

BEFORE THE HON'BLE A.P. ELECTRICITY REGULATORY COMMISSION
AT IT'S OFFICE AT V FLOOR, SINGARENI BHAVAN, RED HILLS, HYDERABAD

File No.....of 2019
O.P No 67 of 2019

In the matter of:

Revision of tariff payable to Solar Power Developers who enters Power Purchase Agreements / Power Sale Agreements during 2012 to 2016 - Reg.

1. Southern Power Distribution Company of Andhra Pradesh Limited,
Rep. by its Chairman & Managing Director,
Beside Srinivasa Kalyana Mandapam, Tiruchanoor Road,
Tirupathi - 517501.
2. Eastern Power Distribution Company of Andhra Pradesh Limited,
Rep. by its Chairman & Managing Director,
P&T Colony, Seetammadhara, Vishakhapatnam - 530020.

.... Petitioners

and

1. M/s. Abhedya Power Pvt. Ltd.
D.No.74-12-8A, Shop No.8,
Radha Krishna Residency,
Near Auto Nagar Gate,
Patamata, Vijayawada-520007.
2. M/s. New Era Enviro Ventures (Mahbubnagar) Pvt. Ltd.
1131/A, Sai Square,
Road No.36, Jubilee Hills,
Hyderabad-500033
3. M/s. Palanadu Solar Power Pvt. Ltd.,
59-14-10, Lingamaneni Corporate House,
Ramachandra Nagar,
Vijayawada-520008.
4. M/s. Sai Achyuth Energy Pvt. Ltd.
51/14-68-C-1-1, GLR Complex,
4th Floor, Challa Stree,
Opp.New Bustand,
Kurnool-518003
5. M/s. Sprouts Energy Pvt. Ltd.
(Vallala Sujatha)
401, Indira Imperia,
Above Yes Bank,
Opp.Ramanathapur Lake,
Ramanthapur, Habsiguda,
Hyderabad-500013.
6. M/s. Sri Lakshmi Venkateswara Green Energy Pvt. Ltd.,
Door No.13-37,
Pedda Gandhi Bomma Center,
Nuzvid -521201, Krishna District.

7. M/s. Sumeru Energy Pvt. Ltd.,
210, Mehra Block,
Garden Towers, Masab Tank,
Hyderabad-500028.
8. M/s. Aarohi Solar Pvt Ltd.
Plot No. 152, Sector-44,
Gurgaon-122002 (Haryana),
Tel: +91124-7117000.,
9. M/s. ACME Jaisalmer Solar Power Pvt Ltd
Plot No 152, Sector 44,
Gurgaon - 122002 (Haryana).
10. M/s. Amaravathi Textiles Pvt. Ltd.
33-263, Kandimalla Road,
Pandaripuram,
Chilakaluripet-52216
11. M/s. Azure Power Infrastructure Pvt Ltd
3rd Floor Asset 301-304 and 307, Worldmark 3,
Aerocity ,New Delhi-110037
12. M/s. Bright Solar Renewable Energy Pvt Ltd
Mahindra Towers, Dr G.M.Bhosale Marg,
P.K.Kurme Chowk,
Worli, Mumbai - 400018
13. M/s. Dayanidhi Solar Power Pvt Ltd
Plot No 152, Sector 44,
Gurgaon - 122002 (Haryana).
14. M/s EAAMA Estates Pvt Ltd
#50-121-14/1, B. S Layout, Seethammadhara,
Visakhapatnam, AP-530 013.,
15. M/s. GRT Jewellers (India) Pvt Ltd
138, Usman Road,
T.Nagar, Chennai-600017
16. M/s. Hindupur Solar Park Pvt Ltd., (Chittoor)
Office No. 504/2, 5th Floor, Block I, White House,
Municipal No. 6-3-1192/1/1,
Kundanbagh, Begumpet,
Hyderabad-500016.
17. M/s. Hindupur Solar Park Pvt Ltd., (Hindupur)
Office No. 504/2, 5th Floor, Block I,
White House, Municipal No. 6-3-1192/1/1,
Kundanbagh, Begumpet,
Hyderabad-500016.
18. M/s. Niranjana Solar Energy Pvt Ltd
Plot No 152, Sector 44,
Gurgaon - 122002 (Haryana).
19. M/s. Rain Coke Ltd.
No.1071, Road No.44,
Jubilee Hills, Hyderabad,
Telangana-500033

20. M/s Maddimadugu Power Private Limited
(Formerly M/s. Rajaratna Energy Holdings Pvt Ltd)
Door No.1-88/2, Gem Square, 3rd Floor,
Above HDFC Bank, Madhapur,
Hyderabad, Telangana-500081
21. M/s. Renew Solar Energy (Karnataka) Pvt Ltd (Kurnool)
138, Ansal Chambers II,
Bikaji Cama Place, Delhi-110066.
22. M/s. Renew Solar Energy (Karnataka) Pvt Ltd (Prakasam)
138, Ansal Chambers II,
Bikaji Cama Place, Delhi-110066.
23. M/s. SEI Arushi Pvt Ltd
No.6J, Century Plaza, 560-562,
Anna Salai, Teynampet,
Chennai-600018, TamilNadu
24. M/s. SEI Green Flash Pvt Ltd
No.6J, Century Plaza, 560-562,
Anna Salai, Teynampet,
Chennai-600018, TamilNadu
25. M/s VBC Renewable Energy Pvt Ltd
D.No.43-29-54/16, 3rd Floor,
Balaji Metro Chambers, Narona Road,
Dondaparthi, Vishkapatnam-530016,
26. M/s. Vishwatma Solar Energy Pvt Ltd
Plot No 152, Sector 44,
Gurgaon - 122002 (Haryana).
27. M/s. Waaneep Solar Pvt Ltd., (Gurramkonda)
Plot No.201, First Floor,
Okhla Industrial Estate,
Ph-III, New Delhi-20
28. M/s. Waaneep Solar Pvt Ltd., (Nagari)
Plot No.201, First Floor,
Okhla Industrial Estate,
Ph-III, New Delhi-20
29. M/s. Walwhan Renewable Energy Ltd (Kurnool)
(Formerly M/s Welspun Renewables Energy Pvt Ltd)
C/o. The TATA power company limited,
Corporate Center, B-34,
Sant Tukaram road,
Carnac Bunder, Mumbai-400009.
30. M/s. Walwhan Renewable Energy Ltd (Kadapa)
(Formerly M/s Welspun Renewables Energy Pvt Ltd)
C/o. The TATA power company limited,
Corporate Center, B-34,
Sant Tukaram road,
Carnac Bunder, Mumbai-400009.
31. National Thermal Power Corporation Limited,
Core 6, 4th Floor,
Scope Complex, Lodhi Road,
New Delhi.

32. Solar Energy Corporation of India,
1st Floor, Prius Platinum,
D-3 District Center, Saket,
New Delhi-110017.

.....Respondents

PETITION FILED UNDER SECTION 86(1)(B) OF ELECTRICITY ACT 2003 READ WITH CLAUSE
55 & 59 OF APERC (CONDUCT OF BUSINESS) REGULATIONS 2 OF 1999

1. The Petitioners 1 & 2 are Distribution Companies of State of Andhra Pradesh which are wholly owned by Government of A.P, procure bulk power from power generators and supply to end consumers of the State. They are licensees of the Hon'ble Commission.
2. The Respondents 1 to 30 are Private Solar Power Developers who have established their Solar Power projects at various locations of the State of AP, entered PPAs during 2012 and 2014 with APDISCOMs and have been supplying the power. Whereas, the Respondents 31 & 32 are the Solar Parks developed by NTPC & SECI commissioned during 2017-18 and has been supplying the power to APDISCOMs under Power Supply Agreement (PSA).
3. The Petitioners submit that as part of National tariff policy and as per Section 86 (1) (e), the Hon'ble Commission has passed Renewable Power Purchase Obligation, Regulation 2012 where under specific percentages of the Solar and non-Solar of nonconventional power out of total consumption of power by Discoms, has been specified. Further it is to submit that so as to achieve the RPPO obligations in year 2012, the Government of Andhra Pradesh has issued Solar Policy vide G.O.Ms.No.39 dated 26.09.2012. In pursuance thereof during the year 2012, the Petitioners have initiated competitive bidding process for procurement of Solar Power, at various locations of the State where at evacuation facility for power evacuation is found feasible. After the conclusion of the said bidding process with due approval of the Government AP, open offer was given to all bidders who are ready to supply power Rs. 6.49/unit. The Respondents No. 1 to 7 have come forward to supply power with a capacity of 30 MW and entered PPAs with the APDISCOMs at a tariff of Rs. 6.49/unit for

entire 20 years of PPA period. During the course of time, few developers could not commission the projects within stipulated period. Consequently, the tariff to such delayed projects were reduced on mutual consensus. The said reduced tariff is Rs. 6.45/unit as against the initially agreed tariff of Rs. 6.49/unit. All the said developers have commissioned their projects during 2014 to 2016, and have been supplying the power to APDISCOMs.

4. The Petitioners submit that during further course of time after bifurcation of the State, the APDISCOMs have again approached the APERC for procurement of 1000 MW Solar Power through competitive bidding process. The Hon'ble Commission has granted approval vide orders dated 07.11.2014 for such power and for the proposed bidding process to procure 1000 MW of solar power. It is pertinent to State that at that time there was no bidding guidelines and that no standard bid document issued by Government of India under Section 63 of Electricity Act 2003. Therefore, the bidding process is not under Section 63 of Electricity Act, but is a general bidding process conducted as per the method evolved by DISCOMs.
5. The said bidding process which was aimed at to procure power at different rates depending upon the location basis (the substation locations where feasibility of evacuation is available also notified) and requested the prospective bidders to select the location and to quote their price for supply of power. Since the bidding process is on location basis, the tariff discovered at the conclusion of bidding process was in the range of Rs. 5.25 to Rs. 5.99/unit with an escalation of 3% year on year up to 10 years and thereafter the 10th year tariff shall continue the remains up to 25th year. The Power Purchase agreement (PPA) period is for 25 years. After ascertaining the tariff to the said process, once again the APDISCOMs have submitted PPAs of 25 in number to Hon'ble Commission with little modifications which were incorporated in the PPAs as per the request of the bidders.
6. The Hon'ble Commission sought for details of the modifications in the model PPA that was issued earlier, and as to the cash outflow for purchase of said solar power together with levelized tariff. The Petitioners have submitted all

the details as required by the Hon'ble Commission. Thereafter, the Hon'ble Commission vide its order dated 21.02.2015 granted approval for the PPAs together with tariffs, which is discovered in the bidding process.

7. It is pertinent to submit that although there was no bidding guidelines and the standard bid document issued by Government of India under section 63 of Electricity Act, the APDISCOMs due to inadvertence sought for adoption of tariff as if such tariff was discovered by following the guidelines. The Hon'ble Commission also did not go into the facts as to whether or not there was any bidding guidelines issued by GOI in force at that time and also as to whether such bidding process was as per the guidelines and standard bid document issued by Government of India under Section 63 of Electricity Act. As such, the Hon'ble Commission has passed the aforesaid orders dated 21.02.2015 adopting the tariff purportedly as if the bidding process is under Section 63 of Electricity Act. Since there was no bidding guidelines and that no standard bid documents at the time of the bidding process initiated by the APDISCOMs or by the time of conclusion of said bidding process, the said bidding process cannot be said as the process undertaken as per Section 63 of Electricity Act. As a matter of fact such tariff which was agreed by both parties preceded by bidding process shall have to be construed under Section 86 (1) (b) and the approval granted by the orders dated 21.02.2015 should be construed as orders issued under Section 86(1) (b) of Electricity Act. On the said proposition of law, the Hon'ble Appellate Tribunal in its orders passed in Appeal No. 112 of 2012 held that in order to consider the bidding process under Section 63, it is not only a competitive bidding process and that too as per the guidelines and the standard bidding document issued by Government of India under Section 63 of Electricity Act. Since, the bidding process undertook by the Petitioners is de hors to the guidelines or standard bid document, such process cannot be construed as per Section 63 of Electricity Act.
8. The Petitioners further submit that during the course of time the Respondents No. 31& 32 who are NTPC and SECI during the year 2016 and 2017 have developed solar parks in pursuance of the scheme granted by Govt. of India.

The NTPC during the year 2016 have developed 250 MW capacity Solar Park by selecting the developer through EPC contract and entered PPA with the APDISCOMs with a tariff of Rs. 5.96/unit for 250 MW capacity. It is to submit that the said price was arrived at after thorough negotiation and bargaining during pendency of the proceeding for approval of PPA before the APERC. As such, the same can be construed as negotiated tariff and that the tariff shall be construed as approved under Section 86 (1) (b) of Electricity Act. Subsequently, the NTPC has also developed solar park with a capacity of 1000 MW at Gani of Kurnool District by selecting the developers under engineering procurement contract to establish generating stations. The NTPC entered Power Supply Agreement (PSA) dated 08.01.2016 with APDISCOMs for sale of grid connected Solar Power Projects to bundle the said purchased solar power with unallocated quota from NTPC Thermal stations on 2:1 ratio of Thermal power allocated by MoP, Gol with a tariff in the range of Rs.4.63/unit to Rs. 5.20/unit. The said PSA is backed by several PPAs entered by NTPC with Solar Power developers. As such, there is difference of tariff depending upon the quoted price of each developer in the bidding process conducted by NTPC. However, even by the said date of 08.1.2016 when PSA with said tariff was entered by the parties, there was no guidelines for competitive bidding and that no standard bid document issued under Section 63 of Electricity Act by the Government of India. Therefore, as per the binding precedent law decided by APTEL in Appeal No.112 of 2012, since there was no bidding guidelines and standard bid document by the time of aforesaid date of PSA, the tariff agreed by both parties shall be considered as negotiated price and the approval granted by this Hon'ble Commission shall be construed as the orders issued under Section 86 (1) (b) of Electricity Act.

9. The Petitioners further submit that the Respondent No. 32, the Solar Energy Corporation of India (SECI) during the year 2016 has developed Solar Park at Galiveedu Village, Kadapa District with a capacity of 500 MW (400 MW has commissioned). The SECI reported to have conducted competitive bidding process and discovered by tariff at Rs. 4.57/unit (including trading margin of 7 paise) for development of solar park of 400 MW. The Petitioners entered Power

Supply Agreement dated 27.10.2016 with the Respondent, SECI for 400 MW, which is backed by Power Purchase Agreement entered by the Solar Power Generator with SECI. However, by the date of the said bidding process conducted by SECI for selection of bidder, there was no guidelines and that no standard bid document issued under Section 63 by Government of India. As such, the tariff which is incorporated in the Power Supply Agreement entered by Petitioners with SECI is only mutually agreed rate, but not determined by Hon'ble Commission under Section 62 of Electricity Act nor discovered as per Section 63 of the Electricity Act. Therefore, although the Petitioners due to inadvertence sought for adoption of aforesaid agreed tariff, as if the process is under section 63 of Electricity Act 2003, the same shall be construed as that of tariff regulated under Section 86 (1) (b) of the Electricity Act.

10. The Petitioners further submit that during course of time, it has come out that the tariff that was agreed by the Petitioners with the Respondents is not truly discovered the prevailing market price in the said bidding process undertaken either by the Petitioners or by the Respondents No. 31 & 32. Further it is to submit that the said tariff is found to be very much high and the same has caused havoc to the financial health of APDISCOMs. It is also manifestly clear, by the tariff discovered during February 2017 by SECI in Rajasthan state as per the guidelines issued under Section 63 by the Government of India is at Rs. 2.44/unit, that aforesaid tariff of NTPC and SECI does not reflect the correct market price. The following are the Lowest Solar Tariff discovered in the different states in India.

	2015-16	2016-17	2017-18	2018-19
Lowest Cost in the Country during the Year (Rs/Unit)	5.17	4.66	2.44	2.44
State in which lowest tariff discovered	Telangana	Telangana	Rajasthan	Rajasthan

11. The Petitioners further submit that because of the high tariff, the APDISCOMs could not pay the monthly bills and the dues are piled up nearly Rs. 20,000 Cr when calculated with the present high tariff. As a matter of fact during the public hearings held by this Hon'ble Commission in respect of aggregate revenue requirements of APDISCOMs for the FY 2019-20, public have made several objections about the high cost of wind and solar power procurement.

Considering the said facts, this Hon'ble Commission addressed a letter dated 27.02.2019 to the Principal Secretary, Energy, Government of AP to obtain opinion from the Advocate General state of AP whether the tariff specified in the PPAs can be revised or the period of the PPA can be reduced from 25 years to 5 years or any other period. The said issue is still pending with the Government.

12. The Petitioners further submit that due to financial crisis of the Discoms and the impossibility to perform their obligations under PPA, APDISCOMs could not pay monthly Power Purchase Bills from the last one year. Further, as per the terms of Power Sale Agreement if the DISCOMs failed to pay the monthly bills beyond stipulated time period as mentioned in the relevant clauses of respective PPAs/PSAs from the date of submission of the bills, the respondents are at liberty to terminate the PPA/PSA and go for third party sales. The PPA/PSA which contains relevant Discoms default clauses for payment of bills are indicated as Annexure-1, 2, 3 & 4.

13. The Petitioners further submit that the interpretation of terms of the long-term PPA with a reference to the tariff specified therein fell for consideration by the Hon'ble Supreme Court in Tarini Case reported at 2016 (8) SCC page 745. The Hon'ble Supreme Court in the said judgment held asunder:

“When the tariff order itself is subject to periodic review it is difficult to see how incorporation of a particular tariff prevailing on the date of commissioning of the power project can be understood to bind the power producer for the entire duration of the plant life (20 years) as has been envisaged by Clause 4.6 of the PPA in the case of Junagadh. That apart, modification of the tariff on account of air cooled condensers and denying the same on account of claimed inadequate pricing of biogas fuel is itself contradictory.

Before parting, a word about the recent pronouncements of this Court in Gujarat Urja Vikas Nigam Limited Vs. EMCO Ltd. & Anr. (supra) and Bangalore Electricity Supply Co. Vs. Konark Power Projects Ltd. (supra), relied upon by the appellant. All that would be necessary to note in this regard is the context

in which the bar of a review of the terms of a PPA was found by this Court in the above cases. In Gujarat Urja Vikas Nigam Limited Vs. EMCO Ltd. & Anr. (supra) the power purchaser sought the benefit of a second tariff order made effective to projects commissioned after 29.01.2012 (the power purchaser had commissioned its project on 02.03.2012) though under the PPA it was to be governed by the first tariff order of January, 2010. Under the first tariff order for such projects which were not commissioned on or before the date fixed under the said order, namely, 31.11.2011 the tariff payable was to be determined by the Gujarat Electricity Regulatory Commission. The power producer in the above case did not seek determination of a separate tariff but what was sought was a declaration that the second tariff order dated 27.01.2012 applicable to PPA(s) after 29.01.2012 would be applicable. It is in this context that this Court had taken the view that the power producer would not be relieved of its contractual obligations under the PPA. In the case of Bangalore Electricity Supply Co. Vs. Konark Power Projects Ltd. (supra), this Court held that it was beyond the power of State Commission to vary the tariff fixed under the approved PPA in view of the specific provisions in Regulations 5.1 and 9 of the KERC (Power Procurement from Renewable Sources by Distribution Licensee) Regulations, 2004 and 2011 respectively as the same specifically excluded a PPA concluded prior to the date of notification of the Regulations in question.”

14. The Petitioners submit that in view of the aforesaid binding precedent law, the tariff agreed and specified in the long-term PPA is not inviolable, and infact is amenable for revision, in public interest. The Petitioners submit that because of the said high tariff, besides the “**Must Run**” status given to the solar power generation, by which the solar power need to be scheduled de hors to the economic principles/merit order, the said “**Must Run**” status has caused unjustified burden on the Petitioners/end-consumers. The said unjustified burden is clearly evident from the financial position of the APDISCOMs and the true-up applications have been filed by the APDISCOMs before the Hon’ble Commission.

15. The Petitioners further submit that the Additional financial burden on Discoms due to “Must Run” status given to the Wind & Solar Power is stated hereunder.

The “Must Run” high cost renewable power accounts to 15000 MU/year out of 60000 MU/year of AP State consumption. This is about one-fourth of the AP State consumption and is the highest share for any state in India. All this high cost must run energy is purchased at an additional cost of rates Rs.2/unit by shutting down the readily available cheaper thermal power. This leads to a loss of nearly Rs. 3000 Cr per year (15000 MU x Rs.2/unit). This will contribute to Rs. 0.5/unit additional cost (Rs.3000 Cr/60000 MU) to the end-consumer which is not a small amount. Therefore, this is certainly prejudicial to the interest of end consumers. There is no stipulation of “Must Run” status in Solar Power purchase agreement entered with Respondents. But the state Government in the policy has stated that the solar power generator, who supplies to DISCOMs is to be given “Must Run” status by which the solar power has to be dispatched de hors to merit order dispatch which is based on economic principles. Therefore, the implication and value of such “Must Run”, in the Power Purchase Agreement (PPA)/Power Sale Agreement (PSA), since not factored, need to be deducted from the said decided/agreed tariff.

16. Further Petitioners submit that as per the report of “ Committee On Optimal Energy Mix In Power Generation On Medium And Long Term Basis “ constituted by Ministry Of Power Government Of India, it is reported that the following components have adverse impact on the DISCOMs for procurement of wind and solar power.

i) Adequacy costs (back-up costs)

The variable nature of renewable energy has implications on system adequacy and on the utilization of available power plants. First, in terms of adequacy, generation capacity needs to be present in the system to be able to ensure demand-supply balance at all times, also at times of low RES generation. Second, the variability of RES has implications on how the remainder of the generation system can be operated (shift from base load generation to mid and peak load generation). As such, the variable character of renewable energy causes additional integration costs, referred to as back-up cost.

ii) Balancing costs

On short time scales, the supply-demand balance must be maintained. As the generation from Renewable Energy Sources (RES) is subject to forecast errors, additional operational flexibility might be required in this regard. As such, the partly unpredictable character of RES causes additional integration costs, referred to as balancing costs.

iii) Grid integration costs

Deploying renewable energy requires connecting these to the grid and possibly strengthening the grid (both on the transmission and distribution level), to carry the RES-generated power to load centers. Offshore wind farms require a specific grid connection, while onshore wind and solar PV have a modular nature. As such, these RES cause integration costs, referred to as grid integration costs.

17. The petitioners submit that considering the above said components and adverse impact on procurers, during the 11th meeting of Standing committee of Southern Zonal council, the GOAP has submitted the following:

a) Burden due to Adequacy cost effect

AP maintains 12,000 MW of stable power purchase through agreements to cater to its peak demand. The fixed costs are paid irrespective of whether this power is consumed or not. AP has backed down APGENCO and CGS stations to an equal extent to which VRE purchase was done. Thermal generation is being backed down to accommodate the wind & solar generation even during low grid demand conditions. This imposes indirect charges on the consumers being supplied by the DISCOMs. The variability in VRE generation is forcing discoms to have surplus power in the system so that deficit resulting from deviation in forecast of these generation cost could be met seamlessly to ensure 24X7 power supply to consumer. The VRE at 7400 MW is a surplus capacity which is at a cost much higher than the pooled variable cost of the firm thermal power. Due to this surplus and the must run nature of VRE, the state is losing more than Rs. 2 per unit of VRE consumed as shown below.

	16-17	17-18	18-19
APERC Tariff	4.84	4.84	4.84
Pooled thermal variable cost	2.61	2.6	2.59
Adequacy cost	2.23	2.24	2.25

Annually AP consumes more than 15,000 MUs of VRE. This results in a loss of more than Rs.3000 Cr per year.

b) **Burden due to Balancing cost effect**

Contingency purchases are being made in cases of frequent daily deviations in forecast during the day furnished by VRE generation. Recently, changes were made in the deviation settlement mechanism effective from 01.01.2019 in which Average market clearing price in exchange is linked to frequency at 50Hz and sign change for every 6 time blocks is introduced. Subsequently this six time sign change was revised to 12 time blocks until next year. These changes resulted in increase in pay out to Unscheduled Interchange (UI) pool and the introduction of sign change is forcing SLDC to load shedding to be carried out due to its intermittency nature.

There are also losses incurred due to the reduced efficiency of thermal plants, increased wear & tear etc.

All this is costing Rs. 1 per unit of VRE purchased by AP.

c) **Burden due to Grid Integration cost effect**

The evacuation infrastructure is created by the AP State. Most of the infrastructure created is lying unutilized during low generation times. The Discoms and Transco are unable to pay for the debts that have arisen out of these wasted capital expenditure. This grid integration cost is Rs. 0.25 per unit.

The abstract of additional burden on APDISCOMs in procurement of said RE power

Adequacy cost impact on tariff - difference between readily available pooled variable thermal cost and variable renewable energy)	Rs. 2.25 per unit
Balancing cost (reduced efficiency of thermal plants, increased sp. heat rate, auxiliary consumption, wear & tear etc.)	Rs. 1 per unit
Grid integration cost	Rs. 0.25 per unit
Total RE integration cost burden	Rs.3.50 per unit

18. The following table shows the costs incurred by Discoms due to purchase of additional solar energy beyond RPPO, when compared with Thermal Variable cost for the year FY 2015-16 to 2018-19.

Sl.No.	Source of Energy	2015-16	2016-17	2017-18	2018-19	Total
1	Energy Purchased (MU)	79.0	1303.0	3356.0	4609.0	9347
2	Purchase Rate (Rs/Unit)	4.00	5.50	4.30	4.80	

	with Bundled Power					
3	Additional Burden Beyond RPP0 due to Back Down : RPP0 MU	111	121	1537	2250	4019
4	Excess Power Purchase Over RPP0 in MU	0	1182	1819	2359	5360
5	Thermal Variable Cost which is arrived in Rs/Unit	2.57	2.77	2.82	2.97	
6	Excess Over Thermal Variable Cost Rs/Unit	1.40	2.75	1.51	1.87	
7	Additional Burden on DISCOMs in respect of excess unit of Solar power procured beyond RPP0 obligation multiplied by excess over thermal variable cost is in Cr.	0.0	325.10	274.7	441.1	1041
8	Lowest cost in the country during the year(Rs/Unit)	5.17	4.66	2.44	2.44	
9	Excess over the lowest rates in the country (Rs/Unit)	0.0	0.9	1.9	2.4	
10	Additional burden within RPP0 in Crs	0.0	10.4	290.5	540.0	841

In view of the above facts of additional financial burden, public interest warrants revision of tariff by reducing the same to Rs. 2.44/unit from the existing tariff.

19. The Petitioners further submits that the tariff is a continuous process and is revisable by regulating the same considering the circumstances that exist during the relevant period. The said principle of law is evolved by the Hon'ble Supreme Court in UP power corporation case reported at 2009 (6) SCC at page 235.

"The Central Commission in exercise of its jurisdiction under Section 55 of the 1998 Act framed regulations known as the Central Electricity Regulatory Commission (Conduct of Business) Regulations, 1999 (for short "the 1999 Regulations").

Chapter V of the 1999 Regulations deals with tariff regulations. Regulations 92, 93, 94 read as under:

"92. The Commission on its own on being satisfied that there is need to review the tariff of any utility shall initiate the process of revision in accordance with the procedure as may be prescribed. The proceedings for suo moto review of the tariff shall be the same as set out in Chapter II of these Regulations.

93. Review of orders of the Commission on tariff will be entertained strictly in accordance with the relevant regulations governing review as contained in the relevant regulation herein.

94. The utilities shall submit periodic returns as may be prescribed containing operational and cost data to enable the Commission to monitor the implementation of its order and reassess the bases on which Tariff was approved."

Chapter VII of the 1999 Regulations deals with Miscellaneous Matters. The 1999 Regulations expressly confer a power of review on the Central Commission in terms of Regulation 103 thereof. For the aforementioned purpose, the Central Commission may not only exercise its jurisdiction suo motu but it may review a decision even if an application is filed within a period of sixty days of making of any decision, direction or order.

Regulation 110 empowers the Central Commission to issue orders and practice directions in regard to the implementation of the Regulations and procedure to be followed and various matters which the Commission has been empowered by these regulations to specify or direct. Regulations 111 and 112 read as under:

"111. Nothing in these Regulations shall be deemed to limit or otherwise affect the inherent power of the Commission to make such orders as may be necessary for ends of justice or to prevent the abuse of the process of the Commission.

112. Nothing in these Regulations shall bar the Commission from adopting in conformity with the provisions of the Act,. a procedure, which is at variance with any of the provisions of these Regulations, if the Commission, in view of the special circumstances of a matter or class of matters and for reasons to be recorded in writing, deems it necessary or expedient for dealing with such a matter or class of matters."

While exercising its power of review so far as alterations or amendment of a tariff is concerned, the Central Commission *stricto sensu* does not exercise a power akin to Section 114 of the Code of Civil Procedure or Order XLVII, Rule 1 thereof. Its jurisdiction, in that sense, as submitted by Mr. Gupta, for the aforementioned purposes would not be barred in terms of Order II, Rule 2 of the Code of Civil Procedure or the principles analogous thereto.

Revision of a tariff must be distinguished from a review of a tariff order. Whereas Regulation 92 of the 1999 Regulations provides for revision of tariff, Regulations 110 to 117 also provide for extensive power to be exercised by the Central Commission in regard to the proceedings before it.

Having regard to the nature of jurisdiction of the Central Commission in a case of this nature, we are of the opinion that even principles of res judicata will have no application.”

20. The Petitioners submit that considering several of the aforesaid facts, the Petitioners made an attempt to negotiate with the Respondents for reduction of tariff with a view that in the event there exists mutual consensus for reduction of tariff the same can be submitted to the Hon'ble Commission for its approval to implement the same. But, the Respondents have disinclined to enter negotiation and filed batch of Writ Petitions vide W.P.No.9844 of 2019 and batch, contending that neither the Government nor the Petitioners have any right to negotiate the tariff. When Petitioners stated that in view of the disinclination for negotiation of tariff by the Respondents, the Petitioners have no option than to approach this Hon'ble Commission for revision of tariff which is warranted by the public interest. The Respondents have contested the said Writ Petitions stating aforesaid stand that they have no option than to approach this Hon'ble Commission for revision. The Hon'ble High Court by its judgment dated 24.09.2019 held that both parties may approach the APERC with their respective claims on the issue of revision of tariff and this Hon'ble Commission is directed to dispose of such proceedings within 6 (six) months and that until disposal of such proceedings, the Petitioners/APDISCOMs are to pay Rs. 2.44/unit towards pending bills and future monthly bills subject to final tariff that may be arrived at.
21. Further Petitioners submit that as stated above, in the event when the DISCOMs unable to pay monthly bills for more than specified period as stated above procedure is contemplated in the PPA gets triggered where under the Petitioner/Generator have a right to terminate the PPA and also liberty to sell the power to third parties.
22. Without prejudice to the contentions that the Tariff agreed is not as per section (63) of Electricity Act 2003 and that it is only 86(1) (b) of Electricity Act 2003, even assuming without admitting that the said tariff agreed is as per section 63 Electricity Act 2003, still the same is amenable for

revision/modification during the course of time in public interest and that the same is not inviolable.

23. Cause of action to file this petition arose in February -2019, when Public made several objections during public hearing for A.R.R of 2019-20, and on 22.07.2019 when the Petitioners held a meeting with Respondents to negotiate the issue of reduction of tariff and the same was disagreed by Respondents and that on 24th September when the Hon'ble High Court disposed of the W.P.No.9844 of 2019 and batch.
 24. The petitioners pays Rs. 50,000/- (Rupees Fifty Thousand only) towards payable as per APERC regulations.
 25. Law of limitation does not apply to proceedings before Hon'ble Commission in respect of tariff issues.
 26. It is prayed that Hon'ble Commission may be pleased to admit the Petition and
 - a. To revise the tariff by reducing the same to Rs. 2.44/unit from July 2019 to all solar Power Purchase Agreements/Power Sale Agreements entered with Respondents in public interest and in the interest of justice.
- (OR)
- b. To reduce the period of the PPA/PSA to 5 years from the date of COD and to relieve the petitioners from the obligations of said PPAs/PSAs entered with Respondents.
 - c. Any other relief to which the petitioners are entitled may also be granted.

Petitioner-1

Petitioner-2

BEFORE THE HON'BLE A.P. ELECTRICITY REGULATORY COMMISSION
AT IT'S OFFICE AT V FLOOR, SINGARENI BHAVAN, RED HILLS, HYDERABAD

File No.....of 2019
Case No..... of 2019

In the matter of:

Revision of tariff payable to Solar Power Developers who enters Power Purchase Agreements / Power Sale Agreements during 2012 to 2016 - Reg.

1. Southern Power Distribution Company of Andhra Pradesh Limited,
Rep. by its Chairman & Managing Director,
Beside Srinivasa Kalyana Mandapam, Tiruchanoor Road,
Tirupathi - 517501.
2. Eastern Power Distribution Company of Andhra Pradesh Limited,
Rep. by its Chairman & Managing Director,
P&T Colony, Seetammadhara, Vishakhapatnam - 530020.

.... Petitioners

and

M/s. Abhedya Power Pvt. Ltd.
D.No.74-12-8A, Shop No.8,
Radha Krishna Residency,
Near Auto Nagar Gate,
Patamata, Vijayawada-520007 and 30 Others

.....Respondents

VERIFICATION AFFIDAVIT

I, K. Santhosha Rao, S/o. K. Yosupu, age: 57 years working at Chief General Manager (IPC), Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL), Tirupathi, do solemnly affirm and say as follows:

1. I am the Chief General Manager (IPC) of Southern Power Distribution Company of Andhra Pradesh Limited (APSPDCL) having its office at 19-13-65/A, Raghavendra Nagar, Kesavayanagunta, Tiruchanoor Road, Tirupathi - 517 501 and am competent and duly authorized by the Petitioners to affirm swear, execute and file this Petition.
2. I have read and understood the contents of the Petition. The contents of the Petition now shown to me are true to my knowledge derived from the official records made available to me and are based on information and advice received which I believe to be true and correct.

DEPONENT

VERIFICATION:

I, solemnly affirm at Tirupathi on this _____ day of _____, 2019 that the affidavit has been signed in my presence.

ATTESTED