, even overrides the existing contracts between the regulated entities inasmuch as it casts a statutory obligation on the regulated entities to align their existing and future contracts with the said regulations. Whereas the Petitioners are relying on the sanctity of the contract as upheld by the Hon’ble Supreme Court in various judgements. To examine the Respondent’s claim, the relevant part of the Hon’ble Supreme Court judgement dated 15.03.2010 is extracted below.

“40. As stated above, the 2003 Act has been enacted in furtherance of the policy envisaged under the Electricity Regulatory Commissions Act, 1998 as

it mandates establishment of an independent and transparent Regulatory Commission entrusted with wide ranging responsibilities and objectives inter alia including protection of the consumers of electricity. Accordingly, the Central Commission is set up under Section 76(1) to exercise the powers conferred on, and in discharge of the functions assigned to, it under the Act. On reading Sections 76(1) and 79(1) one finds that Central Commission is empowered to take measures/steps in discharge of the functions enumerated in Section 79(1) like to regulate the tariff of generating companies, to regulate the inter-State transmission of electricity, to determine tariff for inter-State transmission of electricity, to issue licenses, to adjudicate upon disputes, to levy fees, to specify the Grid Code, to fix the trading margin in inter-State trading of electricity, if considered necessary, etc.. These measures, which the Central Commission is empowered to take, have got to be in conformity with the regulations under Section 178, wherever such regulations are applicable. Measures under Section 79(1), therefore, have got to be in conformity with the regulations under Section 178. To regulate is an exercise which is different from making of the regulations. However, making of a regulation under Section 178 is not a pre-condition to the Central Commission taking any steps/measures under Section 79(1). As stated, if there is a regulation, then the measure under Section 79(1) has to be in conformity with such regulation under Section 178. This principle flows from various judgments of this Court which we have discussed hereinafter. For example, under Section 79(1)(g) the Central Commission is required to levy fees for the purpose of the 2003 Act. An Order imposing regulatory fees could be passed even in the absence of a regulation under Section 178. If the levy is unreasonable, it could be the subject matter of challenge before the Appellate Authority under Section 111 as the levy is imposed by an Order/decision making process. Making of a regulation under Section 178 is not a pre-condition to passing of an Order levying a regulatory fee under Section 79(1)(g). However, if there is a regulation under Section 178 in that regard then the Order levying fees under Section 79(1)(g) has to be in consonance with such regulation. Similarly, while exercising the power to frame the terms and conditions for determination of tariff under Section 178, the Commission has to be guided by the factors specified in Section 61. It is open to the Central Commission to specify terms and conditions for determination of tariff even in the absence of the regulations under Section 178. However, if a regulation is

made under Section 178, then, in that event, framing of terms and conditions for determination of tariff under Section 61 has to be in consonance with the regulation under Section 178. One must keep in mind the dichotomy between the power to make a regulation under Section 178 on one hand and the various enumerated areas in Section 79(1) in which the Central Commission is mandated to take such measures as it deems fit to fulfil the objects of the 2003 Act. Applying this test to the present controversy, it becomes clear that one such area enumerated in Section 79(1) refers to fixation of trading margin. Making of a regulation in that regard is not a pre-condition to the Central Commission exercising its powers to fix a trading margin under Section 79(1)(j), however, if the Central Commission in an appropriate case, as is the case herein, makes a regulation fixing a cap on the trading margin under Section 178 then whatever measures a Central Commission takes under Section 79(1)(j) has to be in conformity with Section 178. One must understand the reason why a regulation has been made in the matter of capping the trading margin under Section 178 of the Act. Instead of fixing a trading margin (including capping) on a case to case basis, the Central Commission thought it fit to make a regulation which has a general application to the entire trading activity which has been recognized, for the first time, under the 2003 Act. Further, it is important to bear in mind that making of a regulation under Section 178 became necessary because a regulation made under Section 178 has the effect of interfering and overriding the existing contractual relationship between the regulated entities. A regulation under Section 178 is in the nature of a subordinate Legislation. Such subordinate Legislation can even override the existing contracts including Power Purchase Agreements which have got to be aligned with the regulations under Section 178 and which could not have been done across the board by an Order of the Central Commission under Section 79(1)(j)." (**Emphasis added**).

In the present case, in exercise of the powers conferred by Section 30, Section 86 (1) (e) and read with sub-section (1) of Section 181 and clause (zp) of sub-section (2) of Section 181 of the Electricity Act, 2003 (36 of 2003), APERC issued the Regulation 3 of 2017. Clause 17 of Regulation 3 of 2017 says that "APTRANSCO/Discoms shall extend power supply to all these generating plants either at Low Tension (LT) or at High Tension(HT) as desired by the power producers/Developers for maintenance, start-up operations and lighting purposes. The tariff for these plants for the FY

2017-18 shall be charged at the rate of Rs. 11.77 per unit without any fixed charges and minimum charges. The Discoms shall file Tariff proposals under Section 62 of the Electricity Act 2003 in the ARR proposals of FY 2018-19 for the supply of electricity to this type of generating Plant”.

As per the above direction in Regulation, the DISCOMS have filed tariff proposals under section 62 of the Electricity Act, 2003 for FY 2018-19 and the Commission has issued the RST Order for FY 2018-19 duly fixing the Tariff for STARTUP POWER FOR CAPTIVE GENERATING PLANTS, CO-GENERATION PLANTS AND RENEWABLE GENERATION PLANTS under separate category HT CATEGORY-II(F) in terms of the Regulation 3 of 2017. The Commission while fixing the said tariff, stipulated the following conditions in the RST Order for FY 2018-19.

“(1) Supply is to be used strictly for generstart-up operations, maintenance and lighting purposes only.

(2) Monthly minimum charges on energy are not applicable.

(3) Allowable Maximum Demand shall be limited to the percentage (as given below) of the maximum capacity unit in the generating station in case of generators other than Wind and Solar, and of the plant capacity in case of Wind and Solar generator. Thermal -15%, Gas based – 6%, Hydel – 3%, NCE Sources – 10%, Wind and Solar – 2%

(4) If the Maximum Demand exceeds the limits specified above, the energy charges shall be charged at 1.2 times of normal charge for the entire energy consumed.

(5) All other conditions applicable to HT-II category shall also supply to the HT-II(F) category to the extent they are not contradictory to the above.

*(6) This category is also applicable to all the wind and solar plants who have PPAs with the licensees”. (**Emphasis added**)*

As can be seen from the above, the tariff conditions do not provide for netting off the energy and also did not exempt existing PPAs from the application of the above tariff conditions/ Regulation. Therefore, the ratio laid down in the above judgement of the Hon’ble Supreme Court squarely applies to the present case. Accordingly. Regulation 3 of 2017 intervenes and prevails over the existing PPAs. Therefore, after the issue of the above regulation, the procedure of netting off auxiliary consumption ceased to exist. The applicable tariff as determined by the Commission under HT category-II F shall be applicable prospectively from the date of notification

of the Regulation. Accordingly, we hold that the action taken by the Respondent as per Regulation and subsequent tariff Orders in respect of billing auxiliary consumption of Petitioners's solar plants is legal and valid.

Re: D

19. On the aspect of collecting the security deposit from the Petitioners as per Regulation 6 of 2004 and Regulation 2 of 2019 of the APERC, it is pertinent to mention here Hon'ble APTEL Order 25.11.2011 which held that a generator requiring 'startup up power' from the grid occasionally cannot be termed as a consumer. Regulation 6 of 2004 issued by the Commission as per section 47 read with Section 43 of the Act is meant for collecting the security deposit from the Discoms' consumers. Hence, the raising of demands on the petitioners for security deposit by the Respondent is not valid. Accordingly, the amounts collected if any from the Petitioners towards the security deposit shall be refunded by the Respondents within one month from today.
20. In terms of the above decisions and directions, the Petition and connected Interlocutory Applications stand disposed of.

Sd/-
P.V.R.Reddy
Member

Sd/-
Justice C.V. Nagarjuna Reddy
Chairman

Sd/-
Thakur Rama Singh
Member