



**ANDHRA PRADESH ELECTRICITY REGULATORY COMMISSION**

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

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WEDNESDAY, THE SIXTH DAY OF MARCH  
TWO THOUSAND AND TWENTY FOUR

:Present:

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

**O.P.No. 63 of 2023**

**Between:**

Narasimha Swamy Solar Power Pvt. Ltd.  
Registered office at # 28/1070,  
Saibaba Nagar, Nandyal, Kurnool District,  
Andhra Pradesh-518502

...Petitioner

**AND**

1. Andhra Pradesh Transmission Corporation (APTRANSCO),  
Vidyut Soudha, Gunadala, Eluru Road, Vijayawada, Andhra  
Pradesh 520004, Rep. by its Chairman & Managing Director.
2. Southern Power Distribution Company of Andhra Pradesh  
Limited (APSPDCL). Rep. by its Chairman & Managing  
Director,  
# 19-13-65/A, Srinivasapuram, Tiruchanoor Road,  
Tirupati-517503, Rep. by its Chairman & Managing Director.

...Respondents

This Original Petition has come up today for final hearing before this Commission in the presence of Sri Y.Shreyas Reddy, counsel representing Sri N.V.Sumanth, learned counsel for the Petitioner, and Sri P. Shiva Rao, learned Standing Counsel for the respondents, that after hearing the learned counsel for both the parties and after carefully considering the material available on record, this Commission made the following:

## **ORDER**

This Original Petition is filed for the following reliefs:

- (i) To declare the action of the respondents in delaying Open Access Settlement Process; in reducing the banked energy and in only paying 50% of the Average Pooled Power Purchase Cost for the unutilized banked energy, as illegal, arbitrary and contrary to the A.P.Solar Power Policy 2015 enunciated in G.O.Ms.No.8, dated 12.02.2015 and G.O.Ms.No.9 dated 13.02.2015 read with Sec.86(1)(f) of the Electricity Act, 2003 and Articles 48A and 51A (g) of the Constitution of India, and, consequently, direct the respondents not to levy or demand any charges towards transmission and wheeling of solar power generated by the petitioner for its captive use;
- (ii) to direct the respondents to release the amount for the utilised banked energy of the petitioner in accordance with the A.P.Solar Power Policy 2015 enunciated in G.O.Ms.No.8, dated 12.02.2015 and G.O.Ms.No.9 dated 13.02.2015 along with interest @12% per annum from the date the amount fell due till the date of realisation; and
- (iii) to pass such orders as are deemed fit and proper and proper in the circumstances of the case.

The case of the petitioner, in brief, is:

- a) that the Government of Andhra Pradesh, after review of its earlier Solar Power Policies, has formulated the Andhra Pradesh Solar Policy, 2015, vide: G.O.Ms.No.8, Energy, Infrastructure & Investments (PR-II) Department, dated 12-2-2015; that, according to the said Policy, the Solar Power Projects that were setup shall be eligible for the incentive

declared thereunder for a period of ten years from the date of commissioning - unless otherwise the period is specifically mentioned for any incentive; that, according to the said Policy, the Government will promote setting up of Solar Power Projects within the State for sale of electricity/captive use to APDISCOMs and the DISCOMs would procure 2000 MW of Solar Power in a phased manner within five years; that the DISCOMs would enter into long term PPA of 25 years with the Developers, who were selected on a competitive procurement process; that the Projects would also qualify for Renewable Energy Certificates subject to applicable Regulations/Guidelines issued by this Commission;

- b) that being attracted by the incentives provided under the said Policy, the petitioner has set up 5 MW Solar Power Project in Peravali village, Singanamala Mandal, Anantapur District, which was approved by the Chief Electrical Inspector to Government (CEIG) vide: proceedings dated 30-8-2016, whereunder the number of modules and its corresponding capacities were categorically mentioned, and entered into a long Term Open Access dated 23-12-2016 with

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APSPDCL-respondent No.2 for a period of 25 years, which was approved by this Commission;

- c) that the petitioner is evacuating the generated power and selling the same to its customer i.e., Narayana Medical College, under third party sale as per the terms of the PPA dated 29-6-2016 and the Joint Monthly Bills are being sent on 1st of every month to the Energy Billing Centre at Vijayawada for Open Access Settlements; that due to the irregular Open Access Settlements (viz., respondent No.1 giving OA settlement orders considering the 15 minute block and calculating the generator/consumer's generation/ consumption and also the banking units) the petitioner is unable to calculate the total number of units banked by it during the previous year; that based on the said Open Access Settlement Orders, the Superintending Engineer (Operation), Nellore, is deducting the minimum consumption of consumer as per the consumer agreement, and, in that process, the petitioner's supply to the consumer is reduced by consumer's minimum units i.e. 46000 units; that the petitioner has requested to add the said quantity of units in its banking units and make the

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payment in the year 2019, but of no avail; that the difference of units deducted by the Superintending Engineer, Nellore, would be more than 9,15,000 units, which are deemed to be banked with the respondents, but the respondents have not paid for the said units and thereby put the petitioner to loss;

d) that the respondents are only paying 50% of the Average Pooled Power Purchase cost for the unutilized banked energy, which is in contravention of the A.P.Solar Policy, 2015, which postulates that *“the unutilized banked energy shall be considered as deemed purchase by Discom(s) at the pooled power purchase cost as determined by the APERC for the applicable year. Energy settlement shall be done on monthly basis”*; that when the same was brought to the notice of the respondents, they replied that they have been considering the unutilized banked energy for purchase in accordance with the A.P.Solar Policy, 2018, vide: G.O.Ms.No.1 dated 3-1-2019, which is irrational;

e) that the petitioner has set up the Power Plant as per the Solar Power Policy, 2015, which clearly mentioned that the incentives declared under the said Policy shall be in force for a

period of 10 years from the date of its commissioning; that since the date of Commissioning of the petitioner's Project is 23-9-2016, it is eligible for the incentive for purchase of banked energy as per the 2015 Policy but not as per the 2018 Policy;

f) that the Government of Andhra Pradesh, vide: G.O.Ms.No.35 dated 18-11-2018 amended the A.P. Solar Policy, 2018 by withdrawing the incentives provided thereunder; that, subsequently, vide: G.O.Ms.No.1, dated 1-3-2021 the Government has clarified that G.O.Ms.No.35 dated 18-11-2019 would operate prospectively and would be applicable to the Renewable Energy Power Projects that were commissioned after 18-11-2019;

g) that the Indian Wind Power Association has challenged the aforesaid G.O.Ms.Nos.35 and 1 dated 18-11-2019 and 01-3-2021, respectively, before the Honourable High Court by filing Writ Petition Nos.13374 of 2020 and 9680 of 2021; that the Honourable High Court, vide: common order dated 16-8-2022, disposed of both the Writ Petitions, *inter alia*, observing that "*in view of the Common Additional Affidavit*,

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*reflecting the stand of the Government regarding honouring the agreements and incentive commitments under the 2015 and 2018 Wind Solar and Wind-Solar Hybrid State of Andhra Pradesh Policies, the Writ Petitions stand disposed of”; and*

h) that, subsequently, the Government has addressed a letter dated 15-9-2022 to the APTRANSCO, the DISCOMS and the NREDCAP to enforce the decision of the Government to honour various incentives made available to the Developers under the Wind & Solar Policies, 2015 and 2018 before issuance of G.O.Ms.No.35 dated 18-11-2019; that the action of respondent No.2 in not adhering to the aforesaid letter dated 15-9-2022, thereby delaying the Open Access Settlement Process and reducing the banked energy, and paying only 50% of the Average Pooled Power Purchase Cost for the unutilized banked energy is illegal; and that, therefore, filed the present petition seeking the aforementioned reliefs.

Both the respondents filed separate counter-affidavits denying the averments in the petition.

Respondent No.1-APTRANSCO in its counter affidavit, while denying the allegation of the delay in monthly settlement of the

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energy injected by the petitioner, *inter alia*, stated that the Open Access energy settlements are being done by APSLDC together with the banked units and convey the same to the concerned for payment towards unutilized banked energy if any; that the concerned DISCOM will undertake such final settlement duly considering that any part of banked units were utilised by the OA generator; that the settlement of energy in respect of the petitioner was completed upto July, 2023, which was not disputed by the petitioner; that the settlement from August, 2023 could not be made since the petitioner failed to pay the requisite SLDC charges; that, if the petitioner pays the said charges, the balance settlement will be completed; that the allegation of the petitioner, that due to irregular Open Access settlements they could not calculate the total number of banked units, is incorrect; that as per Clause 13 of the APERC Interim Balancing and Settlement Code for Open Access Transactions, 2006 (Regulation 2 of 2006) if any dispute as to settlement of energy involved, it shall be referred to SLDC; and that, if the OA user is still aggrieved by the decision of the SLDC, then it is entitled to approach this Commission; that the petitioner has not



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approached the SLDC for redressal of its grievance; and that, therefore, prayed for dismissal of the petition.

Respondent No.2-APSPDCL filed a counter-affidavit, *inter alia*, stating that the petitioner has mixed up several distinctly different causes of action against different parties, and, hence, the petition is bad for misjoinder of causes of action and also bad for misjoinder of parties; that as per the monthly energy settlements made by APSLDC, respondent No.2 has undertaken financial settlements at the end of the Open Access year i.e., 1st February to end of January of succeeding year; that considering the energy settlement made by APSLDC in respect of the banked units for the relevant year, it has paid 50% of the Pooled Cost, *de hors* the Policies issued by the Government, as per Regulation 4 of 2019; that prior to Regulation 4 of 2019 it has paid 100% of Pooled Cost for the unutilized banked energy; that it is settled law that Regulation intervenes and overrides the existing Agreements; that by, applying Regulation 4 of 2019 the petitioner is entitled only to 50% of the Pooled Cost, but not 100% of the Pooled Cost; and that, therefore, the claim of the petitioner is contrary to law.

The petitioner filed two separate reply affidavits to the counter-affidavits filed by respondents 1 and 2, reiterating its stand in the main Original Petition.

Having regard to the respective pleadings of the parties, the point for consideration is -

**Whether the action of the respondents in paying only 50% of the Pooled Power Purchase Cost, instead of Full Pooled Power Purchase Cost, is proper and correct?**

We have heard Sri Shreyas Reddy, learned counsel for the petitioner; and Sri P.Shiva Rao, learned Standing Counsel for the respondents.

This Commission has framed Regulation 2 of 2006 governing Interim Balancing and Settlement Code for Open Access Transactions, 2006. Clause-12 of the said Regulation provides that no generators, other than the Wind and Mini Hydel power generators, shall be allowed the facility of banking the electricity generated by them. Under Clause 2(c) of Appendix-3 (Terms and Conditions of banking facility allowed to Wind power and Mini-hydel Power Generators) appended to the said Regulation 2 of 2006, drawals were permitted only during the six- month period from July

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to December, and the unutilized banked energy as on 31st December shall be treated as lapsed.

By way of amendment to Regulation 2 of 2006, this Commission made Regulation 1 of 2013, *inter alia*, including the “Solar Power Generators” also under the Principal Regulation 2 of 2006.

A further amendment (second amendment) was made to Appendix-3 of the Principal Regulation 2 of 2006 by issuing Regulation 2 of 2014, whereunder the earlier Appendix-3 was substituted. Clause 2(f) of the amended Appendix-3 provided for payment by the DISCOMs for the unutilized banked energy equivalent to 50% of the Pooled Cost of Power Purchase applicable for that financial year as determined by the Commission under the RPPO.

The Government of Andhra Pradesh issued new Solar Power Policy, 2015 and New Wind Power Policy, 2015, vide: G.O.Ms.No.8, Energy, Infrastructure & Investment (PR-II) Department, dated 12-2-2015; and G.O.Ms.No.9, Energy, Infrastructure & Investment (PR-II) Department, dated 13-2-2015, respectively, superseding the earlier Solar Power Policy, 2012 and

Wind Power Policy, 2008 respectively. The said Policy, for the first time, envisaged payment of full pooled power purchase cost as determined by the Commission for the applicable year in respect of the unutilized banked energy. This Policy is made applicable for a period of five years and/or shall remain in force till such time a new Policy is issued. It is further provided that Solar and Wind Power Projects commissioned during the operative period shall be eligible for the incentives declared under the Policy, for a period of ten years from the date of commissioning, unless otherwise the period is specifically mentioned for any incentive. In pursuance of the Policy directive issued under Section 108 of the Electricity Act, 2003 by the Government, the Commission has amended the Principal Regulation 2 of 2006 by issuing Regulation 2 of 2016, which adopted the Policy Guidelines contained in G.O.Ms.Nos.8 and 9 dated 12-2-2015 and 13-2-2015 respectively. Through this Amendment Regulation, Proviso to Clause 3(f) has been introduced, which reads as follows:

“Provided the unutilized banked energy from such Solar and Wind Power Projects and for such operative periods as mentioned in G.O.Ms.No.8, dated 12-02-2015 and G.O.Ms.No.9, dated 13-02-2015 shall be considered as deemed purchase by Discom(s) at the Pooled Power Purchase cost, applicable for that financial year, as determined by the Commission under RPPO/REC Regulation (Regulation No.1 of 2012). Discom (s) shall settle such purchase transactions with the generators by 31st March of each year”.

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Subsequently, the Government of Andhra Pradesh has issued G.O.Ms.No.1, Energy, Infrastructure & Investment (PR-II) Department, dated 03-1-2019, which contained a New Policy relating to Solar Power Units established in the State of Andhra Pradesh. Clause-1 thereof provided that it applies to the Solar Power Projects that are commissioned during the operative period i.e., Five years from the date of issuance of the Policy, and those Units are eligible for the incentives declared under this Policy for a period of ten years from the date of commissioning, unless otherwise the period is specifically mentioned for any incentive. As per this New Policy, the un-utilized banked energy shall be considered as deemed purchase by the DISCOMs at 50% of the Average Pooled Power Purchase Cost as determined by this Commission for the applicable year.

Following this New Policy, this Commission has further amended the Principal Regulation 2 of 2006 through Regulation 4 of 2019 dated 11-3-2019. The Preamble of this Amended Regulation 4 of 2019 clearly states that in view of the New Solar and Wind Policies, vide: G.O.Ms.No.1 dated 03-1-2019 and G.O.Ms.No.2 dated 3-1-2019, Regulation 2 of 2016 is being amended. Under

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Clause-3 of the said amendment, Proviso to Clause 3(f) of the Appendix-3, incorporated by the Amended Regulation 2 of 2016, stands deleted.

As regards the petitioner herein, it has commissioned its Solar Unit in the year 2016 with the synchronisation of the plant having been declared as 26-9-2016. As per Regulation 2 of 2016, the petitioner was being paid full Pooled Power Purchase Cost till Regulation 4 of 2019 was issued. However, from the date of coming into force of Regulation 4 of 2019, which, *inter alia*, deleted Proviso to Clause 3(f) of Appendix-3, the respondents have started paying only 50% of the Pooled Power Purchase Cost.

Sri Shreyas Reddy, learned counsel for the petitioner, submitted that the action of the respondents in denying the benefit of full Pooled Power Purchase Cost is illegal and arbitrary and the same is in violation of the doctrine of Promissory Estoppel.

Sri P.Shiva Rao, learned Standing Counsel for the respondents, however, sought to justify the action of the respondents by saying that once the amendment is made to Regulation 2 of 2016 by deleting Proviso to Clause 3(f) of the Appendix-3, the petitioner cannot claim full Pooled Power Purchase

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Cost; and that it is entitled to payment of only 50% of the Pooled Power Purchase Cost as envisaged under the New Policy as reinforced by Regulation 4 of 2019.

From the facts narrated above, it is clear that the Solar and Wind Power Policies issued vide: G.O.Ms.Nos.8 and 9 dated 12-2-2015 and 13-2-2015, respectively, provided for payment of full Pooled Power Purchase Cost in respect of the unutilized banked energy. It is clear from the said Policies, that they shall apply to the power plants that are commissioned during the operative period of five years commencing from the date of issuance of the said Policies and the incentives declared under the said Policies shall be made available to the said Units for a period of ten years from the date of commissioning, unless otherwise the period is specifically mentioned for any incentive. Admittedly, no shorter period than ten years was mentioned in the Policies. As already noted, the Solar Policy was followed by an amendment to Regulation 2 of 2016. The amended Regulation also reiterated the contents of the said Policy. Hence, *ex facie*, the petitioner, who, admittedly, achieved the COD during the said operative period, is entitled to the incentives declared in the Policy for a period of ten years.

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Sri P.Shiva Rao, learned Standing Counsel for the respondents, however, submitted that if a Regulation is made curtailing the period of incentives, such a Regulation shall bind everyone alike irrespective of whether they were covered by earlier Policy or not. According to him, the Regulation supersedes even the Contract. In support of his submission, he relied upon the Judgement of the Apex Court in **PTC India Ltd. Vs. Central Electricity Regulatory Commission**<sup>1</sup>.

Sri Shreyas Reddy, learned counsel for the petitioner, relied upon the decision of the Supreme Court in **Union of India & others Vs. Indo-Afghan Agencies Limited**<sup>2</sup>, in support of his submission that by the doctrine of *promissory estoppel* the respondents are precluded from withdrawing the incentive, since the petitioner, attracted by the Government Policy, has established its unit.

In our opinion, it is not necessary for this Commission to embark upon the discussion on whether the doctrine of promissory estoppel applies or not for the reasons that are discussed infra.

It is indubitable that as per the Government Policy, vide: G.O.Ms.No.8 dated 12-2-2015, and also the amended Regulation 2

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<sup>1</sup>) 2010 ELR (SC) 269

<sup>2</sup>) AIR 1968 SC 718



of 2016 the petitioner is entitled to all the incentives declared under the Policy for a period of ten years from the date of the COD, i.e., upto 26-9-2026. However, according to the respondents, with the issuance of the Revised Policy by the State Government, vide: G.O.Ms.No.1 dated 03-1-2019, certain incentives declared under the earlier Policy have been taken away. In our opinion, this submission is misconceived. As discussed above, the New Policy declared under G.O.Ms.No.1 dated 03-1-2019 was applicable to the Solar Power Projects that are commissioned during the operative period i.e., five years with effect from the date of issuance of the said Policy only. The Policy is silent on the Units that went into operation in pursuance of the previous Policy governed by G.O.Ms.No.8 dated 12-2-2015. This necessarily means that the State Government did nothing to revisit the incentives declared in respect of the Units which became operational during the previous operational period covered by G.O.Ms.No.8, dated 12-2-2015. Even the amended Regulation 4 of 2019 was issued only following the revised Policy issued, vide: G.O.Ms.No.1 dated 3-1-2019. Clause-3 of the said Regulation merely deleted Proviso to Clause 3(f) of Appendix-3.

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Sri P.Shiva Rao submitted that once the Proviso to Clause 3(f) of Appendix-3 is deleted, the basis for the claim of the petitioner, for payment of deemed banked energy at full Pooled Power Purchase Cost, lost its basis.

We are afraid, we cannot accept this submission. When the amendment of Regulation was made to effectuate the Policy of the State Government, the Regulation cannot travel beyond the scope of the Policy, unless the Commission, for reasons recorded, has amended the Regulation even to take away the incentives already declared in favour of the Units covered by the previous Policy, i.e., G.O.Ms.Nos.8 and 9 dated 12-2-2015 and 13-2-2015 respectively. As no such reasons were recorded by this Commission, it is reasonable to interpret the amendment to Regulation 4 of 2019 as to mean that deletion of Proviso to Clause 3(f) of Appendix-3 shall be applicable only in respect of the Units which fall under the New Government Policy, vide: G.O.Ms.No.1 dated 3-1-2019. Therefore, it necessarily follows that all the Units covered by the previous Government Policies, i.e., G.O.Ms.No.8, dated 12-2-2015 and G.O.Ms.No.9 dated 13-2-2015, shall continue to be governed by Regulation 2 of 2016. Any other interpretation of the amended

Regulation 4 of 2019 would lead to incongruous results and it does violence to the revised State Government Policy.

For the aforementioned reasons, we have no hesitation to hold that the petitioner is entitled to the benefit of all the incentives, including the one relating to payment of full Pooled Power Purchase Cost for the deemed banked units of energy under G.O.Ms.No.8 dated 12-2-2015 and as per Regulation 2 of 2016 for a period of ten years from the date of declaration of COD of the petitioner's Unit. The respondents shall, accordingly, pay the arrears of the amounts withheld within one month from today, and they shall continue to pay the full Pooled Power Purchase Cost till the expiry of ten years from the COD.

The Original Petition is, accordingly, allowed.

***Order passed on this the 6th day of March, 2024.***

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

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

**Sd/-**  
**Thakur Rama Singh**  
**Member**