



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**  
4<sup>th</sup>Floor, Singareni Bhavan, Red Hills, Hyderabad 500004

**FRIDAY, THE TWELFTH DAY OF APRIL,  
TWO THOUSAND AND TWENTY-FOUR  
(12.04.2024)**

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

**OP No.3 of 2024**

**IN THE MATTER OF APPROVAL OF THE TRIPARTITE POWER SALE AGREEMENT  
DATED 01.12.2021 BETWEEN SECI, APDISCOMS AND GoAP, FOR PURCHASE OF  
7000MW SOLAR POWER WITH AN ANNUAL CEILING QUANTUM OF 17000 MU  
FOR 25 YEARS**

**Between:**

1. Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL);
2. Eastern Power Distribution Company of Andhra Pradesh Limited (APEPDCL);
3. Andhra Pradesh Central Power Distribution Corporation Limited (APCPDCL);
4. Government of Andhra Pradesh (GoAP) .....**Petitioners**

**and**

1. Solar Energy Corporation of India Limited (SECI);
2. Ministry of Power, GoI;
3. Andhra Pradesh Green Energy Corporation Ltd (APGECL) Renamed as  
“AP Rural Agriculture Power Supply Company Ltd (APRAPSCOM)” ..... **Respondents**

This Original Petition has come up for final hearing before the Commission on 10.04.2024 in the presence of Sri P.Shiva Rao, learned standing counsel for the Petitioners, and Ms Anushree Bandham, learned standing counsel for the Respondent No 1. After hearing the learned counsel for both the parties and on consideration of the entire material on record, the Commission passed the following:

**ORDER**

1. This Petition by APSPDCL, APEPDCL, APCPDCL and GoAP (For short **“The Petitioners”**) is filed under section 86 (1) (b) read with section 64(5) of the Electricity Act, 2003 (For short **“the Act”**), seeking approval of the Tripartite Power Sale Agreement (the Tripartite PSA) dated 01.12.2021 and its Supplemental Power Sale Agreement dated 29.12.2023 executed between Solar Energy Corporation of India (SECI) and the Petitioners. The averments, in brief, are that Andhra Pradesh Green Energy Corporation Ltd (APGECL) renamed as AP Rural Agriculture Power Supply Company (APRAPSCOM) is deemed to include as a successor or assign of the Petitioners in the agreement; that the SECI, Ministry of Power-Government of India (MoP-GoI) and the APRAPSCOM are arrayed **as Respondents**; that the agreement is executed for the procurement of 7000 MW Solar Power by the Petitioners from Respondent No. 1 with an annual ceiling limit of 17000 MU under three tranches i.e., 3000 MW in 2024, 3000 MW in 2025 and 1000 MW in 2026; that the Petitioners are the Buying Entities; that the Respondent No.1, Solar Energy Corporation of India (SECI), is a nodal agency for the implementation of the MNRE Scheme for ISTS Connected Solar PV Projects linked with the setting up of a Solar Manufacturing Plant in India on a “Build Own Operate” basis (Manufacturing linked Solar Scheme). SECI is the Buyer under the Tripartite PSA and acts as the Intermediary Procurer under the Guidelines for Tariff-Based Competitive Bidding Process for Procurement of Power from Grid-Connected Solar PV Power Projects issued by the Ministry of Power; that Respondent No.3, AP Rural Agriculture Power Supply Company Limited, is a public undertaking under the complete control of GoAP, specifically established upon the directions of Petitioner No. 4, vide Go.Rt.No. 152 dated 03.11.2021, by renaming Andhra Pradesh Green Energy Corporation Ltd- Respondent No 3 specifically to supply uninterrupted 9-hour daytime power to the farming community on a sustainable basis under the Tripartite PSA; that at present, Respondent No.3 does not hold a distribution license. However, once it becomes operational as a distribution licensee, Respondent No.3 shall act as the Buying Entity in place of the APDISCOMS and shall be taking over the function of supply and distribution of power under the Tripartite PSA; that the primary objective of procurement of solar power under the terms of this Tripartite PSA is to provide a 9-hour daytime free power to farmers envisaged under the policy of the Government of Andhra Pradesh vide the G.O.Ms. No.18 dated 15.06.2020 while also contributing towards the target of realising 500 GW Renewable Energy fixed by the Government of India. That the power supply under the Tripartite PSA

is estimated to commence in a phased manner from September 2024; that the procurement of power under the terms of the Tripartite PSA will not cause any burden on the consumers and decrease the financial burden on the Government for 25 years while relieving the DISCOMs from the accumulation of subsidy burdens. That the aforesaid Tripartite PSA was executed in pursuance of the APERC's Order dated 11.11.2021, and that in terms of Article 2.1.2 of PSA, the Petitioners are seeking the approval of this Commission for PSA.

Some important points mentioned in the Petition are stated briefly here under:

- i. SECI entered back-to-back power purchase agreements with solar power developers Adani Renewables Energy & Azure Power India Ltd to Procure 4667 MW & 2333 MW of solar power respectively for supplying to APDISCOMS. On 29.12.2023, SECI entered into a supplemental PSA to the Tripartite PSA dated 01.12.2021 with AP Discoms and the Government of Andhra Pradesh wherein 2333 MW earlier from Azure was substituted with Adani Renewable Energy without altering the Tariff and terms of the PSA.
- ii. Sri K. Ramakrishna (CPI) filed WP(PIL) no. 237 of 2021 before the Hon'ble High Court of A.P. against the procurement of 7000 MW Solar power from SECI and the same is pending.
- iii. Hon'ble CERC passed orders dt 02.04.2022 approving the adoption of the tariff of Rs.2.49 per unit including trading margin which was discovered under the transparent competitive bidding process as per the guidelines issued by the MoP, Government of India under section 63 of the Electricity Act, 2003 in the Petition 286/AT/2021 filed by SECI for approval of PPAs entered into with Solar Power Developers subject to the outcome of PIL pending before the Hon'ble High Court of A.P.
- iv. Sri Payyavula Keshav (MLA of Uravakonda) has filed WP (PIL)No. 76 of 2022 before the Hon'ble High Court challenging the orders passed by the CERC in Petition No.286/AT/2021 in approving the adoption of tariff is pending before the High Court of A.P.
- v. APDISCOMs filed the PSA before the CERC for approval vide Petition no.269/MP/2021. Hon'ble CERC heard the matter and passed orders on 28.06.2022 stating, "the Commission has already adopted the tariff under the PPAs based on the PSAs and the present petition is redundant at this stage".

2. The Petition was filed on 30.01.2024 and the same was taken on the file of the Commission on 05.02.2024. After the issue of notice to all parties, the matter was taken up for hearing on 21.02.2024. During the hearing on 21.02.2024, Sri P. Shiva Rao, learned Standing Counsel for the Petitioners; and Ms. Anushree Bandham, learned counsel for Respondent No.1 were present. During the hearing, the issue of maintainability of the OP has cropped up in the light of the fact that under the PSA and the supplemental PSA, it is only the Government, which agreed to bear the cost of power purchase the DISCOMs, though parties to the PSA, have agreed to distribute and supply the power to the farmers. That whether Under Section 86(1)(b) of the Electricity Act, 2003 the Commission has jurisdiction to approve PSA of this nature? Moreover, the relief, which is claimed in this petition, was claimed before the Central Electricity Regulatory Commission (CERC) by way of a Petition, viz Petition No.269/MP/2021. That was disposed of by the CERC by order dated 28.06.2022. That once the CERC has passed an order in a Petition, in which the relief identical to the one claimed in this OP has been sought, the Commission raised whether the petitioners can maintain the present OP for the same relief. Both the counsel were asked to address these aspects on the next date of hearing ie; on 10.04.2024. The Record of Proceedings to the above effect was placed on the Commission's website and the same was published in the Print media also. No objector/stakeholder entered appearance in the above matter on 10.04.2024 when the case was posted for further hearing.
3. On 10.02.2024, the counsel for the Respondent-SECI stated that the CERC has no jurisdiction under Section 79 to approve PPAs/PSAs and only this Commission has jurisdiction under Section 86 (1) (b) of the Electricity Act, 2003 to regulate Electricity purchase and procurement process through contracts by Distribution Licensees. The counsel for the Respondent also stated that the PSA was entered by the Petitioners in pursuance of the Commission's order dated 11.11.2021, and therefore, the Commission has jurisdiction under Section 86(1)(b) to approve the terms of said PSA. The Learned Counsel further stated that though the State Government agreed to bear the Cost of Power Procurement, the DISCOMS are designated as the buying entities (the Procurers) under the PSA and hence any agreement entered by the DISCOMs requires this Commission's Approval under section 86 (1) (b) of the Electricity Act 2003. The counsel for the Petitioners also stated that PSA will be void as per Section 21 of the AP Electricity Reforms Act,1998 if the Commission does not consent to PSA.

Having given our earnest consideration to the submissions of the Learned Counsel for the Parties on the maintainability, we are entirely in agreement with them.

The subject matter of PSA pertains to interstate power supply. As the DISCOMs of Andhra Pradesh have been designated as Buying Entities, i.e., Procurers, they approached this Commission for its approval to procure power. On a detailed examination of the matter, the Commission, vide: its Proceedings dated 11-11-2021 granted approval of the said proposal, subject, however, to the condition that the Tariff shall be fixed by the appropriate Commission. In pursuance of the said approval, the petitioners entered into a tripartite PSA with respondent No.1 as narrated hereinbefore. Petitioners 1 to 3 filed a petition before the Central Electricity Regulatory Commission (CERC) under Section 79(1)(b) of the Electricity Act, 2003, since the transaction related to a composite scheme for generation and sale of electricity in more than one State.

As noted in the foregoing paras, by order dated 02-4-2022, the CERC approved the adoption of tariff at 2.49 per kWh (including a Trading Margin of 7 paise per kWh). While that petition before the CERC was pending, petitioners 1 to 3 have filed an application seeking approval of the PSA, which was disposed of by the CERC by order dated 28-6-2022. By the said order, the CERC agreed with the submissions of the learned counsel for the parties that the petition became redundant. The learned counsel for the petitioners as well as respondent No.1 submitted that under the Statutory Scheme of the Electricity Act, while the tariff in respect of the generation and interstate sale of electricity is required to be fixed/adopted by the CERC under Section 79(1)(b) of the Act, it is only the State Electricity Regulatory Commissions, which have competence to approve the PPA/PSA under Section 86(1)(b) of the Act; and that it is by obvious mistake that petitioners 1 to 3 have approached the CERC for approval of the PSA.

On a reading of Sections 79 and 86 of the Act, we find ourselves in agreement with the above submissions of the learned counsel for the parties. While the Tariff for the interstate supply is required to be adopted by the CERC, it is only the State Electricity Regulatory Commissions, which are conferred with the jurisdiction, to approve/regulate the electricity purchase and procurement process, inter alia, through Agreements for the purchase of power for distribution and supply within the State. Though the State Government has agreed to bear the entire cost of power purchase, the responsibility of procuring power supply for the present is placed on Petitioners 1 to 3, as could be seen from Clause (D) of

the preliminary part of the PSA. It is mentioned therein that “AP DISCOMs are presently designated as the Buying Entity to procure power from the Buyer to be sold by the Buyer on a back-to-back basis of the power under the Request for Selection (RfS) ... ..”.

In the light of the above position, the Commission is satisfied that without the formal approval of the PSA by this Commission, the same is not enforceable. Hence, the petition has been entertained for disposal on merits.

4. Before discussing the submissions on merits, it is relevant to note that some objectors requested for a public hearing on this petition. Section 64(2) of The Electricity Act 2003, envisages the publication of application for determination of tariff under section 62. Under sub-section 64 (3) the Commission is required to consider all the objections and suggestions received from the public before issuing the tariff order. In no other context, the Act has envisaged any public notice by the Commission while discharging its regulatory functions under the Act. The Commission has framed Andhra Pradesh Electricity Regulatory Commission (Business Rules of the Commission ) Regulation 1999. Clause 7(2) of the said regulation envisages hearings of the matter in three different situations viz

- (i). Where the Act provides for such hearings
- (ii). In all matters affecting the rights or interests of the licensee or any other person or class of persons except where the Commission may provide reasons to be recorded in writing
- (iii) Where the Commission considers it appropriate to do so

As noted above, the Act envisages a public notice only when the tariff is required to be fixed under Section 62 of the Act. In the present case, the CERC adopted the Tariff discovered through a transparent bidding process under section 63 of the Act. The present petition is not concerned with the tariff fixation, but it is filed only for approval of PSA. Therefore, the first limb of Sub-clause 2 of Clause 7 of Regulation 2 of 1999 has no application to the present case. Under the second limb, the Commission shall undertake a hearing in all matters affecting the interests of the Licensee or any other person or class of persons. As regards, the Licensees, they are themselves petitioners in the Petition and they are heard. As for the third party any person or class of persons, they are referable to consumers who are among the main stakeholders. Having regard to the nature of PSA and whereunder, the State Government has

undertaken to pay the entire power purchase cost, interests of any category of Consumers in any way are not affected.

It is relevant to note in this context that, while granting approval for procurement of power, the Commission stipulated the following conditions.

- i) The State Government shall ensure that the transmission and distribution network is adequately strengthened to cater to the injection of the proposed power before the commencement of the power supply.
- ii) The DISCOMs are entitled to claim from the Government of AP, wheeling and other charges, if any, in supplying the proposed power.

The above conditions would insulate all categories of consumers from the burden of any cost arising on account of the purchase of power either directly or indirectly including Backing Down cost, Balancing Cost etc. Therefore, the second limb of sub-clause 2 also does not get attracted.

As regards the third limb, the Commission felt it not appropriate to hold a hearing in the light of the above reasons in addition to the fact that the present proceedings are formal in nature and that the substantive aspects of the PSA have already been accomplished viz approval of procurement process and fixation of Tariff. So the present proceedings relate to the consequential action of lending formal approval to terms of PSA. The two core aspects mentioned above viz approval for procurement and determination of Tariff having already been completed, the power purchase process has become irreversible and therefore, any public hearing is a futile exercise.

In the light of the above, the Commission has heard the Counsel for the Petitioner and Counsel for Respondent No. 1 and proceeded to decide the matter.

5. The short point in this petition is whether the PSA shall be approved?
6. The Commission while approving the proposal to procure 7000 MW solar power in three tranches as proposed by the APDISCOMs and permit them to enter into tripartite PSA by proceedings dated 11.11.2021, has examined the approved load forecasts and resource plans for the 4th Control Period and indicative forecasts and plans for the 5th control period. The year-wise indicative energy deficit for the State as a whole during the 5th Control Period as recorded in the Resource Plan for the 4th Control Period vis a vis the Long Term Electricity Demand Forecasting done by CEA in August 2019 for the State of AP as per the SUR

Model Baseline for the period 2024 to 2030 and concluded that there will be energy requirement during the 5th control period commencing from 01.04.2024. The Commission has also taken note of the contents that the Government has conceived the proposed plan of procurement mainly to achieve the object of providing 9 hours of daytime free supply to the farmers without increasing the financial burden on the State's DISCOMs for the next 25 years and to relieve the DISCOMs of accumulation of subsidy burdens. The Commission has also noted that the State Government will be one of the parties to the tripartite Power Sale Agreement (PSA) and that it will take care of the payment security mechanism exclusively. Therefore, the Commission gave its approval after being satisfied that the proposed purchase of power will not cause any burden on any consumer category as the purchased power is meant to be supplied to the agriculture sector, the cost of which will be completely borne by the AP State Government. Equally, the existing DISCOMs will also be freed from supplying power from their own resources to the agriculture sector, and eventually, the supply activity will be taken over by the AP Rural Agriculture Power Supply Company (APRAPSCo).

7. Under the transition arrangement, the PSA was entered by DISCOMS. The arrangement for the supply of free power by GoAP to the farmers directly is not yet finalised. The GoAP has agreed to bear the entire cost of free power through its statement before the Commission at the end of public hearings conducted regarding the finalisation of Retail Supply Tariffs for FY2024-25. The free power sales therefore included in the sales of the DISCOMS and accordingly in power requirement. Further, the inclusion of SECI power in DISCOMS's power procurement in the transition period will reduce about 40-50 paise per unit of the weighted average power purchase cost of NCE and therefore it will be beneficial to all consumers in the transition process.
8. In addition to the above, the Commission has now examined the total Renewable Energy (RE) projected to be available with the DISCOMS as per the Commission's estimations and the RE requirement as per the MoP Notifications under the Energy Conservation Act 2001, NTP and APERC Regulation are shown in the table below.



(MU)				
FY	Total RE Available	RE Requirement as per MoP Notification Dated 20.10.2023	RE Requirement as per MoP Notification Dated 22.07.2022	RE Requirement as per APERC Regulation
2024-25	21,452	24,229	24,229	16,719
2025-26	29,703	28,585	28,585	19,591
2026-27	35,308	33,267	33,267	23,461
2027-28	36,577	38,408	38,408	
2028-29	36,504	43,804	43,804	
2029-30	36,504	49,123	49,123	

As can be seen from the table above, the projected RE available with Respondent DISCOMS ( even after the inclusion of 7000 MW of solar power under the present impugned PSA) falls short of meeting the RCO compliance from FY 2027-28. The APDISCOMS are obligated to comply with the RCO notified by the Government of India under the Energy Conservation Act, 2001.

9. The Commission after examination finds that all the terms of PSA conform to standard formats and they are not either unreasonable or unconscionable affecting the interests of any stakeholder.
10. In view of the foregoing, the Commission is inclined to approve the Tripartite Power Sale Agreement dated 01.12.2021 and its Supplemental Power Sale Agreement dated 29.12.2023 subject to the outcome of the PIL pending before the Hon'ble High Court of Andhra Pradesh.
11. The OP is accordingly allowed.

Sd/-

**P.V.R Reddy**  
Member

Sd/-

**Justice C.V. Nagarjuna Reddy**  
Chairman

Sd/-

**Thakur Rama Singh**  
Member